

Land Assessment Framework (Revised)

11th September 2013

PNG: Rural Primary Health Services Project

Endorsed for implementation

_____/____/2013

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Secretary for Health

Prepared by the National Department of Health, Government of Papua New
Guinea

CURRENCY EQUIVALENTS

(as of 11 September 2013)

Currency unit	–	Kina (K)
K1.00	=	\$0.4328
\$1.00	=	K2.3105

ABBREVIATIONS

ADB	-	Asian Development Bank
APs	-	Affected persons
CHP	-	Community Health Post
DDR	-	Due Diligence Report
DLPP	-	Department of Lands and Physical Planning
EA	-	Executing Agency
GRC	-	Grievance Redress Committee
GRM	-	Grievance Redress Mechanism
NDOH	-	National Department of Health
NGO	-	Non-governmental organization
LAF	-	Land Assessment Framework
LIR	-	Land Investigation Report
LLG	-	Local level government
PA	-	Provincial Administration
PHA	-	Provincial Health Authority
PLO	-	Provincial Lands Officer
PSU	-	Project Support Unit
PNG	-	Papua New Guinea
SPS	-	Safeguard Policy Statement
VGO	-	Valuer General's Office

NOTE

In this report, "\$" refers to US dollars unless otherwise stated.

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

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I. INTRODUCTION

1. The Government of Papua New Guinea (PNG) with the financial assistance from the Asian Development Bank (ADB) and other development partners has been implementing the Rural Primary Health Services Delivery Project (the Project) in order to achieve goals of the National Health Plan (2011-2020). The Project's Output 4: Community Health Facility Upgrading involves improvement of selected rural primary health facilities and community health posts (CHPs) in eight provinces. The project has been classified as Category C on involuntary resettlement. Although this is being implemented as a project loan, the project is a sector-like which involves construction or upgrading of several CHPs to be selected during the project implementation. A Land Assessment Framework (LAF) was prepared during the project processing providing the guidance to screen and assess land issues for CHPs.

2. It is estimated that 32 CHPs will be upgraded or constructed under the project—i.e. 2 CHPs in each of two districts in each project province. Each CHP, including staff housing, will require an area 0.5 ha to 2.0 ha of land. It was assumed at the time of project processing that all CHPs would be upgraded or constructed on land owned by the government or a partner organization (e.g. church) that runs the concerned health facility. However, an initial assessment of CHP sites proposed by provincial governments indicates that not all CHPs can be accommodated on state land and many CHPs will be located on customary lands for which respective landowner groups or communities have expressed their willingness to voluntarily provide those lands for the upgrading or construction of CHPs. The Land Assessment Framework (LAF), therefore, has been revised to provide for additional two options: voluntary land use agreement (lease) and land purchase through negotiated agreement (but not involving compulsory acquisition). The LAF provides procedures for each option to arrange land for CHP construction or upgrading. The National Department of Health (NDOH), the executing agency, and the Provincial Health Authorities (PHAs)/Provincial Administration (PA) will implement the provision of the LAF in compliance with ADB's Safeguard Policy Statement (SPS) and applicable national laws, as relevant.

II. OBJECTIVES, POLICY FRAMEWORK AND ENTITLEMENTS

3. **PNG Laws:** Most lands in PNG are customarily owned although some lands, mostly in urban areas, are owned by the state or occupied on long term leases by private persons or organisations.. The National Constitution (1975) recognizes customary land rights and protects citizens from "unjust deprivation of property." The Land Act (1996) sets out the procedures for the state to obtain land through negotiated agreement (as well as compulsory acquisition, which is not relevant in this project). The Land Disputes Settlement Act (2000) sets out the procedures for resolution of disputes involving customary land. The Fairness of Transaction Act (1993) ensures the fairness of certain transactions, including those governed by customary law. Land Group Incorporation (Amendment) Act (2009) and Land Registration (Amendment) Act 2009 recognize the corporate nature of customary groups and allow them to hold, manage and deal with land in their customary names, and for related purposes. These Acts also facilitate voluntary registration of customary land, to be known as "registered clan land", and make that land available for development through the use of Incorporated Land Groups. A detailed description of relevant PNG laws is in Appendix 1.

Where customary land is required/has been used for development of health or education infrastructure current Government policy requires eventual acquisition by agreement with compensation paid in accordance with the Valuer-General's valuation at the time of acquisition.

4. **ADB's Safeguard Policy Statement (SPS)** requires ADB-assisted projects to (i) avoid involuntary resettlement impacts wherever possible; (ii) minimize such impacts by exploring alternatives; (iii) enhance, or at least restore, the living standards of affected persons (APs) in real terms relative to pre-project levels; and (iv) improve the living standards of the poor and other vulnerable groups. It covers both 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 involuntary land acquisition or restriction on land use, or on access to parks and protected areas.

5. The SPS has 12 policy principles on involuntary resettlement, of which principle # 7 is directly relevant to this project which involves obtaining land through negotiated agreements.¹ This requires to “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.” The para 25 of the SPS Appendix 2 states “Safeguard Requirements 2 does not apply to negotiated settlements.” However, this includes certain safeguards that negotiated settlements should: (i) completely avoid expropriation—i.e. the failure of negotiations should not result in expropriation; (ii) be based on meaningful consultation with APs, including those without legal title; (iii) offer adequate and fair price for land and/or other assets; and (iv) openly address the risks of asymmetry of information and bargaining power of the parties involved. For this, the project’s borrower/client should agree with ADB on (a) consultation processes, policies, and laws that are applicable to such transactions, (b) third-party validation, (c) mechanisms for calculating the replacement costs of land and other assets affected and (d) record-keeping requirements.

