

LAND ACQUISITION AND RESETTLEMENT FRAMEWORK

**Supplementary Appendix to the
Report and Recommendation of the President
to the Board of Directors**

on the

GENDER EQUALITY AND EMPOWERMENT OF WOMEN PROJECT

in

THE KINGDOM OF NEPAL

Department of Women Development/Ministry of Women, Children, and Social Welfare

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LAND ACQUISITION AND RESETTLEMENT FRAMEWORK

I. INTRODUCTION

1. The purpose of this Framework is to establish the involuntary resettlement screening and planning procedures that will apply to each sub-project that involves involuntary land acquisition and resettlement, if any, so that they conform to the ADB's Policy on Involuntary Resettlement.

II. LAND ACQUISITION AND RESETTLEMENT POLICIES FOR THE PROJECT

2. The project policy framework is based on (i) the Asian Development Bank's (ADB's) policy on Involuntary Resettlement (1995) and Handbook on Resettlement (1998) and (ii) while Nepal does not have specific policy on involuntary resettlement that result from implementation of infrastructure projects/programs, its constitution and legal instruments provide legal basis for the same.

3. ADB policy requires to (i) avoid or minimize impacts where possible; (ii) consultation with affected people in project planning and implementation, including disclosure of RP and project-related information; (iii) payment and compensation for acquired assets at the market/replacement value; (iv) resettlement assistance to affected people, including non-titled persons (e.g. informal dwellers/ squatters, and encroachers; (v) special attention to vulnerable people and groups; and (vi) income restoration and rehabilitation program.

4. Considering the inadequacy of national policy/legal requirements to properly address the issue of involuntary resettlement, and recognizing the gaps between the ADB and national standards, the Water and Energy Commission Secretariat (WECS) has been taking initiatives to formulate a National Resettlement Policy, and an amendment to the Land Acquisition Act 1977 with the technical assistance from ADB (under RETA 5935). A project-specific resettlement framework has been prepared consistent with the existing norms and guidelines of the Government and ADB policy on Involuntary Resettlement to cover losses and categories identified in this project. The following points constitute the Project's policy framework for land acquisition and resettlement.

- i. Each community will, with NGO assistance, prepare a resettlement plan (RP) for a sub-project if households are adversely affected by the Project and for loss of productive assets.
- ii. All losses -- including land, buildings, structures, and trees -- that result from project implementation will be compensated at full replacement costs.
- iii. Two representatives of project-affected families, including one representative of women or of vulnerable group will also be invited in the Compensation Determination Committees (CDC) meeting to discuss/negotiate the land compensation rates before the CDC formally takes decision on the land compensation rates.
- iv. The time gap will be minimized between the notice of acquisition and the compensation.
- v. The date of census/survey of affected households and assets will be the cut-off date for eligibility for compensation and assistance. However, non-title-holder affectees should have lived or cultivated in the plot for at least 3 years prior to the cut-off date to be eligible for resettlement and rehabilitation support.
- vi. Special attention will be given to the vulnerable groups, such as women-headed households, poor, landless, elderly, low castes, dalits, and minority ethnic groups.

- vii. Option of land-for-land compensation will also be availed of for the poor and vulnerable affectees, if they desired so.
- viii. The Project will use land and/or other assets only after the compensation is paid to the affectees. Those who are to relocate would be given minimum 120 days from the date of compensation for relocation from the original house. In cases where authentic documents for affected land parcels are lacking or titleholders could not be present within the given time, civil works may continue. The compensation in such cases will be paid as soon as authentic documents are presented or the titleholders are present.
- ix. Affected households will be classified into two groups according to the proportion of the loss of land, income or house. Those who lose 10% or more of their total land or income will be classified as Significantly Project Affected Families (SPAFs), and those who lose less than 10% of their total land or income will be classified as Project Affected Families (PAFs).¹ Households who lose residential/business house will also be classified as SPAF. If affected land/house is under tenancy, both the landowners and tenants will be included in the list of SPAFs or PAFs for entitlements and compensation/rehabilitation purposes. The CDC will prepare list of SPAFs and PAFs during compensation.
- x. Due attention will be given to restoration of livelihoods of affectees. SPAFs will be assisted with rehabilitation measures.
- xi. One person from each SPAF and vulnerable household will be given priority in project jobs or construction works. They will be provided suitable skill trainings prior to the construction works. Bidding/tender documents and contract specifications will also include requirements of hiring SPAFs and vulnerable groups in the order of priority.
- xii. If any affected household purchases farmland in another place within one year from the date of compensation, the land registration fees for equal amount of land will be provided by the project.
- xiii. Construction works will, as far as possible, be planned to allow for the harvesting of standing crops before land is acquired. Where crops cannot be harvested or the destruction of crops is unavoidable, cash compensation will be paid, based on market values.
- xiv. Local Consultative Groups (LCGs) will be established locally to support the affectees and resolve the conflicts that arise during compensation process.
- xv. After the acquisition of land if the remaining portion of the respective land parcel is considered too small to be viable for cultivation or other use, the owner will have the option to relinquish the remainder of that parcel or landholding if they desire so. Such a threshold will be 8 *ana*.
- xvi. Affectees will have access to effective procedures for lodging complaints and for their appropriate resolution.
- xvii. Landowners who are severely affected through loss of agricultural land will also be offered assistance with identification and purchase of suitable land in location/community of their choice.

