



# Final Report of the Special Project Facilitator

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**PUBLIC**

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## Pakistan: National Highway Network Development in Balochistan Project

(Complaint Received: 6 April 2018)

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## ABBREVIATIONS

ADB	Asian Development Bank
AM	Accountability Mechanism
CWRD	Central and West Asia Department
ft	foot
ft <sup>2</sup>	square foot
km	kilometer
m	meter
NHA	National Highway Authority
OSPF	Office of the Special Project Facilitator
PRM	Pakistan Resident Mission
SPF	Special Project Facilitator

## NOTE

In this report, "\$" refers to United States dollars and "PRs" refers to Pakistan rupees.

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## Project Fact Sheet

**Project:** National Highway Network Development in Balochistan Project

**Approved:** 27 June 2014

**Project Closing Date:** 1 January 2021

**Description:** The project was to rehabilitate 81 kilometers (km) of the existing two-lane road of Zhob–Mughal Kot (N-50) and 120 km of the existing two-lane road of Qila Saifullah–Waghum Rud (N-70) in Balochistan, Pakistan.

**Description of Project Outputs:** Two-lane roads of Zhob–Mughal Kot (N-50) and Qila Saifullah–Waghum Rud (N-70) rehabilitated, and community facilitation centers integrated into the improved mobility through rehabilitated project roads.

**Outcome:** Reduced transport cost from Balochistan to the political and industrial centers of the country.

### Summary of Environmental and Social Aspects:

**Environment:** The civil works associated with the two road rehabilitation subprojects were limited to resurfacing and road widening, and were to be carried out within the existing right-of-way. The environmental impact was limited to the construction phase of the two subprojects; all impact was to be temporary in nature. Initial environmental examination reports for the two project roads were prepared and uploaded on the Asian Development Bank (ADB) website.

**Involuntary Resettlement:** The project was designed to avoid land acquisition and minimize the involuntary resettlement impact by adopting the existing alignment of the project roads and using the most feasible technical design. Resettlement plans were prepared in accordance with national legal requirements and ADB's Safeguard Policy Statement (2009). According to the Land Acquisition and Resettlement Plan (December 2016), all project works are designed within the right-of-way limits and, therefore, there will be no land acquisition involved. However, some privately owned assets like structures and trees were to be removed for clearing, given the construction limits within the right-of-way.

**Indigenous Peoples:** The project roads are located in the settled areas of Balochistan province, with no indigenous peoples as defined under ADB's Safeguard Policy Statement (2009). Therefore, no indigenous peoples' communities were to be affected by the project.

### Safeguard Categories:

Environment: B

Involuntary Resettlement: B

Indigenous Peoples: C

### Source of Funding

Loan 3134-PAK: National Highway Network Development in Balochistan Project	Ordinary capital resources	\$122.60 million
Grant 0451-PAK: National Highway Network Development in Balochistan Project (Partial substitution of ADB ordinary capital resources loan)	Department for International Development	\$72.40 million

## I. BACKGROUND

### A. The Project

1. The National Highway Network Development in Balochistan Project (the Project) was initiated by the Government of Pakistan with the objective of reducing transportation costs from Balochistan to the political and industrial centers of Pakistan. The Project was approved on 27 June 2014. The Project included the rehabilitation of approximately 81 kilometers (km) of Zhob–Mughal Kot (N-50) and approximately 120 km of Qila Saifullah–Waghum Rud (N-70), and the construction of at least five local community facilitation centers along the Project roads.

### B. The Complaint

2. On 6 April 2018, the Special Project Facilitator (SPF) received a complaint from two affected people, representing 12 other landowners and heirs of landowners, in an area where their land is allegedly affected by the Project. The complainants and the 12 others they represent are from Mouza Chapli, Tehsil Bori, District Loralai, an area traversed by the N-70, which was to be widened as part of the Project. The existing 3.65 meters (m) width of the N-70 section was to be increased to two lanes, a 7.3 m wide carriageway with 2.5 m shoulders on each side.<sup>1</sup> The complainants alleged that widening the existing road would affect their ancestral commercial land and asked for compensation.

