

Government of Papua New Guinea

Resettlement Policy Framework (RPF): *Rural Service Delivery Project (RSDP)*

Funded by The World Bank
Department for Provincial and Local Government Affairs (DPLGA)
September 2016

Resettlement Policy Framework

Social safeguards policy OP4.12 Involuntary Resettlement has been triggered for this Project as a precaution. The objective of this policy is to ensure affected persons living standards are not adversely affected as a result of the Program or its interventions, especially as a result of involuntary land acquisition. As such, the Borrower is required to either prepare appropriate social safeguard instruments or conduct adequate due diligence to address all adverse impacts that will be generated as a result of project activities and subprojects.

A. Project Overview

The Project Development Objective of the Rural Service Delivery Project (RSDP) is to improve communities' access to basic infrastructure and services in targeted rural areas using inclusive, participatory planning and implementation.

RSDP will cover five provinces (up from two), covering 19 districts and 20 LLGs. The five provinces where the Project will be implemented are: Central, Western, East New Britain, West Sepik, and Simbu.

The proposed project will provide two rounds of Ward Development Grants to rural wards in five targeted provinces, which could be used for a wide-range of small-scale social or economic investments and/or services (e.g. classrooms, health aid posts, water supply and sanitation systems, access roads, bridges, wharves, solar power systems).

The Project comprises three components:

Component 1: Preparation and Implementation of Ward Development Grants

Subcomponent 1.1: Ward Development Grants

Subcomponent 1.2: Subproject Preparation and Implementation Support Grants.

Component 2: Capacity Building of National and Sub-national entities

Component 3: Project Management

A full project description can be found in the Project's ESMF.

B. Rationale

It is envisaged that the land required for project purposes will occur through either voluntary land donation and/or land use agreements. Activities that require physical displacement (relocation or removal of houses, businesses or permanent structures), economic displacement (loss of livelihood, restriction of access to traditional lands or resources), and/or involuntary acquisition or leasing of customary land where suitable government land is available are not eligible for funding under RSDP. This means that any land required for subprojects will largely be based on the goodwill of the beneficiary community.

This framework guides the process where landowners wish to provide access, change of land use, or donate land for subproject purposes that are of **direct benefit** to them and their

community. It also outlines the procedures for other scenarios involving government land or assets.

C. Key Principles

- Decisions on land and donations will be made with the informed consent, free of coercion, and will not unduly affect the donor
- Full consultation with landowners and any claimants will occur well in advance
- Living standards and livelihoods not adversely affected (i.e. no individual should lose more than 10% of their productive assets or landholdings)
- Any agreement will be confirmed through written record and verified by an independent third party
- Participating individuals and communities should be made aware of how to access the grievance redress mechanism.

D. Procedures for securing land for CDD Subprojects

RSDP subprojects involving small-scale infrastructure will require the use of land in order to implement the subproject. In most cases, the subproject will involve community asset(s) on customary land (Section E). However, there is potential for other scenarios to arise as detailed in Table 1.

Table 1 Securing land

<i>Scenario:</i>	<i>Requirement:</i>
Community asset on customary land	Clan Land Use Agreement (CLUA) is completed following the voluntary land donation protocol in Section E below.
Community asset on government land	Government verifies in writing it’s acceptable and endorsement for the asset to be erected on government land. Memorandum of Understanding (MoU) between community and relevant Government agency is negotiated and signed, witnessed by Provincial Lands Officer (Annex 2).
Government asset ¹ on customary land	Government requests use of customary land for direct community benefit. A CLUA between community and relevant Government agency is negotiated and signed.

E. Procedures

¹ Appropriate assets will include those that are a direct community benefit that the community has requested such as a classroom, aid post or similar.

1. Voluntary Land Donation Protocol for customary land

For cases where communities and/or individual landholders have offered to donate their land for the project because it is of benefit to the broader community, the World Bank's Voluntary Land Donation Protocol (VLDP) should be followed. The project team is to exercise their best judgment where voluntary land is offered and conduct due diligence to avoid adverse impacts and reputational risks. Donations are based on the premise that the project benefit will offset or outweigh the loss of the land donated.

VLD is *only* suitable for community driven projects where the landowner and/or community wish to 'gift' land parcels or small areas for small-scale community infrastructure that will be of direct benefit the donor's community.

