

West Balkans Drina River Basin Management (WBDRBM) Project



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RESETTLEMENT POLICY
FRAMEWORK
MONTENEGRO

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1 INTRODUCTION

1.1 Brief Description the Project

The World Bank (WB) is supporting the preparation of the **West Balkans Drina River Basin Management (WBDRBM) Project** (the Project), financed by the Global Environment Facility’s (GEF) Special Climate Change Fund (SCCF)¹, **aimed at assisting Montenegro, Serbia and Bosnia and Herzegovina (BiH) in capacity building, studies and investments to strengthen the capacity of their governments to plan and implement integrated, cooperative international management of the trans-boundary Drina River Basin (DRB) and address climate change adaptation in the DRB** – based on “global best practices” and within the framework of integrated water resource management (IWRM) involving extensive stakeholder consultations to ensure adequate public participation. In addition, the Project will help meet objectives related to climate change adaptation (but also to climate change mitigation) and climate change resilience, through the financing of, and the building of capacity for interventions to prevent and deal with climate change-related disasters notably floods and droughts, and, thus, meet the short- and long-term objectives of the GEF Strategy on Adaptation to Climate Change - SCCF.

The planned Project implementation period is 38 months, beginning in 2016.

Project components

The three Project components are:

Component 1:	Multi-state Cooperation on International Drina Management	Sub-component 1A	Development of an agreed Strategic Action Program mainstreaming transboundary IWRM and climate change adaptation in national planning
		Sub-component 1B	Institutional development and capacity building
Component 2:	Pilot investments for Integrated Basin Management and Climate Change Resilience and Flood and Drought Management	Sub-component 2A	Strengthening capacity for climate change resilience
		Sub-component 2B	Pilot investments for Basin climate change resilience
Component 3:	Project Management and Monitoring and Evaluation	Support for the Regional Project Management Team which be established and responsible for overall coordination of the project at the regional level and Project Implementation Teams in each of the three countries who will be responsible for the day-to-day implementation of project activities at the national level.	

¹ The SCCF was created in 2001 is designed to finance activities, programs and measures related to climate change that are complementary to those funded through the climate change focal area of the GEF. Adaptation to climate change is the top priority of the SCCF.

Institutions responsible for Project implementation

The Project will be implemented by the ministries and/or government agencies responsible for water management in Montenegro, Serbia and BiH, namely:

- in Montenegro, the main responsibility for Project implementation will be under the Ministry of Finance (Technical Service Unit), and the line ministry is the Ministry of Agriculture and Rural Development which will implement the Project through its Water Directorate;
- in Serbia, the main responsibility for project implementation will be under the Ministry of Agriculture and Environmental Protection and its Directorate for Water Management;
- in BiH, the Ministry of Foreign Trade and Economic Relations is responsible for Project implementation with regard to common activities as well as activities located in the Federation of BiH (FBiH), and the Agriculture Projects Coordination Unit established by the Republic of Srpska (RS) Ministry of Agriculture, Forestry and Water Management is responsible for activities located in RS. Technical support in the implementation of the Project activities will be carried out in FBiH by the Agency for Sava River Basin in Sarajevo, and in RS by the Public Enterprise "Vode Srpske" from Bijeljina.

Project Implementation Teams (PITs) responsible for the day-to-day implementation of Project activities will be established in each of the three countries.

Drina River Basin (DRB)



The DRB, with total surface area of 19,680 km², spreads over the territory of three riparian countries: BiH (portion of DRB: 37.1%), Montenegro (portion of DRB: 31.6%) and Serbia (portion of DRB: 30.5%), while 0.8% of the basin belongs to Albania (not included within the scope of the Project). With its high flow volume and good water quality, the DRB scores high on the list of areas with high endowments of natural resources and development opportunities in the region. It has significant hydropower generation potential (of which about 60% is reported to be still untapped) as well as tourist attractions (including the UNESCO World Heritage Site of the Tara Canyon), and it is a source of abundant biodiversity. Mining, manufacturing, tourism and agriculture create other significant economic opportunities. The DRB is home to approximately 750,000 people, with most settlements concentrated along the 346 km long Drina River and its major tributaries.

Project beneficiaries

The Project will have numerous direct and indirect beneficiaries. Component 1 of the Project will directly target the above mentioned five national/entity ministries, four water directorates and four water agencies from riparian countries, as well as two institutions which will be responsible for the DRB cross-border cooperation (Project-based Drina Task Force and Coordination Committee). The indirect benefits will be experienced by the entire DRB ecosystem, and all Basin water users (inhabitants of the DRB, 56 municipalities, two cantons in FBiH, three regions in Serbia, the entire DRB business community). Direct beneficiaries of Components 2 and 3 of the Project will be four national/entity hydro-meteorological institutions; vulnerable communities affected by hydrological events; citizens, environmental NGOs, community and other associations of the DRB targeted

through Public Awareness Campaigns; at least 35 grantees that will implement projects through the Small Grant Scheme; 4 regional and 25 municipal authorities responsible for Drina management (5 in RS, 2 in FBiH, 10 in Montenegro, 8 in Serbia) through preparation of numerous studies related to flood prevention, water quality improvement, climate change mitigation; ecosystem and population in 4 municipalities and 4 public utility companies, which will benefit from water quality and water supply reliability improvements. Indirect beneficiaries include: climate-sensitive economic sectors within the DRB (energy, agriculture, road traffic, construction) to benefit from improved hydro-meteorological services; consumers that will benefit from improved production as a result of improved hydro-meteorological information services.

1.2 Scope and Purpose of the Resettlement Policy Framework (RPF)

This RPF outlines the key land acquisition and resettlement principles and objectives to be followed, the organizational arrangements and design criteria to be applied to subprojects to be prepared during Project implementation to ensure the adequate management of land acquisition required for the Project, and ensure that eligible, affected persons are assisted in their efforts to restore or improve their livelihoods, in line with:

- the legislation in force in Montenegro, and
- the WB Operational Policy (OP) 4.12 on Involuntary Resettlement (OP 4.12)².

The RPF has been prepared as the exact locations of subprojects, potential land impacts and the extent of resettlement have not yet been defined. **Once the specific locations and impacts become known, the RPF will guide the preparation of site-specific Resettlement Action Plans (RAPs) where applicable.** RAPs will be prepared for all subprojects that entail resettlement, in order to satisfy the provisions of OP 4.12 and the requirements of local legislation regarding land acquisition.

The RAPs will include baseline census and socioeconomic survey information; specific compensation rates and standards; policy entitlements related to any additional impacts identified through the census or survey; description of resettlement sites and programs for improvement or restoration of livelihoods and standards of living; implementation schedule for resettlement activities; and detailed cost estimate.

The structure of RAP according to OP 4.12 has been provided in Appendix 2 to this document.

In addition to OP 4.12, the *WB Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects (2004)*³ has been also used as a guiding document during the preparation of this RPF.

1.3 Potential for Land Acquisition/Resettlement and the Screening Process

The objective of Project sub-component 2B is to support pilot project investments in all three riparian countries that affect the reduction of the impact of climate change issues. Potential land acquisition is associated with the pilot project investments under the sub-component 2B.

² Available at:

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184~isCURL:Y,00.html>

³ Available at: <http://documents.worldbank.org/curated/en/2004/01/5159399/involuntary-resettlement-sourcebook-planning-implementation-development-projects-vol-1-2>

Several pilot projects in Montenegro have been identified at this stage of Project preparation. The preliminary list of pilot projects includes:

	Project name	Brief description
1	Assessment of climate change impacts on groundwater in Lim, Piva and Ćehotin river basins	The objective is determination of the impact of climate changes on the level of ground water and the option for their usage for water supply. The project will be implemented through 2 activities: (i) field work (select pilot locations in catchment areas of rivers Lim, Piva and Cehotina; defining two areas per location; exploration drilling; monitoring of ground water levels and capacity of springs), and (ii) development of groundwater model from the aspect of climate changes. Proposed period for project realization is 12 months.
2	Flood prevention and irrigation in the Lim River Basin with the aim of mitigating impacts of climate change	The objective is identification of climate change impact on floods and drought in the Lim River basin and their mitigation. Proposed period for project realization is 12 month.

