



Technical Assistance Consultant's Report

Project Number: 44140
Date: January 2013

TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Supporting and Strengthening
National-Level Capacity for a Country Involuntary
Resettlement System (Sri Lanka)

LAND ACQUISITION AND IMPLEMENTATION OF THE NATIONAL INVOLUNTARY RESETTLEMENT POLICY: A GUIDE FOR PUBLIC OFFICIALS ON GOOD PRACTICES

Prepared by ADB Consultant Team

This consultant's report does not necessarily reflect the views of ADB or the Government concerned, and ADB and the Government cannot be held liable for its contents.

Asian Development Bank



Ministry of Land
and
Land Development

LAND ACQUISITION
AND
IMPLEMENTATION
OF THE
NATIONAL INVOLUNTARY
RESETTLEMENT POLICY

*A Guide for Public Officials
on Good Practices*

with assistance from the
Asian Development Bank

LAND ACQUISITION
AND
IMPLEMENTATION
OF THE
NATIONAL INVOLUNTARY
RESETTLEMENT POLICY

*A Guide for Public Officials
on Good Practices*

Ministry of Land and Land Development

With assistance from the
Asian Development Bank

First Print 2013

ISBN: 978-955-4708-01-3

Published by:

Ministry of Land and Land Development
'Mihikatha Medura' Land Secretariat
1200/6, Rajamalwatte Avenue
Battaramulla
Sri Lanka

Printed by:

Print & Print Graphics (Pvt) Ltd
No. 6, Sri Bodhiraja Mawatha
Maligawatta
Colombo 10

CONTENTS

<i>Abbreviations</i>	v
<i>Glossary of Terms</i>	vi
<i>Message from the Honourable Minister of Land and Land Development</i>	xi
<i>Message from the Honourable Deputy Minister of Land and Land Development</i>	xii
<i>Foreword</i>	xiii
<i>Preface</i>	xv
1. Introduction	1
2. National Involuntary Resettlement Policy (NIRP)	3
2.1 Introduction	3
2.2 Rationale	3
2.3 Policy Objectives	4
2.4 Policy Principles	4
2.5 Policy Applications	5
2.6 Legal Framework for Implementing the Policy	5
2.7 Responsibility of the Ministry of Lands	5
2.8 Guidelines for Planning and Implementing the NIRP	5
3. Resettlement, Relocation Support and Income Restoration Planning	7
3.1 Resettlement Planning	7
3.1.1 Types of Resettlement Plans	7
3.1.2 Preparation of a Resettlement Plan	9
3.2 Resettlement Sites and Relocation Support Planning	12
3.2.1 Resettlement sites selection	12
3.2.2 Development of resettlement sites	13
3.2.3 Provision of resettlement assistance	13
3.3 Planning for Income Restoration	13
3.3.1 Issues and challenges in income restoration and improvement	14
3.3.2 Livelihood and income restoration strategies	14
3.3.3 Guiding principles for income restoration and improvement planning and implementation	15

4. Policy and Legal Framework for Land Acquisition, Compensation and Resettlement and Income Restoration	17
4.1 Introduction	17
4.2 Land Acquisition for a Public Purpose	17
4.3 Project Screening and Consultation	18
4.4 Participation in Resettlement Planning	18
4.5 Grievance Redress	18
4.6 Improve or Restore Livelihoods	18
4.7 Payment of Replacement Cost	18
4.8 Prompt Payment of Compensation	19
4.9 Compensation for Non-titled Displaced Persons	19
4.10 Resettlement Planning	20
5. Determining Compensation for Private Land Acquired	35
5.1 Definition of Compensation	35
5.2 Payment of Compensation	35
5.3 Valuation and Payment of Compensation	36
5.4 Land Acquisition and Resettlement Committee (LARC)	36
5.5 National Policy for the Payment of Compensation	37
5.6 Land Acquisition Regulations 2008	37
5.7 Key Components of the Land Acquisition Regulations	38
5.7.1 Assessment of the 'Market Value'	38
5.7.1.1 When the entire land is acquired	38
5.7.1.2 When a part of a land is acquired	38
5.7.1.3 When a servitude is acquired	39
5.8 Additional Compensation	40
5.8.1 Computation of additional compensation	40
5.8.2 Reinstatement cost for buildings and compensation for other developments on encroached lands	40
5.9 Compensation for paddy lands-Value based on development potential	41
5.10 Tenant / Statutory Tenant	43
5.10.1 Obtaining vacant possession	43
5.10.2 Entitlement of compensation for premises with protected tenants	45
5.11 Injurious Affection and Severance	45
5.12 Payments for Disturbances and Other Expenses	45
5.13 Conclusion	48
6. Acquisition Process and Procedures	49
6.1 Land Acquisition Process and Procedures [Steps 1-11]	49

ABBREVIATIONS

ADB	- Asian Development Bank
APs	- Affected Persons/Affected Parties
CCCRMA	- Coast Conservation and Coastal Resource Management Act
CEA	- Central Environmental Authority
DRC	- Depreciated Replacement Cost
EIA	- Environmental Impact Assessment
EIAR	- Environmental Impact Assessment Report
EUV	- Existing Use Value
FFPO	-Fauna and Flora Protection Ordinance
FRP	- Full Resettlement Plan
IEER	- Initial Environmental Examination Report
IOL	- Inventory of Losses
LAA	- Land Acquisition Act
LABR	- Land Acquisition Board of Review
LARC	- Land Acquisition and Resettlement Committee
MLLD	- Ministry of Land and Land Development
NEA	- National Environmental Act
NHSP	- National Highway Sector Project
NIRP	- National Involuntary Resettlement Policy
PEA	- Project Executing Agency
RAP	- Resettlement Action Plan
RF	- Resettlement Framework
RIP	- Resettlement Implementation Plan
RP	- Resettlement Plan
SEA	- Strategic Environmental Assessment
SRP	- Short Resettlement Plan
STDP	- Southern Transport Development Project
TOR	- Terms of Reference
WB	- World Bank

GLOSSARY OF TERMS

[The Terms described here are only in relation to their use in this Guide and the descriptions are based on a layman's use of these terms]

Acquisition of Private Land	Compulsory taking over of the possession of private land by the state for a public purpose e.g. development project.
Acquiring Officer	The officer designated with statutory powers to acquire land as stipulated in the law e.g. the Land Acquisition Act (LAA). Generally, the Divisional Secretary in the respective area where the land identified for acquisition is located carry out the functions of a land acquiring officer.
Advance Tracing	Initial plan prepared by the Survey Department on the land to be acquired without any reference to its ownership status.
Affected Persons	A person directly or indirectly affected by changes arising from development projects in the use of land, water or other resources.
Authorized Rent	Maximum legal rent which could be paid by a tenant or received by a landlord under the provisions of the Rent Act No: 7 of 1972 as amended by Rent (Amendment) Act No: 55 of 1980.
Before and After Method of Valuation	Assesses the market value of the entire land before acquisition and the market value of the remaining land plus the amount of compensation after acquisition.
Chief Valuer	The Chief Valuer of the Department of Valuation of the Government of Sri Lanka, his officers, his authorized representative
Compensation	Payment in cash or kind to replace an asset, resource or income source which has been acquired or affected by a project for which the person affected is entitled to, and the amount of money required to keep a person in the same socioeconomic position that he held before acquisition.
Condition Report	A report that describes the condition of the land -e.g. when a parcel of land is acquired under Section 38(a) of the Land Acquisition Act.
Depreciated Replacement Cost	Adjusted cost of reconstruction of a building with an annual reduction for the age of the building depending on its condition.
Disturbance	Disturbances caused to normal living of a person arising from compulsory acquisition of private land

Dominant Tenement	Land on which servitude or right of way is created
Economic Displacement	Loss of land, assets, access to assets, income sources, or means of livelihood as a result of involuntary acquisition of land, or obstructed access to resources (e.g. land, water, forests). Economic displacement can be either permanent or temporary.
Eminent Domain	The right of the state/government using its sovereign power to acquire land for a public purpose. National law establishes which public agencies have the prerogative to exercise the right of eminent domain.
Encumbered Freehold Interest	Reduction of open market value due to creation of other interests out of freehold interest or due to encroachments, squatting and trespassing.
Entitlement Matrix	Range of measures comprising compensation, income restoration, transfer assistance, income substitution, and relocation which are due to affected persons, depending on the nature of their losses, to restore their economic and social base. It indicates the agency responsible for the delivery/implementation of measures. Entitlement matrix is a key component of a resettlement plan.
Executive Agency	The agency responsible for implementing development projects
Existing Use Value	Value of the present use such as residential, commercial, agricultural, industrial, bare land etc.
Freeholder	Absolute ownership of a property
Income Restoration and Improvement	Re-establishing income sources and livelihoods of affected persons either to the same level that they had prior to displacement or if possible to a higher level.
Injurious Affection	Adverse affect to the value of the remaining land due to acquisition of a part of a land.
Initial Social Assessment	Identification of social impacts, impoverishment risks, project benefits and interests and capacities of the affected persons, beneficiaries, and other participants in a development project in consultation with them at the early stage of the project preparation. An example is the initial poverty and social assessments (IPSA) conducted in ADB funded projects.
Inventory of Losses	A survey of property losses and a census of all affected persons conducted after completion of a detailed measurement survey (DMS) of the affected properties based on the engineering design of a project.