ADB’s Involuntary Resettlement Sourcebook clarifies that the voluntary land donation/contribution is not within the scope of the SPS, but the project should conduct due diligence to avoid adverse impacts on APs and possible risks. Such due diligence should also (i) verify that the voluntary contribution is in fact voluntary and did not result from coercion and confirmation through an independent third party; and (ii) ensure that this does not severely affect the living standards of APs and benefit them directly. The Sourcebook further clarifies that voluntary contribution option is appropriate in a project—in this case CHP—that is not location specific and can be built somewhere else if the landowners do not agree.

6. **Gap Analysis and Gap Filling Measures:** The following table provides an analysis of PNG laws and SPS requirements on negotiated settlements.²

¹ The 12 principles are: (1) Screen early and assess resettlement impacts; (2) Carry out consultations with APs and develop a grievance redress mechanism; (3) Improve/restore livelihoods of APs through land-based strategies, replacement of lost assets, compensation at replacement cost, and additional benefits, as appropriate; (4) Provide appropriate assistance to physically displaced APs; (5) Improve living standards of poor APs and other vulnerable groups; (6) develop transparent procedures for negotiations; (7) provide assistance and compensation to non-titled APs for loss of non-land assets; (8) Prepare Resettlement Plans (RPs) or due diligence reports (DDRs), with necessary provisions; (9) disclose RPs to APs and other stakeholders and document the consultation process; (10) conceive and execute resettlement as part of the project; (11) deliver entitlements to APs before their physical or economic displacement; and (12) monitor and assess resettlement outcomes.

²The gap analysis is focused on purchase of land through negotiated agreement, since the voluntary contribution/land use is not within the scope of SPS. In PNG context also, such voluntary contributions operate informally or under custom.

Comparison of PNG Laws and ADB SPS Requirements on Negotiated Settlement

ADB SPS Objectives and Principles/ Requirements on Negotiated Settlement	PNG Laws	Gaps between ADB SPS and PNG Laws	Gap-filling Measures
Avoid involuntary resettlement wherever possible. Minimize involuntary resettlement by exploring project and design alternatives.	The National Constitution National Goal 5(4) calls for 'traditional villages and communities to remain as viable units of Papua New Guinean society'. Section 53 protects citizens from 'unjust deprivation of property' by limiting the justification for compulsory acquisition by the State.	No explicit reference to the need for avoidance or minimizing involuntary resettlement impacts.	The project has adopted the objective to avoiding involuntary land acquisition and resettlement.
Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status	General principles of compensation for damage or destruction of physical and economic assets are set out in National Constitution and Land Act.	No specific requirements on maintaining income and livelihoods.	The LAF includes measures to ensure APs will be able to maintain or improve living standard.
The failure of negotiation should not result in expropriation	Land Act sets out procedures for land purchase or lease through agreement.	PNG laws do not specifically state that expropriation should not result from the failure of negotiation.	The project will completely avoid involuntary land acquisition and resettlement. The LAF includes measures on this.
Negotiated settlements should be based on meaningful consultation with APs, including those without legal title	National Constitution National Goal 2(9) calls for 'every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community'. The Land Act's procedures for purchase or lease through negotiation include consultation with landowners.	PNG laws do not require with APs without having legal interests on land.	The LAF includes the provision that all APs regardless of their legal status will be meaningfully consulted.

Negotiated settlements should offer adequate and fair price for land and/or other assets	General principles of compensation for damage or destruction of physical and economic assets are set out in National Constitution and Land Act.	No specific requirement for compensation at replacement cost. Valuer General's Schedule is from 2008.	The project will ensure that any negotiated purchase of land will offer compensation at replacement cost for affected land and assets. Any waiver of compensation claims by landowner communities under the voluntary land use agreement will be documented in respective agreements and verified by a third party.
Negotiated settlements openly address the risks of asymmetry of information and bargaining power of the parties involved.	The Fairness of Transaction Act sets out rules on fairness of transactions.	No specific requirement for third-party validation.	The project will engage a third-party to verify and validate negotiated agreements under the project. The LAF describes the process for this.
Agree on (a) consultation processes, policies, and laws that are applicable to such transactions, (b) third-party validation, (c) mechanisms for calculating the replacement costs of land and other assets affected and (d) record-keeping requirements.	National Constitution National Goal 2(9) calls for 'every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community'. Land Act sets out procedures for land purchase or lease through agreement. The Fairness of Transaction Act sets out rules on fairness of transactions.	No explicit requirement on third-party validation and calculation of compensation at replacement cost.	The LAF includes measures on consultation process, documentation and third-party verification of negotiated agreements and the provision of compensation at replacement cost for purchase of land.

7. The Project's Objectives and Principles: The Project's objective is to (i) avoid involuntary land acquisition and resettlement impacts; and (ii) minimize land requirements and use government land or obtain other land through voluntary means or negotiated agreements. In compliance with PNG laws and ADB SPS, the Project adopts the following policy principles:

- a) Priority for construction will be given to CHPs and/or health facilities that are to be constructed on state land free of customary or private uses or claims.
- b) The Project will not finance CHPs that involve compulsory land acquisition and/or involuntary resettlement impacts.
- c) If a suitable state land is not available in the proposed CHP area and the non-state land is only the available suitable option, such land will be obtained through voluntary land use agreement or negotiated purchase. It will be ensured that the failure of the negotiation will not result in compulsory acquisition.