Based on the conducted initial due diligence and screening of likely land acquisition and resettlement impacts, the potential for such impacts has been estimated to be acceptably low to moderate, given that the subprojects within sub-component 2B will be implemented mainly on land owned by municipalities or other public bodies. Based on the current available data, no physical displacement of occupants (legal or illegal) or restriction of access to resources or income streams is expected as a result of the Project, and the Project is not expected to entail permanent acquisition of residential or commercial structures. The impacts that may be associated with the pilot projects include temporary occupation of private land plots for purposes of construction works (such as material storage, access, etc.) or for purposes of preparatory works (such as drilling works), removal of auxiliary structures such as fences, cutting of privately owned trees, etc.

Prior to the submission of pilot projects for funding consideration, the PIT shall carefully screen the proposed projects to assess whether or not land acquisition may be required and to what extent. **It is important to take into consideration during such screening that even though the planned project activities may not lead to impacts in terms of land acquisition, preparatory investment activities foreseen during the project preparation period (such as drilling activities, site clearance or construction of access roads) may involve temporary land acquisition or temporary occupation of land**, in which case the PIT must ensure that such preparatory activities are also in compliance with the requirements of this RPF. In addition, **the proposed projects involving the development of studies and designs that would facilitate/recommend the construction of physical infrastructure need to be diligently screened to establish any potential impacts associated with specific subsequent investments** (regardless whether such future activities will be funded by the WB or other sources).

Following the screening process and determination of potential impacts, the PIT shall report the findings of the screening process to the World Bank and prepare site-specific RAPs, ensuring that all project activities adhere to the requirements of this RPF. The RAPs will be submitted to the World Bank for review and approval.

2 Legal Framework in Montenegro and WB Requirements

2.1 Applicable WB Policy

All WB financed projects involving resettlement are subject to OP 4.12, which describe the instruments and procedures aiming to avoid and mitigate negative economic, social and environmental issues that may arise as a consequence of land taking, or restriction of access to legally designated parks and protected areas. OP 4.12 is triggered not only with physical relocation, but any loss of land resulting in relocation or loss of shelter, loss of assets or access to assets and loss of income sources and means of livelihood. The overall objectives of OP 4.12 are the following:

- Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.
- Where resettlement cannot be avoided, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should be encouraged to participate in planning and implementing resettlement programs.
- Displaced persons should be assisted in improving their former standards of living and livelihoods (income earning capacity, and production levels), or at least in restoring them.

OP 4.12 distinguishes the following three categories of persons for eligibility for compensation and assistance:

- a. Persons with formal rights to land (including customary and traditional rights recognized under the laws of the country). These persons are provided with compensation for the land they lose, and other assistance in accordance with the policy.
- b. Persons who do not have formal rights to land at the time the census begins but have a claim to such land and assets - provided that such claims are recognized under the country laws or become recognized through a process identified in the specific resettlement plans. These persons are provided with compensation for the land they lose, and other assistance in accordance with the policy.
- c. Persons without recognizable legal right or claim to the land they are occupying. These persons are provided resettlement assistance in lieu of compensation for the land they occupy, and other assistance as necessary.

2.2 Legal Framework in Montenegro

The Constitution of Montenegro

The Constitution of Montenegro⁴ lays down the legal basis for expropriation of land and protects property rights, only exceptionally allowing the possibility of limiting these property rights in case when it is imposed by public interest and established by the law or based on the law.

⁴ Official Gazette of Republic of Montenegro, No. 1/2007, as amended subsequently

Law on Expropriation of Montenegro

The *Law on Expropriation*⁵ guides the land/property management and serves as a general framework for the land/property expropriation on the territory of the Republic of Montenegro.

The main provisions of the Law on Expropriation are as follows:

- Outright purchases of immovable property (land, residential and other structures) are defined as full (complete) expropriation. Partial (incomplete) expropriation includes the instigation of an easement over the immovable property or a lease of land for up to 3 years. Temporary occupation of land is also possible when needed for construction or other works associated with the project for which expropriation is being sought (accommodation of workers, materials, machines, etc.).
- The expropriation proposal may be submitted by the beneficiary of expropriation only after the determination of the public interest in expropriation. The expropriation proposal is submitted to the authority competent for property affairs – the regional unit of the municipality on whose territory the immovable property proposed for expropriation is located.
- The request for determining public interest and subsequently the proposal for expropriation, have to include a detailed list of properties to be expropriated, their location, and information about individuals who have formal legal rights on these properties. The proposal for expropriation also has to be accompanied by extracts from the Cadaster or other public documents (land registries) specifying all rights on the affected properties. Ownership or other formal legal rights on land and structures are recorded in the Real Property Cadaster. All issues regarding property rights have to be resolved before the expropriation payment is made; in case of disputes, the affected parties turn to the court to decide who will receive compensation.
- If it is determined that the expropriation of a part of the owner's property would result in the owner having no economic interest in using or not being able to use the remainder of the property, that remaining part of the property will also be expropriated, at his/her request.
- All persons who have formal legal rights on land and structures, as registered by the Cadaster, are entitled to compensation.
- Valuations (inventory) of properties / assets have to take place before the request for expropriation is submitted (so that this request can include a bank guarantee for the amount needed for compensation).
- Negotiated settlements are recognized by the Law and may be concluded up to the moment of validity of the decision on expropriation. If a settlement is not reached, the case is referred to the relevant court to pass a decision on compensation.
- Compensation provided to previous (formal) owners of property is defined as fair compensation in cash or in kind (replacement property). When compensation is provided in cash, it is determined “in the amount of the market value of similar properties in the area, increased by any losses of income during the resettlement period, depending on the manner the property was used and the costs of resettlement” (Article 35). When compensation is provided in kind, the previous owner is provided with replacement property plus the payment

⁵ Official Gazette of the Republic of Montenegro, No. 55/00, 12/02, 28/06 and 21/08

of all accompanying costs (losses of income during the resettlement period, depending on the manner the property was used and the costs of resettlement).

In addition, the Law stipulates that the financial and other personal/family circumstances of the previous owner must be taken into consideration if such circumstances are “of significance to the livelihood of the owner” (large number of household members, number of household members earning income, the health status of the household members, monthly income of the household, etc.).

- Property rights on the new property are formally transferred based on the final decision on expropriation and proof that compensation has been provided/paid.
- A condition to start expropriation, a bank guarantee with a commercial bank (or, in the case of government authorities, proof of funds allocated in the budget), in the assessed total sum for payment. The signed agreement on compensation (decision on compensation) has to include the timing and rate at which cash compensation will be paid or in kind compensation provided.
- The Law foresees rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure, beginning with administrative and judicial appeals (i.e. against the decision on public interest, the decision on expropriation, and regarding compensation).
- Those who have formal legal rights are informed throughout the expropriation process (i.e. passing of the decision on public interest; before the decision on expropriation is passed, the municipal office in charge of expropriation has to invite the affected person with formal legal rights to a meeting to present any facts which may be relevant for expropriation).

Other Related Legislation of Montenegro

- The *Law on Ownership and Property Relations*⁶ regulates ownership rights and other property rights. A significant provision of the Law is the conscientious builder of a structure on land owned by another person is entitled to acquire such land, if the land owner did not oppose to the construction. The land owner is in this case entitled to request to be compensated for the market value of the land, not later than ten years from the date the construction was completed. In case the builder of a structure on land owned by another person was not conscientious, and the land owner opposed to such construction, the land owner may request to acquire the ownership right over the structure (but must pay the structure owner the construction value of the structure) or the removal of the structure from his/her land or to be compensated for the market value of the land.
- The *Law on Spatial Planning and Construction of Structures*⁷ regulates the system of spatial planning in Montenegro, the manner and conditions for construction of structures and other issues of significance for spatial planning and construction. The Law does not foresee that structures built without the necessary permits may be legalized, and stipulates that such structures must be removed.
- The *Law on State Survey and Cadaster*⁸ establishes the Real Property Cadaster as a single public record which contains, inter alia, data on expropriation.

