
CHAPTER IV

RESETTLEMENT PRINCIPLES, POLICY FRAMEWORK, AND GUIDELINES

4.1 Introduction

This resettlement principle, policy framework, guideline and entitlement is based on the policy and guidelines of the Asian Development Bank on involuntary resettlement, and the road act, the land acquisition act and other relevant policy of Nepal Government. It is prepared to address the resettlement, relocation and rehabilitation of the project affected people and the lands and structures minimizing and mitigating negative social and economic impacts of the project.

4.2 Resettlement Policy, Principles and Guidelines

There is no specific policy on resettlement in Nepal. Land Acquisition Act, 2034 (1977) is the core legal document to guide in this task. The Act guides the land acquisition, compensation and resettlement assistance for project-affected people. This resettlement principles, policy frameworks, guidelines and entitlements are derived from the Land Acquisition Act, 2034 (1977) and ADB policy and guidelines on *Involuntary Resettlement* (1995) and other safeguard policies. This is also based on the resettlement and relocation framework adopted by the Department of Road for current projects funded by ADB, complying with the ADB guidelines. The entitlement policy recognizes all types of affected persons and businesses such as titleholders, non-titleholders, squatters, encroachers, vulnerable persons, kiosks, etc. and establishes eligibility and provisions of compensation and assistance for the following five types of losses of areas where the lands are to be acquired.

- (i) Loss of land, crops/trees;
- (ii) Structures (residential/commercial) and other immovable assets;
- (iii) Assistance for loss of business/employment/wage and income;
- (iv) Assistance for shifting; and
- (v) Assistance for re-building and/or restoration of community resources/facilities.

A detailed description of each type compensation and assistance measures is provided in the table 4.7.1 *entitlement matrix*. The affected people/households may be entitled to a combination of compensation measures and resettlement assistance, depending on the nature of ownership rights of lost assets and scope of the impact, including social and economic vulnerability of the affected persons.

There is provision in Article 3 of LA act to acquire the land for any public purposes, subject to the award of compensation. Any institution seeking land acquisition may also request the government to acquire the land under the regularity provisions subject to the compensation by such institutions' resources.

As per the land acquisition act, the government forms a Compensation Fixation Committee (CFC) under the chair of Chief District Officer (CDO) of the district/s where the lands are to be acquired for compensating the loss of property. Other members in the committee include the Chief of Land

Revenue Office and/or Land Survey Office, representative from District Development Committee (DDC), and Concerned Project Manager. Besides, there is practice of making representation from the Affected Persons (APs)¹ and the Chairperson/s of concerned Municipality/ VDC. The recent trend observed is consultation with local people regarding fairness and timely payment of compensation of at least no less than prevailing market rate with special attention to vulnerable groups and women.

Basically, the CFC verifies the land to be acquired, reviews and fixes the compensation rate, identifies proper owner(s), distributes compensation, provides necessary administrative support addressing associated issues. The implementation process of CFC begins once the government grants formal approval for the land acquisition. After the approval from the government, the Officer concerned of Executing Agency (EA) initiates the task through public notification. The public notification includes details of the land area, municipality/VDC concerned and houses concerned.

The compensation shall be provided as per market value and/or replacement costs. In addition, there is provision of additional grant as resettlement assistance such as shifting allowance, compensation, for loss of workdays / income due to dislocation and income restoration assistance. Female-headed households and vulnerable families will be eligible for further income restoration grant. There is recent trend of using a community consultation process known as the Community Consultation Valuation (CCV) method for the fairness and timely payment of compensation at least no less than prevailing market rate to SAF, vulnerable groups and women. The Compensation Fixation Committee (CFC) determines the replacement value in consultation with the local committee of affected people or the sub-project level committee. The sub-project level committee shall comprise the members from APs, political parties, religious leaders, vulnerable groups, business community and local NGOs. The CFC in consultation with the committee determines the amount of compensation taking into the consideration of the following:

- Current price of land
- Land and structure sale and purchase prices which are recently available (last 2 years)
- Consultation with DDC and VDC on land / structure prices in their area based on size, type and location of the land to be acquired
- Value of standing crops, houses, walls, sheds, etc
- Loss incurred as a result of shifting residence or place of residence and
- Public consultation in the areas to arrive at a consensus on the unit price of land based on type, size and location and structures, crops and trees.