- d) Local communities, stakeholders and any APs regardless of their legal status will be meaningfully consulted over the project cycle.
- e) If the project involves land purchase the state will offer compensation at Valuer-General's valuation for affected land and assets to ensure that APs will not be financially disadvantaged. Such compensation will be paid to APs prior to commencement of civil works. For voluntary agreement on land use (without purchasing land) or any voluntary waiver of compensation claims by landowner communities will be documented in respective agreements and verified by an independent third-party.
- f) The project will employ a third-party (e.g. NGO) to document and verify the voluntary land use agreement and purchase through negotiated agreement.
- g) Absence of formal title will not be a bar to compensation and assistance for loss of non-land assets. Particular attention will be paid to women, women-headed households, elderly and other vulnerable people.
- h) A due diligence report (DDR) will be prepared and submitted to ADB for clearance before start of the civil works involving use of non-state land. The DDR will document the process and outcome achieved for respective CHPs according to its requirements and appropriate land arrangement.
- i) The DDR will be disclosed locally and posted on website.
- j) All costs related to land assessment development of agreements for voluntary land use agreement or negotiated purchase will be included in the project cost and funded by the project. The cost of land purchases will be borne by the state or its agents.
- k) The project will monitor implementation of land aspects, submit semi-annual reports to ADB and address any unforeseen impacts that may occur during implementation in line with LAF and ADB SPS.

8. Principles for Voluntary Land Use or Purchase of Land through Negotiated Agreement: For most community-driven projects in PNG, the project agencies often consult with landowner communities and obtain land-use rights as a voluntary contribution or purchase land through negotiated settlement. The project will continue this tradition. Any land purchase, if required, will be undertaken through negotiated agreement following relevant provisions of the Land Act. National and Provincial governments' preference is to purchase the land, but landowners' preference will also be taken into consideration. To ensure that the voluntary land-use or the negotiated purchase is truly voluntary, the project will follow adequate safeguards, including: (i) consultation with local communities on the purpose of the CHP, the selection of sites and options to avoid or minimize impacts; (ii) applicable national laws and regulations will be followed; (iii) landowners or any other people will not experience major adverse impacts—i.e. the proposed site should be free of any private residential structures or major sources of livelihoods to APs; (iv) APs will receive compensation for land that is purchased or any losses to non-land assets and (v) a written memorandum of agreement (MOA) will be signed with representatives of landowner communities and the MOA will be verified by an independent third-party NGO.

9. Entitlements and Benefits: Many communities have expressed their willingness to provide voluntarily a part of their communal land for CHP construction. In this case landowner communities/groups may waive their compensation claims in consideration of benefits of CHP to their community members and the fact that landownership will still remain with them. However, in the case of negotiated purchase, the date of signing of land investigation report (LIR) will be the "cut-off" date for eligibility for compensation. APs that have either documented claims to the purchased land/assets or are able to demonstrate that the land/assets belong to them as of the cut-off date will be eligible for compensation. Those APs who cannot demonstrate that they are the

rightful owners/users but are using the land anyway as of the cut-off date will receive compensation only for assets attached to the land and other assistance as required. Any person or group that occupies or uses the land identified for the project after the cut-off date would not be eligible for any compensation or assistance. Table 2 (below) summarizes eligibility and entitlements for APs.

Table 2: Entitlement Matrix

Type of Impact	Entitled Person	Entitlements
Temporary use of land (without transfer of title)	Customary land: Land owners/users as recognized by clan leaders	Use of the land will be obtained through voluntary land use agreement. Compensation at replacement cost will be paid for any damages on project affected land during construction. The land remains in the ownership of the customary landowners.
	State-owned land: Users or occupants	State land is expected to be free of customary or private use or occupation. If any users or occupants found during implementation, compensation at replacement cost will be paid for any damages of non-land assets.
	Church lands: Owners/Users	Use of the land will be obtained through voluntary land use agreement. Cash compensation at replacement cost will be paid for any damages on project affected land.
	Informal settlers/land users without legal rights	Compensation at replacement cost for any affected non-land assets.
Permanent use of land (transfer of title through agreement)	Customary land: Land owners/users as recognized by clan leaders	Land will be obtained through negotiated purchase following the Land Act. Compensation at Valuer-General's valuation will be paid for land and other affected properties.
	State-owned land: Users	State land is expected to be free of customary or private use or occupation. If any users or occupants found during implementation, compensation at replacement cost will be paid for any damages of non-land assets.
	Church lands: Owners/Users	Land will be obtained through negotiated purchase following the Land Act. ??? Church land is almost always held as a long term lease Compensation at replacement cost will be paid for land and other affected properties.
	Informal settlers/land users without legal rights on any type of land	Compensation at replacement cost for affected non-land assets.
Loss of trees, crops	APs and households	It will be agreed with APs that any crops and trees will be harvested by them before site clearance. If APs are not able to harvest, they will be paid compensation at replacement cost. In the case of

Type of Impact	Entitled Person	Entitlements
		perennial crops and trees, the compensation will also include loss of income for a period until new crops or trees produce an equivalent income.
Structures	All APs (whether having legal title to land or not)	The project is not expected to impact any structures. If any structures are affected, APs will be provided compensation at replacement cost without deductions for depreciation or salvaged materials. APs will also receive transportation allowance and assistance in locating to an alternative site.
Employment	All APs	APs will be provided priority employment in civil works should local labor be required.
Unforeseen or unintended impacts	Concerned affected people	These will be determined as per the principles of this framework and ADB's SPS.