⁶ Official Gazette of Republic of Montenegro, No. 19/2009

⁷ Official Gazette of Republic of Montenegro, No. 51/08, 40/10, 34/11, 47/11, 35/13, 39/13 and 33/14

⁸ Official Gazette of Republic of Montenegro, No. 29/2007, 32/2011, 40/2011 and 43/2015

2.3 Gaps and Solutions

In general, the above described legislation in Montenegro is generally compatible with WB requirements. In particular, the “fair compensation” requirement of the Law on Expropriation is compliant with the WB requirement of “compensation at replacement cost” – Article 35 of the Law stipulates that when compensation is provided in cash, it is determined in the amount of the market value of similar properties in the area, increased by any losses of income during the resettlement period, depending on the manner the property was used and the costs of resettlement”, and when compensation is provided in kind, the previous owner is provided with replacement property plus the payment of all accompanying costs.

The main gaps between local legislation and WB requirements, and the solutions addressed through this RPF are:

- *Compensation for informal owners and occupants of land:* the only category the Law on Expropriation guarantees compensation to is the category of the legitimate owner of the real property. Informal owners or occupants are not mentioned in the Law. Legalization is possible in certain cases under the above described Law on Ownership and Property Relations.

Corrective Action: Compensation for all categories of affected persons (formal and informal owners and occupants of land) will be provided in line with the Entitlements Matrix, according to the requirements of OP 4.12 (Table 1 of this RPF).

- *Livelihood restoration assistance for households and businesses who will suffer loss of income due to Project impacts:* the Law on Expropriation provides only for compensation for loss of assets and does not prescribe other types of assistance to displaced persons or communities. However, the Law does allow some flexibility in devising specific compensation measures as it stipulates that the “financial and other personal/family circumstances of the previous owner must be taken into consideration if such circumstances are of significance to the livelihood of the owner”. The examples of such circumstances provided by the Law are: a large number of household members, number of household members earning income, the health status of the household members, monthly income of the household, etc.). This provides a suitable legal framework for addressing livelihood restoration.
- *Corrective Action:* All types of assistance for livelihood restoration will be provided in line with the Entitlements Matrix, according to the requirements of OP 4.12 (Table 1 of this RPF).

A more detailed comparison of the provisions of legislation of Montenegro with the provisions of OP 4.12 is presented in Appendix 1.

3 Key Land Acquisition / Resettlement Principles and Commitments

The following principles of resettlement and land acquisition will be adhered to in relation with Project implementation:

1. Compliance with local legislation and WB requirements

Any involuntary acquisition of property, restriction of access to assets or resettlement that may arise in conjunction with the implementation of subprojects will be conducted in compliance with the applicable legislation in Montenegro (in particular, the Law on Expropriation of Montenegro), the requirements set by WB OP 4.12 on Involuntary Resettlement, this RPF and good international practice.

2. Avoiding or minimizing resettlement

Involuntary resettlement will be avoided where feasible, or minimized, exploring all viable alternative project designs.

To the extent possible, amicable negotiations and agreements with Project Affected Persons will be sought to avoid or minimize the extent of involuntary resettlement.

3. Resettlement Action Plans (RAPs)

Where it is not feasible to avoid resettlement, the procedures and requirements outlined in this RPF will be followed in the preparation and implementation of site-specific RAPs for each of the locations/sites where resettlement is expected.

During the preparation of RAPs, a census and baseline survey will be conducted in order to determine the number of people affected, their average income and standard of living, employment rate and general health condition, and establish who shall be eligible for compensation and assistance.

4. Cut-off date

The cut-off date for the establishment of eligibility for formal land owners will be the date such owners are notified in written form of the submitted proposal for expropriation by the expropriation beneficiary (as stipulated by the Law on Expropriation), and the cut-off date for informal owners not recognized by the Law on Expropriation will be date of the baseline survey.

The cut-off date will be publicly disclosed in the local media and consultation meetings, with an accompanying explanation.

Persons who have settled in the Project area after the cut-off date will not be eligible for any compensation, but will be given sufficient advance notice, requested to vacate premises and dismantle affected structures prior to project implementation. Their dismantled structures materials will not be confiscated and they will not pay any fine or suffer any sanction.

5. Improving livelihoods and standards of living

Livelihoods and standards of living of affected persons shall be improved or at least restored to pre-displacement levels or to levels prior to the beginning of Project implementation, whichever is higher, in as short a period as possible.

6. Compensation

All owners, occupants and users of affected properties at the time of the cut-off date, whether with or without fully recognized ownership rights, are eligible for certain type of compensation or assistance as outlined in the Entitlements Matrix (Table 1 of this document). Both loss of shelter (physical displacement) and loss of livelihoods (economic loss, i.e. “economic displacement”) shall be taken into account and mitigated.

Compensation eligibility will be limited by a cut-off date to be set for each subproject on the date of submission of proposals for expropriation for formal owners, and on the day of the beginning of the baseline survey (project-affected-persons (PAPs) census) for any informal users.

Compensation will always be effected prior to land entry or taking of possession over property by the expropriation beneficiary. The land cannot be taken physically (i.e. any civil works or construction cannot start) before compensation has been paid to the affected persons. In the case of absentee owners (e.g. people with legal rights to the land but who are living elsewhere), they will still be eligible for compensation and the implementing agency should make, and document, good faith efforts to find them and inform them about the process. These efforts may include efforts to reach them through their neighbors, publication of an ad in newspapers informing about the process, etc. If they can't be found, and in accordance with local requirements, the compensation amount must be allocated in an escrow account and be readily available should the absentee owner reappear.

In case there any legal issues related to the ownership of a property, the compensation amount must be allocated in an escrow account and be readily available once the legal issues related to the ownership had been resolved.

In accordance with the WB requirements (and as allowed under the Law on Expropriation of Montenegro), for any displaced persons whose livelihoods are land-based, preference will be given to land-based resettlement strategies to the extent possible. Whenever replacement land is offered, affected persons should be provided with land for which the combination of productive potential, location-specific advantages and other features is at least equivalent to those of the land to be taken for Project needs. However, payment of cash compensation for lost assets may be appropriate: where livelihoods are land-based but the land to be acquired for the Project represents a small fraction of the affected plot and the residual part is still economically viable; where active markets for land or housing exist and there is sufficient offer of land and housing; or in case of livelihoods that are not land-based. Cash compensation will be provided at replacement cost. The replacement cost includes the amount sufficient to replace lost assets and cover transaction costs (e.g. administrative, registration, transaction fees, transfer taxes, legalization fees, etc.). In determining the replacement cost, depreciation of the asset will not be taken into account.

In case that a business is affected, livelihood restoration assistance will be based on the income lost during the period required to re-establish the business elsewhere, to be assessed on a case-by-case basis.

7. Information disclosure and consultations

All affected persons and any new host communities will be informed, meaningfully consulted and encouraged to participate in the planning, RAP development, resettlement implementation and evaluation. Affected people will be informed about their options and rights pertaining to resettlement, and consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives.

All directly affected persons (owners, occupants and users) will be visited and explained the land acquisition process and the specific impacts on their land.

Access to information and assistance for vulnerable persons/households will be facilitated by the PIT according to the specific needs of such persons, on the basis of case-by-case screening to be carried out with support from the relevant municipal social departments.

In addition, the PIT will disclose this RPF and any future RAPs to municipalities on whose territory land acquisition may take place (in both English and local language), and assist the municipalities in understanding the requirements set out in these documents. The PIT, in cooperation with local authorities, will ensure that procedures for submitting grievances are communicated and available to PAPs at municipality level.

8. Temporary occupation of land

Short-term impacts related to temporary occupation of land for construction purposes will be compensated in accordance with the Law on Expropriation of Montenegro (Article 49), as well as in accordance with the requirements of OP 4.12 for any informal owner/users affected by such temporary land occupation, as stipulated in the Entitlements Matrix (Table 1 of this document).