The basic resettlement principles and guidelines include the followings:

- The land acquisition and resettlement shall be based on the land acquisition and resettlement plan covering all aspects from identification of alternative land to the schedule of resettlement.
- The land acquisition will be carried out in a way to avoid or minimize the adverse and negative impacts on the people affected by the project and avoid displacement as much as possible. Where negative impacts are unavoidable, the project-affected persons will be assisted in improving or regaining their standard of living. Vulnerable groups will be identified

and assisted to improve their standard of living.

- It will be taken care that there will be no/or minimum adverse social, economic and environmental effects of displacement on the host communities.
- All information related to resettlement planning and implementation will be disclosed to all concerned. People's participation will be ensured in planning and implementation of the project.
- All acquisition of land will be under the Land Acquisition Act, 2034. There will be provision of compensation for properties to be acquired as far as possible at the replacement value of property. Before acquisition and taking the possession of lands and properties, compensation and resettlement assistance will be provided.
- Provision of relocation on the edge of the available ROW (if possible), to avoid severe social distress to the AP is open. There is provision of multiple options for resettlement (for example; "self relocation, assisted restoration) of the affected residential structure, including encroacher/squatters.
- The Act recognizes that together with cash compensation, more elaborate steps have to be taken to rehabilitate APs specially the SAFs. Rehabilitation assistance i.e., compensation for lost business and workdays (including employee) due to relocation shall be provided. Assistance will be provided to owners of residential structures and encroachers/squatters households, who may incur loss of ability to maintain livelihood during relocation and resettlement.
- Broad entitlements for different categories of project-affected people are given in the entitlement matrix. Anyone moving into the project area after the cut-off date and undertaking the structural and land modification activities will not be entitled to resettlement assistance.
- Appropriate grievance redress mechanisms will be established at the district level or sub-project level to ensure speedy resolution of disputes.
- All activities related to resettlement planning, implementation, and monitoring will ensure involvement of women. Efforts will be made to ensure that vulnerable groups are included.

These principles are further explained in the Entitlement Matrix.

4.3 Government Laws and ADB Policy Requirement

The Constitution of Nepal 2047 (1990) is the main legal document that guarantees all sort of right of the citizens. Article 17(1) of the constitution provides property rights to every citizen whereby they are entitled to earn, use, sell and exercise their right of property under the existing rules and regulations. In addition, Article 17(2) states that except for public interest the state will not acquire or obtain or exercise authority over individual property. Article 17(3) illustrates that the State will compensate for the loss of property it the states acquires or establishes its right over individual property for public interest. In this sort of condition, the basis of compensation will have to be specified in the subsequent act.

The LA Act envisages the need to minimize large-scale displacement. Where the displacement is inevitable, the resettlement and rehabilitation has to be worked out. This is especially necessary for seriously affected, vulnerable and marginal families. Landless people, forest dwellers, tenants, artisans are not eligible for cash compensation.

The Act envisages the possibility of two separate rates of compensation distinguishing between families who lose all land and those who lose only some part of land. In determining the compensation the committee has to consider relevant periodic guidelines of government and the loss suffered by persons due to acquisition of land, shift of residence or place of business to another place. If the land has to be acquired for institutions other than the local committees and institutions fully owned by the government, the Committee has to consider the following in fixing the compensation amount:

- Price of land prevailing at the time of notification of land acquisition
- Price of standing crop therein and the house, wall, shed, etc.
- Damage incurred by the concerned person by being compelled to shift his or her residence or place of business in consequence of the acquisition of land.