	<p>The census and assets inventory of losses of the affected persons help identify the number of displaced and affected persons eligible for entitlements, and provide a base for calculation of compensation and other assistance.</p>
Involuntary Land Acquisition	<p>Compulsory taking over the possession of private land by the state for a public purpose e.g. for development without the consent of the people who own or occupy that land.</p>
Involuntary Resettlement	<p>Physical or economic displacement from development activities occasioned due to affected persons having no choice/option but to rebuild their lives, incomes and asset base elsewhere.</p>
Market Value	<p>“The amount of money which can be obtained, for the interest, at a particular time, from persons able and willing to purchase it”. In other words, the price to be realized for a particular interest in a property in the open market on a particular date.</p>
Non-titled Persons	<p>Persons who do not possess legal documents in support of claims made towards ownership of structures or land such as a squatter, encroacher, forceful occupier or tenant without a proper lease agreement.</p>
Physical Displacement	<p>Relocation, loss of residential land, or loss of shelter as a result of involuntary acquisition of land, or obstructed access to resources (e.g. land, water, forest) where affected persons are required to move to another location. Physical displacement can be either permanent or temporary.</p>
Preliminary Survey Plans	<p>Plan prepared under Section 6 of LAA by the Survey Department on the land to be acquired showing different allotments according to the ownership.</p>
Probable Gross Value	<p>Estimated value before deduction for relevant outgoings such as rates, repairs, management, insurance and any other identified deductions.</p>
Public Purpose	<p>The government has the power (eminent domain) to acquire /restrict use of private land for a development project to generate sufficient benefits for the larger population despite displacement and adverse impacts for some groups. What constitutes a public purpose is implied in the doctrine of the greatest happiness of the greatest number; i.e. interests and claims of a whole community are superior to those of an individual. The identification of the public purpose depends on the proper procedures followed to avoid the over acquisition of land, disclose the purpose and evidence of the need for the particular land for a development activity.</p>

Regulations 2008	Land Acquisition Regulations of 2008 published in the Gazette of 07 th April, 2009
Reinstatement Value	The value of a property at current prices having utility equivalent to consideration of a new property but having material, standards, and design according to prevalent market.
Replacement Cost	Replacement cost involves replacing an asset at a cost prevailing at the time of acquisition. This includes fair market value, transaction costs, interest accrued, transitional and restoration costs, and any other applicable payments, if any. Depreciation of assets and structures should not be taken into account in calculating replacement cost. Where there are no active market conditions, replacement cost is equivalent to delivered cost of all building materials, labor cost for construction, and any transaction or relocation costs.
Reasonable Cost /Amount	In terms of Rent Act, the market value of a tenancy cost/amount over and above the amount calculated as specified in the law.
Relocation	Moving affected persons and their movable assets and rebuilding housing, structures, improvements to land and re-development of public infrastructure facilities in another location.
Resettlement Action Plan	A time-bound action plan with a budget setting out the procedures that a project executing agency will follow and the actions that it will take to mitigate adverse effects, compensate losses, and provide development benefits to persons and communities affected by the development project.
Resettlement Assistance	Support provided to physically and/or economically displaced persons of a project which may include food, shelter, transport, social welfare services, and a cash living allowance.
Resettlement Framework	A Resettlement Framework clarifies resettlement policy objectives, principles, organizational arrangements and other mandatory requirements to be applied in a project with subprojects and resettlement plans for each sub project need to be prepared in consistent with the resettlement framework during project implementation.
Servitude	A right of way created over a land by a freeholder
Severance	Dividing a land into two or several parts due to acquisition of the middle portion for a public purpose
Servient Tenement	Land getting the benefit of a right of way created over adjoining land

Site Value	Value of land for a specific purpose, e.g. residential or commercial purpose
Social Impact Assessment	A project feasibility study to identify social groups and households who are affected/benefited, their needs/preferences, demands and absorptive capacity, gender issues, possible adverse effects on vulnerable groups and measures required to mitigate adverse social impacts.
Statutory Tenant	A tenant with statutory protection under Rent Act or any other law.
Unencumbered Freehold Interest	Absolute ownership of a property without any other interest created or freehold interest not disturbed by illegal trespassing such as squatting, encroachment etc.
Valuation	A process of finding the Present Value of a future income stream of an interest in a property, based on the past information or simply, finding the market price of a movable or immovable property.
Valuation report	Valuation prepared for a statutory or non-statutory purpose
Value on contractor basis	Valuation done based on land value plus depreciated replacement cost of the building
Value on investment basis	Valuation based on rental value of the building
Value to owner	Valuation based on actual cost to the owner
Vulnerable persons	Distinct groups of people who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may suffer disproportionately than others and who may be limited in their ability to claim or take advantage of resettlement benefits and related development benefits.
Years Purchase in Perpetuity	Multiplier used to ascertain the market value based on rental value of a property when investment basis is adopted.



Message from the **HONOURABLE MINISTER OF LAND AND LAND DEVELOPMENT**

Sri Lanka's rapid phase of development in recent times requires the government to use private land for development projects in addition to the use of state land. The present government has recognized and emphasized the need to secure the rights of persons who have either donated their private land or allowed their land to be acquired for country's development as well as their rights to restore their livelihoods and resettlement. It is necessary that both the land acquiring officers as well as the affected persons gain a comprehensive knowledge on the legal process of acquisition of private land, particularly, methodologies for valuation of acquired properties, determination of entitlements for compensation, and compensation payment procedures as it would facilitate a smooth implementation of the entire process. It would further help in understanding the grievances of the people and to facilitate their participation in the development process. I hope this Guide provides the necessary directions and guidance for both the government officials and the affected persons. I take this opportunity to thank the Asian Development Bank and the officials of the Ministry of Land and Land Development for the support extended to produce this Guide.

Janaka Bandara Tennakoon

Minister of Land and Land Development



Message from the DEPUTY MINISTER OF LAND AND LAND DEVELOPMENT

The Government of Sri Lanka under the leadership of his Excellency President Mahinda Rajapakse has emphasized the need for effective and efficient implementation of the process of acquiring private land for country's development programmes. Despite its overall benefits to country's development, involuntary land acquisition and displacement is an unpleasant experience on the part of people affected by land acquisition. Recent experience shows people expressing their resentment to land acquisition through engagement in public protest campaigns, lengthy judicial procedures and sometimes in destructive activities thereby obstructing the entire development process. As development is ultimately intended for the wellbeing of the people it should be implemented with least inconvenience to people so that development projects can win the support and confidence of the people. In the circumstances, public officials are expected to perform their functions in a people-friendly manner. And there is a need to create more awareness among both the general public as well as the public officials on the entire land acquisition process. I hope this Guide responds to that timely need.

Siripala Gamalath

Deputy Minister of Land and Land Development



FOREWORD

Sri Lanka is moving towards a phase of rapid infrastructure development to reduce poverty and socio-economic disparities and establishing sustainable peace among all communities. Investments in mega infrastructure development projects to restore infrastructure facilities and services that were destroyed or neglected during the conflict on one hand and creating more opportunities for income generation and employment for people of this country on the other constitute a significant strategy of the government's development agenda. People of Sri Lanka have witnessed enormous resources being diverted for construction and improvement of road networks, highways, railways, air ports, harbours, power generation plants and irrigation systems. The goal of all development projects is to enhance the wellbeing of all citizens. However, such projects can adversely affect some persons and communities and place them at high risk temporarily or permanently, particularly, when private properties have to be acquired by the State for development projects.

Land acquisition not only causes the loss of dwellings, properties and livelihoods, but also population displacement and relocation of persons and households. It is an internationally recognized principle that adverse conditions resulting from development projects and land acquisition processes should be avoided, or at least minimized. Affected persons should also be adequately compensated so that they could restore or improve their living conditions. In this regard, it is essential that adequate safeguard measures are put in place to secure the interests and rights of affected persons. It is a timely need that Sri Lanka critically reviews its safeguard systems and procedures pertaining to land acquisition, compensation and income restoration in order to identify the gaps, if any, and take appropriate measures to correct them and to strengthen their effective enforcement.

Sri Lanka already has a comprehensive safeguard system that substantially complies with international standards and best practices. The National Involuntary Resettlement Policy (NIRP), Land Acquisition Act of 1950, environmental laws, Cabinet decisions, and precedents created by judgments and administrative practices - all form a part of this safeguard system. However, the safeguard system has not been effectively applied on many occasions because of delays in updating the legal framework consonant with social change, insufficient capacity within implementing agencies in adopting international norms and standards and sometimes due to extraneous issues such as political interference.

The Technical Assistance from the Asian Development Bank: 'TA-7566 (REG): Strengthening and Use of Country Safeguard System - SRI: Supporting and Strengthening National Level Capacity for a Country Involuntary Resettlement Safeguards Subproject', implemented through the Ministry of Land and Land

Development and the Department of Valuation has strived to identify and address some of the key issues mentioned above in the context of international best practices and standards. I have no doubt that its positive outcomes and recommendations would benefit the country at large. This Guide published by the Ministry of Land and Land Development under the above Technical Assistance Programme is primarily intended to enhance the awareness of the public officials about land acquisition, compensation, relocation and income restoration. I am sure that a comprehensive understanding of basic laws and international best practices would help officials in applying them to all development programmes thereby ensuring that development projects would become a development opportunity for all project-affected persons and their communities.

T. Asoka Pieris

Secretary,

Ministry of Land and Land Development



PREFACE

The acquisition of private land for development projects by the State is a lengthy process, and is governed by national policies and legislative procedures. The Land Acquisition Act (LAA) of 1950 stipulates the procedures to be followed in land acquisition in detail regarding identification of suitable land for a the public purpose, conducting land assessments including inquiring into ownership rights, dispute resolution, land acquisition, vesting with project implementing agencies etc. Acquisition of private land should not violate the rights of owners and occupants of such lands and properties which would make them worse off. Sri Lankan laws mandate that project-affected persons who lose their land and property should be adequately compensated. There are legislative procedures, regulations and established systems and methodologies for valuation of acquired properties and determining compensation payable which would balance public interest and welfare on one hand and the welfare of the affected on the other. Where land acquisition causes physical and/or economic displacement of populations either temporarily or permanently, both LAA and the National Involuntary Resettlement Policy (NIRP) of 2001 make provisions to safeguard the rights and interests of such displaced persons and to prevent or at least to minimize risks and adverse impacts on them. A project executing agency is required to implement a Resettlement Action Plan to assist affected persons and to sustain or improve their living conditions.