III. PROCEDURES FOR LAND SCREENING, ASSESSMENT AND PREPARATION OF DUE DILIGENCE REPORT

10. **Screening/Assessment:** To avoid involuntary land acquisition and resettlement, the project will screen all CHPs for their land aspects and will prioritize CHPs which are on government land. CHPs on customary land will also be considered if communities have expressed their willingness on voluntary land-use agreement or purchase through negotiated agreement. For this, the screening will be undertaken based on the preliminary design of CHP after site visits, and as relevant, in consultations with potential APs to understand local land use and ownership arrangements. The Project will follow following steps for the screening of land aspects for proposed CHP:

- Preparation of a location map identifying the concerned facilities and its boundaries.
- Coordination with the DLPP for verification of the land ownership.
- Consultations with local administration offices (e.g. lands, courts, etc.) about any ongoing disputes or litigation.
- Visit to and observation of the proposed construction sites.
- Consultations with local residents to assess if the proposed works will adversely affect any person(s) or communities.
- Preparation of a land assessment/screening report summarizing the main findings, including (i) brief description of the proposed site including a location map; (ii) description of CHP and types of works; (iii) description of proposed land, status of ownership and use; (iii) findings of the field visit and observations; (iv) process and outcome of consultations with communities and stakeholders (records of meetings, etc.); and (v) confirmation whether any further actions are required or not. An outline of screening/assessment is in Annex 1.

11. The project will organize a public consultation meeting in the respective CHP and health facility site to verify the information provided in the draft land assessment/screening report. The project team will prepare minutes of the meetings, which will be kept in the project office and their copies attached to the land assessment/screening report.

12. If the screening/assessment report has confirmed the clear ownership of the required land for CHPs by the government or agency that run such facilities, there will be no further assessment needed. The procurement of civil works will start after such report has been finalized.

Further Due Diligence for CHPs Involving Non-state Land

13. If the initial assessment/screening ascertains that a suitable state land is not available for the proposed CHP and non-state lands are the only available suitable options, the project will follow the steps described in following paragraphs to obtain such land through one of two options:.

14. **Voluntary Land-Use Agreement.** For CHPs where local landowner communities are willing to provide voluntarily part of their communal land for CHP construction in consideration of benefits of CHP to their community members, the land (use right) will be obtained through a voluntary land use agreement for construction or upgrading of CHP. The project will follow the following steps and prepare a due diligence report (appendix 3):

- i. A land survey will be undertaken and a land investigation report (LIR) will be prepared with the help of Provincial Land Officer (PLO) that will identify the land boundary, landowners, and any improvements on the land.
- ii. It will be confirmed based on the survey that landowners or any other users/occupants will not experience major adverse impacts from land use—i.e. (i) the site should be free of any residential structures; and (iii) it should not result in APs losing 10% or more of their income generating assets. It will be ensured that the size of the land use will not exceed 2 ha per CHP.
- iii. Local communities/landowners/APs will be meaningfully consulted on the purpose of the CHP, the selection of sites and options to avoid or minimize impacts;
- iv. Applicable policies, laws and regulations will be explained to communities and they will adopted;
- v. Terms and conditions of voluntary land use agreement will be discussed and agreed with communities. It will be ensured that it is in fact voluntary and no one will be forced to provide their land or assets.
- vi. The agreement will be confirmed in writing in a form of a voluntary land use agreement and this will be verified by an independent third-party NGO. An outline agreement and verification format is in Appendix 4. NDOH/PSU will coordinate with DLPP in case it or provincial governments preferred to register such agreements with DLPP.
- vii. People will be explained about relevant project information, including the grievance readdress mechanism.

15. **Land Purchase through Negotiated Agreement.** For CHPs where landowners are willing to sell part of their land for CHP construction, the land will be purchased through negotiated agreement following the Land Act. As with the voluntary land use agreement, the project will follow all relevant steps set out in paragraph 15 (i-vii) and prepare a due diligence report. In addition, the project will also need to follow the steps prescribed in Land Act to purchase land through agreement, including:

- NDOH/PSU requests the DLPP to issue an official land file number for the CHP site to be purchased.
- NDOH/PSU employs surveyors to determine boundaries, location, size and area of the land to be purchased. It requests the Surveyor-General to register the surveys.
- At the same time, NDOH will request the Valuer General's Office (VGO) to send a Valuer to value the land and any improvements (for example, garden crops, food trees, timber trees, structures). His/her report is sent to the VGO.

- NDOH/PSU will also request the DLPP to ask the Provincial Land Officer (PLO) to do the investigation for land purchase.
- PLO will prepare LIR including ownership genealogy, rights and interests held in the land, and, estimated value of improvements to land in consultation with the landowners, the Valuer-General and other relevant government offices.
- The LIR is then submitted to the respective province for Provincial Administration's signed approval for the land to be purchased.
- The completed LIR is sent back to DLPP who compiles the land file made up of: the registered survey plan, the valuation certificate, and the PA-approved LIR.
- DLPP then sends the land file to national Department for Provincial and Local Level Government Affairs (DPLLG) who will prepare a certificate of alienability confirming that there is no impediment to land purchase.
- This is then sent back to the DLPP, who prepares the purchase documents and advise NDOH when it is ready for payment. It has to be gazetted for 21 days in case of objections. The DLPP executes the purchase of the land.
- NDOH receives the land file with the survey plan, the LIR including the valuation report, and certificate of alienability, and raises a check for the land payment to the landowners.
- Copies of the signed documents and also sent to PLO for their records.
- NDOH keeps records of titles, approvals and lease agreements.