III. ENTITLEMENT MATRIX AND PRINCIPLE OF COMPENSATION FOR LOST ASSETS

5. Table 1 in Annex III sets out the entitlements and implementation strategies for the compensation, resettlement, and rehabilitation measures.

¹ The total land or income will be calculated totaling land or income sources owned by all family members of the affected landowners. In other words, if other family member(s) of the affected landowners also own any land or have any income sources, such land or income sources will also be included in this calculation

IV. RESETTLEMENT PROCEDURAL GUIDELINES

6. The procedural guidelines require that i) the District Development Committee (DDC), with the support of the District Project team, carry out an initial social assessment survey, as part of the subproject appraisal, to determine if resettlement impacts are significant once the location and scope of each subproject is identified, ii) if necessary, the DDC, with the support of the District Project Team, will prepare a full or short resettlement plan depending on the degree of impact significance. All full or short resettlement plans must comply with the requirements of ADB's *Policy on Involuntary Resettlement* and other social safeguard guidelines.

V. CONSULTATION AND GRIEVANCE REDRESS MECHANISM

7. In those cases in which resettlement plans are required, these will be prepared and implemented in close consultation with community members and affected persons. Development of plans will include group discussions and meetings, particularly with affected people.

8. The consultation with the affected people will be the starting point for all activities concerning resettlement. Participation of affected people as well as other stakeholders in planning and managing resettlement programs will be facilitated throughout the RP preparation and implementation.

9. Various mechanisms of participation will be adopted in the process. Information sharing will be the first principle of participation. Besides, following methods will be used for effective consultation and participation:

- i) Public meetings
 - ii) Formation of consultative groups
 - iii) Focus groups
 - iv) Interviews and frequent interaction with affected people
 - v) Formation of committees for resettlement planning and implementation
 - vi) Invitation and consultation of two PAF/SPAF representatives in the CDC meeting
- Social mobilization

10. Grievances will be heard through the elected ward representative, the Village Development Committee (VDC) and the DDC and the Compensation Determination Committee. The Committee will include a representative from DDC, a representative from respective VDC, a representative from WSST, the Chief District Officer (CDO), the Chief/Land Revenue Officer (LRO) and representation from project affected households. The grievance process will be governed by applicable laws, in most cases the Land Acquisition Act 2034 (1977) or the Government's Resettlement Policy Framework. All grievances, regardless of the result, will be reported to District Project Team and the Central Project Management Team. The grievance procedure will be a part of all resettlement plans.

11. The affected people as well as other people in the Project areas will have opportunities to make complaints or queries to the Project and know that they will be heard and addressed fairly. The District Project Team in each sub-project will be responsible for handling initial grievances of the project-affected people, and will help PAF/SPAFs to file their complaints and concerns, if any, to the relevant agencies.

12. The RPs will provide time-bound actions for projected activities to ensure that people affected are compensated and assisted before award of civil works contracts.

13. The RPs will also provide cost estimates, budgets and cash flows for meeting the objectives of the RP, according to the established schedules.

VI. INSTITUTIONAL FRAMEWORK AND IMPLEMENTATION OF RPS

14. The Central Project Management Team will be responsible for the overall oversight and monitoring of resettlement and land acquisition. The DDC and the Compensation Determination Committee will be responsible for ensuring that resettlement and land acquisition complies with applicable laws and regulations. They will be assisted by VDCs and NGOs engaged to support communities' implementation of subprojects.

15. The DDC with assistance of the District Project Team, will make this determination based on ADB's *Handbook on Resettlement* and applicable Government laws and regulations. Should a Resettlement Plan be required, the NGO engaged to assist the community will work with the community to formulate the plan in accordance with requirements for consultation and dissemination of information about procedures and the grievance process. All resettlement plans (short of full) will be approved by the DDC and submitted to the Central Project Management Team for their comment and concurrence.