1. When VLD is Applicable

Voluntary donation of land by beneficiary households is acceptable where:

- It has been verified the donation did not result from any form of coercion or manipulation and is offered in good faith;
- The donation does not severely affect the living standards of the community and/or individual landholder responsible for the donation (i.e. impacts are marginal based on percentage of loss and minimum size of remaining assets);
- Alternatives and the viability of other locations or sites have been considered;
- The donation does not result in the displacement of households or cause loss of income or livelihood;
- The landholder/s making the donation will directly benefit from the project;
- Consultation has been conducted in an open and transparent manner and to a degree that the landholder/s can make an informed choice;
- The land is free from disputes regarding ownership or tenure;
- Land transactions are supported through the transfer of titles;
- Full and proper documentation of all consultations, meetings, grievances and actions taken to address grievances has been reviewed and made available;
- Where impacts are minor and other alternative sites are not viable.

2. When VLD is NOT Applicable

VLD is NOT applicable under the following scenarios:

- Medium/large-scale infrastructure particularly in cases where a government agency or entity that has a statutory obligation to provide the infrastructure and/or services for which the land is required
- Where inadequate consultation with donors of customary land results in lack of understanding about the terms and conditions of the donation;
- In lieu of formal procedures for land acquisition where these do not exist;
- Where donor property owners, landowners or customary rights holders do not support, or will not directly benefit from the Project;
- Where conflicts over land exist, including customary collective ownership;

- Conflicting land titling that make it difficult to establish with certainty who has a right to own, donate and use a specific parcel of land;
- Where donors did not provide their informed consent and were subject to political or social pressure and coerced into making the donation.

3. Process for Voluntary Donation

This section provides guidance on the process for VLD, namely on how to:

- Verify the requirements of the donation and the formalization of the donation;
- Carry out due diligence on the owners and users of land donated;
- Ensure appropriate consultation and disclosure;
- Establish informed consent of the person donating the land;
- Sign written agreement; and
- Establish grievance redress mechanism.

The project team will undertake the following steps:

(i) Determine VLD is appropriate in the circumstances of the project

The team should assess that:

- land is being put forward *voluntarily* by rightful customary landowners;
- the land is suitable for the proposed subproject (alternatives have been considered);
- the subproject has a direct benefit to the donor and their community;
- the donor and their livelihood will not be adversely affected by the donation;
- size of the area required; and
- donor's understanding of the terms and conditions of the donation.

(ii) Conduct due diligence on who owns and uses the land

Given the specific issues surrounding land ownership and user rights, it is important that the project team carries out careful due diligence to understand the type of land rights that exist and to identify any particular issues relating to land ownership and use. Thereafter, specific due diligence must be conducted on each parcel of land proposed for donation to identify:

- The rightful customary owner(s) of the land;
- Those with customary rights to use the land or its natural resources; or any parties that occupy the land (either physically or through ownership of an asset or conduct of livelihood or business activities on the land);
- Any competing claims of ownership or use;
- Structures and assets on the land;
- Any encumbrances on the land.

It is important to: (a) identify the right that is being transferred (an ownership right, a use right, a right of way, etc.); and (ii) check whether the donor actually has the right s/he claims to have. In many circumstances where careful due diligence has not been carried out, significant conflict has arisen at a later stage when another party claims that they have the same or a competing right. In some circumstances – but not all – the donor will have documentary evidence of such right. Where conflict or potential conflict over the ownership of the land or its boundaries, alternative sites will be required.

(iii) Disclosure and Consultation

The decision to donate must be taken on the basis of a full understanding of the project and the consequences of agreeing to donate the land. Accordingly, the donor(s) and users of the land must fully comprehend what the land will be used for, for how long, and the impact the donation will have on them and their families.

The long-term and inter-generational impacts of the donation need to be fully considered by the clan and/or families donating the land.

(iv) Establishing Informed Consent

It is crucial that the project team is confident that the decision to donate customary land was taken in circumstances of *informed consent or power of choice* and offered on the goodwill of the donor/customary land owner(s). The owner(s) or user(s) of the land understand:

- What the land is going to be used for, by whom and for how long;
- That the ownership or right to use the land will change, and what this really means;
- Possible alternatives to using this land;
- What they will need to do to donate the land (e.g., documentation, get spousal consent);
- The exact demarcation of land boundary;
- The potential intergenerational impact of the donation on their family, what they can do if they (or their family or heirs) want the land back.