16. As market rates for land are largely absent in rural areas in PNG where most CHPs will be constructed, the project will negotiate with affected landowners/users for compensation for purchased land and assets on such land. The negotiation will be based on (i) information about recent land transactions; (ii) land types; (iii) cropping patterns and crop production; and (iv) availability of land in CHP areas. The project will ensure that compensation rates are based on the replacement cost principle. For this, NDOH/PSU will employ a valuation specialist to work with VGO, if needed, to ensure that compensation is at the replacement cost.

17. **Third-Party Verification.** The voluntary land use agreement and negotiated purchase agreements will both be verified by a third party NGO. NDOH/PSU will employ a third-party NGO, who will provide the independent verification of the agreements that (i) the local community and landowners support the CHP upgrading/construction and have agreed to provide respective land; (ii) consultations and negotiations with landowners have been undertaken meaningfully, freely and in good faith and the landowners have made informed decisions on use of land, and (iii) terms and conditions of the agreements have been explained to and understood and agreed by the landowners. For this, the third-party will perform following tasks:

- Review of the documentation on the identification of affected landowners and the consultation and negotiation process leading up to the signing of the agreements;
- Validate that consultations with the landowners have been undertaken and that they were provided with relevant information as per the LAF;
- Validate that the agreement is voluntary (free of coercion) and that the landowners have fully understood and agreed to the agreements' terms and conditions;
- Validate that the landowner representatives signing the agreement duly represent the landowners;
- Validate that landowners or any other users/occupants will not experience major adverse impacts from land use or purchase by the project;
- Validate that any minor impacts have been identified, sufficiently addressed and documented by the project;
- Validate that compensation for land purchase represents a fair and reasonable replacement cost based on market prices; and

- Validate that the agreement is in compliance with applicable laws of PNG as well as safeguard requirements stipulated in the LAF.

IV. CONSULTATION, PARTICIPATION AND DISCLOSURE

18. Various mechanisms will be adopted for consultation, participation and disclosure, including: i) community consultations and dissemination of information about CHPs; (ii) specific meetings with communities and APs; (iii) separate meetings with women and vulnerable groups; (iv) various surveys (LIR, etc) and (v) disclosure of safeguard reports.

19. The local communities and other relevant stakeholders will be consulted during the CHP preparation and implementation. Community level consultation meetings involving both women and men from all clans living in the village will be facilitated. The CHP will be introduced to meeting participants, the probable positive and possible negative impacts explained, and land issues discussed (where applicable). Participants at the meeting will be afforded the opportunity to discuss among themselves and with facilitators the issues that concern them.

20. Additional meetings will be held with landowners and APs, as needed and when necessary they will involve ward councillors, DLPP staff and/or local level, district or provincial authorities. The PSU national safeguard specialist (NSS) will also visit all communities, which will afford communities the chance to raise any concerns they may have. The NSS will also be able to use these visits as opportunities to conduct any training or awareness raising that may be necessary.

21. The project will ensure that separate meetings will be organized with women, as needed, so that their concerns can be discussed. Consultations will be undertaken at venues and times that are suitable for women and will not disadvantage them.

22. A summary brochure containing relevant information from the LAF and safeguard due diligence reports will be disclosed to APs at each CHP site. The full LAF and DDR will be made available in English, the official administrative language in PNG, in accessible public locations, such as the LLG office. Village leaders and AP households will be provided with a brochure prepared in local language(s).

V. GRIEVANCE REDRESS

23. The project will form a grievance redress committee (GRC) in each province for hearing and resolving any complaints. Other than disputes relating to legal rights, grievances will be redressed within one month from the date of lodging the complaints. The legal cases will be referred to respective courts. The key functions of the GRCs are to (i) record, categorize and prioritize the grievances; (ii) settle the grievances in consultation with complainant(s) and other stakeholders; (iii) inform the aggrieved parties about the solutions; and (vi) forward the unresolved cases to higher authorities.

24. The safeguard officers/specialist will assist APs in registering their complaints with NDOH/PSU, field office or provincial health administration, and preparing their specific grievance. The PSU Project Manager will consider the complaint and within one month will convey a decision to the APs. The PSU staff, along with local government officials, will assist the Project Manager in reviewing and addressing the complaint. The safeguards officers will facilitate communication between the APs and the PSU in this process. If the APs are not satisfied with the PSU's decision, they may then take the grievance to the PNG judicial system. The Land Disputes Settlement Act

(2000) establishes judicial procedures for resolution of landownership disputes on customary land. It has a mediation process followed by court proceedings. Any CHP sites involving a dispute requiring a lengthy legal process will not be considered for funding under the project.

VI. COMPENSATION FOR LAND PURCHASE AND PROJECT BENEFITS

25. NDOH/PSU will coordinate with the provincial administration to disburse or pay agreed compensation to APs for purchase of land through agreements. Provincial safeguard officers will assist in identifying entitled persons and delivering the compensation amounts.

26. There should be no relocation of APs necessary under this project, and nor is there likely to be need for income restoration, since the CHPs are not expected to involve major adverse impacts. Communities will retain their rights to access around the CHPs, as long as they do not interfere with the operation of the CHP. Should any trees need cutting down, those who own them will be compensated at market prices.

27. It is anticipated that communities will receive improved health benefits from CHPs. In addition, APs will be given priority employment in construction and operation of CHP.

