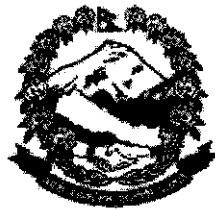




# **Nepal Health Sector Program – (NHSP- II)**

## **Framework for Land Acquisition and Resettlement**



**Government of Nepal  
Ministry of Health and Population  
Kathmandu  
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# **Nepal Health Sector Program-II**

## **Framework for Land Acquisition and Resettlement**

### **1. Introduction**

*The Nepal Health Sector Program-II (NHSP) will expand geographical coverage of essential health services and implement policies aimed at increasing access to the poor and excluded more systematically. The sector program may include construction or rehabilitation of medical facilities. Based on earlier experiences in the public health sector, the program is not expected to require land acquisition through eminent domain considering the small scale and rehabilitation nature of the medical facilities to be considered under the program. However, as a sector program, it is difficult at this planning stage to rule out the possibility of land acquisition under the Land Acquisition Act 1977. In consideration to this, the framework is prepared to provide policy and procedures guidance to screen, assess, plan land acquisition and resettlement in full compliance with relevant domestic laws and World Bank policy on Involuntary Resettlement in the eventuality that acquisition of land through eminent domain cannot be avoided.*

### **2. Applicable Legal and Policy Framework**

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 rights 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.

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. There is a provision of Compensation Determination Committee (CDC) chaired by Chief District Officer to determine compensation rates for affected properties. 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."

The **World Bank's Operational Policy on Involuntary Resettlement** states that involuntary resettlement should be avoided wherever feasible. Where such impacts are unavoidable, it

should be minimized by exploring all viable technical design options. People affected should be compensated and assisted to improve or at least restore their livelihoods. People affected should be informed fully and consulted on resettlement and compensation options. The absence of formal legal title to land by some affected groups should not bar the affected to the benefits of compensation. Compensation and resettlement activities should be planned as a development program to improve or at least restore their livelihoods. The planning and implementation of any compensatory and resettlement measures should be monitored.

### 3. Objectives, Principles and Entitlement for the Program

The following objectives and principles will guide the planning and implementation of any compensation and resettlement measures under the project.

The objectives of the RF are to (i) avoid land acquisition and involuntary resettlement wherever feasible; and (ii) minimize it where it is unavoidable, and ensure that PAPs receive assistance, so that they would be at least as well off as they would have been in the absence of the project. While selecting facility locations, the program will try to minimize land acquisition and resettlement. All involuntary land acquisition will be compensated and PAPs assisted so that their economic and social future would generally be as favorable as it would have been in the absence of the project. All compensation will be delivered before taking of the land and assets. The absence to formal title to land will not be a bar to compensation for loss of assets and special attention will be paid to ensuring that households headed by women and other vulnerable groups receive appropriate assistance to help them mitigate the impacts and improve their living standard. The date of the census will be the “cut-off-date” for the entitlement, and owners (including non-titled) of affected assets.

### 4. Entitlement Policy/Matrix

| Type of Loss                                      | Entitled Persons          | Policy/Entitlement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Acquisition of private, tenancy, or Guthi land | Landowners<br><br>Tenants | <ul style="list-style-type: none"> <li>• Land with equivalent size/category, or cash compensation at replacement cost</li> <li>• Any transfer costs, registration fees or charges</li> <li>• Tenant will receive the 50% value of the land</li> <li>• If remaining land becomes unviable as a result of land acquisition, PAPs will have option to relinquish unviable remaining portion of land and receive similar benefits to those losing all their land parcel.</li> <li>• Non-registered tenants will receive compensation for crops and subsistence allowance for one year crop, and provided with replacement land if <i>ailani</i> or Gov. land is</li> </ul> |