9. Assistance to vulnerable persons

Particular attention and consideration must be paid to the needs of vulnerable groups⁹. Vulnerable people will be identified and appropriate measures for providing support to such people will be incorporated in the RAPs, based on the personal situation of such vulnerable people. An indicative list of such measures includes but is not limited to: individual meetings to explain eligibility criteria and entitlements, assistance during the payment process (ensuring that compensation documents and payment process are well understood), supplemental social assistance, support for removal and transportation of materials, etc.

Groups or persons who may be particularly vulnerable include, but are not limited to:

- poor people
- people with disabilities
- refugees and internally displaced people
- children, women, the elderly or ill persons

- households whose heads are children or female
- households who have no or have very limited resources
- ethnic minorities (such as Roma people or others)
- people without land or use rights under local legislation

10. Relocation assistance

11. Relocation assistance should cover the cost of moving furniture and other personal belongings in case of physical resettlement of households, and the costs of transfer and reinstallation of equipment, machinery or other assets for affected businesses. Where applicable, the moving assistance should also include support to cover the cost of identifying and securing a new dwelling, as well as other relocation costs such as the cost of transferring utilities to the new address.

12. Grievance mechanism

An effective grievance mechanism will be in place for receiving and addressing in a timely fashion specific concerns about compensation and relocation raised by displaced persons, in the manner described in more detail in Chapter 6 of this RPF.

13. Monitoring and evaluation

The PIT will monitor and evaluate the implementation of the RAPs, both through internal, official institutional arrangements, as well as through an independent, external monitor, in the manner described in more detail in Chapter 7 of this RPF.

⁹ Vulnerable people are people who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status, may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits

4 Compensation Eligibility and Entitlements

4.1 Compensation and Entitlements

In cases where land acquisition and resettlement cannot be avoided, all Project Affected Persons (PAPs) shall be entitled to compensation, according to the compensation principles of the Law on Expropriation of Montenegro and OP 4.12 requirements. The whole process must be transparent, publicly disclosed, and defined in detail within the RAPs. The primary criterion for PAP eligibility is that the person or the asset must have been located within a project area before the cut-off date.

According to OP 4.12, there are 3 categories of persons in terms of compensation eligibility:

- Those who have formal rights to land and are entitled to compensation for the land they use and other assistance;
- Those who do not have formal rights to land but have a claim to such land and assets, provided that such claims are recognized under the laws in force in Montenegro or become recognized through a process identified in the resettlement plan, and are entitled to compensation for the land and other assistance; and
- Those who have no recognizable legal right or claim to the land they are occupying, but are entitled to resettlement assistance.

This indicates that the persons who have or claim formal rights to land or assets are considered eligible for compensation of the land or assets they lose, as well as other assistance such as moving allowance and support after resettlement, whereas persons who do not have any recognizable legal rights or claims to the land they have been occupying before the acquisition procedure are eligible for resettlement assistance.

In case an amicable sale-purchase agreement between the expropriation beneficiary and the affected owner is reached, the PIT must make sure that the agreement is in accordance with OP 4.12 requirements. No land acquisition (i.e. start of construction) shall take place prior to the provision of all types of required compensation to affected owners.

Specific compensation entitlements

Compensation entitlements for different categories of eligible persons and assets covered either by the current applicable legislation of Montenegro, or by this RPF to bridge the gaps and meet the specific WB requirements are described below in Table 1.

West Balkans Water Management in Drina River Basin Project
Resettlement Policy Framework

Table 1: Entitlements Matrix

Type of Project affected right or property or loss	Entitlement	Process and specific conditions
Loss of residential structure		
Loss of residential structure (owners)	Replacement property of similar size and characteristics or Cash compensation at replacement value of property ¹⁰ + Moving allowance and compensation for other resettlement related expenses	<ul style="list-style-type: none"> ▪ Transfer of property right through amicable agreement or expropriation process in accordance with Law on Expropriation (which guarantees “fair compensation” defined as market value of property or replacement property + any losses of income during resettlement period + costs of resettlement
	Owners with partially affected land plots: Compensation for the loss of land and other assets in affected area + The right to request complete expropriation of their land plots and corresponding compensation	<ul style="list-style-type: none"> ▪ Owners affected by a partial loss of their land plots are entitled, according to the Law on Expropriation (Article 8), to request complete expropriation and corresponding compensation in case partial expropriation would deteriorate the economic situation of the property owner or render the remaining part of the property useless or difficult to use.
Loss of informal residential structure (erected without building permit on <u>own</u> land plot)	Compensation for land at replacement value + The affected person has the right to i)take away the building materials and ii) be provided with cash compensation at replacement cost of the structure (i.e. cost of materials and labor to build an equivalent structure elsewhere) + Moving allowance and compensation for other resettlement related expenses	<ul style="list-style-type: none"> ▪ Transfer of property and/or provision of compensation through amicable agreement. Any salvaged materials will not be deducted from the cash compensation received.
Loss of informal residential structure (erected without building permit on <u>someone else’s</u> or <u>state owned</u> land plot)	Cash compensation at replacement value for the private land plot to the owner + The affected person has the right to i)take away the building materials and ii) be provided with cash compensation at replacement cost of the structure (i.e. cost of materials and labor to build an equivalent structure elsewhere) + Moving allowance to structure owner	<ul style="list-style-type: none"> ▪ Transfer of property right and/or provision of compensation through amicable agreement ▪ Provision of use of alternative accommodation by the competent authorities, with security of tenure, if the occupant has no or no stable sources of income and his/her family does not own other property

¹⁰ Replacement value indicates market value of the property plus legal costs of acquiring other property, such as taxes and fees related to purchase of other property, registration in land registry etc.

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Type of Project affected right or property or loss	Entitlement	Process and specific conditions
Loss of non-residential structure		
Non-residential structure without construction permit on <u>own</u> land	Cash compensation at replacement value of the structure to the structure owner	<ul style="list-style-type: none"> ▪ Transfer of property right and/or provision of compensation through amicable agreement
Non-residential structure illegally raised on <u>someone else's or state owned</u> land plot	Cash compensation at replacement cost of the structure (i.e. cost of materials and labor to build an equivalent structure elsewhere) to the structure owner + Cash compensation at replacement value of the land to the landowner	<ul style="list-style-type: none"> ▪ Transfer of property right and/or provision of compensation through amicable agreement
Loss of land plot		
Registered land plot	Cash compensation at replacement value or Replacement land plot of similar size and characteristics	<ul style="list-style-type: none"> ▪ Transfer of property right through amicable agreement or expropriation. ▪ If the remainder after expropriation of the affected part is unusable, the owner will be entitled to expropriation of the whole plot and compensation according to Law on Expropriation.
Land plot registered in the name other than the user's name	Cash compensation at land replacement value to land owner or successors + Cash compensation for any developments on the land to the owner of such developments (e.g. structures or installations such as irrigation or drainage systems, perennial plantations, etc.)	<ul style="list-style-type: none"> ▪ Transfer of property right to land owner through amicable agreement or expropriation process in accordance with Law on Expropriation ▪ Compensation for any developments of land to owner of such developments through amicable agreement
Loss of land plot without any formal land title	PAP without formal land title occupying the area at the time of the cut-off date will not be compensated for land, but will be compensated for any structures or other assets on the land	<ul style="list-style-type: none"> ▪ Provision of compensation to be provided in accordance with OP 4.12

