

Resettlement Planning Document

Resettlement Framework
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**SCHOOL SECTOR REFORM PROGRAM
(SSRP)**

**FRAMEWORK FOR
LAND ACQUISITION
THROUGH VOLUNTARY DONATIONS OR
WILLING BUYER/WILLING SELLER
PROCESSES**

July 2009

1. The Government of Nepal (GON) is currently implementing the Education for All (EFA) program based on the EFA core document which was developed as a common document for all the Development Partners (DPs) supporting education in Nepal. The EFA 2004-2009 is a five year strategic plan supported by the GON and several DPs, and which comes to an end on January 31, 2010. The School Sector Reform Plan (SSRP) is a follow-on program to EFA and has been in effect between 2009 and 2014. The EFA-National Plan of Action provides the necessary framework guiding a 5 year SSRP to be implemented during 2009-2013/14. The SSRP is a sector wide program and will be implemented nationwide. The primary objective of the SSRP is to focus on ensuring access, equity, and quality and relevance in basic schooling (Grades 1-8). The program supports several key areas *viz.*: i) scholarships, ii) per capita funding for un-served children, iii) teacher development, iv) teacher salary and textbooks, v) physical infrastructure, vi) program cost, vii) operating/ administrative cost, and viii) management and governance.

A. The Objective of Land Acquisition Framework

2. This framework particularly concerns the activities under the SSRP that finances an expansion of the physical assets of school education and where land acquisition may be required. There are two distinct activities under SSRP which help build physical assets – (i) the financing of classrooms, libraries and laboratories in schools and (ii) activities that help construct administrative buildings, such as, DEO offices etc.

3. The purpose of this Land Acquisition Framework (LAF) is therefore to: i) establish procedures to record, disclose and ensure that all land occupied/acquired by schools during the program period and become eligible for financing was made available to the school on a voluntary basis, and ii) ensure that the government's acquisition of land for DEO and other building constructed under SSRP follows a willing seller and willing buyer approach. The Department of Education (DoE) and District Education Office (DEO) will implement and comply with the provision of the LAF. The power of eminent domain by the state for acquiring land will not be used.

4. The objectives of the LAF are to (i) avoid forced land acquisition and involuntary resettlement; and (ii) minimize it where it is unavoidable exploring possible alternative, and ensure that land owners receive appropriate payments, so that they would be at least as well off as they would have been in the absence of the project.

B. Land Acquisition under SSRP

5. A unique feature of Nepal is that schools are initiated and established by communities. Government support in the form of teacher grants, student scholarships, and additional classrooms are only available after a school has been established. The framework is designed in a manner to ensure that this feature is not altered due to requirements of development partner institutions. Therefore, while the building of administrative buildings will follow well established willing buyer/willing seller approaches, the framework for voluntary donation of land for school classrooms and other associated rooms or buildings is triggered only at the time the school is identified for additional financing for classrooms under the program and only if (i) the school was established during the program period or (ii) additional land was acquired by the school during the program period and will be used for purposes of expansion through project financing.

6. There will be no involuntary land acquisition. In the case of schools, financing from the program will only be made available after establishment of the school as described above, and for purposes of expanding classroom and other facilities. This expansion will be confined to the existing premises of the schools, and schools without sufficient land area in which to expand, will fail to meet the Minimum Eligible Criteria (MEC) for schools, and hence will not be eligible for financing for classrooms. For a school established during the program period and with sufficient land in which to expand, would be eligible for financing, and when it is determined that this school is to receive support for additional classrooms, the requirements of this framework would have to be met. In addition, for a school established prior to the program period, but which acquires additional land during the program period in anticipation of further expansion under the SSRP, the same requirements on voluntary donation of land would have to be met.

7. For administrative buildings, it is likely that the land used will already be registered in the name of the Ministry or government. However, in the event that private land needs to be acquired, this will be done only through a willing seller and willing buyer approach, which is elaborated below in paras. 15-18.

C. Applicable Policies on Voluntary Land Acquisition

8. The Land Revenue Office (LRO) is responsible for land administration and registration of all types land in Nepal. The Survey Office prepares land records through cadastral mapping. The three major types of land ownership are in practice i) registered private land, ii) registered public land and iii) un-registered (but cadastral mapped) government land (*ailani*).

9. The **Interim Constitution of Nepal (2007)** guarantees the fundamental rights of a citizen. Article 19(1) establishes the right to property for every citizen of Nepal, whereby every citizen is entitled to earn, use, sell and exercise their right to property under existing laws. Article 19(2) states that except for social welfare, the state will not acquire or exercise authority over individual property. Article 19(3) states that when the state acquires or establishes its right over private property, the state will compensate for loss of property and the basis and procedure for such compensation will be specified under relevant laws.