3. The complainants had previously reached out to the local government unit, Deputy Commissioner and Collector, Loralai, and to the Asian Development Bank (ADB) Pakistan Resident Mission (PRM) prior to filing their complaint with ADB's Accountability Mechanism (AM):

- a. In January 2017, the complainants filed their initial complaint for payment of compensation with the Deputy Commissioner and Collector, Loralai. They stated that they should be compensated for those parcels of land which are in their names and would be affected by the widening of the road. They requested the Deputy Commissioner to initiate the land acquisition proceedings under the Land Acquisition Act, 1894 and pay the corresponding compensation.
- b. According to the ADB PRM team, during the implementation of the Land Acquisition and Resettlement Plan, compensation was paid to the affected people in accordance with the ADB Safeguard Policy Statement (2009). Specifically, the ADB PRM team explained that on 19 June 2017 and 20 July 2017, the complainant's family (father and uncle) were paid compensation for trees amounting to PRs654,904.00.
- c. In February 2018, they submitted their complaint on payment of compensation for land, to ADB PRM. The National Highway Authority (NHA) claimed that the complainant was not entitled to compensation for land and could separately litigate the matter.
- d. In April 2018, claiming that they were not satisfied with the way their grievances were being dealt with by the government and the ADB operations department, the complainants submitted a complaint to the Complaint Receiving Officer of ADB AM.

4. The complainants stated that based on the revenue record of the Board of Revenue, Balochistan, the land owned by them was being adversely affected due to the construction of the N-70 section. According to the complainants, the revenue record identifies their land and states:

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<sup>1</sup> Updated Resettlement Plan for N-70 (120 km), December 2016, National Highway Network Development in Balochistan Project, Executive Summary, p. 4.

*“Note: The areas mentioned in this document are being adversely affected by the NHA road to the extent of 55 feet (ft) from the center on one side and 55 ft from the other side, i.e., to the extent of total of 110 ft which is width of the road is being adversely effected (sic).” [With attestation stamp and signature of Tehsildar/Assistant Collector, Loralai]*

5. On the other hand, the NHA claimed that it has a statutory right-of-way to the extent of 55 ft from the center of the road in urban areas and 110 ft from the center of the road in rural areas. According to NHA, a notification to this effect was issued by the Government of Balochistan. NHA claims that the part of road in question is within these limits and therefore, the process for land acquisition and payment of compensation was not applicable in this complaint.

### **C. Determination of Eligibility**

6. To determine the eligibility of the complaint, the Office of the Special Project Facilitator (OSPF) reviewed the documents received and conducted interviews with complainants and concerned ADB project staff.

7. After examining the complaint based on the 2012 ADB's AM Policy eligibility criteria and the documents and information from the complainants and the operations department, the SPF deemed it eligible for the problem-solving process on 7 May 2018.

## **II. REVIEW AND ASSESSMENT AND PROBLEM-SOLVING**

### **A. Identification of Stakeholders**

8. The stakeholders included (i) the complainants who were the signatories of the complaint letter filed with ADB's AM, and allegedly affected by the Project; and (ii) the government agencies involved in making decisions related to the project including the executing agency, NHA, and the project management office. Confidentiality was not requested by the complainants.

9. Other stakeholders included the ADB staff involved in the Project, both from the Central and West Asia Department (CWRD) and PRM.

### **B. Review and Assessment**

10. The revenue records presented by the complainants were intended to show their family's rightful landownership. These lands were allegedly being directly affected by the road widening project. On the other hand, the NHA claimed that the disputed land being claimed by the complainants actually belong to the NHA under the provisions of the NHA Act of 1991.

11. In parallel to the OSPF process, the NHA filed an application on 17 May 2018 with the Balochistan High Court to restrain the complainants from taking any measures to stop the Project's construction works on the land in question. The Balochistan High Court allowed the NHA to continue with the construction works. The OSPF fielded a review and assessment mission to Pakistan in June 2018. The mission (i) explored the history of the complaint, (ii) confirmed the key stakeholders, (iii) identified the main issues of the complaint, (iv) explored the stakeholders' readiness for joint problem-solving and possible options for resolution, and (v) recommended a course of action. The review and assessment included discussions with the CWRD, PRM, the local government units concerned, and the complainants.

12. In its order dated 15 November 2018, the Balochistan High Court held that based on the revenue record and the report submitted by the revenue authorities, a portion of the land included in the record of the N-70 section belonged to the persons whose names are mentioned in the revenue record. The Balochistan High Court further held that *“due to inadvertence (sic) on the part of Revenue Authorities and without proper investigation, property of private landowners was shown to be part of road N-70 and delivered to NHA.”* The court concluded that the NHA should direct the Collector Loralai to assess the land belonging to private landowners which has been included in N-70 and *“all the landowners concerned should be thereafter compensated in accordance with the Land Acquisition Act, 1894.”*

### **C. Problem-Solving**

13. On 6 December 2018, the OSPF wrote to the NHA stating that it was in receipt of a copy of a decision by the Balochistan High Court dated 15 November 2018, which, among other issues, instructs the NHA to *“ask the Collector Loralai to assess the land belonging to the land owners, which has been included in the road (N-70) and all the land owners concerned should thereafter be compensated in accordance with the Land Acquisition Act, 1894.”* The SPF explained that the complainants contacted the OSPF to request the SPF's assistance in a facilitation role in settling the matter as quickly as possible. The SPF explained that this was a valid request based on the problem-solving process of the 2012 ADB's AM Policy. Thus, the SPF requested the NHA's timely advice on the latter's course of actions in response to the 15 November 2018 order of the Balochistan High Court.