(v) Documentation

The terms and conditions of the land donation must be mutually agreed upon and detailed in a written agreement.

Meeting minutes with landowner(s) and parties with an interest in the land must be recorded and documented prior to the donation of land for subproject purposes. All parties must be consulted widely to ensure clear understanding of the intent, voluntary nature and conditions of the donation.

Legal transfer is *not* required since: (i) customary land in Papua New Guinea cannot be bought or sold, and (ii) it is for the subproject purpose and cannot be transferred to an entity as such. However, legal transfer would be required for government land, if applicable.

Representatives of the landowners (family or clan) will sign a Clan Land Use Agreement (CLUA). This certifies that the land is voluntarily donated for the purposes of the subproject and for the benefit of the community. The signature of the Letter is witnessed (as attested by their signature) by a suitable project representative.

The project team will:

- Identify additional appropriate documentation that may be required;
- Ensure that the CLUA:
 - Refers to the consultation that has taken place (date, attendees, topics);
 - Confirms the donation was voluntarily made and not subject to coercion, manipulation, or any form of pressure;
 - Includes accurate map of the land being donated (boundaries, coordinates);

- Ensure that all necessary parties sign the documents, including obtaining consent from spouses and children over a certain age;
- Ensure local witness(es) or third party verification to CLUA.

The Project implementing agency should maintain a record with documentation for each parcel of land donated. Such documentation must be available for World Bank review, and for review in relation to any grievances that may arise.

(vi) Grievance Arrangements

Grievances may be referred to customary conflict mediation arrangements where they are not directly affiliated with traditional leaders who are a party to the donation process. Land that comes under ownership disputes during subproject preparation will result in the subproject being terminated. See ESMF for more information.

2. Government Land

There may be some potential for community assets funded by RSDP to be located on government land. This will occur when no suitable customary land exists or where the ward is situated in the District or LLG headquarters or the 99 year agricultural lease land areas. In such situations, a MoU with relevant government agencies and community representatives will be required.

The Memorandum of Understanding (MoU) applies when (i) government land is required for a community asset as no suitable alternative sites exists, (ii) where the ward is situated in the District and/or LLG headquarters, (iii) where the ward is situated in the 99 year agricultural lease land area and (iv) the relevant government agency has agreed for the land to be used for a specific purpose, over a specific timeframe, for the benefit of the whole community. The land parcel will be confirmed with relevant Lands Department and the document will need to be witnessed by the Provincial Lands Officer (or District-level equivalent). The Annex 2 contains the MoU template.

Annex One: Clan Land Use Agreement

The Clan Land Use Agreement (CLUA) applies when (i) customary land is required for the subproject; (ii) no suitable alternative sites exists, and (iii) customary landowners have agreed for the land to be used for a specific purpose, over a specific timeframe, for the benefit of the whole community. The CLUA does not apply when state- or privately-owned land will be utilized or needs to be acquired. The agreement will be in relation to small-scale assets that are of direct community benefit that are either government-owned or community-owned. It is important that absentee landowners are engaged, and that a suitable witness (non-clan member) signs this agreement. Due diligence on correct customary landowners must be conducted prior to the signing of this agreement.

Based on discussions during the project preparation phase, the process that would be used under RSDP to enter into the CLUA is as follows:

- If land is required for the identified community sub-project then the clan leaders of the community, along with other community leaders as appropriate (chief, religious leaders, etc.), would organize a meeting with the representatives of the specific clan who have customary ownership of the proposed land;
- Any persons with fixed physical assets on the land/proposed site, but not considered a landowner, is involved in meetings and their rights are taken into consideration;
- The meeting would discuss the proposed sub-project with the land owning clan to reach an understanding that the subproject is for the benefit of the whole community and change of land use (either permanent or temporarily) is required;
- Share the rationale for the sub-project and its proposed siting, and seek the donation of the necessary land by the owning clan;
- The landowners would also be notified clearly that their agreement to donating their land should be completely voluntary and will not involve compensation, now or into the future;
- If agreement to proceed is reached, then a CLUA will be entered into between the clan, the other clans and the leader of the community;
- The CLUA should be endorsed by the Ward Councilor and Provincial and/or District Lands Officer;
- The signed CLUA will be submitted as part of the sub-project proposal.
- The CLUA is submitted to the local magistrate or equivalent for certification.