10. The **Land Acquisition Act (1977)** and its subsequent amendment in 1993 specify procedures of land acquisition and compensation. The Act empowers the Government to acquire any land, on the payment of compensation, for public purposes or for the operation of any development project initiated by government institutions. The Act also includes a provision for acquisition of land through negotiations and thus provides a space for voluntary donation. It states in Clause 27 "notwithstanding anything contained elsewhere in this Act, the Government may acquire any land for any purpose through negotiations with the concerned land owner. It shall not be necessary to comply with the procedure laid down in this act when acquiring land through negotiations."

11. The **Malpot Ain or Land Revenue (land administration and revenue) Act, 2034** This is the main Act to carry out land administration including maintenance and updating records, collection of land revenue and settlement of the disputes after completion of survey and handing over of the records to Land Revenue Office by the Survey Parties. It authorizes the Land Revenue Offices to registration, ownership transfer and deed transfer of land. This Act also authorizes the Land Revenue Offices to transfer ownership and deeds of individual land, if any person applied for the ownership transfer of his/or land with mutual understanding for public use with recommendation of relevant committee.

D. Procedures for Acquisition of Land for Schools

12. It is the tradition in Nepal that schools are established by the communities, and not by the Central or District administrations¹. The land typically used for the establishment of the school by communities and/or the school management committees (SMCs) are typically *ailani* land. Such land is obtained by the community or the SMCs with the consent of the local authorities (such as, VDC or the larger representation of the community). If such land is not available, the community may approach a large land owner or other individuals and ask the owner(s) to contribute land to the school. The owner may contribute the land on a purely voluntary basis or may ask for compensation to part with the land. When compensation is sought, the community typically pools resources together, and provides the necessary resources to acquire the land. These procedures are normally completed as per the willing seller or willing buyer procedures of land administration.

13. For schools that are eligible for financing as described in Para 5-6, the DEO, or an appropriate designate, will arrange for a public hearing when the schools become eligible for financing through the program. There are well established procedures for a public hearing given the historical roles that communities have played in delivering essential services across the country. The public hearing shall verify the information provided in the land assessment data sheet (see attachment 1), with the purpose of ensuring that all land acquired by the schools during the program period were indeed obtained through voluntary mechanisms. The DEO or an appropriate designate, will prepare minutes of the meetings, which will be filed in the office of the DEO. If grievances/claims are raised during this public meeting the concerned school will cease to be eligible for program financing. These new procedures will be conveyed to all districts and other appropriate offices through a GON circular for this year, and will be included in the guidelines of the DOE for the following year. In addition to this the GON will disseminate this through other means as well.

14. All land transactions will be subject to registration (as per market transactions) under the ownership of the school that is involved in the program and will be done only after ensuring that new school infrastructure or additional classroom construction will be built on that particular piece of land. The DEO or an appropriate designate will coordinate with the Land Revenue Office and the Survey Office for the land registration and/or transfer of land title [rule 158-162, Education Regulations, 2059].

E. Procedures for Acquisition of Land for Administrative Buildings

15. The DoE has developed clear procedures for either options of land acquisition. For the willing sell and willing buy option the DoE will follow the Public Procurement Act, 2007²; Public Procurement Regulations, 2007; and directives as enforced by Public Procurement Monitoring Office (PPMO). This involves the following established procedures:

¹ The education sector has set the trend for decentralization and devolution with the passing of the 7th Amendment to the Education Act in 2001.

² IDA has reviewed the revised Procurement Act 2007, and has agreed to all the provisions therein, *except* the ICB provisions. The Joint Financing Arrangement for SSRP stipulates that up to NCB, all procurements follow GON guidelines, but for ICB, all signatories have agreed that IDA guidelines will be adopted.

- The DEO will publish a public notice in newspapers and on notice boards with details of the land required for the construction of buildings requesting individuals within the catchment area of the office.
- The individual shall submit a proposal for land selling to DEO with the evidence of land ownership and with other relevant documents as per the requirement of the Act.
- The evaluation committee at DEO will evaluate the proposals as per the Act.
- The committee will submit its recommendation to the DEO to purchase the land.
- DEO will negotiate rates for the transfer of the land to reflect the proper market value
- The DEO will apply for the ownership transfer certificate at the Land Revenue Office to purchase the land.
- For the voluntary donation option, the procedures ensure that the donation of land is completely voluntary (without any coercion) and unless the household giving the land is clearly well off, that the donation of land does not cause any significant loss of income. The procedures also ensure that the land title is transferred in the name of the School or the DEO.

16. For the construction of DEO buildings and other infrastructure, the DEO will explore the use of government or public lands as the first step. If DEO identifies government land within its catchment area then it will apply for the ownership/ right of use to the concerned authority. After the authorization of land use rights, the DEO will apply for SSRP funding for physical infrastructure development.