I. INSTITUTIONAL ARRANGEMENTS AND IMPLEMENTATION

28. The NDOH, as project executing agency, has the overall execution and coordination responsibility. The Provincial Health Authorities (PHAs)/Provincial Administration (PAs) have planning and implementation responsibilities at the provincial level. The PHAs/PAs have appointed a safeguard officer in each province to coordinate activities concerning land and other safeguard issues. The PSU set up under NDOH will include safeguard specialists (one international 3 months and one national 18 months) to assist in implementation and monitoring safeguard activities. The detailed tasks of the NDOH/PSU include:

- Collaborating with DLPP and PHAs/PAs to implement the project and LAF;
- Providing qualified personnel to conduct the surveys and preparing due diligence reports, etc.;
- Collaborating with DLPP and PHAs/PAs for land use for CHPs (agreements, etc.);
- Ensuring that all requirements are carried out concerning consultation and disclosure, and grievance redress;
- Preparing and submitting DDRs and monitoring reports ADB following the LAF;
- Ensuring that all land related activities are completed in a timely manner;
- Monitoring implementation of the LAF, including disbursement of relevant payment; and
- Coordinating with civil works during the CHP construction.

29. The DLPP through Provincial Land Officer (PLO) will collaborate with NDOH/PSU to plan, implement and monitor land related activities for CHPs in the province. The DLPP/PLO's responsibilities include: (i) conducting land surveys; (ii) negotiating with the community leaders and affected landowners; (iii) cooperating to help facilitate resolution of disputes and grievances; and, (iv) consulting with and advising affected communities about the project, its policies and procedures on land aspect.

30. The NDOH/PSU and PHAs/PAs will monitor the provisions mentioned in the LAF and DDR to ensure that they are complied with during the project implementation. The NDOH will prepare semi-annual monitoring reports on land activities and submit to ADB. The other progress reports will also

include a section on status of land. In addition, land assessment reports and DDRs will be submitted to ADB before award of the civil works contract.

VII. BUDGET AND FINANCING

31. Necessary costs for the project's land aspects will be financed by the project as counterpart funds. Actual costs for such activities under each CHP will be prepared and incorporated in each CHP budget after detailed design of relevant CHPs and detailed assessment of land aspects. The government will release sufficient budget for implementation of land related activities in an appropriate and timely manner.

RELEVANT PNG LAWS

1. The **PNG Constitution** adopts customary law as part of the underlying law of the country and recognizes the property rights attached to customary land. According to the 2000 Underlying Act, customary law comprises the rules, rights and obligations pertaining to an individual or group by custom and tradition. Customary law applies and the courts recognize it where it is not inconsistent with written law. The Constitution also guarantees the right of the citizens to protection from unjust deprivation of property. No land or interest in land may be acquired compulsorily by the government except as it is required for public purposes or other justifiable reasons. In the event of expropriation of land, just compensation must be made by the expropriating authority.

2. The **Land Act (1996)** deals with ownership and use rights of customary land.³ It also sets out the procedures for the government to acquire customary land required for public purposes. The key provisions of the Act are (i) the government may acquire land, including improvements on land; (ii) usually the government negotiates agreements with the customary landowners for purchase of required land, but it can also compulsorily acquire the land; and (iii) the acquisition process involves several steps, including initial investigation, land survey, land investigation report, determination of compensation value of land and improvements, payment of compensation, registration of land for state ownership and transfer of title.

3. The **Land Disputes Settlement Act (2000)** sets out the procedures for resolution of disputes involving customary land. The Act provides for a land disputes committee at provincial level and land courts at local, district and provincial levels. The committee can appoint land mediators. The Act promotes resolution of disputes through mediation based on the principles of traditional dispute settlement. If mediation fails, it is followed by appeal to the courts. The registration of customary landowners as an ILG has been used a lot in private sector projects in PNG. While it is not a mandatory requirement for acquisition of land in case of public sector projects, registration of ILGs may be helpful in dispute resolution and negotiation with landowners. On the other hand, ILGs in the past have often been fraudulently used for the interests of a small group, rather than the whole clan.

4. The **Fairness of Transaction Act** of 1993 relates to the effect of certain transactions, to ensure that they operate fairly without causing undue harm to, or imposing too great a burden on, any person, and in such a way that no person suffers unduly because he is economically weaker than, or is otherwise disadvantaged in relation to, another person. The purposes of this Act are to (a) ensure the overall fairness of any transaction which (i) is entered into between parties in circumstances where one party is for reasons of economic or other advantage predominant and the other is not able to exercise a free choice; or (ii) for one reason or another, without attaching any evil design or bad faith, appears to be manifestly unfair or not to be genuinely mutual; and (b) allow for the re-opening and review of any transaction irrespective of fault and validity, enforceability or effect of any agreement; and (c) ensure the fair distribution and adjustment of rights, benefits, duties, advantages and disadvantages arising out of a transaction. Transaction means any contract,

³ The customary land includes land owned, used or occupied by a person or community in accordance with current customary usage. Access to land and resources is embedded in social relationships and expressed as customary land rights to utilize resources. Small clan-based groups live in the villages, managing their own resources, and exercising the right to utilize them. These groups (matrilineal or patrilineal clans which are composed of sub-clans, lineage groups, and at the lowest level extended households) are typically made up of “primary rights holders” – the recognized traditional leaders of the group – who collectively have the authority to allocate use rights through their spokesperson(s). Different cultures have different ways of allocating land between primary and secondary rights holders.

promise, agreement, dealing or undertaking of an economic or commercial nature whether supported by consideration or not entered into between parties, and includes (a) an informal, complete or incomplete transaction; and (b) a transaction governed by customary law.