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Type of Project affected right or property or loss	Entitlement	Process and specific conditions
Temporary occupation of land		
<p>Temporary land occupation and losses</p>	<p style="text-align: center;"><u>Owners:</u> Affected land and infrastructure will be restored to pre-project conditions + Cash compensation for temporary land occupation in the amount of lease at market prices + Cash compensation for lost assets (e.g. structures, trees) + Compensation at market value for loss of net income from subsequent crops that cannot be planted for the duration of temporary possession</p> <hr style="border-top: 1px dotted black;"/> <p style="text-align: center;"><u>Informal users/occupants:</u> Affected land and infrastructure will be restored to pre-project conditions + Cash compensation for lost assets (e.g. structures, trees) + Compensation at market value for loss of net income from subsequent crops that cannot be planted for the duration of temporary possession</p>	<ul style="list-style-type: none"> ▪ Temporary land occupation and any damages to assets compensated in accordance with the Law on Expropriation of Montenegro (Article 49). Informal users/occupants of land plots affected by temporary losses are not entitled to cash compensation for temporary land occupation, but shall be compensated for any losses and damages to assets/harvests on land owned by such users, including compensation for harvests lost ▪ Compensation for damages during the period of temporary possession at replacement cost of material and labor without deduction for depreciation or salvageable materials
Loss of right of way		
<p>Loss of right of way</p>	<p style="text-align: center;">Compensation for reduced market value of the property + Compensation for any damages to the property</p>	<ul style="list-style-type: none"> ▪ Compensation for establishment of right of way on private property to be provided in accordance with the Law on Expropriation

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Type of Project affected right or property or loss	Entitlement	Process and specific conditions
Loss of crops		
Loss of annual crops (land owner, occupant or tenant)	<p style="text-align: center;">The right to harvest crops or (if harvesting not possible)</p> <p style="text-align: center;">Cash compensation for annual crops at replacement value</p>	<ul style="list-style-type: none"> ▪ Cash compensation for crops will be provided only if annual crops could not be harvested before expropriation takes place, in accordance with the Law on Expropriation of Montenegro. If that is not possible (e.g., the crops are not ripe yet), the land owner/occupant/tenant is entitled to cash compensation at full replacement cost of the crops ▪ To the extent possible, land acquisition and land entry will be scheduled so that any standing annual crop, regardless of its development stage, can be harvested before the initiation of construction works
Loss of perennial crops (land owner, occupant or tenant)	<p style="text-align: center;">The right to pick fruits, vegetables, etc. +</p> <p style="text-align: center;">Cash compensation for perennial trees/plants at replacement value</p>	<ul style="list-style-type: none"> ▪ Compensation will include all trees and plants, and the court expert will assess their value depending on the age, type, etc. ▪ If the perennial crops cannot be harvested, the owner is entitled to cash compensation for the expected crops ▪ Perennial crops and trees will be valued at the cost of replacement (determination of full replacement value includes the yield of the crop over one year, the cost of re-establishing the plantation (seedlings, soil preparation, fertilizers, etc.), as well as of the lost income during the period needed to re-establish the crop) ▪ The replacement value for commercial timber tree species should be the market value of the logged timber. If an affected commercial forest cannot be logged before entry of the expropriation beneficiary into the land plot, the compensation principle will be similar to that for annual crops, taking consideration of the market value of the lost timber
Loss of place of business and business income		
Loss of place of business (commercial structure)	<p style="text-align: center;"><u>Formal businesses:</u> Same as for residential property</p> <hr style="border-top: 1px dotted #000;"/> <p style="text-align: center;"><u>Informal businesses:</u> Assistance to informal businesses to regularize their status +</p>	<ul style="list-style-type: none"> ▪ Compensation for informal businesses is not regulated by local legislation, and such businesses will be individually consulted and provided free legal assistance in regularizing their status (in instances where PAPs prefer to regularize their status) to allow for provision of compensation based on the Law on Expropriation. The Project will provide alternative appropriate location where affected businesses can continue their economic activity.

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Type of Project affected right or property or loss	Entitlement	Process and specific conditions
	<p style="text-align: center;">Compensation for construction value of the structure and provision of adequate alternative location or similar arrangement as to enable the business to continue its economic activities elsewhere</p>	
<p>Loss of business income (formal or informal businesses)</p>	<p style="text-align: center;">Compensation for loss of income incurred as a result of Project activities until the full restoration of business activities, to be assessed on a case-by-case basis (based on accounting reports or other applicable documents)</p> <p style="text-align: center;">+</p> <p style="text-align: center;">Compensation for any transitional costs (e.g. the cost of the transfer and reinstallation of the plant, machinery or other equipment)</p> <p style="text-align: center;">+</p> <p style="text-align: center;">Assistance to informal businesses to regularize their status</p>	<ul style="list-style-type: none"> ▪ Compensation for informal businesses is not regulated by local legislation, and such businesses will be individually consulted and provided free legal assistance in regularizing their status (in instances where PAPs prefer to regularize their status) to allow for provision of compensation based on the Law on Expropriation

4.2 Methodology for Valuating Affected Assets

Agricultural and forest land

Compensation for land will wherever feasible be in the form of a replacement property allowing the owner approximately the same conditions of use. *Same conditions of use* is to be understood as meeting the following criteria:

- being acceptable to the affected owner/farmer,
- being approximately the same size,
- having a similar or better agricultural potential, i.e. fertility, slope, parcel shape, exposition to sunshine, and
- being located at reasonable distance.

Where replacement property cannot be offered to the affected landowner because suitable agricultural land is not available at reasonable distance or is not acceptable to the landowner, the expropriating authority will establish written evidence of its unsuccessful efforts to identify such similar land.

The following approach is proposed to assess the replacement value:

- three recent (within 6 months) transactions of parcels with similar characteristics in the area should be identified,
- average price per square meter for these three transactions should be used as the reference replacement value for the expropriated parcel, and
- associated transaction costs (e.g. taxes, purchase fees, registration fees, etc.)

The Law on Expropriation does not explicitly regulate the situations where only a plot smaller in size or agricultural potential can be offered as a replacement property, and whether it would be acceptable to pay a balance in cash on top of the compensation in kind to offset such a difference in size or potential. In situations where a plot of equivalent size or potential cannot be identified and offered, and plots smaller in size or potential can be offered, the owner will be allowed the option to receive compensation partly in kind (replacement property - plot) and partly in cash. This requires both the affected and the replacement plot to be valued so that the difference can be calculated. As a general rule, if the difference in established values is less than 10%, the plots will be considered approximately equivalent and no cash compensation will be provided to offset this difference.

In situations of partial expropriation of agricultural land where the land owner would assess the plot remainder as unsuitable for further agricultural use, the owner can apply for expropriation of the whole plot according to the Law on Expropriation of Montenegro. Such situations are to be assessed on an individual basis by the expropriating authority, and the following criteria will be used to assess the suitability for further agricultural use:

- size of the remaining part of the parcel,
- agricultural potential of the remaining part of the parcel compared to that of the expropriated part, and
- possibility to operate mechanized agricultural equipment on the remaining part (accessibility).

Residential land

The preferred option for residential land to be expropriated will be replacement with alternative land according to the provisions of the Law on Expropriation. The compensation package will usually include a compensation for residential houses on the given plot.

If residential land is affected but the house itself is not, compensation will usually be in the form of cash. Cash compensation will be provided at replacement value, applying the approach similar to that described for agricultural land above.

Houses or other structures

When assessing the replacement properties, the following criteria should be applied to the extent possible:

- parcel on which the houses or other structures are located should have approximately the same size,
- houses should have similar size and standards, including access to utilities, and
- houses should be located at a reasonable distance and be with a similar potential from the livelihood point of view (access to employment or agriculture).

If replacement structures smaller in size or of favorable characteristics are proposed to affected persons, the difference in value should be paid to the affected owner pursuing the approach similar to that described in section on agricultural land compensation.

Where the affected owner opts for cash compensation rather than replacement property or if no suitable substitute property can be identified in the area, residential structures will be compensated in cash. Principles applicable to the determination of replacement value are the same as those described above for land - at least three transactions of comparable properties in the area should be considered as a basis for calculation of prices, including both the value of residential land and the value of structures. Non-residential structures will be compensated for in cash based on replacement value.

Crops and forest

To the extent possible, land acquisition and land entry will be scheduled so that any standing annual crop, regardless of its development stage, can be harvested before the land is taken from the land owner or land user. Annual crops that are harvested before land entry by the beneficiary shall not be compensated for.

Annual crops that cannot be harvested prior to land entry or that are damaged by construction works shall be compensated for at full market value. Recent agricultural produce prices at municipal level should be applied.