17. If government land is not available in the catchment area of the DEO then it will proceed to using the willing seller and willing buyer option. In the first step, the DEO will publish a public notice in newspapers and place these notices on notice boards with details of land required for the construction of buildings requesting individuals for their proposals for the sale of land.

18. The individual will apply to DEO with evidence of land ownership and proposal of land for sale. The DEO will review the proposal and form an evaluation committee as per the Procurement Act. The committee will give permission to the DEO to purchase the land. Finally, DEO will negotiate rates for the transfer of the land and apply for the ownership transfer at the Land Revenue Office. Once DEO gets the land ownership certificate it will apply for SSRP funding for physical infrastructure development.

19. In case of voluntary donation of land, the DEO must submit written evidence ensuring that the donation of land is completely voluntary (without any coercion) and unless the household giving the land is clearly well off, ensure that the donation of land does not cause any significant loss of income. The procedures must also ensure that the land title is transferred in the name of the School or the DEO.

F. Rules of Taking Possession of Land

20. The DoE will not only ensure that any land donations are fully voluntary, but also that such donations do not involve physical displacement or any significant adverse impacts upon incomes of the donor household. All voluntary land transactions will meet the following criteria:

- (i) The land in question will be free of squatters, encroachers or other claims.

- (ii) Verification of the Voluntary nature of land donations in each case through formal public hearing to confirm that (a) concerned landowners (donors) are fully informed about their rights; (b) land donation does not physically displace people and does not impoverish them (i.e. falling below poverty line); (d) the donations are truly voluntary (free of coercion); and (e) mechanism is in place to settle grievance of APs..
- (iii) Land transfer will be completed through registration, with land title vested in the School; and
- (iv) Leasing of land or rights of use of land for schools will be duly documented.
- (v) Program Implementation Guidelines will include the principles of land acquisition described in this document.
- (vi) For any government building to be constructed under SSRP the land will be purchased from the open market and will follow the existing legal procedures on land procurement.
- (vii) A grievance redress mechanism will be in place to hear complaints regarding land acquisition.

G. Information Dissemination, Consultation, Participation and Disclosure

21. Various mechanisms of participation will be adopted in the process. The SMCs and communities would be consulted during SIP preparation and provided with relevant information about the SSRP, and supplementary safeguard documents prepared for the SSRP implementation.

H. Grievance Redress Mechanism

22. SMC at each school District education committee at DEO will work as a Grievance Redress Committee (GRC) for hearing the complaints of different stakeholders and for their appropriate resolution. Other than disputes relating to legal rights, it will review all grievances relating to land acquisition and other SSRP interventions. Grievances will be redressed within two to four weeks from the date of lodging the complaints.

23. The key functions of the GRCs are to (i) record the complains, categories and prioritize them; (iii) settle the grievances in consultation with complainer and the Program staff; (v) report to the aggrieved parties about the decision/solution; and (vi) forward the unresolved cases to higher authorities.

I. Monitoring and Reporting

24. The MOE/DOE will monitor the provisions mentioned in the frameworks to ensure that they are complied with during implementation of the SSRP. The MOE/DOE will prepare annual reports on land acquisition and submit this during the Joint Consultative Mission (JCM) in November. In addition, a section on status of land acquisition will be included in each progress report.³

³ This ex-post monitoring and reporting requirement replaces the ex-ante preparation of a resettlement plan, in view of the sequencing of the activities, in which communities have acquired land prior to applying for government funding.

J. Implementation Arrangements

25. The key agencies involved in implementation of this framework are MOE, DOE, District Education Offices (DEO), and School Management Committees (SMCs). MOE/DOE has overall coordination responsibility. The DEO and SMC have planning and implementation responsibilities at the district and community levels respectively.

K. Budget

26. Budget required for the purchase of land or any assistance to be paid to a voluntary donor of the land and administrative cost for the land transaction will be borne by the DOE, DEO and or respective SMCs.

**Sample Format
Land Acquisition Assessment Data Sheet**

- a) Location map
- b) Documentary proofs of land ownership or rights of use. (notarized or witnessed statements)
- c) Land/ assets acquired¹

Plot No.	Area, local unit	Area, Sq.Ft equivalent	Description of assets in the land, if any	Date of acquisition (year, month, day)	Previous owner (choose one of the following: Individual/ Government/ Public)	Name of the owner ²	Method of acquisition (choose one of the following: donation, sell-purchase/lease/rights of use)	Previous use (choose one of the following: barren land, farm land, squatter, describe in case of other uses)

¹ To be used to record all land acquired for schools.

² Provide name of the office in case of the government and name of the VDC in case of the public land.