5. Land Group Incorporation (Amendment) Act (2009) and Land Registration (Amendment) Act (2009). These Acts were brought into effect in 2011, following recommendations from the National Land Development Taskforce. The Acts recognize the corporate nature of customary groups and allow them to hold, manage and deal with land in their customary names, and for related purposes. These also facilitates the voluntary registration of customary land, to be known as “registered clan land”, and makes that land available for development through the use of Incorporated Land Groups (ILGs). These laws encourages (a) greater participation by local people in the national economy by the use of the land; (b) better use of such land; (c) greater certainty of title; (d) better and more effectual settlement of certain disputes; (e) legal recognition of the corporate status of certain customary and similar groups, and (f) conferring on them, as corporations, of power to acquire, hold, dispose of and manage land, and of ancillary powers; and (g) encouragement of the self-resolution of disputes within such groups.

APPENDIX 2: OUTLINE OF LAND SCREENING/ASSESSMENT REPORT

Province:		District:	
LLG:			
Name of CHP:			
Type of CHP (upgrading or new construction):			
Brief Description of CHP Site and Proposed Infrastructures (provide as much detail as possible including location map, boundaries and surrounding area):			

Screening Checklist

	Yes	No	Description
Will the CHP require additional land?			
If yes, is the land plot and area (square meter) of additional land required known? If yes, describe the plot number and area needed and measures adopted to avoid or minimize land.			
Is the ownership status of additional land known? If yes, what are the ownership arrangements? Attach DLPP verification.			
Is the current usage of the land known? If yes, describe such usage or occupation.			
Are there any houses or structures on land? If yes, describe them including number of households/ persons living there who might be affected.			
Are there any trees, crops or economic activities on land? If yes, describe them including number of households/persons and their potential losses.			
Are there non-titled people who live or earn their livelihoods at the site? If yes, describe about this including number of households/persons and potential impacts to them.			
Are there any other issues concerning proposed land (e.g. historical claims by landowners,			

inter-agency coordination issues, etc.) If yes, describe them in detail			
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A narrative summary of the screening/assessment, including methodology (field visit, observation, etc.), key findings and documentation of consultations. Attach records of meetings, disclosure, etc.

Continue.....

Conclusion

Based on the initial screening/assessment the CHP will:			
	Use state-owned land only without involving any issues or impacts to people. This screening/assessment report is adequate and no further due diligence required.		
	Involve issues on state land or non- state/customary land, so further due diligence is required.		
The report has been reviewed and agreed with by:			
Name & Signature (Project Manager)		Date:	
Name & Signature (Safeguards Specialist)		Date:	

APPENDIX 3: OUTLINE OF DUE DILIGENCE REPORT

(Voluntary Land Use Agreement or Purchase through Negotiated Agreement).

A due diligence report will be required for all CHPs involving non-state land. Its level of details may vary according to site specific conditions and nature of issues. The following outline will serve as a guide.

- A. **Executive Summary.** A concise statement of key findings.
- B. **Project and CHP Description:** This section provides descriptions of the project, relevant CHP and CHP area. Alternatives considered to avoiding or minimizing use of non-state land and a rationale for the final decision.
- C. **Scope of Land Use/Purchase:** This section includes a map of the area of the CHP facilities; scope of proposed use/purchase of non-state land; descriptions of land (type, size, plot no, etc.), its current ownership, usage. A description whether there are any houses/structures/trees/crops/economic-activities/non-titled-persos, etc. on the land. If yes, description about their owners/users/occupants.
- D. **Socioeconomic Information:** This section identifies and enumerates landowners/APs and assesses any impacts to them from proposed land use/purchase.
- E. **Information Disclosure, Consultations, and Participation:** This section describes activities undertaken to disseminate information, results of consultations with landowners/APs; confirms disclosure of the due diligence report; describes any further planned measures during implementation. Attach records of consultations and disclosures.
- F. **Grievance Redress Mechanism:** This section describes mechanisms to receive and facilitate the resolution of concerns and grievances at project level.
- G. **Applicable Policies and Laws:** This section describes or references to the applicable national laws and ADB policies and how they have been applied in the given context.
- H. **Agreements on Land Use:** This section describes the process arriving at the land use or purchase agreement and terms and conditions of such agreements. Also describes the process and outcome of third-party verification of the land use agreement. Attach signed and verified copies of agreements in appendix.
- I. **Compensation and Benefits (applicable mainly in case of land purchase):** This section defines agreed compensation and/or benefits that will be provided to landowners/APs. Describe how compensation at replacement cost was calculated in

case of land purchase. Any assistance to vulnerable groups and sharing of project benefits with communities.

- J. **Budget and Sources of Funds:** This section provides an estimate of costs for the land use/purchase agreement and its further implementation. Specifies sources of funding.
- K. **Institutional Arrangements:** This section describes the responsibilities to implement land related activities during implementation.
- L. **Implementation Schedule:** This section includes an implementation schedule of land related activities, if any, in coordination with civil works construction.
- M. **Monitoring and Reporting:** This section describes the monitoring and reporting arrangements, as appropriate.

APPENDIX 4 – MEMORANDUM OF AGREEMENT

This **Memorandum of Agreement (MOA)** entered into by and between;

The Independent State of Papua New Guinea as represented by the National Department of Health (NDOH);

---AND---

The community of (_____ (Name of Ward), _____ District, 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;

---WITNESSETH---

Whereas, the State through the NDOH is implementing the Rural Primary Health Services Delivery Project (the Project) in order to support achieving goals of the National Health Plan, with the financial assistance from the Asian Development Bank (ADB) and other development partners;

Whereas, _____ CHP has been selected by the State through the National Department of Health (NDOH) which require use of non-state/customary land as there are no suitable state land available in the CHP area;

Whereas, the clans and communities who jointly own the land identified for CHP are fully (i) aware of the project benefits for their communities, mainly better access to health services through CHP upgrading/construction; (ii) supportive of the proposed CHP; and (iii) are willing to provide voluntarily the use of identified land for CHP construction/rehabilitation.