The determination of the full replacement value requires consideration not only of the yield of the crop over one year, but also of the cost of re-establishing the plantation (seedlings, soil preparation, fertilizers, etc.), as well as of the lost income during the period needed to re-establish the crop.

Compensation rates should be calculated in compliance with the full replacement value principle, whereby the compensation rate C for one tree is determined by application of the following formula:

$$C = V \times D + C_p + C_L$$

V - average market value of the produce of one tree for one year

D - average period of time required to re-establish the tree to an adult production level, in years

C_p - cost of planting (seedling, soil preparation, initial fertilization)

C_L - cost of the labor required to maintain the crop during the period of time needed to re-establish it to its previous production level

The calculated unit rate C is then applied to the whole parcel assuming either an average density or based on the precise count of all standing trees.

Market values of the produce for each of the common fruit trees in the area is to be investigated and reflected in each RAP. Compensation rates will be generated for the following stages of plant (tree) development:

- seedling,
- young plant, not productive,
- young plant , productive, and
- mature plant.

Unlike perennial fruit plantations, which can be harvested over a long period of time, most commercial timber tree species are yielded only once, as is the case with annual crops. The replacement value should therefore be the market value of the logged timber. If an affected commercial forest cannot be logged before entry of the expropriation beneficiary into the parcel, the compensation principle will similar to that described for annual crops, taking consideration of the market value of the lost timber.

5 Disclosure of Information and Public Consultations

The requirements for disclosure of Project relevant information and public consultations have been set out in the Stakeholder Engagement Plan (SEP) prepared within the framework of the Project for the purpose of enhancing stakeholder engagement throughout the life cycle of the Project, and carrying out stakeholder engagement in line with local legislation and WB's requirements.

The Project Implementation Team (PIT), together with the representatives of municipal departments in charge of expropriation, are responsible for communicating with affected communities and Project Affected People (PAPs).

All stakeholders will be timely informed about the Project's scope and contacts for further information inquiries, the available grievance mechanism and the availability of the publicly available documents, through:

- the website of the Ministry of Finance of Montenegro (www.mf.gov.me)
- the website of the Ministry of Agriculture and Rural Development of Montenegro (www.minpolj.gov.me)
- the website of the involved municipality.

Affected households and businesses will be individually visited and informed by the municipal departments in charge of expropriation about the impacts of the Project on their property, particularly the precise impacts on their property. PAPs will be consulted during the preparation of the RAP and informed on the results of the census and baseline survey, and their opinions on compensation or other resettlement assistance will be given due consideration. The processes and mechanisms ensuring the active involvement of PAPs and other stakeholders will be detailed in the RAPs which will also include an appendix with the date, list of participants, and minutes of consultation meetings.

Access to information for vulnerable groups will be facilitated by the PIT, as appropriate for each person/household according to their specific needs and/or situation, in cooperation with municipal departments for social affairs.

The PIT will disclose this RPF and any future RAPs to municipalities on whose territory land acquisition may take place (in both English and local languages), and assist the municipalities in understanding the requirements set out in these documents. The PIT, in cooperation with local authorities, will ensure that procedures for submitting grievances are communicated and available to PAPs at municipality level.

In addition, the **PIT will organize public consultative meetings** to present the Project and the expected impacts, and enable participants to present their opinions and remarks with regards to the Project, as well as to suggest possible solutions of the issues raised or problems identified, which will be documented and addressed appropriately in Project Progress Reports. The timetable and the venue designated for public consultative meetings will be precisely defined by the PIT. All stakeholders will be informed about the exact date, time and venue where a consultative meeting will be held through the above mentioned websites, as well as daily newspapers/ radio/ television stations as necessary.

6 Grievance Mechanism

The grievance mechanism will be established by the PIT for dealing with the issues of acquisition of land and other assets, as well as the losses and damages caused by the construction works. Therefore, the grievance mechanism shall be in place by the time the PIT, in cooperation with municipal administrations, starts negotiations with the PAPs, and shall function until the completion of construction activities.

The PIT will establish a register of grievances, and ensure that Project Affected Persons are fully informed of the grievance mechanism by communicating the availability of this registry, its function, the contact persons and the procedures to submit a complaint in the affected areas.

A sample grievance form is provided in Appendix 3 of RPF.

The PIT will ensure that the involved municipality dedicates at least one officer to the task of administering grievances. This officer will ensure that grievances are acknowledged receipt of within 7 calendar days, that grievances are allocated to the right person for review and proposal of resolution, and that resolution / closure letters are timely sent to the complainant and acknowledged receipt of. The officer in charge at municipality level will have to provide updates to the PIT on the received grievances on a regular basis and upon any extraordinary or urgent developments.

Any comments or concerns can be brought to the attention of the PIT or the Local municipal officer verbally or in writing (by post or e-mail) or by filling in a grievance form, without any costs incurred to the complainant. Grievances can also be submitted anonymously

All grievances will be recorded in the register and assigned a number, and acknowledged within 7 calendar days. Each grievance will be recorded in the registry with the following information:

- description of grievance,
- date of receipt acknowledgement returned to the complainant,
- description of actions taken (investigation, corrective measures), and
- date of resolution and closure / provision of feedback to the complainant.

The PIT or the Local municipal officer will make all reasonable efforts to address the complaint upon the acknowledgement of grievance. If the PIT Local municipal officer is not able to address the issues raised by immediate corrective action, a long-term corrective action will be identified. The complainant will be informed about the proposed corrective action and follow-up of corrective action within 25 calendar days upon the acknowledgement of grievance.

If the particular issue raised through the grievance mechanism cannot be addressed or if action is not required, a detailed explanation/ justification will be provided to the complainant on why the issue was not addressed. The response will also contain an explanation on how the person/ organization that raised the complaint can proceed with the grievance in case the outcome is not satisfactory.

At all times, complainants may seek other legal remedies in accordance with the legal framework of Montenegro.

Contact details for enquiries and grievances:

**Attention: Head of PIT, West Balkans Water Management in Drina River Basin Project
Ministry of Agriculture and Rural Development of Montenegro**

Water Directorate

Address: Bulevar Revolucije br.24, 81000 Podgorica

Tel: + 382 20 224 593

Fax: +382 20 224 594

E-mail: upravazavode@uzv.gov.me

7 Implementation of RAPs

7.1 Implementation Responsibilities

Ensuring that the entire process of RAP preparation and implementation in Montenegro is carried out adequately in line with the requirements of this RPF will be the responsibility of the PIT within the Water Directorate of the Ministry of Agriculture and Rural Development of Montenegro.

The PIT will appoint an officer for liaison with municipalities and other involved agencies, who will be responsible for communication with and disclosure of information to all involved parties.

RAPs will be in place prior to the initiation of any land acquisition activities.

The specific tasks regarding the preparation and implementations of RAPs will be shared between the PIT, municipal administrations and other involved agencies, according to Table 2 below:

Table 2: Organizational Responsibilities and Arrangements

Task	Responsible party
Preparation of RAPs	
Ensuring the preparation of RAPs including the census and socioeconomic surveys	PIT
Developing municipalities' awareness of the requirements of RPF and RAPs	PIT
Approval of RAP	WB
Information disclosure and consultations	
Disclosure of information and documents to all Project Affected People and communities, and organization of public meetings	PIT in cooperation with the involved municipalities
Keeping records of consultation activities	PIT
Land acquisition process	
Direct communication with and visits to owners and occupants	The PIT and the involved municipalities as the expropriation authorities
Negotiations and expropriation activities, prior to construction commencement	The PIT and the involved municipalities
Provision of assistance to vulnerable persons / households	The PIT in cooperation with the municipal departments responsible for social care, displaced persons and refugees
Payment / provision of compensation packages	PIT
Monitoring and reporting	
Monitoring and reporting to WB with respect to land acquisition	PIT
Monitoring and reporting in respect of temporary land occupation carried out after construction commencement	Contractor
Preparation of a Completion Audit at the end of the land acquisition process	Independent third party contracted by PIT
Receiving and managing grievances	
Grievance processing and management	PIT / Local municipality officer
Receiving grievances and acknowledging receipt of grievances	PIT / Local municipality officer
Keeping an integrated registry of grievances	PIT

7.2 Costs

The costs of the land acquisition / resettlement process will be the responsibility of the Ministry of Agriculture and Rural Development. Social assistance costs will be the responsibility of the mentioned Ministry and the involved Municipalities. Detailed cost estimates will be provided in the RAPs.