The processes of land acquisition, payment of compensation, relocation of displaced persons and income restoration involve a large number of institutions and officials including the Ministry of Lands, Divisional Secretariats, Survey Department, Valuation Department, Central Environmental Authority, and Judicial institutions. It is important that all of them gain a good knowledge

of the policies, laws and regulations that govern the land acquisition processes so that they could perform their roles and functions more effectively and efficiently and with great accountability and transparency. This Guide outlines the policy and legal frameworks for land acquisition, payment of compensation and resettlement. It also includes guidelines, methodologies and internationally recognized good practices that could enhance the knowledge and capacity of the officials. Presented in a user-friendly language and published in English, Sinhala and Tamil languages, the Guide provides useful resource and reference material. This Guide is not intended to be a primary/ source document, or to be used in place of the laws, regulations, circulars and such other materials that prescribe land acquisition, resettlement and income restoration processes. In a situation where resources are meager to conduct regular training and awareness creation programmes on diverse aspects of land acquisition, payment of compensation and resettlement for the benefit of the officials of the above mentioned agencies this Guide significantly contributes to fill that vacuum and certainly enhance their awareness and capacities in doing their public duties.

The Guide is one of the outcomes of the Technical Assistance programme of the Asian Development

Bank - 'TA-7566 (REG): Strengthening and Use of Country Safeguard System - SRI: Supporting and Strengthening National Level Capacity for a Country Involuntary Resettlement Safeguards Subproject'. It was conducted by the Sri Lankan Resident Mission of the Asian Development Bank, the Ministry of Land and Land Development, and the Department of Valuation during the period of 2011-2012. A team of consultants have generously put together their knowledge, expertise and long-standing experience in developing the content of this publication. I appreciate the support we received from the Sri Lanka Resident Mission of the Asian Development Bank in facilitating this technical assistance programme which significantly contributed to improve the knowledge and experience of key stakeholder institutions engaged in land acquisition, valuation, payment of compensation and resettlement.

The Guide has consolidated the national laws, regulations, guidelines and international best practices into a readable document which reflects the country safeguard system pertaining to involuntary resettlement process.

S.D.A.B. Boralessa

Additional Secretary (Land)

Ministry of Land and Land Development

1. INTRODUCTION

Development projects require acquisition of private land and other property in the absence of suitable alternative state land. This sometimes results in physical and economic displacement of persons and bringing adverse impacts on affected communities. Development projects with compulsory land acquisition or restrictions on access to public land have shown that such actions could trigger impoverishment risks among the project-affected persons (APs). In this context, it is necessary to identify categories of APs and their impoverishment risks arising from land acquisition, and to carefully plan mitigatory measures to minimize such risks and impacts. If compulsory land acquisition cannot be avoided, adequate measures must be implemented to minimize such adverse impacts and risks by paying sufficient and fair compensation for all losses, and providing alternative land, particularly, to those who depended on land for their livelihood. They also need to be helped in restoring sources of incomes and livelihood at least, to the level that prevailed prior to the loss of land and physical relocation. These key issues associated with compulsory land acquisition and income restoration and improvement of APs, and proposals on how to mitigate them are outlined in the Guide. Resettlement planning, implementation, and monitoring help realize the key objectives of the National Involuntary Resettlement Policy (NIRP), namely, to 1) avoid or at least minimize involuntary displacement and relocation impacts by exploring alternative project sites; 2) assist those who will be adversely affected to reestablish their livelihoods and also to improve their standards of living by paying compensation for acquired or damaged

property at their replacement cost; 3) ensure that no impoverishment of people would result from compulsory land acquisition; and 4) provide appropriate resettlement assistance to the displaced poor and other vulnerable groups so that they could improve their standards of living. The NIRP also emphasizes the importance of involving project-affected persons (APs) and other stakeholders in planning and implementation of resettlement programmes. In this regard, it is important that APs are consulted in selecting project and relocation sites, livelihood compensation programmes and their development options. In addition, resettlement planning and implementation are to be carried out with full participation of provincial and local government authorities.

Land Acquisition and Implementation of the National Involuntary Resettlement Policy: A Guide for Public Officials to Good Practices is primarily written for the benefit of government officials who are involved in land surveys, land acquisition, valuation and payment of compensation for lost assets, relocation and income restoration and improvement programmes. It provides useful reference materials for other stakeholders who are interested in land acquisition and resettlement processes such as development consultants, NGOs and civil society organizations. It can also be used as a reference material in resettlement training programmes. However, this Guide is not intended to be a primary/ source document, or to be used in place of the laws, regulations, circulars and such other materials that prescribe land acquisition, resettlement and income restoration processes.

The Guide outlines legislative and regulatory frameworks that guide land acquisition and valuation processes. Based on internationally recognized best practices and experience in involuntary resettlement derived from several development projects the Guide provides a set of useful tips, guidelines and good practices for involuntary resettlement planning, implementation and monitoring.

The Guide comprises 6 chapters.

Chapter 1 explains the background and objectives of the Guide.

Chapter 2 outlines the key prescriptions of the National Involuntary Resettlement Policy (NIRP) to construct a broad country level safeguard policy framework to guide land acquisition, compensation, restoration of income sources and livelihoods, and relocation process.

Chapter 3 is an introduction to resettlement planning and types of resettlement plans. It outlines a set of basic principles of and guidelines for the

selection of relocation sites, development of resettlement sites, resettlement assistance, and restoration and improvement of livelihood and income sources.

Chapter 4 outlines a country level safeguard system for land acquisition and resettlement in Sri Lanka based on local laws, regulations, policies as well as internationally recognized resettlement principles.

Chapter 5 describes the procedures for property valuation and payment of compensation in terms of Land Acquisition Act (LAA) No.9 of 1950, and its subsequent Regulations enacted in 2008 (Regulations 2008). The chapter also provides a set of principles and practices related to the assessment of reinstatement cost, market value of acquired land, injurious affection and severance, and payments for disturbances and other expenses, caused by land acquisition and displacement, resettlement and income restoration.

Chapter 6 delineates the different steps of the process of land acquisition, as stipulated in the Land Acquisition Act of 1950.

2. NATIONAL INVOLUNTARY RESETTLEMENT POLICY (NIRP)¹

2.1 Introduction

The Government of Sri Lanka has adopted the National Involuntary Resettlement Policy (NIRP) in 2001 for the benefit of persons displaced by the process of land acquisition for development purposes. The Policy is designed to ensure that (i) project affected persons are adequately compensated, relocated and rehabilitated; (ii) delays in project implementation and cost overruns are reduced; and (iii) better community relations are restored.

2.2 Rationale

Development projects increasingly involve acquisition of land. People whose homes and lands are acquired have to move elsewhere and resettle in locations that may be unfamiliar. The general perception is that resettlement programmes cause hardship to those displaced. Land acquisition and resettlement often lead to impoverishment of affected people. High mortality rates, food insecurity, lack of access to common property and public services, and disruption of the existing social organization are some of the common characteristics of re-settlers. International, regional and national experience in resettlement programmes has generated considerable body of knowledge on planning and implementation of involuntary resettlement which could be used effectively to minimize some of the adverse impacts on affected people.

In Sri Lanka, the Land Acquisition Act of 1950, as amended from time to time, only provides for compensation for land, structures and crops. It does not direct project executing agencies (PEAs) to address key resettlement planning and implementation issues such as (a) exploring alternative project options to avoid or minimize impacts on people; (b) compensating the non-titled persons who will be affected by a project; (c) consulting affected persons and resettlement hosts on resettlement options; (d) providing for successful social and economic integration of the affected persons into the host communities, and (e) rehabilitating affected persons.

The National Environmental Act (NEA), No.47 of 1980, amended by Act, No.56 of 1988 has some provisions relevant to involuntary settlement. The Minister has by gazette notification No.859/14 of 23 February 1995 determined the projects and undertakings for which Central Environmental Authority (CEA) approval is needed in terms of Part IV - C of the NEA. Item 12 in the Schedule requires addressing involuntary resettlement exceeding 100 families.

Sri Lanka adopted the NIRP to ensure that people affected by development projects are treated in a fair and equitable manner, and to ensure that they are not impoverished in the process. The Policy also enables establishing the framework for project planning and implementation that would meet international best practices in involuntary resettlement.

¹ Adapted from Process Manual for Implementation of the National Involuntary Resettlement Policy (2003), Ministry of Lands, Colombo, Sri Lanka, p.1-4

2.3 Policy Objectives

- ☑ Avoid, minimize and mitigate negative impacts of involuntary resettlement by facilitating the reestablishment of the affected people on a productive and self-sustaining basis. Ensure that people adversely affected by development projects are fully and promptly compensated and successfully resettled. The livelihoods of the displaced persons should be reestablished and the standard of living improved.
- ☑ Ensure that no impoverishment of people shall result as a consequence of compulsory land acquisition by the State for development purposes.
- ☑ Assist adversely affected persons in dealing with the psychological, cultural, social and other impacts caused by compulsory land acquisition.
- ☑ Make all affected persons aware of processes, available for the redress of grievances that are easily accessible and immediately responsive.
- ☑ Have in place a consultative, transparent and accountable involuntary resettlement process with a time frame agreed to by the Project Executing Agency and the affected persons.

2.4 Policy Principles

- ☑ Involuntary resettlement should be avoided as much as possible by reviewing alternatives to the project as well as alternatives within the project.
- ☑ Where involuntary resettlement is unavoidable, affected persons should be assisted to re-establish themselves and improve their quality of life.
- ☑ Gender equality and equity should be ensured and adhered to throughout.

- ☑ Affected persons should be fully involved in the selection of relocation sites, livelihood compensation and development options at the earliest opportunity.
- ☑ Replacement land should be an option for compensation in the case of loss of land; and in the absence of replacement land cash compensation should be an option for all affected persons.
- ☑ Compensation for loss of land, structures, other assets and income should be based on full replacement cost and should be paid promptly. This should include transaction costs.
- ☑ Resettlement should be planned and implemented with full participation of the provincial and local authorities.
- ☑ Participatory measures should be designed and implemented to assist those economically and socially affected to be integrated into the host communities.
- ☑ Common property resources and community and public services should be provided to affected persons.
- ☑ Resettlement should be planned as a development activity for the affected persons.
- ☑ Affected persons who do not have title deeds to land should receive fair and just treatment.
- ☑ Vulnerable groups should be identified and given appropriate assistance to improve their living standards.
- ☑ Project Executing Agencies should bear the full costs of compensation and resettlement.

2.5 Policy Applications

- ☑ All development-induced land acquisition or recovery of possession by the State
- ☑ All projects regardless of the source of funding
- ☑ All projects in the planning phase on the date the policy came into effect and all future projects

2.6 Legal Framework for Implementing the Policy

- ☑ The Land Acquisition Act
- ☑ The National Environmental Act
- ☑ Other laws (e.g. Urban Development Authority Act; Coastal Conservation Act) that have a bearing on planning and implementing the NIRP in specific circumstances
- ☑ Regulations under the above Acts
- ☑ Legal principles established by Court judgments

2.7 Responsibility of the Ministry of Lands

The Ministry of Land and Land Development (MLLD) is responsible for implementing, administering and development of the National Involuntary Resettlement Policy. This is done in collaboration with a wide network of public and civil society organizations including the CEA, Project Executing Agencies (PEA), the Ministries concerned and the Divisional Secretariats.

Responsibilities of the MLLD fall into four broad areas:

- ☑ Administer the NIRP
- ☑ Assist other agencies to implement the NIRP
- ☑ Land acquisition under the LAA
- ☑ Build capacity to effectively implement the NIRP

2.8 Guidelines for Planning and Implementing the NIRP

In addition to the Process Manual² the administration of the NIRP is facilitated by three other sets of guidelines that have been developed by MLLD as part of its efforts to enhance its institutional capacity:

- ☑ General Guidelines on Planning and Implementation of Involuntary Resettlement
- ☑ Guidelines for the preparation of a Resettlement Action Plan
- ☑ Guidelines for a Participatory Resettlement Process

It is necessary to have a good grasp of the above Guidelines to comprehensively understand the spirit of NIRP and method of its implementation. Although the NIRP Process Manual is primarily meant for the MLLD, the conceptual, planning and implementation framework extends much beyond the MLLD to project implementing agencies, administrative authorities at the divisional level and village level organizations that are involved in resettlement planning and implementation.

²Published by Ministry of Land in 2003 under ADB TA 3792 –SRI Capacity Building Project for the National Involuntary Resettlement Policy

3. RESETTLEMENT, RELOCATION SUPPORT AND INCOME RESTORATION PLANNING

This chapter addresses three important aspects of involuntary resettlement planning. The first part provides a short introduction to resettlement planning. Some important issues regarding planning resettlement sites and relocation support for displaced families are discussed in the second part. The third part provides some guidelines for planning income restoration and improvement of APs.

3.1 Resettlement Planning

Any development project with involuntary resettlement impacts must incorporate a resettlement plan (RP). The National Involuntary Resettlement Policy (NIRP) of 2001 requires that a Resettlement Action Plan (RAP) is prepared for projects where 20 or more families are affected regardless of the source of funding of the project. If affected families are less than 20, a RAP with a lesser level of detail needs to be prepared. The responsibility for reviewing and approving RAPs is vested with the Ministry of Land and Land Development.

The Land Acquisition Act of 1950 (LAA), and its subsequent amendments and regulations govern the land acquisition process for a 'public purpose' and payment of compensation for such land. An application for land acquisition for a specified public purpose can be submitted to the Ministry of Land and Land Development (MLLD) by any government agency or local government institution.

The National Environmental Act (NEA) of 1980 and its regulations of 1993 and 1995 requires approval of the Central Environmental Authority (CEA) for 'prescribed projects'; i.e. those resulting

in involuntary resettlement of more than 100 families because of state acquisition of private land. The approval granted by CEA for such 'prescribed projects' is based on an Environmental Impact Assessment Report (EIAR) or an Initial Environmental Examination Report (IEER). These reports although are prepared following the CEA Guidelines, contain details of resettlement and recommendations for mitigating adverse impacts.

Bilateral and multilateral development agencies have their own involuntary resettlement policies and governments borrow money after giving an undertaking to comply with them. For example, in ADB-funded projects, if 200 or more people experience involuntary resettlement, the project will be considered as a category 'A' project, which means the project has 'significant' involuntary resettlement impacts. Severity and significance of resettlement impacts determine the degree of information to be collected, consultations to be conducted, and costs of compensation, relocation and income restoration.

3.1.1 Types of Resettlement Plans

The terms 'Resettlement Plan' (RP), 'Resettlement Action Plan' (RAP) and 'Resettlement Implementation Plan' (RIP) are used interchangeably to refer to a resettlement planning document. The type of resettlement plan depends on the significance of involuntary resettlement impacts of a project and the level of resettlement activities to be carried out during the project cycle. For example, a full RP is required when involuntary resettlement effects are significant in terms of the large number of persons/families/households

affected and displaced. On the other hand, a short RP could be prepared for a project with minor social impacts.

A Resettlement Plan is a time-bound action plan with a dedicated budget. It sets out the social impact assessment strategy, compensation and resettlement programmes paying attention to entitlements, institutional actions and responsibilities, and monitoring and evaluation processes. In some large-scale infrastructure development projects such as highways and dams, a draft RP is prepared at the project feasibility stage which is subsequently updated after the completion of engineering designs, survey of inventory of losses (IOL) and public consultations.

An RP is prepared when the project site is selected and the number of APs is estimated. This information will be updated after the completion of engineering designs and surveys for land acquisition. Based on the full data base, the initial draft RP will be updated to a RAP or RIP. For example, in the Southern Transport Development Project (STDP), an RP was prepared in 1999 at project appraisal and approval stage which was later updated to a RIP in 2002 after the completion of engineering designs, land surveys and boundary markings (preparation of advanced tracings), census and IOL surveys, identification of all affected properties and public consultations.

A Full Resettlement Plan

A Full Resettlement Plan (FRP) covers the following essential elements.

- Project description
- Scope of land acquisition and relocation
- Study methodology
- Resettlement policies and legal framework

- Socio-economic information of the project and profiles of APs
- Project area map
- Information dissemination, consultation, and participatory approaches to resettlement planning
- Grievance redress mechanism
- Land acquisition impacts, entitlement policy and entitlement matrix
- Impacts on vulnerable groups and their entitlements
- Relocation plans and maps
- Income restoration and other assistance
- Resettlement budget
- Institutional arrangements
- Implementation schedule
- Monitoring and evaluation

A Short Resettlement Plan

A Short Resettlement Plan (SRP) covers all the elements of a Full Resettlement Plan. The details required for a SRP however are much less than the details required for a Full Resettlement Plan. However, SPR will have the same degree of completeness in case of entitlements of APs, relocation plans, and compensation and rehabilitation measures. A budget and an implementation schedule are also required.

A Resettlement Framework

Another type of resettlement planning document is a Resettlement Framework (RF). An RF sets out the broad framework of resettlement policy, social assessment and planning procedures that will apply to RPs of sub projects or project components of a

sector project. It contains the arrangements for preparing full or short resettlement plans during project implementation depending on the significance of impacts of each sub project or the project component. Such RPs must conform to the policy and procedures outlined in the RF. An RF is prepared when a project takes the form of a sector project or a multi-tranche project. This means that at the stage of project planning, all project components or sub projects are not known for planning. In such instances, an RF is prepared together with RPs for known subprojects. The RPs of subproject with involuntary resettlement impacts identified during project implementation will be prepared following the guidelines given in the RF. For example, in the National Highway Sector Project (NHSP), an RF was prepared together with an RP for one sub project. Three more RPs were prepared for three subprojects during project implementation. An RP prepared for each sub project or component needs to be approved by the project executing agency or project approving agency and its funding agency before civil work contracts are awarded.

A Resettlement Framework (RF) outlines the arrangements for preparing a full or a short resettlement plan. It provides 1) a project description, its scope, extent and types of involuntary resettlement impacts of the project; 2) screening procedures and a methodology for a social impacts study for sub projects or components;

3) resettlement policy principles and eligibility criteria applicable to all sub projects or components; 4) APs' entitlements; 5) relocation plans; 6) institutional and financing arrangements to implement RPs including grievance redress mechanism; and 7) provisions for strengthening the capacity of relevant agencies and institutions.

3.1.2 Preparation of a Resettlement Plan

Formulation of an RP and its implementation is the responsibility of the project executing agency and project management unit (PMU) of a development project. The land acquisition and relocation processes involve a series of activities which are to be carried out early in the project cycle including the formulation of an RF and RP or SRP or RAP/RIP which entails consultation, socioeconomic surveys, disclosure of information, implementation of planning documents and their monitoring. A good understanding of this process, tasks and expected outputs at each stage of the project cycle is necessary to ensure that involuntary resettlement impacts are addressed in a timely manner in order to achieve the objectives of NIRP. Such understanding of the processes is also necessary to ensure that APs get opportunities for consultation, participation and information sharing. Key tasks/activities and guidelines in resettlement plan preparation are indicated in Table 3.1.

Table 3.1 : Tasks and guidelines for the preparation of a Resettlement Plan

Tasks/activities	Guidelines
<p>Conduct an initial social assessment</p>	<ul style="list-style-type: none"> - Identify social and involuntary resettlement issues and their scope - Define project area and develop a database of its socio-economic conditions - Identify key stakeholders and conduct a stakeholder analysis - Consult and involve other stakeholders such as local government officials, non-government organizations. - Explore viable project alternatives to minimize social impacts, especially involuntary displacement, and assess whether resettlement and social impacts are significant or not
<p>Conduct a social impact assessment using a sample survey and an inventory of losses survey</p>	<ul style="list-style-type: none"> - Identify past, present, and future social impacts and review EIA/IEE reports of the project, if available, to gather supplementary data and information - Conduct a sample socio-economic survey and an inventory of displaced persons and affected assets - Assess involuntary resettlement impacts on communities other than displaced persons, and potential impacts on vulnerable groups, common property and other public resources - Develop data collection methods, strategies for hiring and fielding investigators, field supervision, data processing and analysis
<p>Prepare an entitlement matrix</p>	<ul style="list-style-type: none"> - Determine the cut-off date for qualifying compensation. Enumerate and register APs according to their respective locations (This would help in establishing a list of legitimate beneficiaries who live at the locations prior to project planning and to avoid false claims by those moving in to the project area to collect compensation and project benefits) - Identify the types of losses and set up a database of APs and the impacts (prepare an Inventory of Losses (IOL) at the household, commercial, and community level) - Set out eligibility criteria for their different losses - Determine replacement cost for land and structures which will be acquired to the project - Prepare an entitlement matrix for each type of loss and categories of affected persons (women, indigenous people, customary land users, encroachers, squatters, the poor, severely affected persons)

<p>Conduct consultations with APs and other stakeholders and design information disclosure and a grievance redress mechanisms</p>	<ul style="list-style-type: none"> - Conduct stakeholder consultation workshops and record findings and suggestions - Disseminate information on resettlement plan, project activities, entitlements, and obtain views and preferences of stakeholders - List out strategies for information campaign and procedures for APs to negotiate their entitlements - Include a ‘social preparation phase’ when resettlement activities are likely to cause protests/objections - Study existing procedures of grievance redress systems and introduce robust mechanisms to deal with complaints from APs
<p>Review legal and policy framework of involuntary resettlement</p>	<ul style="list-style-type: none"> - Review the national legal framework and policies for land acquisition, compensation, relocation and income restoration, and identify gaps, if any, to address them in the entitlement matrix
<p>Conduct a gender analysis</p>	<ul style="list-style-type: none"> - Identify the needs of women who are affected by land acquisition, relocation and other project activities - Consult women and women groups to identify their needs, opinions, project impacts on them, and special assistance that they may require - Address their vulnerability arising from loss of livelihood and familiar living surroundings
<p>Identify needs of vulnerable groups</p>	<ul style="list-style-type: none"> - Identify and consult vulnerable groups including the poor - Assess the special needs of vulnerable households
<p>Design income restoration/improvement programmes</p>	<ul style="list-style-type: none"> - Identify persons/households severely affected in terms of their income and employment losses - Conduct consultations to develop an income restoration programme for all APs - Develop a special income improvement programme for vulnerable APs
<p>Prepare a budget and an implementation schedule</p>	<ul style="list-style-type: none"> - Estimate the costs of key activities of resettlement operations and provide necessary budgetary provisions - Maintain a contingency budget to address unanticipated resettlement impacts - Establish a timeframe for completion of activities such as information campaign, compensation payments, and relocation

<p>Identify sources of funding to implement RAP/RIP</p>	<ul style="list-style-type: none"> - Identify local and foreign funding sources - Estimate their adequacy to pay compensation at replacement cost - Pay special attention to income restoration and improvement programmes and their budgets
<p>Establish institutional arrangements to implement RAP/RIP and to monitor their implementation</p>	<ul style="list-style-type: none"> - Assess the institutional framework and capacity building requirements, if any, to implement RP - Identify agencies responsible for implementation and management of the resettlement process - Establish a Resettlement Unit with resettlement staff, if the project is large and complex - Establish a coordination committee at project and sub project level for resettlement management - Appoint a local NGO/CBO or a local authority to monitor implementation of RP - Include a list of monitoring indicators into RP
<p>Outline arrangements for RP disclosure, review and approval</p>	<ul style="list-style-type: none"> - Disclose the draft RIP for comments/observations from APs and other stakeholders - Indicate who will review the RP - Translate into Sinhala/Tamil - Indicate the approval authority and timeframe for approval

3.2 Resettlement Sites and Relocation Support Planning

Some of the guidelines given below can be used for selecting suitable sites for resettlement and planning support services for the benefit of relocated families.

3.2.1 Resettlement sites selection

- Discuss sites selection criteria with APs, their representatives and local officials and knowledgeable people

- Consult APs on different relocation options, such as relocation on the left over portion of the land after acquiring, buying a plot of land in the vicinity where their relatives are, self-relocation, relocation on a site selected by the project executing agency.
- Conduct a feasibility assessment of each proposed resettlement site to check its suitability for resettlement and the presence of infrastructure facilities, connectivity with markets and towns

Box 3a: Criteria for sites selection

- Proximity to acquired lands
- Accessibility to and availability of adequate infrastructure facilities such as schools, hospitals, markets, and communication centres
- Proximity to employment sources such as factories, estates, cultivated land
- Availability of surface or ground water
- Low population density but with the potential for further development

3.2.2 Development of resettlement sites

- Engage APs, especially women, in designing, planning and developing resettlement sites
- Provide infrastructure facilities such as roads, water, electricity, communication, schools, hospitals, and market buildings before the arrival of re-settlers. Extend some of these facilities for host communities too
- Develop income generating programmes for the benefit of both APs and host communities

3.2.3 Provision of resettlement assistance

- In consultation with APs prepare an 'Action Plan' for transportation of displaced persons to resettlement sites. This plan should indicate time frames for movement by taking into account factors such as harvesting times of crops, rainy seasons, and important cultural occasions. The action plan should also include arrangements for transportation of re-settlers and their belongings to new sites and how to provide temporary shelter and services, if required
- Ensure that APs are paid full compensation for their entitlements before they are relocated

- Provide a movement allowance to cover their incidental expenses
- Provide food to re-settlers during their transport and at resettlement sites for a few days
- Provide initial cash grants and basic tools, seeds and fertilizer, if required
- Provide special assistance to vulnerable groups, mainly in cash, and reestablish networks with service providers, government officials and markets
- Establish all basic infrastructure facilities at resettlement sites prior to relocation of APs
- Facilitate the services of social/community workers to accompany APs and assist them in the taking over their new residences

3.3 Planning for Income Restoration

A large-scale infrastructure development project could adversely affect livelihoods and income sources of populations living in the project area. Such impacts could arise from three major sources.

First, adverse impacts result from the *acquisition of land* on which people rely for their livelihoods.

Second, a new project can also enforce *restrictions on land use*. For example, people may be prevented from entering into legally designated parks such as

forest or wildlife conservation areas or water resources on which they depended for their livelihoods.

Third, a project can also cause population displacement and their relocation and resettlement. In such instances, people may lose their traditional occupations or home based economic activities, access to raw materials, neighbourhood support groups, customer base, and market networks.

3.3.1 Issues and challenges in income restoration and improvement

Livelihood and income restoration planning processes can encounter several challenges. The Southern Transport Development Project (STDP) and the National Highway Sector Project (NHSP) brought out some of them:

1. Inadequacy/non-availability of replacement land and land suitable for agricultural activities
2. Inadequate compensation to cover all economic assets losses and particularly, livelihood assets of the non-title holders
3. Lack of skills among APs to engage in alternative employment
4. Unwillingness of APs to replace their traditional livelihood practices with non-agricultural activities introduced under income restoration programmes
5. Inadequate budgets allocated for livelihood and income restoration programmes
6. Considerable delays in starting income restoration programmes and establishing adequate implementing and monitoring mechanisms for such programmes

3.3.2. Livelihood and income restoration strategies

The National Involuntary Resettlement Policy (NIRP) recognizes the need for re-establishing livelihoods of displaced persons and improving their standard of living; avoiding impoverishment of people as a result of compulsory land acquisition for development purposes; and providing livelihood compensation and development options at the earliest opportunity to APs.

A comprehensive livelihood and income restoration plan is formally required only when more than 20 families are severely or substantially affected by a development project. Internationally recognized best practices propose a set of principles that guide the planning and implementation processes of income restoration programmes. In terms of these guiding principles, livelihood and income restoration should be integrated into on-going community development processes. The NIRP recognizes and acknowledges this approach by stating that 'resettlement should be planned as a development activity for the affected people' based on the principle that APs should be engaged in planning and implementation of income restoration programmes.

It is necessary to conduct a comprehensive assessment of possible impacts of the project on livelihoods and incomes of APs prior to planning income restoration programmes. Such an assessment would help to identify the nature of livelihood/income related losses and reach a realistic assessment of how such losses should be compensated and what income restoration strategies are needed. The project executing agency is responsible for conducting a livelihood and income assessment. Information generated from the assessment should be maintained in a database as benchmark data to be used in subsequent monitoring exercises.

The project executing agency will implement the livelihood and income restoration plan on its own or with support from a competent organization. Based on the assessment, the plan should spell out the strategy and specific activities that would be implemented under it. Furthermore, it is important to arrange the programmes in a culturally sensitive manner and by paying attention to their economic, financial and technical feasibility.

There are different types of livelihood and income restoration strategies. For example, such a strategy could take the form of a short-term or a long-term strategy; or it could be a land-based or non-land based or enterprise-based strategy. International best practices recognized three types of key income restoration strategies.

- a) *Cash-based assistance*: Cash-based assistance is primarily a short-term strategy. It could take different forms according to the context within which it is applied. For example, people who lose their livelihoods and incomes can be offered temporary paid work (e.g. cash-for-work) by the project until they re-establish their livelihoods or initiate new livelihoods. APs can also be given a cash grant to restore their livelihood and income sources.
- b) *Land-based assistance*: A land-based income restoration strategy can either be a short term or a long-term strategy. A long-term strategy will include providing of replacement land or assistance to purchase new land and/or provision of access to alternative grazing lands, forest or water resources. Other forms of land-based assistance include support extended for physical preparation of farm lands, fencing for pastures and croplands, agricultural inputs such as seeds, fertilizer, implements, veterinary care, small-scale credit facilities, and access to markets.

- c) *Non-land based assistance*: A variety of assistance can be provided to APs under a non-land based income restoration strategy which is usually a long-term strategy. It could provide technical and vocational skills development training; access to micro-finance; business development support services such as assistance for product development and quality improvement, business planning, financial management and accounting; support for accessing markets; and placements in suitable employment in both government and private sector.

3.3.3 Guiding principles for income restoration and improvement planning and implementation

- Design, plan and implement incomes and livelihood restoration and improvement plans prior to displacement of APs.
- Consider both short-and long-term strategies for effective income restoration and improvement.
- Consult project-affected groups including women, and assess their needs prior to planning any income restoration strategy. Such consultations should lead to a comprehensive understanding of the socio-economic context in which people lived prior to their displacement. Understanding livelihood patterns of the affected persons, social organization around which their livelihood practices have evolved and conducted, value systems associated with livelihood practices and their skills and capabilities linked to livelihoods in their previous community settings are all important in designing a feasible and sustainable income and livelihood restoration programme.

- Develop multiple options and diverse interventions with different time frames for income restoration and improvement such as replacement land, employment, businesses, community enterprises, training and skills development, based on the assessment of pre-displacement income generating patterns.
- Develop special measures for displaced persons who are most disadvantaged in terms of income generation and employment, e.g., very poor families, women, people in old age, people with disabilities.
- Assess the adaptive and absorptive capacity (including willingness) of APs to new forms of livelihoods (if they were to be promoted as alternatives to previous livelihood practices) and the availability of raw materials and markets for such ventures at resettlement sites.
- Complement skills training programmes with other support services required for livelihood and income restoration such as access to credit/cash grants, markets, information, and linkages.
- Ensure that adequate resources - financial, material and human - are allocated for effective and efficient implementation of the income restoration and improvement plan.
- Design, plan and establish a comprehensive monitoring system that measures the processes, outputs and outcomes of the income restoration programmes.
- Continue the programme after the project is completed because income restoration and improvement strategy would take a longer period - definitely beyond the project construction cycle - to implement. Follow up on income restoration and improvement is essential.

4. POLICY AND LEGAL FRAMEWORK FOR LAND ACQUISITION, COMPENSATION AND RESETTLEMENT AND INCOME RESTORATION

4.1 Introduction

The National Involuntary Resettlement Policy (NIRP) approved by the Cabinet of Ministers in 2001 outlines the policy safeguards that are available for persons affected by the acquisition of private land by the State for a public purpose. The policy principles found in NIRP reflect some of the international best practices in involuntary resettlement. The NIRP is a policy document to be implemented within the framework of the existing laws. The Land Acquisition Regulations of 2008 published in the Gazette of 07th April, 2009 incorporated many of the NIRP principles into Sri Lanka's legal framework.

This chapter outlines Sri Lanka's policies, laws and regulations pertaining to land acquisition, compensation and income restoration. It will also discuss whether the current practices based on policies, laws and regulations would satisfy the safeguard principles found in NIRP and the relevant international best practices. A summary of laws and regulations pertaining to land acquisition for public purpose is given at Table 4.1 and the basic policy principles of NIRP at Table 4.2

4.2 Land Acquisition for a Public Purpose

The legal framework for land acquisition in Sri Lanka has a history of 125 years. The Land

Acquisition Act No. 9 of 1950 (LAA) was built upon the Land Acquisition Ordinance of 1876. The LAA provides a detailed procedure for acquiring land or servitude, and sets out a process with several in-built safeguards. An expedited process is also provided in the event it becomes necessary to take immediate possession of any land. The normal procedure for land acquisition begins with a request made to the Minister of Lands. Once acquired, the land is vested in the relevant Government Department, State Corporation or local authority.

The LAA makes provisions for the acquisition of lands and servitudes for a 'public purpose'. Although the LAA does not define what constitutes a 'public purpose' there are many judicial decisions that have interpreted this. The weight of judgments suggests that for land acquisition it is best if the public purpose is disclosed without merely stating that the land is required for a 'public purpose'. Judicial decisions affirm that private land can be acquired only for public purposes under LAA, which should ideally be disclosed in the Section 2 Notice. The actual public purpose can result from development programmes initiated by various government departments and agencies from a multitude of sectors such as transport, ports, aviation and agriculture. Defining 'public purpose' in the Notice would make the identification and assessing the suitability of an area and a land more efficient, transparent and effective.

4.3 Project Screening and Consultation

The NIRP stipulates that involuntary resettlement should be avoided or reduced as much as possible by considering alternative project designs. The LAA provides for the screening of projects when a request for acquisition is initially received by MLLD and after the initial investigations of the land to be acquired are completed after inviting public objections, if any. However, in an expedited process of acquisition where it becomes necessary to take immediate possession of land or to acquire servitude on grounds of urgency, the Minister can order immediate vesting of the land after the Section 2 and/or Section 4 Notices have been issued, but before compensation determination is made under Section 17 of the LAA.

Project screening for land acquisition is also required under environmental protection laws. The Coast Conservation and Coastal Resource Management Act (CC&CRMA) of 1980 introduced the concept of environmental impact assessment to Sri Lanka, although it is limited to the coastal zone. The National Environmental Act (NEA) of 1980 and its amendment of 1988 extended the application of 'environmental impact assessment' to the entire country, in respect of 'prescribed projects'.³ The criteria for prescribed projects requiring environmental impact assessment include projects which could result in the involuntary relocation of more than 100 families.

4.4. Participation in Resettlement Planning

The NIRP prescribes that project-affected persons should be fully involved in the selection of

relocation sites, livelihood compensation and development options from the earliest possible time.

4.5 Grievance Redress

The LAA provides a limited grievance redress mechanism whereby certain grievances of the affected persons relating to compensation can be referred to the Board of Review established under the LAA. This is a limited redress mechanism that only addresses issues pertaining to compensation. The NIRP recommends the establishment of an internal monitoring system by project executing agencies to monitor the implementation of Resettlement Action Plans and handling of grievances. One of the key Policy objectives is making all affected persons aware of processes that are easily accessible and immediately responsive for grievance redress. Each project should have its own grievance redress mechanism formally instituted by the project authorities with the support of the Divisional Secretaries of the project area.

4.6 Improve or Restore Livelihoods

A key NIRP principle is that where involuntary resettlement is unavoidable, affected persons should be assisted to re-establish themselves and improve their quality of life. The compensation approach established in terms of the LAA seeks to provide for the improvement and restoration of livelihoods on an individual basis. This key requirement is supported by the NIRP.

4.7 Payment of Replacement Cost

The NIRP recommends that compensation for loss of land, structures, other assets and income should

³ It is noted however that the enabling regulations under this Act were formulated only in 1993.

be based on full replacement cost and should be paid promptly together with transaction costs. This policy principle aligns with international resettlement practices.

The legal framework pertaining to payment of compensation places less emphasis on common property and more emphasis on the interests of the individual. Thus the approach to compensation set out in the LAA takes the path of compensating the individual for the loss of assets rather than for the loss of properties owned by the community as a whole. As a result, each affected person makes an individual claim for compensation. The award of compensation is determined on the basis of such individual claims and the valuation of the acquired assets. For co-owned property, there is an apportionment of the award between co-owners. This approach is established and accepted by the affected communities, provided the compensation is adequate, fair, and prompt.

The LAA provides for the payment of compensation on the basis of 'market value' which is defined as the 'amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity'⁴ This could cause hardships to landowners when a small strip of a larger land is acquired because in market terms a small strip of land will fetch only a minimum value. The Land Acquisition Regulations of 2008 redefines the valuation approach to determine 'market value' stating that 'in the case of land where part of a land is acquired and when its value as a separate entity deems to realize a value proportionately lower than the market value of the main land the compensation should be proportionate to the value of the main land'.

4.8 Prompt Payment of Compensation

Payment of compensation to affected persons can be delayed for several reasons such as the difficulty in establishing ownership, administrative delays or failures on the part of affected persons to furnish relevant documents to land acquisition officers when requested. Compensation payment also gets delayed when disputes over acquisition or ownership of land are referred to courts for adjudication. Where land acquisition is done under 'urgency' clauses of LAA, an affected person may lose property before receiving compensation. Various administrative arrangements are available for project executing agencies to minimize delays in the payment of compensation. One of them is not to award project contracts until compensation for acquired land is fully compensated and resettlement assistance is provided. Another is to allow APs to stay on their lands until land is acquired and compensation is paid fully. Both are well established international good practices.

4.9 Compensation for Non-titled Displaced Persons

The NIRP recommends that affected persons who do not have documented title to land should receive fair and just treatment. In terms of Section 7 of the LAA, the Acquiring Officer publishes a Notice directing every person interested in the land which is to be acquired or over which the servitude is to be acquired to notify in writing the nature of their interest in the land, the particulars of the claim for compensation, the amount of compensation and the details of the computation of the amount sought as compensation. The term 'person interested' is defined in the Act as follows:

⁴Section 45

'Person interested', with reference to a land means a person having an interest in the land as owner, co-owner, mortgagee, lessee or otherwise, whether absolutely for himself or in trust for any other person or for any charitable, religious or other purpose; or a person having a servitude over the land; but does not include a tenant on a monthly tenancy'.

The provisions in the law demonstrate that in order to establish a right for compensation, a person is required to get past this threshold requirement of demonstrating that one falls within the definition

of a 'person interested'. Those who fail to get past this threshold would fail to receive compensation.

4.10 Resettlement Planning

The NIRP mandates the preparation of a resettlement plan when a project affects 20 or more families. The socio-economic conditions of the affected persons should be included within the scope of an EIA; an outline of a resettlement plan is described under section 3.1.1 above.

Table 4.1: Legal Safeguards for Involuntary Land Acquisition and Resettlement

(The laws and sections cited in this table are provided only for the purpose of creating awareness. Please refer to the complete laws and their amendments including the Land Acquisition Act as amended)

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
Legal Safeguards on Permanent Displacement – Provisions for Project Screening			
1	National Environmental Act (1980)	Establishes an Environmental Assessment (EA) procedure in respect of 'prescribed projects'. These provisions apply to all projects except for projects located within the Coastal Zone and the North Western Province (the latter has its own statute).	<p>23AA. (1) ... all prescribed projects that are being undertaken in Sri Lanka by any Government department, corporation, statutory board, local authority, company, firm or an individual will be required to obtain approval under this Act for the implementation of such prescribed projects.</p> <p>23BB. (1) It shall be the duty of all project approving agencies to require from any Government department, corporation, statutory board, local authority, company, firm or individual who submit any prescribed project for its approval to submit within a specified time an initial environmental examination report or an environmental impact assessment report as required by the project approving agency relating to such project, and containing such information and particulars as may be prescribed by the Minister for the purpose.</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
2	Coast Conservation and Coastal Resource Management Act (1980)	Applicable in respect of the Coastal Zone. Any 'development activity' within the Coastal Zone requires a permit. For consideration of an application for a permit, the Director-General may require an environmental impact assessment (EIA).	<i>16. (1) Upon receipt of an application for a permit to engage in a development activity within the Coastal Zone, the Director may require the applicant to furnish an environmental impact assessment relating to such development activity and it shall be the duty of the applicant to comply with such requirement. Every environmental impact assessment furnished under this section shall contain such particulars as may be prescribed.</i>
3	Fauna and Flora Protection Ordinance (1937)	Provides for environmental assessment in respect of any development activity within one mile of the boundary of a National Reserve.	<i>9A. (1) ... no person or organization ... shall within a distance of one mile of the boundary of any National Reserve ... carry out any development activity ... without obtaining the prior written approval of the Director-General.</i> <i>(2) Upon receipt of an application for a permit to carry out a development activity or trade or business within the area specified in subsection (1), the Director-General may require the applicant to furnish an Initial Environmental Examination Report or an Environmental Impact Assessment Report, as the case may be ...</i>
4	Environmental Statute of the North Western Province (1990)	Establishes an Environmental Assessment (EA) procedure in respect of 'prescribed projects'. The provisions are similar to those in the National Environmental Act.	
5	Land Acquisition Act (1950)	Provides for the acquisition of land for a 'public purpose' through MLLD.	<i>2. (1) Where the Minister decides that land in any area is needed for any public purpose, ...</i>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
Legal Safeguards on Permanent Displacement – Provisions for Public Consultation			
6	National Environmental Act (1980)	Provides for an Initial Environmental Examination (IEE) or an Environmental Impact Assessment (EIA). Where the project approving agency decides that an EIA is required for project approval, the EIA report is made available for public comment. It may also result in a public hearing.	<p>23BB (2) A project approving agency shall on receipt of an environmental impact assessment report ... invite the public to make its comments, if any, thereon.</p> <p>(3) ... such project approving agency may, where it considers appropriate in the public interest afford an opportunity to any such person of being heard in support of his comments ...</p>
7	Coast Conservation and Coastal Resource Management Act (1980)	Applicable in respect of the Coastal Zone. Any development activity within the Coastal Zone requires a permit. For consideration of an application for a permit, the Director- General may require an EIA which report is made available to the public for review and comment.	<p>16. (2) The Director shall, on receipt of an environmental impact assessment ...</p> <p>(b) ... notify the place and times at which such assessment will be available for inspection by the public, and invite the public to make its comments, if any, thereon.</p>
8	Fauna and Flora Protection Ordinance (1937)	Provides for an environmental impact assessment including public comment and public hearing.	<p>9A. (3) The Director-General shall, on receipt of an Environmental Impact Assessment Report or an Initial Environmental Examination Report, as the case may be, ...</p> <p>(b) by notice published in the Gazette, notify the place and time at which such assessment or examination ... will be available for inspection by the public and invite the public to make comments, if any, thereon.</p>
9	Environmental Statute of the North Western Province (1990)	Provisions are similar to those in the NEA	

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
10	Land Acquisition Act (1950)	Provides both a regular and an expedited procedure for land acquisition. In terms of the regular procedure, there is provision for the calling of objections from the public prior to proceeding with the acquisition. For urgent acquisitions, Notices under Section 38a proviso are issued after Sections 2 or 4 Notices. When Section 38a proviso is issued after Section 2 Notice there is no opportunity for public consultation. As the best practices recommend allowing more public consultation, issuing of Section 38a Notice after Section 4 Notice is preferred.	<p>4. (1) Where the Minister considers that a particular land is suitable for a public purpose, or that a particular servitude should be acquired for a public purpose, he shall direct the Acquiring Officer ... to cause a notice ... to be given ...</p> <p>(3) The notice referred to in subsection (1) shall-</p> <p>(c) state that ... written objections to the intended acquisition may be made to the Secretary to such Ministry as shall be specified in the notice ... and</p> <p>(d) specify a period within which such objections must be made, such period being not less than fourteen days from the date on which such notice is given.</p> <p>(4) ... When such objections are considered every objector shall be given an opportunity of being heard in support thereof. ...</p>
Legal Safeguards on Permanent Displacement – Provisions for Grievance Redress			
11	Land Acquisition Act (1950)	Provides a limited grievance redress mechanism where decisions relating to the quantum of compensation can be appealed. Inquiries are held into claims by a Board of Review.	<p>9. (1) Where a Notice under Section 7 in respect of any land is published, the Acquiring Officer of the district in which that land is situated shall, on the date on which and at the time and place at which persons interested in that land are directed by that Notice or in accordance with the proviso to Section 7 (2) (c) to appear before him, hold an inquiry into-</p> <p>(a) the market value of that land or of the servitude which is to be acquired over that land;</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
			<p>(b) such claims for compensation as may have been notified to him within the time allowed therefore by that notice or in accordance with the aforesaid proviso ;</p> <p>(c) the respective interests of the persons claiming compensation ; and</p> <p>(any other matter which needs investigation for the purpose of making an award under Section 17.</p> <p>22. (1) A person to whom compensation is allowed ... and who has notified his claim for compensation to the Acquiring Officer within the time allowed therefore by this Act, may appeal to the Board against that award on the ground that the amount of the compensation allowed to him is insufficient ...</p>
Legal Safeguards on Permanent Displacement – Provisions for Raising Objections			
12	Land Acquisition Act (1950)	Provides (under the regular acquisition procedure) a mechanism through which objections to an acquisition of land or servitude can be made.	<p>4. (3) The Notice referred to in subsection (1) shall</p> <p>(c) state that the Government intends to acquire that land or servitude for a public purpose, and that written objections to the intended acquisition may be made to the Secretary to such Ministry as shall be specified in the Notice (hereinafter in this section referred to as the “appropriate Secretary”); and</p> <p>(d) specify a period within which such objections must be made, such period being not less than fourteen days from the date on which such notice is given.</p> <p>(4) Where a Notice relating to the intended acquisition of a land or of a servitude over a land is exhibited under</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
			<p><i>subsection (1) and objections to such acquisition are made to the appropriate Secretary by any of the persons interested in the land within the time allowed therefore by the Notice, the appropriate Secretary shall consider such objections or direct an officer to consider such objections on his behalf and to make recommendations to him. When such objections are considered every objector shall be given an opportunity of being heard in support thereof. After the consideration of the objections the appropriate Secretary shall make his recommendations on the objections to the Minister in charge of the Ministry specified in the Notice (hereafter in this section referred to as the " appropriate Minister "), and such Minister shall, after considering such recommendations, make his own recommendations on the objections to the Minister.</i></p> <p><i>(5) When the time allowed by a notice under this Section for making objections to the intended acquisition of the land or servitude referred to in the Notice has expired and, where any such objections have been made within such time, after the Minister has considered the appropriate Minister's recommendations on those objections, the Minister shall, subject to the provisions of subsection (6), decide whether that land or servitude should or should not be acquired under this Act.</i></p>
Legal Safeguards on Permanent Displacement – Provisions for Improving or Restoring Livelihoods			
13	Land Acquisition Act (1950)	Provides for livelihood compensation. Such livelihood compensation is limited to three times the average annual net profit.	45 (1) ... <i>in determining that amount, all such returns and assessments of income from ... that land ... shall be taken into consideration.</i>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
		<p>However, where the business is the sale of produce from the land to be acquired, no compensation may be paid under this clause. In such an instance, the value of the produce is computed with the value of the land.</p>	<p>... where it is the land which is to be acquired, he shall be entitled to -</p> <p>(iii) compensation for any ... loss of earnings from any business carried on the land on the aforesaid date as may be caused by the acquisition of the land; and</p> <p>(b) the amount of the compensation under paragraph (iii) of this subsection shall not exceed three times the average annual net profits from the business, as shown by the books of accounts, for the three calendar years immediately preceding the date on which the Notice under Section 7 in respect of the land is published in the Gazette ; and</p> <p>(c) no compensation shall be allowed under paragraph (iii) of this subsection if the business is the sale or disposal of the produce of the land to be acquired.</p>
14	Land Acquisition Regulations (2008)	Recognize livelihood compensation in determining the quantum of compensation. These regulations should be read with the provisions in the LAA on livelihood.	<p>(3) Payment of Disturbances and Other Expenses–</p> <p>To fulfil the requirement of the definition of compensation, in addition to the compensation under Sections 1 and 2 above, which are based on the “market value”, compensation for Disturbance based on the “value to owner” basis should be paid under following Sub-headings, after taking into consideration the written claims made.</p> <p>3.4 Cost of advertising;</p> <p>3.5 Refixing cost of fixtures and fittings;</p> <p>3.6 Expenses incurred for transport;</p> <p>3.7 Loss of earnings from business (within the limits given in prevailing Act);</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
			<p>3.8 Increased overhead expenses;</p> <p>3.9 Double payments;</p> <p>3.10 All other expenses to the owner due to the acquisition;</p> <p>3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land ;</p> <p>3.12 When an owner of ... an investment property displaced, additional 10% payment based on market value.</p>
15	Land Acquisition Act (1950)	Provides for exchange of land or land-for-land compensation.	<p>36. (1) Any person to whom compensation for the acquisition of any land is payable under this Act may enter into a written agreement with the Acquiring Officer of the district in which that land is situated to accept, in lieu of the whole or any part of such compensation, a transfer of any other land which is the property of the State. Such agreement shall be signed by that person and by that Acquiring Officer. The amount of compensation in lieu of which the transfer is accepted shall be specified in such agreement.</p>
Legal Safeguards on Permanent Displacement – Provisions for Payment of Replacement Value			
16	Land Acquisition Act (1950)	Provides for determining compensation based on 'market value'.	<p>45. (1) ... the market value of a land in respect of which a Notice under Section 7 has been published shall ... be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that notice in the Gazette ...</p> <p>46. (1) The amount of compensation to be paid under this Act to any person interested in a land shall –</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
			<p>(a) where the compensation is for the acquisition of that land, be based on the market value of that land, or</p> <p>(b) where the compensation is for the acquisition of a servitude over that land, be based on the market value of that servitude.</p>
17	Land Acquisition Regulations (2008)	Seek to eliminate inequities arising from the traditional methods of valuation and determining 'market value'. These regulations should be read with the provisions in the LAA on livelihood.	<p>The basis of assessing the market value of any land or the compensation for any injurious affection caused by the acquisition of any land under this Act.</p> <p>(1) Market Value should be assessed as given under :-</p> <p>1.1 In the case of land where part of a land is acquired and when its value as a separate entity deems to realize a value proportionately lower than the Market Value of the main land the compensation should be proportionate to the value of the main land.</p> <p>(3) Payment of Disturbances and Other Expenses–</p> <p>To fulfil the requirement of the definition of compensation, in addition to the compensation under Section 1 and 2 above, which are based on the "market value", compensation for Disturbance based on the "value to owner" basis should be paid under following Sub-headings, after taking into consideration the written claims made.</p> <p>3.1 Expenses incurred for appearing for Section 9 inquiry;</p> <p>3.2 Expenses for finding alternative accommodation;</p> <p>3.3 Cost incurred in change of residence;</p> <p>3.4 Cost of advertising;</p> <p>3.5 Refixing cost of fixtures and fittings;</p> <p>3.6 Expenses incurred for transport;</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
			<p>3.7 Loss of earnings from business (within the limits given in prevailing Act);</p> <p>3.8 Increased overhead expenses;</p> <p>3.9 Double payments;</p> <p>3.10 All other expenses to the owner due to the acquisition;</p> <p>3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land ;</p> <p>3.12 When an owner of a house or of an investment property displaced, additional 10% payment based on market value.</p>
Legal Safeguards on Permanent Displacement – Provisions for Prompt Compensation			
18	Land Acquisition Act (1950)	Sets out the manner in which compensation is to be paid. It also places restrictions on appeal to the Board of Review where a person had accepted compensation as per the initial award. An amendment to the LAA in 1964 allows staggered payment of compensation in respect of certain types of land.	<p>29. Where an award is made ... the Acquiring Officer of the district ... shall tender to each person who is entitled to compensation ... the amount of compensation allowed to him by that award or, if in lieu of that amount a new amount has been allowed as compensation ... by a final decision on an appeal to the Board or by a decision on an appeal to the Court of Appeal tender that new amount to him, and shall pay the tendered amount to him if he consents to receive it:</p> <p>Provided however that, where,-</p> <p>(a) the total amount of compensation payable to all the persons entitled to compensation in respect of such land, exceeds twenty-five thousand rupees, and</p> <p>(b) such land is not situated within the administrative limits of any Municipal Council, Urban Council or Town Council, and</p> <p>(c) such land does not, on the[relevant] date ... have on it any building which is used for any residential or business purpose,</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
			<p>then, the Acquiring Officer shall, except where the Minister otherwise directs in the national interest, tender and make payment of compensation in the following manner :-</p> <p>(i) forthwith after the said award is made, a sum of twenty-five thousand rupees shall be divided among and paid to the persons who are entitled to compensation in respect of such land in the same proportion as that in which compensation has been apportioned among such persons in such award; and</p> <p>(ii) thereafter the balance compensation shall be divided among and paid to the said persons in the said proportion but in not more than ten equal installments, so however that the entire balance compensation is paid before the lapse of ten years from the date of payment of the said sum of twenty-five thousand rupees ...</p> <p>22. (1) A person to whom compensation is allowed by an award ... may appeal to the board against that award on the ground that the amount of the compensation allowed to him is insufficient :</p> <p>Provided that-</p> <p>(a) where, before such person prefers an appeal ... the whole or any part of the compensation allowed to him ... is tendered to him ... and he does not decline to receive the amount so tendered, he shall not have the right to prefer an appeal against such award, and</p> <p>(b) where, after he has preferred an appeal ... and before such appeal is decided by the Board, the whole or any part of such compensation is tendered to him ... and he does not decline to receive the amount so tendered, the Board shall dismiss such appeal.</p>