|                                                         |                                                             |                                                                                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                         |                                                             | available in the village. Any up-front costs for the tenancy agreement will be reimbursed either through an agreement with the land lord or by the EA                                                                                                                                                                                                                                      |
| 2. Temporary loss of land/crop                          | Landowners<br>Tenants<br>Non-titled (encroachers/squatters) | <ul style="list-style-type: none"> <li>• Compensation at replacement cost for the net loss of income, damaged assets, crops, trees etc.</li> <li>• An agreement between contractors and PAPs before entering the site.</li> </ul>                                                                                                                                                          |
| 3. Loss of residential, commercial, and other structure | Landowners<br>Tenants<br>Non-titled (encroachers/squatters) | <ul style="list-style-type: none"> <li>• Compensation for full/partial loss at replacement cost of affected structure without depreciation</li> <li>• Displacement/transportation allowance for residential and commercial structures.</li> <li>• Rental stipend equivalent of three months rent for tenants who have to relocate from tented building.</li> </ul>                         |
| 4. Loss of community structures / resources             | The users of facility or community or group                 | <ul style="list-style-type: none"> <li>• Reconstruction by the project leaving such facilities in a better condition than they were before; or</li> <li>• Cash compensation at full replacement cost.</li> </ul>                                                                                                                                                                           |
| 5. Loss of trees and crops                              | Owner of affected fruit/nut trees                           | <ul style="list-style-type: none"> <li>• Cash compensation based on the Department of Agriculture norms.<sup>1</sup></li> </ul>                                                                                                                                                                                                                                                            |
|                                                         | Owner of timber and fodder trees                            | <ul style="list-style-type: none"> <li>• Cash compensation based on the Department of Forestry norms.</li> </ul>                                                                                                                                                                                                                                                                           |
|                                                         | Owner of affected crops                                     | <ul style="list-style-type: none"> <li>• Cash compensation based on the market prices for the produce of one year as per the norms of District Agriculture Development Office.</li> <li>• If crop under share-cropping arrangement, cash compensation of the lost crop will be divided between the sharecropper and the owner as per their sharecropping agreement/arrangement.</li> </ul> |
| 6. Loss of time                                         | The entire project                                          | <ul style="list-style-type: none"> <li>• Cash compensation equivalent to cost of</li> </ul>                                                                                                                                                                                                                                                                                                |

<sup>1</sup> DOA norms will depend to the particular district and year in concerned, so such norms will be reviewed during preparation of Resettlement Plan in order to make sure that such rates are acceptable.

|                                            |                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| and travel expenses                        | affected persons eligible for compensation.                                                                                                                                                                                                                                                                                                                                                                              | transport plus daily agricultural wage equivalent for the number of days spent on project related administration                                                                                                                                                                                                                                                                                                       |
| 7. Land donations                          | <p>Voluntary donation is accepted only if AP is:</p> <ul style="list-style-type: none"> <li>• Above poverty line;</li> <li>• Donating up to 20% land holding,</li> <li>• Unforced or freely willing to donate (with an agreement, including a "no coercion" verified by third party NGO;</li> <li>• Donation documented and verified</li> <li>• Project beneficiary and consulted/informed about the Project.</li> </ul> | <ul style="list-style-type: none"> <li>• No compensation for the donated land, but entitled for compensation of other assets such as house, structures, trees, crops, allowances, etc.</li> <li>• Transfer of land ownership by negotiation (DOE and the owner).</li> <li>• Free/escape of any transfer costs, registration fees or charges.</li> <li>• Preferential employment in the project construction</li> </ul> |
| 8. Additional Assistance                   |                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 8.1 Employment opportunities               | All PAPs                                                                                                                                                                                                                                                                                                                                                                                                                 | <ul style="list-style-type: none"> <li>• Allocation of employment to PAPs.</li> <li>• PAPs shall be given priority after construction for work as maintenance worker.</li> </ul>                                                                                                                                                                                                                                       |
| 8.2 Income restoration of vulnerable group | One member of each PAF belonging to vulnerable group/below poverty line                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>• One time additional financial assistance equivalent to Rs. 20,000; or</li> <li>• Skill training and income generation support with equivalent amount.</li> </ul>                                                                                                                                                                                                              |

## 5. Voluntary Land Donation

The program will continue the Nepal's tradition where people voluntarily donate part of their land in building community level health facilities that provide direct benefits to local communities. However, adequate safeguards will be built in resettlement plan to ensure that such donations are unforced and the poor people are not asked for donation. All voluntary land donations should meet the following criteria:

- Full consultation with PAPs on site selection;

- Voluntary donations do not severely affect the PAPs people (i.e. PAPs do not fall below poverty line, and lose >20% landholding);
- The land in question will be free of squatters, encroachers or other claims.
- Verification of the voluntary nature of land donations in each case through formal public hearing.
- Voluntary donation will be confirmed through a written record, including a "no coercion" clause verified by an independent third party NGO;
- Voluntary contribution of land cannot be accepted if the holdings of the affected households will be reduced to marginal land holding, and that the donation is more than 20% of their total holding.
- Land transfer should be completed through registration
- Leasing of land or rights of use of land will be duly documented.
- A grievance redress mechanism is in place.