16. Any land acquisition that may be necessary will be included as a part of subproject cost. This cost may be a part of the community contribution requirement. Resettlement Plan Implementation will take place during the planning phase of each subproject.

VII. MONITORING AND EVALUATION OF RESETTLEMENT

17. The resettlement program/plans will be monitored by DDCs, with assistance from NGOs, and the Central Project Management Team. NGOs working within subproject communities to support implementation will be required to report any land acquisition or resettlement requirements to the DDC. RPs will be submitted to the DDC who will be responsible for forwarding these to the Central Project Management Team. The Monitoring and Evaluation unit at the DDC level and the Central Project Management Team will have responsibility for reviewing RPs, reporting on any land acquisition and ensuring that, women, lower caste and ethnic minorities are not adversely affected by community decisions. The Project will monitor the community decision-making process to ensure that decisions are reached equitably, and that no disadvantaged groups are adversely impacted by this process. If an RP was required for a specific subproject, the subproject completion report will include a specific section reporting on RP implementation. The Central Project Management Team will be responsible for determining if any follow-up actions are necessary and ensuring any necessary actions are taken.

Table 1: Community Based Water Supply and Sanitation Project Entitlement Matrix

Type of Loss	Entitlement Unit	Description of Entitlement and Implementation Procedures	Remarks
1. Agricultural, Residential, Commercial and Forestry Land			
1.1 Private Land	<ul style="list-style-type: none"> Titleholder Registered tenant & non-registered tenant who is legalizable by means of a written agreement with the landlord. 	<ol style="list-style-type: none"> Project Affected Households (PAHs) are entitled to compensation at <u>full replacement cost</u>. Registered tenants will be <u>entitled to 50%</u> of the compensation payable to the titleholder for affected land and crops PAHs will have the option to relinquish the remainder of a parcel or landholding if they feel that the remaining portion of land after acquisition is too small to be viable for cultivation or other use. A minimum land area for viability shall be 8 <i>ana</i>. PAHs who choose to relinquish the whole parcel or landholding will be entitled to assistance with the identification & purchase of replacement land or cash compensation at replacement cost for the entire parcel or landholding. Options will also include land-for-land assistance to identify and purchase suitable replacement land 	<ol style="list-style-type: none"> Compensation in all cases will be either by cash or cheque, depending on the PAHs' preferences. (Cheque will be preferred option of payment for security reasons). The composition of Compensation Determination Committee (CDC) will include: <ul style="list-style-type: none"> Representative from DDC Representative from respective VDC Representative from District Project Team Chief District Officer (CDO) Chief/Land Revenue Officer (LRO) Representative from PAHs
1.2 Loss of Tenancy Land	<ul style="list-style-type: none"> Non-registered tenant not-legalizable as a registered tenant 	<ol style="list-style-type: none"> Non-registered tenants do not qualify for compensation for land losses, however they will be entitled to compensation for crops according to the lease arrangement. Such compensation will be based on 5 years annual net production for fruit & fodder trees & 3 years annual net production for timber/fuel wood trees & other perennial crops. If the landowner is not identified, the full compensation amount as per (1) above will be paid to the cultivator (operator). 	<ul style="list-style-type: none"> Tenant to be assisted with the identification of other agricultural production opportunities in the area. The National Commission on Solving the Problem of Squatters (NCSPS) will be requested to give priority to allocating land
1.3 Temporary Loss of Private Land	<ul style="list-style-type: none"> As specified in 1.1 & 1.2 	<ol style="list-style-type: none"> 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 productiveness. Compensation for other disturbances & damages caused to property. Land will be returned to the owner at the end of 	PAHs will sign a temporary occupation contract specifying: <ul style="list-style-type: none"> Period of occupancy, The formula for calculation of production losses, The frequency of compensation payment, and