14. On 28 December 2018, the NHA wrote to the country director of PRM and stated that the NHA would file an appeal against the 15 November 2018 order of the Balochistan High Court before the Supreme Court of Pakistan. Notwithstanding the appeal, the NHA said that it would deposit a bank guarantee, corresponding to the requisite amount, with the Balochistan High Court to ensure payment to the landowners in case the Supreme Court upheld the 15 November 2018 order of Balochistan High Court.

15. On 16 January 2019, the NHA again wrote to the country director of PRM and attached a copy of the appeal. The NHA said that it would do its best to complete legal formalities to ensure due payment if any, to all affected, in accordance with the final decision of the Supreme Court of Pakistan.

16. On 13 March 2019, the NHA filed an application with the Balochistan High Court praying for a grant of permission to file the bank guarantee. The NHA had evaluated the land in question at the rate of PRs1.45 per square foot (ft<sup>2</sup>). On the other hand, the complainants provided their own valuation of PRs168 per ft<sup>2</sup>. The Balochistan High Court then directed the NHA to furnish a bank guarantee of PRs10 million as a tentative rate of the entire property owned by private parties. The complainant's representative, who was present in the court at that time, did not object to the tentative rate.

17. On 17 April 2019, the NHA submitted to the Balochistan High Court a bank guarantee of PRs10 million dated 19 March 2019 No. 01/2019, issued by the National Bank of Pakistan, Sector F-10 Islamabad Branch. The guarantee was accepted and made part of the court records.

18. The issues regarding the complainants' right to compensation, whether the land acquisition process is applicable, and the statutory right of NHA to use the land in question, are still pending resolution before the Supreme Court of Pakistan.



### III. CONCLUSION

19. Should the Supreme Court of Pakistan deny the appeal of the NHA and uphold the ruling of the Balochistan High Court stating that the complainants must be compensated in accordance with the Land Acquisition Act, 1894, while taking account of the provisions of the NHA Act of 1991, the bank guarantee will be called upon to settle the compensation, as determined by the Supreme Court of Pakistan, in accordance with the Land Acquisition Act.

20. Considering the foregoing and written confirmation of the NHA to ADB Management of its commitment to ensure payment of due compensation in accordance with the final decision of the Supreme Court of Pakistan, the SPF is closing the complaint. The SPF has informed the borrower, the ADB project team, and the complainants of the SPF's conclusion.

### IV. LESSONS LEARNED

21. **Need for improved due diligence.** As part of the project preparation, the executing agency, with guidance of the ADB team, is advised, moving forward, to (i) review any discrepancy of land and revenue records between federal and provincial government departments as part of its due diligence; (ii) carry out meaningful consultations with relevant stakeholders, including the communities along the road corridors on landownership and claims; (iii) collect and review available records of mutation of lands and the necessary documents that confirm the unencumbered government ownership of all lands required for the project, and to update the records in line with any laws and statutory regulation provisions on which the executing agency may rely to assert its rights; (iv) obtain in a timely manner, where necessary, a legal opinion for ascertaining unencumbered government ownership, or to take any other similar steps for clarifying any issues relating to title of the lands in question; and (v) identify and initiate any actions that would be required to address impact on any affected persons who have claims to the right-of-way required for the project. Identification of land title issues at the due diligence stage would have enabled timely addressing of grievances related to landownership, ensured project readiness, and avoided delays in project implementation. This is a critical concern for projects that are developed in provinces which have not updated their revenue records, such as Balochistan.

22. **Building capacities of implementing agencies to manage land-related grievances.** The NHA should utilize the expertise of staff with experience in ADB Land Acquisition and Resettlement Plan preparation and implementation in future projects, while including new staff in the team. The delays in identification of landownership issues and the escalation of the complaint to ADB point to the need for building capacities of the staff of the implementing agencies in complaint handling.

23. **Involvement of ADB Management can be helpful in the resolution of complaints.** Throughout the OSPF problem-solving process, the CWRD management played an active role in communicating with the NHA on safeguard compliance requirements and reputational risks associated with the complaint. This ensured NHA's agreement and commitment on key actions required to address the issues raised.