The MoHP will arrange for a public hearing if there is new construction and acquisition of land involved. This public hearing shall verify the information provided in the land assessment data sheet. The above will be documented and attached to the construction plan of the facility investment proposal.

## **6. Specific Procedures for Resettlement Planning and Participation of PAPs**

### **6.1. Resettlement Planning Steps**

The sector program activities will be programmed on an annual basis. The infrastructure facilities will be identified and programmed as part of the annual implementation plan. The proposed annual infrastructure investment activities will be screened for land acquisition and resettlement impacts and specific mitigation measures will be formulated facility-wise. An annual RAP will be developed documenting all the impacts and measures, as part of the program implementation plan. Facility-wise planning steps are suggested as follows and in attachment I.

### **6.2. Screening of Impacts**

The facility design team will visit each facility location and arrange public meetings to provide information about the project and collect their views on resettlement impact and willingness of PAPs for any voluntary land donation. The screening will identify the potential for loss of land, asset/structures, livelihoods, willingness of the community and individuals to donate the land to the project, and associated impacts on their livelihoods. Resettlement screening will also enable the categorization of subprojects based on their level of social impacts.

### **6.3. Social Impact Assessment and Preparation of Resettlement Plans**

If any program facilities involve potential land acquisition and resettlement, the Environment Assessment Team (EA Team) assisted by social/resettlement specialist will undertake a social

impact assessment (SIA) as part of the detailed design of the sub-project and prepare RPs on completion of detailed design and detailed measurement survey. The SIA will gather relevant information about PAPs, including (i) population record, (ii) an inventory affected assets, (iii) landownership, usage and productivity, and (iv) socio-economic status of PAPs and assessment of their risks. The census survey will enumerate of all PAPs based on site investigation sufficient to identify titled and non-titled PAPs. The census will also serve as a cut-off date for the entitlement purpose. The information will be gathered in participation of community, local NGOs and PAPs.

The SIA will identify measures to avoid/minimize/mitigate involuntary resettlement risks. Vulnerability assessment of project affected persons (PPAPs) will be part of SIA and a list of vulnerable PPAPs prepared and finalized in consultation with local community. The SIA will also assess options for any relocation, opportunities for income restoration/economic rehabilitation, and any need of special assistance for vulnerable groups. It will also solicit PPAPs willingness to donate their land. Based on this information, the eligibility criteria and entitlement for compensation/assistance will be established and appropriate resettlement plans (RP) will be prepared.

The content of full RP includes a statement of involuntary resettlement objective and strategy, with (i) organization responsibilities, (ii) community participation and disclosure arrangements; (iii) finding of the socio-economic survey and social and gender analysis; (iv) legal framework, including eligibility criteria and entitlement matrix; (v) mechanisms for resolution of conflicts and appeals procedures; (vi) identification alternative sites and selection; (vii) inventory, valuation of, and compensation for, lost assets; (viii) land ownership, tenure, acquisition, and transfer; (ix) access to training, employment, and credit; (x) shelter, infrastructure and social services; (xi) environmental protection and management; (xii) monitoring and evaluation; (xiii) a detailed cost estimate with budget provisions; and (xiv) an implementation schedule, showing how activities will be scheduled with time-bound actions in coordination with the civil works. The RP will establish an eligibility cut-off date.

Where a facility involves voluntary land donation, the RP will also include arrangements to deal with losses on a voluntary basis with appropriate safeguards. Such land donations will require a written agreement with the respective landowners. It may be in a form of memorandum of understanding (MOU) between the landowner(s) and the Environmental Assessment (EA) or other documentation acceptable to the World Bank, including a no coercion clause witnessed by an independent third party e.g. NGO. Such agreement will also be annexed to the RP.