Type of Loss	Entitlement Unit	Description of Entitlement and Implementation Procedures	Remarks
		temporary acquisition, restored to its original condition.	<ul style="list-style-type: none"> Land protection and rehabilitation measures.
1.4 Loss of <i>Guthi</i> Trust Land	<ul style="list-style-type: none"> Entitled person/institutions in accordance with the <i>Guthi</i> Corporation Act 2033. Registered & un-registered tenants 	<ol style="list-style-type: none"> Entitlement description as a specified in clause 1.1 in this Table. Entitlement as for registered & un-registered tenants in 1.1 & 1.2. 	
1.5 Restricted Use of Land for Pipeline Right-of Way (ROW) or Easement	<ul style="list-style-type: none"> Titleholder 	<ol style="list-style-type: none"> For pipeline routes the project may enter into contract with owners specifying restricted use of ROW by owners while retaining project's right over the acquired land. In such cases land owners will be compensated a fixed amount as determined by the CDC. Compensation for crop losses for the duration of each period of temporary occupation. Compensation for other disturbances & damages caused to property. Land will be returned to the owner at the end of each temporary acquisition period, restored to its original condition. Agriculture will be permitted on the ROW but no structures. Permitted to sell rights to the land. 	<ul style="list-style-type: none"> If the land is under tenancy, both the owner & the tenant will be entitled for 50 percent of compensation amount each.
2. Crops and Trees			
2.1 Loss of Trees & Perennial Crops	<ul style="list-style-type: none"> Titleholder Tenant Lessee/cultivators having agreement with the owner 	<ol style="list-style-type: none"> Advance notice to harvest crops Net value of crops where harvesting is not possible. Compensation at market value on the basis of loss of future production, based on 5 years annual net production for fruit & fodder trees & 3 years annual net production for timber/ fuel wood trees & other perennial crops. Rights to all other resources from privately owned trees (timber, firewood). 	<ul style="list-style-type: none"> Crop market values will be determined by the CDCs & compensation prices will be finalized with active participation of PAH representatives. If the land is under tenancy, both the owner & the tenant will be entitled for 50 percent of compensation amount each. When a tenant/lessee & landowner have a sharecropping arrangement, the compensation payable should be apportioned according to the arrangement.
2.2 Loss of Non-perennial Crops	<ul style="list-style-type: none"> Titleholder Tenant 	<ol style="list-style-type: none"> Advance notice to harvest crops Net value of crops where harvesting is not possible. Compensation at market value. 	<ul style="list-style-type: none"> Crop market values will be determined by the CDCs & compensation process will be finalized with active participation of PAH representatives. Where there is a registered tenant, the

Type of Loss	Entitlement Unit	Description of Entitlement and Implementation Procedures	Remarks
			tenant & titleholder will each be entitled to 50% of the compensation payable. <ul style="list-style-type: none"> Where there is a non-registered tenant with a sharecropping arrangement with the titleholder, the compensation payable should be apportioned according to the arrangement.
5. Damages Caused During Construction			
5.1 Public and private buildings and structures, infrastructure, land, crops, trees	All categories of entitled persons as defined in clause 1,2 and 3 above in this Table.	<ol style="list-style-type: none"> Extreme care should be taken by contractors to avoid damaging public and private property unnecessarily. Where damages do occur to public or private property as a result of construction works, the affected families, groups, communities, or government agency shall be compensated for damages to crops and trees; damaged land, structures, and infrastructure shall be restored to their former conditions. 	<ul style="list-style-type: none"> Compensation determination for the losses will be same as in 1, 2 and 3 in this Table. Compensation for the losses mentioned in column 3 include restoration cost for loss of income source, damage to land, structure and physical infrastructures,
6. Community Facilities And Resources			
6.1 Loss of buildings and structures	<ul style="list-style-type: none"> Local community 	<ol style="list-style-type: none"> Restoration of affected community buildings and structures to at least previous condition, or replacement in areas identified in consultation with affected communities and relevant authorities. Restoration before commencement of the project where necessary, to be determined in consultation with the community. 	<ul style="list-style-type: none"> Community buildings and structures include: schools, temples, graves, ghats, waiting sheds, irrigation channels, water points, trails/foot paths and bridges.
6.2 Loss of land	<ul style="list-style-type: none"> Local community or user groups 	<ol style="list-style-type: none"> Restoration of access to community resources such as grazing areas, forested areas, etc.. 	<ul style="list-style-type: none"> The Departments of Agriculture and Forestry will be requested to assist communities so that impacts on grazing areas are adequately mitigated.
6.3 Loss of community forests due to construction	<ul style="list-style-type: none"> Forest user groups 	<ol style="list-style-type: none"> Mitigation measures should be initiated to control erosion caused by tree cutting, and to stabilize and rehabilitate the slopes with suitable bio-engineering works and vegetation. The community forestland taken for the road construction should be replaced and reforested according to Department of Forestry regulations. Compensation for trees according to 2.1. Advance notice to harvest resources from affected community forest areas. 	<ul style="list-style-type: none"> Community forests along the MDS main access road affected by construction will be rehabilitated and to minimize future damage the Department of Forestry will be requested for necessary actions.