The Land Acquisition Act covers the legal title holders only, and provides for (i) market value of the land; (ii) compensation for trees, crops, houses or other immovable properties; (iv) damage due to severing of land, residence, place of business; (v) compensation to sharecroppers for loss of earning. The Act do not address many of the social and economic issues associated with displacement and resettlement of “illegal” or non-titled informal settlers/squatters. In many donor-funded projects, the DOR has assisted affected persons without legal titles. The impacts of the present project are also on the roadside households – people who are “non-titled” informal dwellers and encroachers.

The land acquisition act of Nepal Government does not meet some of the ADB’s resettlement policy’s key requirements. The act does not specify any other resettlement and rehabilitation benefits except the compensation at the replacement value. The replacement value is not clearly defined. No specific entitlements have been provided for untitled persons such as squatters and encroachers. The act does not specify that it require projects to (a) minimize displacement and to identify non-displacing or least-displacing alternatives; (b) plan the resettlement and rehabilitation of APs; and (c) provide a better standard of living to PAFs.

The ADB policy on involuntary resettlement was adopted in November 1995. It requires the followings:

- Avoiding or minimizing project impacts where possible;
- Consultation with affected people in project planning and implementation, including disclosure of RP and project-related information;
- Payment of compensation for acquired assets at the market/replacement value;
- Resettlement assistance to affected people, including non-titled persons e.g., informal dwellers/squatters, and encroachers;
- Income restoration and rehabilitation program; and
- Special attention to vulnerable people and groups.

The objectives and principles of the policy, related to income restoration or having a bearing on it, are as follows:

- People unavoidably displaced should be compensated and assisted, so that their economic

and social future would be generally as favorable as it would have been in absence of the project.

- Any involuntary resettlement should, as far as possible, be conceived and executed as a part of a development project or program and resettlement plans should be prepared as appropriate time bound actions and budgets.
- Resettlers should be provided sufficient resources and opportunities to re-establish their homes and livelihoods as soon as possible.
- People affected should be informed fully and consulted on resettlement and compensation options.
- Existing social and cultural institutions of affected people and their hosts should be supported and used to the greatest extent possible, and APs should be integrated economically and socially into host communities.

4.4 Community Consensus Valuation

Community Consensus Valuation (CCV) method has been applied in recent projects, especially for donor assisted projects for fixing compensation in consultation with the affected communities.

- In the implementation process, Officer in charge submits the report to the Chief District Officer (CDO) on specific location and land plus other assets to be acquired for project facilities, the acquisition process begins.
- The valuation of assets follows the existing legal framework and guidelines.
- As specified in the LA Act article 13, a five-member committee headed by Chief District Officer of the concerned district is constituted to fix up the compensation for lost assets.
- The Committee makes extensive consultation with representatives of the affected population, political party representatives and relevant district level chiefs of line agencies to fix the compensation.
- The representatives of affected households, local government representatives, the project personnel, and the local level line agencies were brought together to fix the price of land, structures and other assets.
- After deliberations the group comes to near consensus.
- Then the representatives of affected households take this agenda among the APs in general and a consensus is developed.

This procedure is considered as community consensus valuation. After reaching the agreement, formal notification is placed in public places, local and national newspapers identifying the amount of land, owner and ownership related matters.

4.5 Compensation Valuation

Land records in Nepal are not updated properly, leading to complications in deciding the actual ownership. One of the major areas where implementing NGOs can effectively facilitate the work of land acquisition is updating of land records. To achieve this, land records will be verified followed by the verification on the spot related to identified plots and owners.

Once the land records are updated, calculation of replacement value of land will be done by the Compensation Fixation Committee in close consultation with the sub-project level committee that

will be constituted for the project. The sub-project level committees will comprise of members from APs, political parties, religious leaders, vulnerable groups, business community and local NGOs. The CFC in consultation with the sub-project level committee will determine the amount of compensation considering the following:

- Current price of land
- Land / structure sale and purchase prices which are recently available (last 2 years)
- Consultation with DDC and VDC on land / structure prices in their area based on size, type and location of the land to be acquired
- Value of standing crops, houses, walls, sheds, etc
- Loss incurred as a result of shifting residence or place of residence.
- Public consultation in the areas to arrive at a common consensus on the unit price of land based on type, size and location and structures, crops and trees.