NOW, THEREFORE, for and in consideration of the foregoing premises and covenants hereinafter stipulated, the Independent State of Papua New Guinea, represented by NDOH and the clans and communities who jointly own the customary land that is required for CHP upgrading/construction have entered into this agreement:

1.0 Identification and Location of CHP

1.1 NDOH has considered the CHP upgrading/construction at _____ under the Project. This CHP site has an area of _____ square meters.

1.2 We certify that we, as individuals and representatives of our communities and clans, are the exclusive customary owners of the CHP location. The particulars of our customary land are described below;

CHP location (name): _____

Ward: _____

District: _____

Province: _____

2.0 Agreement

2.1 Responsibilities and Commitments of Clans and Communities

1. We, members and representatives of the clans and communities who jointly own the customary lands on the above mentioned CHP location agree to permit the Independent State of Papua New Guinea (State), as represented by NDOH, to use the land for the upgrading and construction of CHP described above under the Project and guarantee the unimpeded use of the CHP by the public.
2. That we enter into this agreement on the basis of our free and prior informed choice and consent, having been provided with full information by the State through the NDOH and DLPP about the project and its requirements and are fully aware of the consequences for our tribes, clans/sub-clans and communities and waive compensation claims over the said land in lieu of CHP benefits.
3. That our full permission for the State to use the said land is premised on the existence of the said CHP and in the event that the use of our customary land as a CHP is discontinued for any cause, our permission will also cease and the use of the land will revert to the former owners and users of the land at the time of taking.
4. That if the State would seek to purchase or acquire the said land in the future, this will require a separate agreement with us following the applicable laws.
5. That if there will be any minor impacts to any member of clans and community because of the land use by CHP, in considerations for the positive effects of the CHP, our clans and communities involved will address this issue based on our customs and traditions and provide for adequate replacement land to such persons from our other community lands.
6. That we are representing all the clans and communities that jointly owned the land as described in Section 1 of this agreement and that we will all be jointly responsible in complying with the terms and conditions of this agreement. We ensure that after the survey, there will be no new improvements within the CHP site.

2.2 Responsibilities and Commitments of the State through the National Department Of Health

1. The NDOH has avoided/minimized as far as possible land requirements for CHP construction/upgrading. However, the use of the said land is unavoidable but necessary to improve health services in the local communities.
2. NDOH has conducted necessary surveys to determine the land area, has prepared a list of all landowners or the affected persons (APs) and confirmed that landowners/APs will not experience any major adverse impacts.

3. NDOH has meaningfully consulted communities/landowners/APs on the purpose of the CHP and the selection of sites and explained about relevant project information, including the grievance readdress mechanism. NDOH has ensured that the land use agreement is truly voluntary and no one has been forced; a third party NGO will be employed by the project to verify this agreement.
4. NDOH will avoid damages to assets on the land. If any assets are damaged during construction, it will provide compensation at replacement cost.
5. NDOH will give priority to APs for employment in civil works at the CHP site, provided that APs are qualified to perform the work required.
6. All land activities will be coordinated with the civil works schedule. Civil works contractors will not be issued a notice of possession of the site until (i) any payment due to APs has been completed; and, (ii) the site is free of all encumbrances.

3.0 General Conditions

1. If the negotiated land is not used by NDOH for CHP upgrade/construction for any cause, both parties agree that this MOA will become null and void and unenforceable to any or both parties.
2. The State through the NDOH together with the provincial administrations will conduct periodic consultations and encourage active participation of affected clans and communities covered by this CHP location to inform and update all stakeholders of the development of the project.
3. The State through the NDOH in collaboration with the provincial administration will institute a grievance process based on the accepted practices of mediation to address any complaint or issue regarding the land use.
4. No amendment or additional terms and conditions to this MOA 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 _____ 201__.

By and on behalf of the Independent State of Papua New Guinea, National Department of Health (NDOH)

(Name and Signature)

(Designation)

By and on behalf of the Landowners

Name	Signature	Ward/Village	Clan/Sub-Clan	Date

Witness:

I, _____, a Provincial Lands Office 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: _____

Third Party Verification Letter

We provide the independent verification of the Memorandum of Agreement (MOA) signed on _____(date) between the Government of PNG represented by the National Department of Health and landowners clans of -----
(address of landowners) on the use of _____ha land for upgrading/construction of the _____ (name of relevant CHP) under the Rural Primary Health Services Project (the Project) that (i) the landowners support the upgrading and construction of the CHP and have agreed to provide affected land; (ii) consultations and negotiations with landowners have been undertaken meaningfully, freely and in good faith and the landowners have made informed decisions on use of land, and (iii) terms and conditions of the MOA have been explained to and understood and agreed by the landowners. The verification is based on our independent:

- Review of the documentation on the identification of affected landowners and the consultation and negotiation process leading up to the signing of the agreements;
- Validation that consultations with the landowners have been undertaken and that they were provided with relevant information as per the LAF;
- Validation that the agreement is voluntary (free of coercion) and that the landowners have fully understood and agreed to the agreements' terms and conditions;
- Validation that the landowner representatives signing the agreement duly represent the landowners;
- Validation that landowners or any other users/occupants will not experience major adverse impacts from land use by the project;
- Validation that any minor impacts have been identified, sufficiently addressed and documented by the project;
- Validation that compensation (if required by MOA) represents a fair and reasonable replacement cost based on market prices; and
- Validation that the agreement is in compliance with applicable laws of PNG as well as safeguard requirements stipulated in the LAF.

Signature:

Date:

Name of NGO:

Official Stamp: