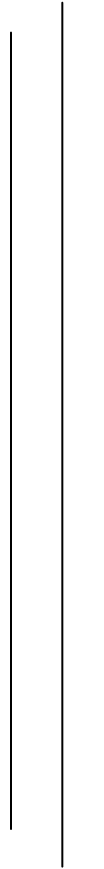


Land Acquisition, Resettlement and Rehabilitation Policy for Infrastructure Development Projects, 2014 (2071 BS)



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1. Background

1. Investment in infrastructure development and other development project is on significant rise in Nepal in the recent years. Thus there is a clear need for a uniform approach in determining compensation and resettlement and rehabilitation of the people who are affected due to land acquisition for the projects. The people of the project area are pushed to the brink of displacement when such projects are executed.

2. Development works such as hydro power projects, roads and highways, irrigation canals, urban development infrastructure, airports and parks contribute to overall national development. There is no doubt about it. But while implementing development initiatives, many people lose their land. A number of affected people lose the only source of their livelihood, and some are even pushed to the state of having to migrate elsewhere. Such adversities come in the way while executing development projects. Besides, the land in and around the project area may lose its productivity, a person may lose his or her productive properties and all source of income and thus have to face a lot of troubles. This could weaken the community organisations and social harmony subsisting among the people and could seriously affect their cultural identity, customary rights, and traditional roots and jeopardize their mutual co-existence system. Various studies as of today have shown that economically, socially and professionally backward people often become the victims of these adversities. The trend till date shows that the poor and deprived class of the society has to bear the brunt most of the time.

3. Land Acquisition, Resettlement and Rehabilitation for Infrastructure Development Project, 2014 has been formulated with the objective of providing services like compensation, resettlement and rehabilitation to the affected people depending on the nature of effects, so as to help them keep their social and economic situations before the project or help them reach the higher socio-economic ladder. The Policy also aims to adopt a uniform approach in carrying out these measures and reducing adverse risks of project implementation thus ensuring smooth operation of project. This Policy shall provide a guideline in implementing the project and establishing coordination among various ministries on land acquisition issues.

2. Past initiatives

4. Up until the beginning of the 20th century, there used to be few and limited physical infrastructure development works under operation in Nepal. Even these few initiatives were individual and community driven rather than launched by the government. The rich and influential members of the community such as traders, landlords and even kings and nobles would build temples, rest houses (*dharmasala*), bridges, water taps, wells, ponds, schools and crematoriums under their own initiatives. Ancient memorials, parks, sanctuaries were built on public or government land or land under private ownerships. Up until 1950 and few years after, the government would issue a decree to make available lands for building schools, health centers, hydro power stations, irrigation canals and industries. Historical records show that the process of state acquiring land for development projects legally started from 1911, when a 500 kilowatt hydro power station was built. About 324 ropanis of land had been acquired for the purpose. Eleven years later, in 1979 BS, 38 ropanis of land had been acquired for building

Sundarijal hydro power station. Thus the then rulers would implement development plans and establish development projects by acquiring lands and houses through royal decree. In this context, the Immovable Property Acquisition Act of 2013 BS could be regarded as the first legal document that started legitimate way of acquiring land and property for development purpose. This Act was first applied only in Kathmandu Valley and was later extended across the country by issuing notification through Nepal Gazette in 2016 BS. Following this, Land Acquisition Act 2018 BS, Compensation Act 2018 BS, and Immovable Property Acquisition Rules 2016 BS, and Land Acquisition Regulations 2026 BS came into effect. Land Acquisition Act 2034 BS is Nepal's latest legal document relating to land acquisition process.

5. However, efforts are being made in the recent times to update legal provisions regarding land acquisition, compensation, and resettlement and rehabilitation initiatives to make them more effective and transparent, especially in the context of growing rate of development projects, including infrastructure development works. Though Land Acquisition Act of 2034 has been able to address land related problems to a considerable extent, the provisions of this Act have proved to be inadequate in the changed context. A common practice has been hearing the complaints of the affected people living in and around development project sites and providing them resettlement and rehabilitation packages. But lack of a policy to address these concerns in holistic and systematic manner has given rise to several complications in executing development plans and projects.

3. Existing situation

6. Acquiring land and property for development related projects is pretty sensitive issue on humanitarian ground and pretty complicated one on the legal ground. This is why even development projects of national importance have been facing hurdles and they are unlikely to be completed within the stipulated time. While there is a clear need for the state mechanisms to be more accountable and transparent there is also a growing level of public awareness regarding development needs and aspiration to be part of such development initiatives. Energy, transportation and urban development have remained major periodic development projects and they receive major attention for big investment. It is likely that there will be greater investments in the projects that are prone to higher risks in terms of land acquisition and displacement of people living in and around the project areas. To carry out these development projects smoothly there will be the need of state investment and regional and international aids. Thus there is a clear need to remain prepared to address this situation to attract foreign investment in the development sectors. Formulation of an integrated policy in line with international practices on land acquisition, resettlement and rehabilitation can help us move toward that direction.

7. Though Land Acquisition Act, 2034 BS has been amended to make land acquisition process relatively easy, there is a greater need to include resettlement and rehabilitation issues and update the Act according to the changing needs. Resettlement work has become even more complicated due to shrinking size of agricultural and residential land. At the same time acquiring land without providing an alternative source of livelihood will push the affected people to immense hardships. Living for the affected people will be even more difficult. Due to lack of

compatible legal provisions, there exist different provisions of resettlement and rehabilitation in different project areas. Thus there is a need to end this practice and devise common and uniform policy that can be applied in the development works of all places while also taking into consideration social security needs.

4. Problems and challenges

8. There is a lack of integrated and updated policies regarding land acquisition, resettlement and rehabilitation. This has resulted into delay of resettlement and rehabilitation of the affected families, which, in turn has caused unnecessary delay in acquiring land, inflated project costs and delayed the project completion. As the existing laws and legal provisions are inadequate and 'not so effective,' and as the land valuation system is not scientific and systematic, this has added to the challenges in acquiring land of the private ownership for development works of public interests. Land is a finite natural resource used for multidimensional purposes. Thus it is vital for the development works which are directly dependent on such scarce resources to be completed on time. Land is the first requirement for every development work: whether be it long-term infrastructure projects of national importance, or the ones meant to provide immediate service and relief to the people or the ones serving larger public interests. Therefore, land acquisition is the most vital and equally challenging issue for the government. Nepalese think of land as the chief source of livelihood. Besides, there is lack of political will to settle land related issues, which, together, has compounded the problems even more. Lack of clear policy on land acquisition, compensation, resettlement and rehabilitation, lack of institutional will and coordination among concerned stakeholders have made timely completion of development projects even more challenging.

5. Need for Land Acquisition, Resettlement and Rehabilitation Policy

9. To address the problems and challenges as mentioned in section (4) and to address the new situations brought about by changing socio-political conditions, added development opportunities and livelihood concerns, there is a stark need to make land acquisition and valuation, compensation, resettlement and rehabilitation more simple, more managed, effective, fair, and transparent in line with contemporary international standards and practices so there is an environment for completing development projects on time. For this, it is extremely necessary to formulate policy on land acquisition, resettlement and rehabilitation and execute it effectively.

6. Vision, mission, goals and objectives

The vision, mission, goals and objectives of this policy shall be as follows:

6.1 Vision

To create conducive atmosphere for executing infrastructure development plans and thus to contribute to overall development of the country and its people

6.2 Mission

To mitigate adverse impacts of development projects on economic, social and cultural fronts of the affected areas and family and thus help development programs to be completed within the stipulated time

6.3 Goals

To help the affected families to enhance their economic and social status by making provision for land acquisition, fair compensation, appropriate resettlement and rehabilitation for the families who are affected by infrastructure development projects or projects of public interests

6.4 Objectives

To make land acquisition process more people friendly and fair, to help the families affected by project implementation and to conduct compensation, resettlement and rehabilitation programs in more humane, inclusive, fair, transparent and effective way, the Policy shall set forth the following objectives:

- 6.4.1 To create the environment where the locals, families and community are not displaced or to ensure that there is just nominal displacement caused by projects implementation,
- 6.4.2 To make available compensation and gainful socio-economic opportunities to the affected families, individuals and communities while at the same time minimizing adverse impacts of displacement just in case project implementation leads to displacement of people from the community,
- 6.4.3 To create the environment for timely completion of project by making processes of land acquisition, compensation, resettlement and rehabilitation and valuation of land simple, easy, transparent and fair.

7 Policies

7.1 To ensure that project implementation does not displace any families and communities and to create the environment where there is least chance of displacement, there shall be following policies:

- 7.1.1 To assess possible adverse effects to be caused to the community before identifying the project so as to minimize displacement risks,
- 7.1.2 To give priorities on alternatives identified to reduce possible risks of socio-economic displacement of affected individuals and families,
- 7.1.3 Project implementation authority to ensure the means and resources needed for resettlement and address the livelihood concerns of affected individuals and families,

7.2 There shall be following policies to minimize adverse impacts of project implementation, ensure gainful socio-economic opportunities to the affected individuals, families and communities and to provide them compensation if necessary:

7.2.1 To assess social impacts of project implementation to identify impacts on affected people, community and vulnerable group,

7.2.2 To formulate resettlement and rehabilitation plan so as to ensure that affected individuals and families can retain living conditions of the time before project implementation and to ensure that their living conditions are much better than before,

7.2.3 To ensure provisions relating to compensation, resettlement and rehabilitation to the affected individuals much before they are physically and economically displaced,

7.2.4 To engage in dialogues and negotiations in the situation when land can be achieved through dialogue and to ensure that dialogue and negotiations with land selling party have been transparent, consistent and fair,

7.2.5 Except in case the affected individuals wish to resettle elsewhere, to make the affected people resettle in their existing residing areas as far as possible,

7.2.6 To ensure 'land for land' deal to the affected families with utmost priority, if acquiring land of private ownership renders the affected land owner completely landless,

7.2.7 To ensure additional assistance by preparing inclusive policies and programs for socio-economic prosperity of the affected people if such people belong to categories of deprived and disadvantaged, dalit, indigenous nationalities and single women,

7.2.8 To ensure the environment of receiving compensation and resettlement package to the displaced people if they have no land under their ownership or they lack legal basis to ascertain ownership of the land in which they are residing,

7.2.9 To create the situation in which part of the profit of the project reaches the affected people in case of the projects that have direct profit of the investment,

7.3 There shall be following policies to make land acquisition, compensation, resettlement and rehabilitation and valuation process simple, easy, transparent and fair and to create an environment for timely completion of project:

7.3.1 To ensure that project implementation authority has carried out meaningful dialogue and negotiations with affected individuals, community, vulnerable group and especially people living below the poverty line, landless, senior citizens, women, children, indigenous people, disabled, incapacitated people and those who lack legal basis to ascertain landownership of the land in which they are currently residing,

7.3.2 To adopt scientific valuation system while determining compensation amount to be paid against the land and property acquired from the affected people so that they receive the

compensation within the specified time in amount that is no less than minimum market price of the property they lose out to project,

7.3.3 To ensure that there is an appropriate mechanism in place to hear the complaints and grievances of the affected people and to facilitate resolving them,

7.3.4 To update and make information and details public from time to time regarding progress, execution of resettlement and rehabilitation programs and their outcomes,

7.3.5 To establish an effective mechanism to ascertain whether the objectives of land acquisition, compensation, resettlement and rehabilitation plans have been realized and to monitor and evaluate impacts of project implementation on displaced people.

8. Strategy and working plans

8.1 Following strategies and working plans shall be devised to ensure that project implementation does not displace any families and communities or to create the situation where there is least chance of such displacement:

8.1.1 The project shall be proposed after carrying out preliminary risk assessment of involuntary displacement in the conceptual phase, resources and means required for the project and its institutional capacity.

8.1.2 An alternative proposal for implementation of the projects with lower risk of involuntary displacement shall be prepared after making preliminary socio-economic assessment.

8.1.3 Based on the preliminary socio-economic assessment, the project shall be divided into the following categories:

a) **High risk project:** the project that could potentially physically and economically displace 50 or more than 50 families in the Himalayan region, 75 or more than 75 families in the hills and 100 or more than 100 families in the Tarai plains.

b) **Medium risk project:** the project that could potentially physically and economically displace 50 or less than 50 families in the Himalayan region, 75 or less than 75 families in the hills and 100 or less than 100 families in the Tarai plains.

c) **Low risk project:** The project that may only economically displace people and the project that does not cause loss of more than 10 percent of productive properties and assets of the affected people.

8.1.4 Comprehensive data collection work about displacement shall be carried out by ensuring availability of adequate resources and means. Elected representatives of the local bodies shall be consulted while collecting census of the affected individuals and families.

8.1.5 Arrangement shall be made to ensure that there is **no repetitious loss** while acquiring land to implement projects within one single area.

8.2 In case project implementation causes displacement, following strategies and working plans shall be adopted to make available socio-economic opportunities to affected individuals, families and communities while at the same time also minimizing adverse impacts of project implementation:

8.2.1 Social impacts of project shall be assessed by consulting with elected representatives of the local bodies, affected individuals and families, stakeholders and concerned authorities. Following details and information shall be included in the social impact assessment report:

- a) Land measurement map, records and other attested documents of land proposed to be acquired by the project,
- b) VDC, Municipality, ward number, map number, plot number, area of the land proposed to be acquired by the project, nature of the land (guhti, raikar, government or public), ownership, state of utility, established infrastructure on **biraha land** (permanent, temporary or others) and quantity of such land.
- c) Holistic details (integrated data) of the affected individuals and families, the records of individuals and families who are at both physical and economic displacement risks,
- d) Quantity of the land and houses proposed to be acquired for the project and analysis of the alternative,
- e) Analysis of relevance of the proposed alternatives,
- f) The details of social, economic, cultural and demographic conditions of the communities residing within project affected areas,
- g) Detailed description of the required resources to address social impacts of the project, assessment of possible effects of this on overall costs and computation of profits.

8.2.2 The data and census collected for social impact evaluation report should be made public the day collection process becomes complete. This shall be deemed as the day of counting for determining the eligibility for compensation and other aids provided to the affected families and individuals.

8.2.3 The concerned department or implementing authority shall submit the social impact evaluation report to resettlement/ rehabilitation units under them for endorsement before submitting it to the concerned offices or ministries. The concerned ministries and offices shall approve of this report in due consultation with or recommendation of the resettlement/rehabilitation authorities under them. In case of low risk projects, the concerned departments or implementing authorities may approve of the social impact evaluation report.

8.2.4 Formulating plans to address impacts of displacement based on social impact evaluation and their approval process shall be as follows:

a) Land acquisition and compensation plan shall be formulated in case of low risk projects. The plan shall have to include following things in it:

i) The details of private property and community assets of the families affected by the project, determination of compensation and distribution process,

ii) The certified details of the facts that show that project does not physically displace anyone, does not affect their livelihood directly or indirectly and that it causes no harm and losses to anyone,

iii) Information dissemination, hearing complaints and managing them, and monitoring and evaluation process,

iv) Mechanism for budget and resource management and implementation.

b) In case of high and medium risk projects, resettlement and rehabilitation policy shall be formulated in due consultation with qualified and experienced experts. The form and outline of such policy shall be as mentioned in the schedule.

c) The proposed measures of risk reduction in land acquisition, resettlement and rehabilitation, compensation and other supporting programs shall be finalized only after consulting with the affected families and in accordance with their opinion.

d) The said project shall be updated as per the need in line with the changes brought about in Detail Engineering Design.

e) All the expenses incurred in relation to the implementation of land acquisition, compensation and resettlement and rehabilitation program shall be adjusted in the project costs.

8.2.5 The district based office shall approve of the land acquisition and compensation program. Concerned departments and implementation authorities shall approve this in case of medium risk project and concerned ministries and executive authority shall approve of such program in case of high risk projects.

8.2.6 Subject to this policy, compensation shall be determined and aids and gains shall be distributed as per the following provisions:

a) In projects involving underground pylon and raising of towers (such as in electricity project), underground pipe lines (such as in drinking water project), and underground telephone lines (such as in telecommunication project), compensation shall cover the costs of the land space occupied by such structures. In other cases, economic impacts of project shall be assessed and lump sum or annual compensation shall be provided within a fixed time period as per the understanding between land owners and the project authority. The provision of land use rights shall be clearly mentioned in such understandings.

b) In case full compensation has been provided as mentioned in section (a), the land may be used by the Government of Nepal or any other authorized bodies for public purpose.

c) In case, only part of the affected land is to be acquired but this renders the remaining parts of land fully unproductive or unusable, all of such land shall be acquired if the land owner so requests.

- d) Compensation of physical infrastructure shall be provided in replacement cost. The valuation of such infrastructure and determination of compensation money shall be done on the basis of the approved standards of the concerned government authority.
- e) In case, physical infrastructures are only partially affected and other parts can still be brought into use, compensation shall be provided only for the affected parts. Expenditure costs shall also be provided to the affected party so as to help them maintain the remaining parts and bring them back to use. However, if the remaining land or properties are rendered unusable or is too small to be used according to the existing standards, all of the affected land and infrastructure shall be acquired.
- f) In case of the loss and damage caused to the flora and fauna of the affected area, costs of such loss shall be calculated based on the standards provided by District Forest Office of the concerned district and compensation shall be provided in cash. In case of loss of crops, fruits and pasture land, cash compensation shall be provided based on the standards provided by Department of Agriculture. But if the loss and damage is inflicted on legally registered commercial farm, orchard or garden, cash compensation shall be provided worth calculated loss for the next five years.
- g) The land and property that the project shall be using temporarily shall be acquired based on the understanding between the land owner and project implementation authority. Compensation for the loss and damage caused to such property shall be as specified in the same agreement. The liability of restoring such land to its former status after the contract period shall have to be clearly mentioned in the agreement itself.
- h) In case where project has not used any land for the purpose but in which project implementation has posed a hurdle to locals in using, irrigation, drinking water, sanitation, pasture land, religious shrines and temples, schools, community buildings, market, pathways and other such facilities, alternative arrangement shall have to be made during the project period so as to allow the locals uninterrupted use of such facilities. It shall be the duty of the project administration to restore those facilities to their former positions much earlier than completion of the project.
- i) Public notice shall have to be issued with clear mention of the details of the land and property project is to acquire, the supporting documents, time period and date and venue to apply for acquiring compensation. Such compensation money shall be paid via check through banks. But if the need be, compensation may also be distributed through local NGOs or social mobilizers in the presence of affected individuals and families or their representatives in the project site itself.
- j) If the project results into the loss of business of women, compensation shall be provided to the women themselves. If affected women are single women or the heads of their families, their presence shall be a must while distributing compensation.
- k) Even in case when specified deadline for claiming compensation has passed and yet affected individuals and families have failed to present themselves for claiming compensation, compensation may still be provided if the heir to such families can furnish the proof of being the legitimate heirs and if the concerned VDC Chairperson or Mayor of Municipality certify the

reasons of their absenteeism and certify in writing that they are genuine heirs to the affected families, compensation may still be provided to the nearest relatives of the affected individuals even if they have no immediate kin such as spouses and children.

l) In case affected individuals fail to turn up to claim the compensation within the stipulated time as mentioned in section (k), and the local authorities certify them as “absent landowners,” the project shall have to deposit their share of compensation money and other means of aid in the bank account under ‘compensation fund.’ If the landowners do not come to claim it even for five years since the day of depositing compensation money, the project shall have to issue public notice in the national newspapers in the interval of at least one month for three times to call the affected families to stake claims. Such notification shall also have to be aired through electronic media. If no one comes to claim the compensation even then, compensation fund shall be transferred into state treasury.

m) Compensation shall have to be paid during the preliminary stage of project implementation. The project shall ensure the update of the land documentation such as plotting and marking of discontinuation of ownership from main records (including lagat katta, kittakat) right after paying the compensation. In case of absentee land owners, the documentation of land ownership shall be done before the compensation money is transferred to the state treasury. The concerned Land Revenue Office and Department of Survey shall offer due assistance in this regard.

n) Land valuation measures shall be formulated ensuring that replacement cost of the land is retained for determining land costs and compensation scheme. Following factors shall have to be included in the process:

i) Current market price (highest possible cost of the affected plot or the land around it that has been sold and bought recently),

ii) Comparative reference point/ Comparative index (tulanatmak sandharva anka) based on composition, structure and size of required area of land.

iii) Kind of road: paved, graveled or blacktopped (highway, main road or secondary roads etc)

iv) The minimum land registration cost as specified by the concerned land revenue office,

v) Geographical or physical situation of the land, its business potential, strategic and cultural significance,

vi) Classification of land, categorization and utility (agriculture, residential, commercial or business land etc),

8.2.7 Subject to this Policy, apart from compensation and rehabilitation schemes, other measures and opportunities shall be introduced to help the affected families enhance their socio-economic conditions or help them regain their former socio-economic status. This shall be done on the basis of the following standards:

a) Depending on the nature of the impact, costs of resettlement, transporting goods, resettlement facilities, business transfer, house rent and other facilities shall be adjusted in resettlement and rehabilitation costs.

b) Subject to the provision in resettlement and rehabilitation plan under this policy, in case of families and individuals seriously affected by the project, additional assistance measures shall be introduced especially if the affected families are from among deprived class, dalits, indigenous community, marginalized group, single women, incapacitated people, disabled and senior citizens.

c) In case the project seriously affects means of earning livelihood of the affected people, measures shall be taken to ensure their resettlement with adequate means and resources. Costs of such measures shall be adjusted in resettlement and rehabilitation plan.

d) Priority shall be given to the members of affected families while filling up the job vacancies that will be created in the process of project implementation.

8.2.8 In case the circumstances lead the affected individuals and the families to be collectively displaced, priorities in selection of resettlement site shall be set based on following criteria:

a) As far as possible the affected individuals and families shall be resettled in group in the vicinity of the areas in which they were formerly residing. While doing so, attempts shall be made to keep their social structure and social relations as intact as possible.

b) The areas of resettlement shall have to be free from risks of environmental and natural disaster risks.

c) Basic infrastructures such as pathway, sanitation, electricity, drinking water, school, dumping site, drinking water, electricity, schools, hospitals, temples, community hall, crematorium sites etc shall be set up in the resettlement areas.

d) Provision shall be made to resettle and rehabilitate the deprived and disadvantaged group, indigenous people and dalits in the nearest location of existing settlement area. Special efforts shall be made so as to preserve their language, religion, culture, life styles and livelihoods.

e) The affected people shall be transferred to resettlement areas from their existing settlement areas only after setting up necessary infrastructure at the resettlement sites.

f) While resettling people whose means of livelihood is only agriculture, resettlement site shall be selected with utmost priority to ensure that sustainable agriculture productivity and management can be realized in the new site. Care shall be taken to make such land available.

g) Special program shall be implemented while resettling the affected individuals and families so as to ensure that their resettlement does not adversely affect the lives of the locals of the resettlement area. The locals shall be consulted while doing so. Provision shall also be made so as to allow the locals to use physical infrastructures such as drinking water, electricity; pathway, community building etc set up in the resettlement sites. Local NGOs, community organizations and social mobilizers shall be mobilized while executing resettlement programs.

8.2.9 If the affected families are from among deprived and disadvantaged class like indigenous and marginalized people, single women etc, inclusive programs as follows shall be formulated and executed:

- a) People of this category or the organizations that represent them shall be consulted throughout the project implementation period from the preliminary stage to the time of completion of the project. Their participation shall be duly ensured.
- b) Apart from compensation and other benefits, special program shall be devised so as to ensure their overall socio-economic prosperity. Such programs shall be accommodated in land acquisition, compensation, and resettlement and rehabilitation plan and executed.
- c) Program shall be devised and executed to preserve the traditional skills and professional competence of such groups. If executing such programs necessitates the use of the infrastructures built by the project, an agreement shall be made between the project implementation authority and the representatives of this group so as to allow them to use those infrastructures.
- d) Priority shall be given to the members of this group based on their education qualification and competence while filling up job positions created during project implementation.
- e) Special concession facilities shall be provided to the people of this group so as to ensure their access in services and benefits of project operation, based on necessity and relevance.
- f) Special care shall be taken to ensure gender equity from the time of devising project plans to the time of their execution.

8.2.10 In case of the projects that result in immediate and direct gains, following provisions shall be made to ensure the access of the affected families to such gains and profits:

- a) Provision shall be made to determine certain percentage of project shares and it shall be ensured that this percentage of shares is reserved only for the affected party.
- b) In case of service providing projects, efforts shall be made to ensure provision of special concession to the affected families in fees and charges to be paid against using those services.

8.3 Following strategies and working plans shall be adopted to create conducive atmosphere to ensure timely completion of the project, and to make land acquisition, compensation, resettlement and rehabilitation and evaluation work simple, fair, easy and transparent:

8.3.1 Meaningful and result-oriented consultation and deliberations shall be conducted with the affected individuals and families and other stakeholders throughout the period of project implementation. Participants shall be notified about issue, date, time and venue of discussions beforehand. Such interaction shall be conducted in the local language of the affected parties.

8.3.2 While conducting consultative interactions it shall be ensured that persons living below the poverty line, the land less, senior citizens, women, children, disabled, indigenous people and incapacitated people from group of affected people and the people who lack legal basis to prove land ownership also participate in such discussion programs.

8.3.3 All types of discussions, consultations and decisions shall be documented. Details of name and address of the stakeholders and consultation venue, date and time shall also be mentioned in the documentation.

8.3.4 It shall be ensured that the gap between the preliminary survey of the project and project implementation is as short as possible and resources shall be rightly mobilized to ensure that there is as little possible gap between census and record collection of the land and properties to be affected by the project and compensation distribution process.

8.3.5 Project implementation authority shall duly make the detailed information regarding objectives, calendar, time period, impact assessment, compensation, resettlement, and rehabilitation plans available to the affected individuals, families or other stakeholders if the latter demand it.

8.3.6 Preparations regarding land acquisition, compensation, resettlement and rehabilitation, and information regarding execution and progress status shall be made public every six months. While doing so, information shall be disseminated in the language that can be understood by affected families, through public meetings or other means of mass communication accessible to all.

8.3.7 The project implementation authority shall make following documents and records public by issuing notice in public places, including through electronic media, that are within easy access of the stakeholders:

- a) Information details of the affected individuals such as name, address and the details of land and property at risk,
- b) Draft of land acquisition and compensation plan and resettlement and rehabilitation programs,
- c) Approved report of the land acquisition and compensation plan and resettlement and rehabilitation programs,
- d) Updated reports of resettlement and rehabilitation activities, if they have been updated.

8.3.8 Preparation regarding land acquisition, compensation and resettlement and rehabilitation plans, and institutional responsibility regarding approval, execution, progress evaluation and hearing of complaints and resolving them shall be as specified in section 12 of this policy.

9. Land acquisition and ownership transfer

9.1 Under this policy, land may be acquired through one or more than one of the following approaches:

9.1.1 Voluntary donation: In case of the projects that can advantage the affected individuals and families, land can be acquired through voluntary donation, if development project has been executed upon the demands of the locals, individuals and families of the community. But following conditions should be met while acquiring land through this approach.

- a) If the area of the land to be donated is less than ten percent of the productive land that the affected individuals and families have been owning and using,
- b) If the affected families and individuals do not fall under the category of the deprived and marginalized farmers, as determined by social impact assessment,

- c) If the donating family is well-informed about its right to decline or accept the proposal of land donation,
- d) If the donating party (affected individual/family) has not taken this decision under overt or covert pressure, intimidation, coercion of the local authority, individual and community or project officials, but has accepted to donate it voluntarily and through the written agreement made in the presence of the third party,
- e) If an understanding has been reached with the affected family during the period of pre-feasibility study and feasibility study, and if the basic procedures such as land measurement and kittakat and ownership transfer have been completed during the period of detailed engineering design,
- f) The land to be given to others, disputed land about which case is sub judice in the court of law, the land upon which a partner can stake a claim, land leased out in contract, the land that has been expropriated by some other projects but which is yet to be deplotted, the land that has been lost out in court case, and the mortgaged land shall not be acquired even if it is voluntarily donated.

9.1.2 Direct negotiation: If the project authority wishes to acquire land through direct negotiation with the concerned land owners, land can be acquired through direct negotiation. Valuation, compensation and other things about such land shall be as per the understanding between the project authority and land owners. Following conditions must have been met while acquiring land through this approach:

- a) If affected family or individual has been notified about it in advance and they have been invited for direct negotiation,
- b) If the negotiation, determination of compensation and process of agreement have been transparent and voluntary,
- c) If a free third party has observed and certified and documented that the process has taken place in his presence.

9.1.3 Land development program: If the concerned project prioritizes to acquire land for the project through land development program, and if the majority of the affected land owners agree in writing to participate in the land development program, land may be acquired through land development program under the Municipality Development Act, 2045.

9.1.4 Expropriation: If land cannot be acquired through any one of the above mentioned approaches, the required land may be acquired by providing compensation and other benefits as per the provisions of the existing laws relating to land acquisition.

9.2 Under this Policy process of measurement, survey, plotting, documentation and ownership transfer shall be as follows:

9.2.1 After the compensation determination committee of the concerned project has decided to acquire land according to the existing laws, the concerned project implementation authority shall have to submit an application in the department of land revenue and survey offices with attested copy of the decision of land acquisition and other necessary documents so as to transfer the ownership of the land in company's name. Having received such application the concerned land revenue office and land measurement office shall have to carry out plotting, resignation, deregistration, documentation process with utmost priority and then provide the land ownership certificate in the name of the concerned authority.

9.2.2 In case of the family that has been displaced and thus needs to be resettled, the concerned land revenue office and land measurement office shall have to prepare resignation process and prepare the land ownership certificate under the name of the affected family, if the project recommends for so with the attested copy of the decision to provide the land ownership certificate of the resettlement site to the affected family. The project shall bear all the expenses incurred in the process of field measurement, plotting, measurement of plot, mapping, registration, ownership handover and distribution.

10 Land may be acquired for the company

10.1 Under this Policy, the Government of Nepal may take the decision to make the land available (by furnishing a reason) for a company, if the company has not been able to acquire land under the existing laws for development project of public interest and if there are genuine reasons behind the inability to acquire such land.

10.2. Notwithstanding anything contained in 10.1, land shall not be acquired for a company if it is to serve the economic, financial and business and profit interests and luxury of the company, or if the people have been deceived by overtly and covertly promising them of real or imagined gains, and if it is for research and experimentation purpose.

10.3 The land acquisition process as mentioned in this section shall not move ahead, unless the company agrees in writing to provide compensation and other benefits, to bear all administrative and procedural expenses in the process of land acquisition, and abide by the conditions set forth by the Government of Nepal for public interest.

11 Government and public land not to be used

Normally, no company shall be entitled to use the government and public land without taking permission from the Government of Nepal. However, if using government and public land becomes unavoidable during the course of project implementation (such as for resettlement and rehabilitation purpose, infrastructure development purpose etc), permission of Government of Nepal shall have to be taken through Ministry of Land Reform and Land Management.

12. Institutional provision

12.1 Committee for Determining Compensation

12.1.1 There shall be a Committee for Determining Compensation as follows to determine the compensation of all kinds of lands and properties affected by the project.

- | | |
|-------------------------------------------------------|------------------|
| 1) Chief District Officer | Chairperson |
| 2) Representative from District Development Committee | Member |
| 3) Mayor of Municipality/ Chairperson of VDC | Member |
| 4) Chief, Land Revenue Office | Member |
| 5) Chief of the concerned project | Member Secretary |

12.1.2 The Committee for Determining Compensation may extend special invitation to the members of the legislature parliament of the concerned constituencies, representatives of people affected by the project, representatives from the office of land measurement, and experts of resettlement and rehabilitation programs to attend the meeting as invitees.

12.1.3 Committee for Determining Compensation may constitute a Task Force comprising technical experts to inspect and value the properties and land. The task force shall send its recommendation to the committee after classifying, valuating the land of the affected area and

determining compensation by preparing **reference point/index (sandarbha anka)** on the basis of specified standards and measures in participation of the affected individuals and families. The Committee shall have to take the decision based on the recommendation of the task force.

12.1.4 Committee for Determining Compensation may appoint an independent valuator if it deems necessary. While appointing the independent valuator the Committee shall have to select a competent and qualified person who has received training from recognized institution and who has experience in the field of land administration, mapping of land and housing and valuation of immovable property.

12.1.5 The Government of Nepal may constitute a government Land and Housing Valuation Authority or a Corporation comprising competent human resources well informed of information technology for the purpose of making land and housing valuation system scientific and to establish a uniform approach by formulating necessary laws. The valuation made by such a body shall be the basis for determining mortgage, surety and compensation. The valuation made by such body will have to be implemented by the concerned authority.

12.2 Resettlement and Rehabilitation Branch/Unit

12.2.1 There shall be a permanent Resettlement and Rehabilitation Branch/Unit based in the concerned ministry of the project. The functions of this Unit shall be as follows:

- a) To incorporate the monitoring experts and resettlement and rehabilitation experts in the Unit,
- b) To monitor the activities and functions of the departments and other executing authorities, and to monitor, or caused to be monitored, the works being done and to carry out other necessary functions.
- c) To review the reports of the resettlement and rehabilitation programs with the help of the experts according to the need, and to carry out other necessary functions to forge coordination to get those reports endorsed,
- d) To make the provision for financial resources needed for conducting the projects in the annual budget of the ministry,
- e) To formulate programs relating to enhancing skills and competence needed in land acquisition, resettlement and resettlement plans and to execute, or caused to be executed, those programs.

12.2.2 There shall be a permanent Resettlement and Rehabilitation Unit in parallel level with departmental authority or other such authorities. The functions of this Unit shall be as follows:

- a) There shall be participation of resettlement, rehabilitation and evaluation experts.
- b) The Unit shall be responsible for monitoring project operation from preparation stage to progress stage and for carrying out other related functions.
- c) The necessary fund for this Unit shall have to be included in the annual budget of the department.
- d) This Unit shall take full initiative to support and offer other necessary assistance in constituting Resettlement and Rehabilitation Unit of the project in the preliminary stage of the project implementation.
- e) To play the role of coordinating agency in getting resettlement and rehabilitation related reports approved after getting those reports reviewed with the help of experts.

f) To conduct skill development programs regarding land acquisition, resettlement and rehabilitation.

12.2.3 There shall be a project-level Resettlement and Rehabilitation Unit in the project identified as having to carry out resettlement and rehabilitation functions. The functions of that Unit shall be as follows:

a) To evaluate the social impacts, to prepare, or caused to be prepared, resettlement and rehabilitation reports, and to execute or caused to be executed and to monitor or and caused to be monitored, them.

d) This Unit shall commence its work along with the formation of organizational structure of the project.

e) Along with the constitution of this Unit, a resettlement coordinator shall be appointed and the office of the coordinator shall also be set up.

f) There shall be participation of experts from the field of resettlement, rehabilitation and evaluation.

12.3 Hearing Complaints and Problem Management

12.3.1 There shall be a three tier committees for hearing complaints and problem management. The project shall arrange for all expenses incurred in the process of problem management.

12.3.2 A Committee for Hearing Complaints and Problems shall be constituted in the project level under the leadership of the project chief comprising the person in charge of overseeing resettlement and rehabilitation, affected individuals and families or their representatives.

a) While preparing resettlement and rehabilitation reports, this Committee shall resolve the problems and grievances of the affected individuals and the families. Also, it shall check and balance the jurisdiction of the project while determining affected area.

b) This Committee shall have to forward the complaints and problems (ones that are beyond its jurisdiction), with its views and inputs, of the affected people to the District Committee for Hearing Complaints and Problems constituted as mentioned in 12.3.3.

12.3.3 District level Mechanism for Hearing Complaints shall be constituted as follows:

1) Chief District Officer- Chairperson

2) Representative from the district office of the government attorney-
Member

3) Experts on resettlement and rehabilitation- Member

a) This Committee shall mainly carry out the following functions: to hear the complaints and grievances coming from the project level and take decisions, to carry out the functions of correcting errors in valuation of land and housing and distribution of compensation.

b) This Committee shall have to forward the complaints and problems (ones that are beyond its jurisdiction) and complaints related with projects in two or more than districts to the Regional Complaint Hearing Committee constituted as mentioned in 12.3.4.

12.3.4. The Regional Committee for Hearing Complaints and Problems shall be constituted as follows:

a) Regional administrator- Chairperson

- 2) Member secretary of the concerned ministry- Member
 - 3) Legal Officer, Regional Administration Office-Member
 - 4) Resettlement and rehabilitation expert from Ministry from Urban Development-Member
 - 5) Chief of resettlement and rehabilitation unit of the concerned department-Member
- a) The function of this Committee shall be to hear the complaints related to:
- i) Property valuation and compensation
 - ii) Proportionate distribution of compensation money within the stipulated time
 - iii) Project affected area
- b) The Committee shall arrange to hear the complaints on the spot
- c) All types of problems and complaints shall be registered in the project office, only the complaints and grievances registered in the project office and those coming in through District Committee for Hearing Complaints and Problems shall be addressed.
- d) If the complainers are not satisfied with the decision of this Committee, s/he may file an appeal at the Appellate Court.

12.4 Central Monitoring and Evaluation Committee

National Planning Commission shall form a Committee as follows to monitor and review effectiveness of its policies and programs regarding land acquisition, resettlement and rehabilitation for infrastructure development of public interest, and to identify and objectively analyze whether the challenges of this sector have been addressed:

- 1) Member of parliament from National Planning Commission (one who oversees social sector)- Chairperson
- 2) Member of parliament from National Planning Commission (one who oversees infrastructure development)- Member
- 3) Secretary, Ministry of Home- Member
- 4) Secretary, Ministry of Land Reform and Infrastructure Development-Member
- 5) Secretary from the ministry related with the project-Member Secretary

This Mechanism shall review the implementation part of resettlement and rehabilitation program and give feedback to the concerned ministries and the departments in formulating effective plans. It shall also inform National Development Problem Solving Committee as necessary. This kind of review shall be made at least once in one fiscal year. But there shall be no obstacle to carry out review work more than once a year if there is a need.

13 Economic aspect

It requires considerable resources and means to implement land acquisition, compensation, resettlement and rehabilitation plans. It involves making provision of required infrastructure, formulating plans, organizational and legal provision, need of the competent human resource and so on. To fulfill this need, it will require internal resources of the country as well as foreign aids and international assistance. Thus the economic resources needed to implement the plans should be identified and managed during the project implementation phase after policy regarding land acquisition, resettlement and rehabilitation is formulated.

14. Legal provision

The Government of Nepal shall take necessary steps to give legal status to the provisions mentioned in this policy, by recommending amending Land Acquisition Act 2034, or making provision to formulate new Land Acquisition, Resettlement and Rehabilitation Act.

15. Technical Guidelines

Depending on the nature and needs of the project, resettlement and rehabilitation programs could be different from one district to other. Therefore the concerned ministry under the provisions of this policy shall prepare the technical guidelines.

16. Monitoring and Evaluation

Under this policy, there shall be three tiered monitoring and evaluation of the project: ministerial level, departmental level and project level. As mentioned in land acquisition and compensation project, and resettlement and rehabilitation plan, periodic evaluation and monitoring of the project shall be conducted.

Expertise of independent monitoring experts shall be sought in monitoring of high and medium risk projects. They shall monitor and evaluate the project works annually and shall submit their report to the implementation authority or concerned ministries and National Planning Commission. All private sector projects and public and private partnership projects may involve the independent external agencies for monitoring and evaluation of their work. Besides, the concerned ministry shall also monitor and evaluate these projects.

17. Risk factors

Following factors have been identified as risks in easy and successful implementation of land acquisition, resettlement and rehabilitation policy:

17.1 High level political and administrative commitment will be required from the central to the local level to implement this policy. Lack of it could pose a hurdle in implementing this policy.

17.2 Internal resources are not enough to implement this policy. Thus if efforts are not made to garner foreign aids and effectively mobilize it, policy implementation is likely to court difficulties.

17.3 Without the help of multiple sector stakeholders, policy implementation could be difficult because land acquisition, resettlement and rehabilitation policy involves multiple stakeholders.

17.4 Unless, appropriate legal measures are taken, institutional structure created, competent human resources mobilized, and competent managerial provision developed on time, implementing this policy could be really challenging.

18. Relaxing difficulties

Notwithstanding anything contained in this policy, this policy shall not pose any difficulty in relation to small scale projects conducted by the local bodies with participation of local people. Land acquisition in such projects may be settled in consensus between the local authority and the local people.

19. Policy update

This Policy Relating to Land Acquisition, Resettlement and Rehabilitation for Infrastructure Development projects, 2014 (2071 BS) shall be reviewed and updated according to time, context and need.

Schedule

(Related to section 8.2.4 (b))

Outline of resettlement and rehabilitation plan

Resettlement and rehabilitation plans will be vital in all high and medium risk projects. Interpretation of this plan shall be as per physical and economic displacement ratio, possible impacts of resettlement on displaced families and risks associated with it. The outline of the resettlement and rehabilitation plan shall be as follows. Its detailed description shall be included in the technical guidelines.

- i) Executive summary
- ii) Project details
- iii) Land acquisition, scope of resettlement
- iv) Socio-economic information and profile
- v) Information dissemination, counseling and participation
- vi) Complaint hearing mechanism
- vii) Legal structure
- viii) Rights, assistance and benefits
- ix) Transfer of residents and resettlement
- x) Restoring income and resettlement of residents
- xi) Resettlement and rehabilitation budget and financial management plan
- xii) Institutional provision
- xiii) Execution time table
- xiv) Monitoring and reporting