After finalizing the technical drawings of the facilities and the draft RP, the EA will organize a consultation workshop with PPAPs and local stakeholders to share the draft RP and inform them about how the concerns raised by them during the SIA have been addressed in the project design. The draft RP prepared by the design team will be reviewed and endorsed by the EA Team and

submitted to the World Bank for approval. No section or part thereof under the civil works contract shall be handed over to the contractor unless the RP has been approved by the World Bank and required land compensation has been completed.

## **7. Information Dissemination, Consultation, Participation and Disclosure**

The information dissemination, consultation, and participation of PPAPs as well as other stakeholders will be facilitated throughout the subproject cycle. Various mechanisms of participation will be adopted in the process. The PAPs would be consulted during screening, SIA and preparation of RPs and provided with relevant information about the project, facilities, project agencies, summary resettlement framework, entitlement for involuntary land acquisition, criteria for voluntary land donation, and grievance redress mechanism. The EA team will make available the RP to PPAPs and disclose to the public. Copies of the RPs will be placed at public libraries. The EA Team shall also post the RPs on its website. The monitoring reports will also be publicly disclosed and posted on the MoHP website during the implementation.

## **8. Grievance Redress Mechanism**

Complaints and grievance procedures will be outlined in each RP. A Grievance Redress Committees (GRC) will be established for each subproject for hearing the complaints of PPAPs and for their appropriate resolution. Other than disputes relating to legal rights, it will review all grievances relating to land acquisition. Grievances will be redressed within two to four weeks from the date of lodging the complaints. A GRC will comprise: (i) Project Manager (Chairperson), (ii) Representative of the local bodies; (iii) Representatives of the PAPs; and (iv) Representatives of civil society organizations;

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

## **9. Compensation, Relocation and income generation**

PAPs will be compensated at replacement cost for any involuntary land acquisition. In line with the Land Acquisition Act 1977, a Compensation Determination Committees (CDC) will be formed at each district to decide compensation rates. The representatives of PPAPs will be also invited in the committee meeting as observers. The design team will assess the compensation rates for the lost assets and recommend it to the CDC for final valuation and compensation distribution. PPAPs losing houses will be assisted in relocation by providing additional transportation and displacement allowances along with compensation. Vulnerable PAPs will get additional assistance/allowances as stated in the policy/entitlement matrix.

PAPs who lose their income sources (e.g. land, employment, business) and are at risk of impoverishment will be assisted through income restoration programs. Special attention will be given to the poor and vulnerable group. PAPs will be given priority for employment in the

construction of facilities. Based on the existing skills and preferences by the PPAPs, multiple options of income generating and life skill training will be explored and the RP will include a comprehensive package of income restoration program for PPAPs. The cost for this program will be financed under the program.

## **10. Monitoring and Evaluation**

The EA Team will be responsible for the internal monitoring of the resettlement planning and implementation. The EA Team will organize periodic progress review meetings involving PPAPs representatives. Special attention will be given to securing the participation of women. The meetings will provide households with the opportunity to discuss both the positive and negative aspects of their resettlement, compensation and rehabilitation. An inclusive problem-solving approach will be followed, using local experiences and realities as the basis for solutions.

The verification of satisfactory implementation of RP including completion of land compensation is a condition for contract award and commencement of civil works. A verification report in this regard will be prepared by the EA assisted by social/resettlement specialist and submitted to the MoHP before award of the contract(s). The MoHP will investigate the extent to which any land donations were freely made and with adequate safeguard, and whether assessed compensation/assistance has been paid to the PAPs.

The implementation activities will be monitored and evaluated externally once in a year through an independently appointed agency, consultant or NGO not involved with any aspects of the program planning, which will provide report to both the MoHP and the World Bank. The EA Team will hire such external monitoring agency with World Bank concurrence within six months after the program is approved. The RPs will include appropriate monitoring indicators for external monitoring.

## **11. Implementation Arrangements**

The MoHP has the overall responsibility for the implementation of this framework. The Department Of Health and Population (DoHP) has planning and implementation responsibilities at the district level. Social specialists will be engaged to assist as part of the EA team for screening and planning RPs. The EA will make provision in the civil works contracts that the contractors will hire PAPs with preference in the construction works.