7.3 Monitoring and Reporting

Monitoring of the land acquisition and resettlement process will be conducted by the PIT to:

- ascertain whether activities are in progress as per schedule and the timelines are being met;
- ensure that the standards of living of PAPs are restored or improved;
- assess whether the compensation / rehabilitation measures are sufficient;
- identify any potential issues; and
- identify methods to mitigate any identified issues.

The PIT will maintain a land acquisition database on the families/businesses whose properties have been affected (including the non-owners). The data/information will be updated periodically in order to keep track of the families' and businesses' progress.

The indicators to be used for monitoring will include, in particular, the following:

- Overall spending on expropriation and compensation
- Number of Project Affected People by categories and number of project affected households by categories
- Number of structures (residential and non-residential) identified for demolition
- Number of public meetings and consultations with affected people
- Number and percentage of individual compensation agreements signed before the beginning of construction activities
- Number of persons requesting special assistance and types of assistance provided to vulnerable individuals/households in a timely manner
- Number of people having received cash compensation during the monitoring period with distribution by compensation type and by classes of amounts
- Number and amount of payments to restore loss of income
- Number and type of grievances, including any court cases, related to land acquisition (submitted and resolved and how long it took for them to be resolved)

The PIT will prepare and submit to WB annual Project Progress Reports including the progress achieved in the implementation of RAPs.

In addition, the PIT will facilitate the development of a Completion Audit at the end of the land acquisition process by an independent expert.

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Appendix 1: Comparison of Provisions of Law on Expropriation of Montenegro with OP 4.12 Requirements

Issue	Provisions of the Law on Expropriation of Montenegro	World Bank OP 4.12 Requirements	Corrective Action
Avoidance or Minimization of Resettlement/ Land Acquisition	No specific provisions in the Law on Expropriation; however, in practice, resettlement and expropriation are avoided or minimized during project design, in the context of minimizing costs.	Involuntary resettlement should be avoided or minimized where feasible, exploring all viable alternative project designs.	The WB requirement is prerequisite - the borrower must consider all viable project alternatives prior to filing requests in accordance with the legal procedures of local legislation.
Census and socioeconomic survey and Resettlement Action Plan (RAP)	<p>The Law does not require the development of specific resettlement plans, nor the implementation of a census / socio-economic survey. According to the Law on Expropriation, the request for determining public interest and subsequently the proposal for expropriation, have to include a detailed list of properties to be expropriated, their location, and information about individuals who have formal legal rights on these properties. The proposal for expropriation also has to be accompanied by extracts from the Cadaster or other public documents (land registries) specifying all rights on the affected properties.</p> <p>Ownership or other formal legal rights on land and structures are recorded in the Real Property Cadaster. All issues regarding property rights have to be resolved before the expropriation payment is made; in case of disputes, the affected parties turn to the court to decide who will receive compensation.</p>	Census and socioeconomic survey to be made for RAP development needs at early stages of project preparation and with involvement of potentially displaced persons. The study should include information on (i) current occupants in the affected area, (ii) characteristics of displaced households and their standards of living and livelihoods, (iii) magnitude of expected losses and extent of displacement, and (iv) information on vulnerable groups or persons.	Census and socioeconomic survey for each RAP to be prepared according to WB requirement in addition to the requirements of the local legislation.
Public Participation/ Consultations With Affected Persons	Those who have formal legal rights are informed throughout the expropriation process: the request for determining public interest has to include a list of affected properties and it is expected that owners are informed about the request at this stage; valuations of properties have to be concluded before the application for expropriation is submitted; before the decision on expropriation is passed, the municipal office in charge of expropriation has to invite the affected person with formal legal rights to a meeting to present any facts which may be relevant for expropriation.	Displaced persons should be meaningfully consulted and should be encouraged to participate in planning and implementing resettlement.	The Montenegro legal requirements must be met, but the borrower should additionally approach and consult the property owners during all expropriation stages.

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Issue	Provisions of the Law on Expropriation of Montenegro	World Bank OP 4.12 Requirements	Corrective Action
Eligibility for Compensation (Categorization)	The only category the Law on Expropriation guarantees compensation to is the category of the legitimate owner of the real property, entitled to compensation for expropriation of housing, commercial facilities and/or land. Those who have informal rights to properties (unregistered) are not included and/or mentioned in the Law.	According to WB OP 4.12, there are 3 categories of persons in terms of compensation eligibility: a) Those who have formal rights to land and are entitled to compensation for the land they use and other assistance; b) Those who do not have formal rights to land at the time the census begins but have a claim to such land and assets, provided that such claims are recognized under the domestic laws or become recognized through a process identified in the RAP, and are entitled to compensation for the land and other assistance; and c) Those who have no recognizable legal right or claim to the land they are occupying, but are entitled to resettlement assistance.	In addition to requirements of the Montenegro Law on Expropriation, the WB requirement related to other categories of affected persons must be met.
Compensation	Compensation is defined as <u>fair compensation</u> in cash or in kind (replacement property). When compensation is provided in cash, it is determined “in the amount of the market value of similar properties in the area, increased by any losses of income during the resettlement period, depending on the manner the property was used and the costs of resettlement” (Article 35). When compensation is provided in kind, the previous owner is provided with replacement property plus the payment of all accompanying costs (losses of income during the resettlement period, depending on the manner the property was used and the costs of resettlement).	Displaced persons should be provided prompt and effective compensation at full replacement cost for assets losses attributable directly to the project. Furthermore, the policy offers cash compensation as an alternative, or residential housing alternatives.	No gap
Assistance to Resettled Parties	The Law does not contain any specific provisions on assistance to resettled parties in line with OP 4.12. The Law on Expropriation provides only for compensation for loss of assets and does not prescribe other types of assistance to displaced persons or communities. However, the Law stipulates that the financial and other personal/family circumstances of the previous owner must be taken into consideration if such circumstances are “of significance to the livelihood of the owner” (large number of household members, number of household members earning income, the health status of the household members, monthly income of the household, etc.).	Displaced persons should be assisted in improving their former living standards, income earning capacity, and production levels, or at least in restoring them.	Assistance to resettled parties must be provided in line with the requirements of OP 4.12.

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Issue	Provisions of the Law on Expropriation of Montenegro	World Bank OP 4.12 Requirements	Corrective Action
Grievance Redress	There is no specific requirement for establishing an independent grievance mechanism, according to the Law on Expropriation. The Law does foresee the rights of affected citizens (those with formal legal rights) to appeal at many stages of the expropriation procedure, beginning with administrative and judicial appeals (i.e. against the decision on public interest, the decision on expropriation and regarding compensation).	Appropriate and accessible grievance mechanisms are established for displaced persons and host communities.	Property owners and/or persons subject to involuntary resettlement must be given the right of appeal during and after the resettlement procedure, in accordance with the Law on Expropriation. In addition, a Project specific grievance mechanism will be established in the manner defined in this RPF.
Monitoring	The Law does not contain any specific provisions on monitoring in line with OP 4.12.	The Borrower is responsible for adequate monitoring and evaluation of the activities set forth in the resettlement instruments.	The PIT will be responsible for monitoring in line with the requirements set out in this RPF.

Appendix 2: Structure of a RAP according to OP 4.12

The scope and level of detail of the RAP vary with the magnitude and complexity of resettlement.

The plan must be based on up-to-date and reliable information about (a) the proposed resettlement and its impacts on the displaced persons and other adversely affected groups, and (b) the legal issues involved in resettlement.

RAP covers the elements below, as relevant. When any element is not relevant to project circumstances, it should be noted in the RAP.