As mentioned earlier, that land records in Nepal are not updated properly and so also the land prices which are difficult to assess. A detailed survey was carried out by the PPTA consultants and DoR to arrive at the unit prices of land and structure for determining the replacement value. Consultations were carried out with the local people along the stretch as well as with the affected plot owners. Recent land sale and purchase prices, land prices fixed by District land revenue office (DLRO) were collected as well as land compensation paid in other ADB projects in Nepal was also evaluated. Additionally DoR also carried out an independent evaluation to identify the replacement value of land and structure. Based on these multi-level assessments it was concluded that the replacement value of land can be fixed up based on a mark-up of 50 percent of the DLRO rate. For the structures, the estimation was done based upon the prevailing market unit construction rates per m² of buildings, plus a mark-up factor of 20 percent for façade improvement, compensation costs for building acquisition according to actual building type.

4.6 Resettlement Principles and Entitlement Matrix

For this project, the resettlement principles and entitlements are derived from the Land Acquisition Act, 2034 (1977) and ADB policy on *Involuntary Resettlement* (1995) and other safeguard policies. The principles adopted establish eligibility and provisions for all types of losses (land, crops, structures, business / employment, and work days wages). All affected persons will be compensated at full replacement costs. In addition to payments from the Chief District Officer (CDO), the APs will receive other cash grants and resettlement assistance such as shifting allowance, compensation, for loss of workdays / income due to dislocation and income restoration assistance. Female-headed households will be eligible for further income restoration grant. The Resettlement principles adopted in this project will provide compensation and resettlement assistance to all affected persons based upon the HMGN norms and ADB guidelines. Further details are provided in table 4.7.1, which outlines the different entitlements in the form of a matrix. A detailed description of each compensation measure is provided below:

Compensation for loss of land and standing crops/trees

- Cash compensation at market / replacement value to titled owners
- Compensation for trees, based on the age and value of the tree.
- If standing crops cannot be harvested, eligible persons will be compensated for the loss of un-harvested crops.
- Squatters/encroachers are not eligible for compensation for loss of land on the ROW, but are

eligible for compensation for affected assets.

In some cases it may so happen that after acquisition the remaining plot may not be viable (the remaining land holding is below average land holding of the district). In such cases, the AP will have the option of either keeping the remaining land or getting the replacement value of the entire land, including the remaining unviable piece of land that will also be acquired by DOR. If the AP is from a vulnerable group, compensation for the entire land may be provided by means of land for land, if so desired by the AP, provided that land of equal or more productive value is available.

In cases of disputes such as where land records are not updated/mutated or where the APs are unable to produce the desired documents, then the compensation amount will be deposited with the competent authority till the case is disposed. All fees, taxes and other charges, as applicable under the relevant laws, incurred in the relocation and resource establishment will be borne by the project.

Compensation for structures (residential/commercial) and other immovable assets

- Cash compensation for structure at replacement cost for titled and non-titled households (squatters and encroachers)
- Affected households will be allowed to take salvageable materials from their existing structures.
- Shifting or relocation assistance will be paid on actual cost basis or on current market rates.
- One time grant as rental assistance to owner of business and tenant for moving to alternative premise for re-establishing the businesses.
- Provision for relocation for businesses operating from mobile/movable structures on the edge of the ROW.
- Non-titled squatter households will be entitled to shifting assistance at actual costs and move their belongings if they decide to “self-relocate” away from the ROW; those who prefer to move back and re-establish their structures will be allowed to do so until they find permanent alternative sites.