Type of Loss	Entitlement Unit	Description of Entitlement and Implementation Procedures	Remarks
6.4 Loss of drinking water points due to construction	<ul style="list-style-type: none"> Community that owns the water points 	<ol style="list-style-type: none"> Replacement and restoration of the water points at suitable locations. Replacement should be made before construction damages the systems. 	<ul style="list-style-type: none"> The down time between construction of the new system and transfer from the old should be minimized to minimize impact on households caused by disruption in water availability. As far as possible, alternate sources of water should be made available during the construction period.
7. Group Losses			
7.1 Loss of income indirectly due to the project	<ul style="list-style-type: none"> Persons in the vicinity of the MDS who may be adversely affected by the project although they do not lose assets. 	<ol style="list-style-type: none"> Rehabilitation assistance as defined under point 9. "Rehabilitation Measures". 	Vulnerable social categories and losses actually affected by the project will be identified in consultation with Local Consultative Groups and may include: porters and other providers of non-vehicular transport.
7.2 Loss of water for irrigation as a direct result of the project.	<ul style="list-style-type: none"> Water user groups using affected irrigation systems. 	If monitoring indicates irrigation users will be affected by reduced water flow into irrigation channels, affected groups will be entitled to assistance to construct mitigation measures to restore access to water for irrigation, such as extending seasonal weirs and intake channels.	<ul style="list-style-type: none"> Provision of water for drinking purposes is a priority use under the Water Resources Act (1992) The District Water Resource Committee will adjudicate any water resource disputes Compensation will be determined by CDCs & compensation prices will be finalized with active participation of PAH representatives.
7.3 Loss of irrigation systems due to construction	<ul style="list-style-type: none"> Water user groups using affected irrigation systems Farmers using irrigation systems 	<ol style="list-style-type: none"> Irrigation systems will be restored to their original conditions. Farmers will be entitled to compensation at replacement cost for all losses caused by damage to irrigation systems during construction, including loss of crops and related income. 	<ul style="list-style-type: none"> Contracts should specify compensation for damages and restoration of irrigation systems to their original condition. NGOs engaged to assist communities should be required to monitor damages and ensure immediate compensation and repairs.
8. Displacement Allowances			
8.1 Severe disruption to cultivation	<ul style="list-style-type: none"> Titleholder Tenant Lessee/cultivator having agreement with the owner 	<ol style="list-style-type: none"> The <i>cultivation disruption</i> allowance will be equal to one season's production on the area of cultivation land lost, based on the published District and VDC productions figures, land types and market prices for crops for the year in which the land is acquired, to be paid at the time of compensation payment. 	
9. Rehabilitation Measures			
9.1 Loss of assets directly due to the project,	<ul style="list-style-type: none"> PAHs 	<ol style="list-style-type: none"> Counseling regarding project impacts, compensation alternatives and risks. 	The rehabilitation measures will be targeted to PAHs and to vulnerable

Type of Loss	Entitlement Unit	Description of Entitlement and Implementation Procedures	Remarks
and impact indirectly caused by the project.		2. Counseling on saving schemes and cash management.	groups in the vicinity of the project area who may be adversely affected by the project, even though they do not lose assets. Vulnerable groups include: landless families, women headed households, low caste households, and ethnic minorities.
	<ul style="list-style-type: none"> PAHs and vulnerable groups who may be adversely affected by the project although they do not lose assets. 	<ol style="list-style-type: none"> 1. Preferential access to project construction employment and micro-credit opportunities, to the extent possible. 2. Assessment of current economic activities and potential for improvement to these activities, as well as alternative income-earning opportunities 	<p>Specifications for training and hiring workers will be included in Community Action Plans.</p> <p>Terms will be determined in consultation with local communities.</p>
	<ul style="list-style-type: none"> PAH agricultural households. 	<ol style="list-style-type: none"> 1. Households shall be entitled to agricultural extension services to increase production on their remaining agricultural and forestry land. 	<ul style="list-style-type: none"> The respective Agriculture Institutions will be requested to assist in implementing the program. Any costs will be borne by the project.
10. Government Property			
10.1 Loss of infrastructure and facilities	<ul style="list-style-type: none"> Relevant agency 	Facilities will be repaired or replaced.	<ul style="list-style-type: none"> To be undertaken in consultation with the relevant department or ministry
10.2 Loss of forest areas	<ul style="list-style-type: none"> Department of Forest 	Mitigation by means of afforestation.	<ul style="list-style-type: none"> To be undertaken in consultation with Department of Forestry
11. General Counseling			
11.1 All project impacts	<ul style="list-style-type: none"> Persons within the project areas 	<p>General counseling on:</p> <ul style="list-style-type: none"> project impacts, construction schedules land acquisition schedules, valuation, compensation and grievance resolution mechanisms, Construction procedures Local development initiatives. 	<ul style="list-style-type: none"> NGOs will be trained and will provide general counseling to community members with specific attention to the poor, those belonging to lower castes and ethnic minorities, and PAHs.