Should natural resources be gifted by community members from an area different to the project site, it is recommended that a similar agreement ('Resource Use Agreement'), be made and an alternative to the CLUA, but one that specifies which natural resources can be utilized as part of the community contribution.

Exit Strategy and Grievances

If all landowner parties are in disagreement about the land or conditions of CLUA, or if landowners are excluded from initial discussions then the subproject will not proceed and the grievance process must be followed.



GOVERNMENT OF PNG
CLAN USE AGREEMENT FORM

Date: _____

1) We, the undersigned being the representatives of _____ hereby acknowledge that _____ have the right under the native law and custom to lease the land known as _____ for the purpose of _____. We certify that all members of the clan agree to the truth of this certificate and that we are the persons authorized by the clan to sign it.

2) We, the undersigned being the representatives of _____ clan of _____ Village, _____ LLG, _____ District hereby declare that;

(1) We have the right under customary law to gift the _____ land for the purpose of _____;

(2) That we transfer rights to use and access the said land to benefit our entire community;

(3) That we undertake not to interfere in any manner on any activities or developments undertaken;

(4) That we agree to allow the use of natural resources located on the said land (edible or non edible plants/shrubs, sand, gravel, rocks, timber, water sources, bush materials and other organic matters) for the purpose of the community project;

(5) We commit ourselves in upholding the contents and the spirit of this agreement for so long as it remains in force and understand compensation payments will not be made for this is a gift to benefit our community;

(6) We understand that dishonouring this agreement could result in project termination and we will undertake efforts to convey the contents of this agreement to members of the _____ clan and to ensure that they so honour it.

3) INVENTORY OF NATURAL RESOURCES

Resource/bush materials	Quantity	Donated by

4) CUSTOMARY LANDOWNERS and COMMUNITY LEADER

Village	First Name, Last Name	Signature and Date	Contact Details

5) GOVERNMENT REPRESENTATIVES and WITNESS

Village	First Name, Last Name	Signature and Date	Contact Details

Made under our hands these agreements:

This _____ day of _____ 201_ at _____

village _____ LLG _____ in Papua New Guinea

Submitted to:

Local Authority at this location _____

On this _____ day of _____ at _____

Annex Two: Memorandum of UnderstandingTemplate:

This Memorandum of Understanding entered into by and between;

The Independent State of Papua New Guinea (PNG) as represented by the
_____ (lead agency);

---AND---

The community of _____ (Name of Ward), _____, Province of
_____ represented by its wards leaders, district leaders, leaders
of clans and sub-clans, the names of which are enumerated at the end of this
document;

Whereas, the State through the _____ (Implementing Agency) is
administering and implementing the Rural Service Delivery Project (the Project
herein), a World Bank funded loan for small-scale rural subprojects throughout PNG;

We, the Independent State of Papua New Guinea (State), as represented by _____,
agree to permit to use of government land to members and representatives of the
_____ clans and communities for the RSDP subproject described above
exclusively under the Project and guarantee the unimpeded use of the road by the
public;

The _____ (Lands Agency) has confirmed the land parcel is confirmed to be
government land by _____ and has a total area of _____
square meters / _____ hectares in _____ (Town/Village)
_____ (Ward), _____ (District) in
_____ Province.

No amendment or additional terms and conditions to this MoU shall be deemed
binding between the parties unless mutually agreed upon by them in writing.

IN WITNESS WHEREOF, we have hereunto affixed our signatures this ____ day of
_____ 20__.

By and on behalf of the Independent State of Papua New Guinea:

_____ (Name and Signature)

_____ (Designation)

Witness:

I, _____, a Provincial Lands Officer of
_____ Province, a public servant of Papua New Guinea, do hereby certify
that the contents of this Agreement were read over by _____ in

the _____ language that is understood by the signatories to this Agreement and I further certify that to the best of my knowledge and belief the contents of this Agreement are understood by the signatories hereto.

Dated at _____ this _____ day of _____

Signature: _____ Designation:

Name	Signature	Ward/Village	Clan/Sub-Clan	Date