Income Restoration Assistance:

- Agricultural titleholders losing more than 10% of the total land holding will be entitled to an income restoration assistance in the form of skill training per family for any productive activity at the rate of NRs 3000. They will also receive a onetime economic rehabilitation grant in the form of productive assets up-to an amount of NRs 6,000 based on the nature and type of productive activity they wish to undertake. Among titleholder households, only those families will be entitled for ERG and training, who are actually dependent on the acquired piece of land. This information has been derived from the census survey and will be further verified during implementation.
- Titleholders becoming landless will receive the same benefits as above and additionally they will also receive a one time assistance of NRs 2000 per a period of 3 months.
- Absentee landlords will receive only compensation at “replacement cost”.
- Loss of income assistance for owners of business operating from fixed commercial structures and business tenants – a onetime lump sum grant based on type of business assessed on a case to case basis.
- Loss of income by owners of businesses operating from mobile / movable structures one time lump sum grant based on type of business and losses assessed on a case to case basis.
- Loss of wage/income by employees of businesses—one time financial assistance of 30 days

income computed at local wage rates for various cadres.

- Employment opportunities connected to the project
- Additional assistance to Women headed households without any male earning member – a one time grant of NRs 2000 for a period of three months over and above all other payments in re-establishing and/or enhancing livelihood.

4.7 Entitlement Matrix

The resettlement principles and assistance have been designed to cover compensation for lost assets and restore or enhance the livelihoods of all categories of affected people. The Entitlement Matrix provides further details regarding application of the principles, definition of entitled persons, entitlements and indicates results of actions. Affected households will be given their compensation before they are asked to relocate and remove their structures from the construction width and ROW of the road. After the expiry of the deadline, DoR can take action to demolish structures located in the road construction width and ROW of the road. The DoR can also evict structures on the construction width and ROW if it is established that those were constructed after the “cut-off” date. Any grievances and objections will be referred to the Grievances Redress Committee.

Table 4.7.1: Entitlement Matrix

Nature of Loss	Application	Definition of AP	Entitlements	Result of Action & Responsibility
Loss of agricultural /residential /commercial land by landowners	Land and other assets acquired for project roads and/or legally confirmed ownership rights on existing ROW	Person(s) with land records verifying ownership / identified by SES	• Cash compensation based on current market rate / replacement value. • Absentee landlords will receive compensation at current market / replacement value. • The compensation amount will be fixed by the CFC and the sub-project level committee through the process of community consensus valuation. • If the AP opts to purchase land, then the project to assist APs to purchase alternate land of their choice within 1 year. • All fees, taxes and other charges, as applicable under relevant laws incurred in the purchase, relocation and resource establishment are to be borne by the project. • If the residual agricultural plot(s) is (are) not viable, i.e., less than the average land holding in the district, the following options will be given: - The AP keeps the remaining land and the compensation and assistance is paid to the AP for the land to be acquired - Compensation and assistance are given for the entire plot including the residual plot, if the owner wishes that DOR should also acquire his/her residual plot. - If the AP is from a vulnerable category, compensation for the entire land is by means of land for land if preferred by the AP, provided that land of equal or better productivity is available.	Compensation for lost assets DoR and CDO

Loss of residential / commercial structure by titleholders	Land on which property stands purchased or reclaimed for road purposes	Owners of the structure	• Cash compensation for loss of built-up structures at full replacement cost. Absentee landlord will receive compensation only at replacement costs. • The compensation amount will be fixed by the CFC and the sub-project level committee through the process of community consensus valuation. • Owners of affected structures will be allowed to take/reuse their salvageable materials for rebuilding/rehabilitation of structure. • In case of relocation, transfer allowance to cover cost of shifting (transport plus loading/unloading) the effects and materials will be paid on actual cost basis or on current market rates.	Restoration of residence / shop. DoR and CDO
Loss of residential and Commercial structure by squatters / encroachers	Land and structure within government ROW	Owners of Structure	• Cash compensation for loss of built-up structures at full replacement costs. (Will not be entitled to compensation for land) • Owners of affected structures will be allowed to take/reuse their salvageable materials for rebuilding/rehabilitation of structure. • In case of relocation, transfer allowance to cover cost of shifting the effects and materials will be paid on actual cost basis or on current market rates	Relocation of squatters / encroachers DOR/CDO/NGO
Loss of agricultural crops	Land purchased or reclaimed for road purposes	Owner of crops	• Advance notice to APs to harvest their crops. • In case of standing crops, cash compensation for loss of agricultural crops at current market value of mature crops, based on average production.	Cash income for lost crops DoR and CDO
Loss of fruits and other trees	Land purchased or reclaimed for road purposes	Owner of crops or trees	• Compensation for loss of fruit trees for average fruit production (to be determined by the CFC or next 15 years to be computed at current market value. • Compensation for the loss of other trees at current market value of wood (timber or firewood, as the case may be).	Cash income for lost crops/trees DoR and CDO