1. *Description of the project.* General description of the project and identification of the project area.
2. *Potential impacts.* Identification of : (a) the project component or activities that give rise to resettlement; (b) the zone of impact of such component or activities; (c) the alternatives considered to avoid or minimize resettlement; and (d) the mechanisms established to minimize resettlement, to the extent possible, during project implementation.
3. *Objectives.* The main objectives of the resettlement program.
4. *Socioeconomic studies.* The findings of socioeconomic studies to be conducted in the early stages of project preparation and with the involvement of potentially displaced people, including
 - (a) the results of a census covering
 - (i) current occupants of the affected area to establish a basis for the design of the resettlement program and to exclude subsequent inflows of people from eligibility for compensation and resettlement assistance;
 - (ii) standard characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population;
 - (iii) the magnitude of the expected loss--total or partial--of assets, and the extent of displacement, physical or economic;
 - (iv) information on vulnerable groups or persons, for whom special provisions may have to be made; and
 - (v) provisions to update information on the displaced people's livelihoods and standards of living at regular intervals so that the latest information is available at the time of their displacement.
 - (b) other studies describing the following
 - (i) land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area;
 - (ii) the patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project;
 - (iii) public infrastructure and social services that will be affected; and
 - (iv) social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.
5. *Legal framework.* The findings of an analysis of the legal framework, covering
 - (a) the scope of the power of eminent domain and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment;

- (b) the applicable legal and administrative procedures, including a description of the remedies available to displaced persons in the judicial process and the normal timeframe for such procedures, and any available alternative dispute resolution mechanisms that may be relevant to resettlement under the project;
- (c) relevant law (including customary and traditional law) governing land tenure, valuation of assets and losses, compensation, and natural resource usage rights; customary personal law related to displacement; and environmental laws and social welfare legislation;
- (d) laws and regulations relating to the agencies responsible for implementing resettlement activities;
- (e) gaps, if any, between local laws covering eminent domain and resettlement and the Bank's resettlement policy, and the mechanisms to bridge such gaps; and
- (f) any legal steps necessary to ensure the effective implementation of resettlement activities under the project, including, as appropriate, a process for recognizing claims to legal rights to land--including claims that derive from customary law and traditional usage.

6. *Institutional Framework.* The findings of an analysis of the institutional framework covering

- (a) the identification of agencies responsible for resettlement activities and NGOs that may have a role in project implementation;
- (b) an assessment of the institutional capacity of such agencies and NGOs; and
- (c) any steps that are proposed to enhance the institutional capacity of agencies and NGOs responsible for resettlement implementation.

7. *Eligibility.* Definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.

8. *Valuation of and compensation for losses.* The methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation under local law and such supplementary measures as are necessary to achieve replacement cost for lost assets.

9. *Resettlement measures.* A description of the packages of compensation and other resettlement measures that will assist each category of eligible displaced persons to achieve the objectives of the policy. In addition to being technically and economically feasible, the resettlement packages should be compatible with the cultural preferences of the displaced persons, and prepared in consultation with them.

10. *Site selection, site preparation, and relocation.* Alternative relocation sites considered and explanation of those selected, covering

- (a) institutional and technical arrangements for identifying and preparing relocation sites, whether rural or urban, for which a combination of productive potential, locational advantages, and other factors is at least comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources;
- (b) any measures necessary to prevent land speculation or influx of ineligible persons at the selected sites;
- (c) procedures for physical relocation under the project, including timetables for site preparation and transfer; and
- (d) legal arrangements for regularizing tenure and transferring titles to resettlers.

11. *Housing, infrastructure, and social services.* Plans to provide (or to finance resettlers' provision of) housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services); plans to ensure comparable services to host populations; any necessary site development, engineering, and architectural designs for these facilities.

12. *Environmental protection and management.* A description of the boundaries of the relocation area; and an assessment of the environmental impacts of the proposed resettlement and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the main investment requiring the resettlement).

13. *Community participation.* Involvement of resettlers and host communities,
- (a) a description of the strategy for consultation with and participation of resettlers and hosts in the design and implementation of the resettlement activities;
 - (b) a summary of the views expressed and how these views were taken into account in preparing the RAP;
 - (c) a review of the resettlement alternatives presented and the choices made by displaced persons regarding options available to them, including choices related to forms of compensation and resettlement assistance, to relocating as individuals families or as parts of preexisting communities or kinship groups, to sustaining existing patterns of group organization, and to retaining access to cultural property (e.g. places of worship, pilgrimage centers, cemeteries); and
 - (d) institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as indigenous people, ethnic minorities, the landless, and women are adequately represented.
14. *Integration with host populations.* Measures to mitigate the impact of resettlement on any host communities, including
- (a) consultations with host communities and local governments;
 - (b) arrangements for prompt tendering of any payment due the hosts for land or other assets provided to resettlers;
 - (c) arrangements for addressing any conflict that may arise between resettlers and host communities; and
 - (d) any measures necessary to augment services (e.g., education, water, health, and production services) in host communities to make them at least comparable to services available to resettlers.
15. *Grievance procedures.* Affordable and accessible procedures for third-party settlement of disputes arising from resettlement; such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.
16. *Organizational responsibilities.* The organizational framework for implementing resettlement, including identification of agencies responsible for delivery of resettlement measures and provision of services; arrangements to ensure appropriate coordination between agencies and jurisdictions involved in implementation; and any measures (including technical assistance) needed to strengthen the implementing agencies' capacity to design and carry out resettlement activities; provisions for the transfer to local authorities or resettlers themselves of responsibility for managing facilities and services provided under the project and for transferring other such responsibilities from the resettlement implementing agencies, when appropriate.
17. *Implementation schedule.* An implementation schedule covering all resettlement activities from preparation through implementation, including target dates for the achievement of expected benefits to resettlers and hosts and terminating the various forms of assistance. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.
18. *Costs and budget.* Tables showing itemized cost estimates for all resettlement activities, including allowances for inflation, population growth, and other contingencies; timetables for expenditures; sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.
19. *Monitoring and evaluation.* Arrangements for monitoring of resettlement activities by the implementing agency, supplemented by independent monitors as considered appropriate by the Bank, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the displaced persons in the monitoring process; evaluation of the impact of resettlement for a reasonable period after all resettlement and related development activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.

Abbreviated Land Acquisition and Resettlement Action Plan¹¹

Where applicable, an abbreviated plan covers the following minimum elements:

- (a) a census survey of displaced persons and valuation of assets;
- (b) description of compensation and other resettlement assistance to be provided;
- (c) consultations with displaced people about acceptable alternatives;
- (d) institutional responsibility for implementation and procedures for grievance redress;
- (e) arrangements for monitoring and implementation; and
- (f) a timetable and budget.

¹¹ According to OP 4.12, subprojects where impacts on the entire population are minor or fewer than 200 people are displaced, an abbreviated RAP may be agreed.

Appendix 3: Sample Grievance Form

Reference number:		
Full name (optional)		
Contact information (optional) Please mark how you wish to be contacted (mail, telephone, e-mail).	<input type="checkbox"/> By post: Please provide mailing address:	_____

	<input type="checkbox"/> By telephone:	_____
	<input type="checkbox"/> By e-mail:	_____
Preferred language of communication	<input type="checkbox"/> Montenegrin	
	<input type="checkbox"/> Other (Serbian, Bosnian, Albanian, Croatian)	
	<input type="checkbox"/> English (if possible)	
Description of incident for grievance	What happened? Where did it happen? Who did it happen to? What is the result of the problem?	
Date of incident / grievance		
	<input type="checkbox"/> One-time incident/grievance (date _____)	
	<input type="checkbox"/> Happened more than once (how many times? _____)	
	<input type="checkbox"/> On-going (currently experiencing problem)	
What would you like to see happen?		

Signature: _____
Date: _____

Please return this form to:

**Attention: Head of PIT, West Balkans Water Management in Drina River Basin Project
Ministry of Agriculture and Rural Development of Montenegro
Water Directorate**

Address: Bulevar Revolucije br.24, 81000 Podgorica

Tel: + 382 20 224 593

Fax: +382 20 224 594

E-mail: upravazavode@uzv.gov.me