## **12. Resettlement Cost Estimate and Financing for the RP**

The RPs will provide cost estimates, budgets, and cash flows for meeting the objectives of the RP, according to the established schedules. Associated cost of land acquisition and resettlement, if any, will be itemized and included in the overall project cost under the budget for RP implementation. The costs required for RP implementation (including any land compensation) will be financed out of Program grant. These costs include (i) compensation for acquired assets; (ii) costs for rehabilitation of PAPs; and (iii) administrative costs for RP implementation and capacity building of the project agencies.

### **Guidance Note on Preparation of a Resettlement Plan**

The social /resettlement specialist with relevant qualifications and experience will carry out assessment of impacts on PPAPs and prepare necessary plans. The tasks will include but not be limited to the following:

- (i) Identify key stakeholders (poor and vulnerable groups in particular)
- (ii) Carry out consultations with relevant stakeholders
- (iii) Identify whether the project activity or construction works will necessitate land acquisition and resettlement or is expected to result in the loss of assets, resources or income of local people, particularly most vulnerable groups.
- (iv) Assess the types of likely impacts, affected persons, institutional constraints, policy issues and action required.
- (v) Conduct a census covering all affected people, to determine the scope and magnitude of likely effects, and to list likely losses. Suggest a cut-off date for entitlements.
- (vi) Conduct a socioeconomic survey of a sample of 10% of PPAPs and 20% seriously affected people.
- (vii) Review legal and institutional aspects.
- (viii) Assess risks and opportunities for affected people.
- (ix) Assess any voluntary land donations
- (x) Identify compensation and livelihood restoration strategies and options.
- (xi) Work out a detailed entitlement matrix and compensation procedures.
- (xii) Identify consultation and participation procedures with all stakeholders
- (xiii) Suggest an implementation mechanism and institutional framework for implementation
- (xiv) Develop budget and implementation schedules.
- (xv) Identify requirements for capacity building for EA staff.
- (xvi) Suggest arrangements for monitoring and evaluation.
- (xvii) Prepare a short or full resettlement plan
- (xviii) Disclose RP publicly to PPAPs and other stakeholders

### Land Donation Agreement

The following agreement has been made between the resident of ..... zone  
 ..... district .....VDC/Municipality ward no .....  
 grandson/daughter/daughter in law of ..... the son/daughter/wife of  
 ..... aged Mr./Mrs/ Miss ..... (hereafter called second party)  
 and the Project Executing Agency....., ..... (hereafter called first party).

1. The second party has accepted (or not accepted) the request of the first party to donate  
 ..... area of land out of ..... area of land registered in the name of first party, situated  
 in ..... district, ..... VDC/Municipality ward no..... recorded in  
 sheet/map no..... and parcel no.....
2. The second party hereby grants/not grants donation of the area land mentioned in article 1 for  
 the construction/ improvement of ..... school free of cost for  
 the benefit of the community.
3. The cost of buildings/structures, trees, and crops in the donated land mentioned in article 1 is  
 agreed as follows:

|                              |            |
|------------------------------|------------|
| Land                         | : Rs.....  |
| Building/hut/shop            | : Rs. .... |
| Cattle shed/other structures | : Rs. .... |
| Timber tree                  | : Rs. .... |
| Fruit tree                   | : Rs. .... |
| Crops                        | : Rs. .... |
| Others                       | : Rs. .... |
| Total                        | : Rs. .... |

Other than the land, the first party will provide compensation for other losses within ..... days  
 to second party.

4. The second party will remove the compensated building/ structures, trees and crops within  
 ..... days of signing. If the second party won't vacate the land till the mentioned date then  
 the first party will have full right to enter into the donated land.
5. The second party will not claim any compensation against the donation of this land asset, nor  
 obstruct the construction process on the land after this date.
6. The EA ..... shall construct and improve the school facilities and take all  
 possible precautions to avoid damage to adjacent land/structure/other assets.

- 7. Both parties agree that the sub project so constructed shall be come publicly owned.
- 8. The provision of this agreement will come into action from the date of signing of this deed.

|                                                                                       |                                                                                 |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Signature of first party<br><br>party<br><br>Name:<br><br>Designation:<br><br>Office: | Signature of second<br><br><br><br>Name:<br><br>Address:<br><br>Right      Left |
|---------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|

Witness (Third Party)

We certify that there is no pressure upon him to donate land voluntarily

1) NGO, .....

.....