Income restoration assistance	Land acquired for the project roads and legally confirmed ownership right on the land and extent of loss more than 10 percent of loss of the total land holding.	Persons with land records verifying ownership	- Provision of skill development trainings for at least one family members of each affected households. @ NRs. 3000 per family to start a new productive activity. - Such APs will be provided with a one-time Economic Rehabilitation Grant (ERG) upto an amount of NRs 6000 per family, in the form of productive assets based on the type of activity chosen by the AP.	DOR/CDO/NGO
Temporary loss of income by commercial structure owner / tenants conducting businesses from rented premises / land	Business affected by road construction	Owner of business / business tenants	One-time lump sum grant; minimum one-month's income based on the nature of business and type of losses assessed on a case-to-case basis.	Short-term compensation for loss of income. DoR and NGO
Loss of business premise owners / business tenant	Structure on acquired land and/or legally confirmed ownership rights on ROW	Owner /renter of business premise	- The amount of deposit or advance payment paid the business tenant to the landlord will be deducted from the payment of the landlord. - One-time cash assistance of NRs. 2000 equivalent for moving to alternative premise for re-establishing the businesses. - Shifting allowance will be paid to affected businessmen (if applicable), on actual cost basis.	Removal /relocation assistance DoR and NGO
Loss of wages by employees	Income reduced during period of readjustment	Employees of businesses	One-time financial assistance equivalent to 30 days wages to be computed at local wage rates for various cadres.	Assistance for income loss.
Loss of income by businesses operating from mobile / movable structures	Business affected temporarily during road construction.	Businesses operating from mobile / movable structures	- One-time lump sum grant; minimum one-month's income based on the nature of business and type of losses assessed on a case-to-case basis. - Shifting allowance will be paid to the affected (if applicable), on actual cost basis.	Assistance for income restoration.

Additional assistance to vulnerable groups including women headed households	Household income affected as a result of road construction or becoming landless	Women headed households without any male earning member or households becoming landless	One time grant of @ NRs 2000 for a period of three months.	Income restoration assistance DoR and NGO
Loss of land temporarily for the use of contractors during construction	Land acquired temporarily by contractors	Owners of land	- Contractor to negotiate a contract agreement on the rental rate with the owner for temporary acquisition of land. - The contract agreement should include compensation for crop losses for the duration of temporary occupation plus one more year necessary for the soil to be adequately prepared to its original productivity. Land restored to its original condition and returned to the owner. - Project and the contractor to ensure that persons other than the owner affected as a result of temporary acquisition are compensated for the temporary period.	Compensation for temporary loss of assets. DoR and Civil Works Contractors
Loss of religious, cultural & community structures /facilities	Cultural /community property on project ROW	Temple Mosque	- Complete rehabilitation/restoration by the Project; or, - Cash compensation for restoring affected cultural/community structures and installations, to the recognized patron/custodian.	Replacement /restoration of structure /facility DoR and NGO
Unanticipated adverse impact due to project intervention or associated activity	The EA and project implementation authorities will deal with any unanticipated consequence of the project during and after project implementation in the light and spirit of the principle of the entitlement matrix.			