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
Legal Safeguards on Permanent Displacement – Resettlement Assistance			
19	Land Acquisition Regulations (2008)	Mandate the provision of assistance in the form of enhanced compensation to affected persons. These regulations should be read with the provisions in the LAA on livelihood.	<p>(3) <i>Payment of Disturbances and Other Expenses–</i> <i>...compensation for Disturbance ... should be paid under following Sub-headings, after taking into consideration the written claims made.</i></p> <p>3.1 <i>Expenses incurred for appearing for Section 9 inquiry;</i> 3.2 <i>Expenses for finding alternative accommodation;</i> 3.3 <i>Cost incurred in change of residence;</i> 3.4 <i>Cost of advertising;</i> 3.5 <i>Refixing cost of fixtures and fittings;</i> 3.6 <i>Expenses incurred for transport;</i> 3.8 <i>Increased overhead expenses;</i> 3.9 <i>Double payments;</i> 3.10 <i>All other expenses to the owner due to the acquisition;</i> 3.11 <i>Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land ;</i></p>
Legal Safeguards on Permanent Displacement – Provisions for Conceiving and Executing Involuntary Resettlement as part of Development Activity			
20	National Environmental Act (1980)	Provides for an environmental assessment process where a development activity follows from land acquisition. A resettlement action plan may be part of the EIA report and thus part of the development project plan.	
21	Environmental Statute of the North Western Province (1990)	Provisions are similar to the NEA.	

No.	Law/subsidiary legislation	Purpose of the law/subsidiary legislation	Provisions for safeguards
Legal Safeguards on Permanent Displacement – Provisions for Payment of Compensation before Displacement			
22	Land Acquisition Act (1950)	<p>Provides both a regular and an expedited approach for acquisition. Under the regular acquisition process displacement can only be affected after the award has been made. The payment of compensation may get delayed where the person displaced appeals against the compensation awarded. However, the person can be displaced notwithstanding such appeal. If one accepts the full compensation or part thereof, one loses the right of appeal.</p> <p>Under the expedited approach displacement can occur prior to compensation being assessed and/or paid.</p>	<p>38. At any time after an award is made under section 17, the Minister may by Order published in the Gazette-</p> <p>(a) where the award relates to the acquisition of any land, direct the Acquiring Officer of the district in which that land is situated, or any other officer authorized in that behalf by such acquiring officer, to take possession of that land for and on behalf of the State, or</p> <p>(b) where the award relates to the acquisition of any servitude, declare that the land over which that servitude is to be acquired shall be subject to that servitude: Provided that the Minister may make an Order under the preceding provisions of this section-</p> <p>(a) where it becomes necessary to take immediate possession of any land on the ground of any urgency, at any time after a Notice under Section 2 is exhibited for the first time in the area in which that land is situated or at any time after a Notice under Section 4 is exhibited for the first time on or near that land, and</p> <p>(b) where it becomes necessary immediately to acquire any servitude on the ground of any urgency, at any time after a Notice under section 4 is exhibited for the first time on or near the land over which that servitude is to be acquired.</p>
Legal Safeguards on Permanent Displacement – Provisions for Monitoring and Assessing Resettlement Outcomes			
23	National Environmental Act (1980)	Requires an EIA report including the Resettlement Action Plan where resettlement is resulting from a 'prescribed project'. The resettlement process may be monitored as part of the overall project monitoring.	

Table 4.2: NIRP Safeguards on Involuntary Land Acquisition and Resettlement

*(The provisions cited in this table are provided only for the purpose of creating awareness.
Please refer to the complete policy document)*

Provisions for Project Screening
1. Involuntary resettlement should be avoided or reduced as much as possible by reviewing alternatives to the project as well as alternatives within the project.
Provisions for Public Consultation
2. Affected persons should be fully involved in the selection of relocation sites, livelihood compensation and development options at the earliest opportunity.
Provisions for Grievance Redress
3. A system of internal monitoring should be established by PEAs to monitor implementation of Resettlement Action Plans, including grievances.
4. Objectives of the policy include making all affected persons aware of processes available for the redress of grievances that are easily accessible and immediately responsive.
Provisions for Improving or Restoring Livelihoods
5. Ensure that people adversely affected by development projects are fully and promptly compensated and successfully resettled and that the livelihoods of the displaced persons are re-established and the standard of living improved.
6. A Resettlement Action Plan is defined as a time-bound action plan with budget setting out resettlement strategy including entitlements. Entitlements are defined as a variety of measures including income restoration and interim support.
Provisions for Payment of Replacement Value
7. Compensation for loss of land, structures, other assets and income is based on full replacement cost including transaction costs.
8. Replacement Cost is defined as the level of valuation for expropriated property sufficient to actually replace lost assets, or to acquire substitutes of equal value or comparable productivity or use inclusive of transaction costs.
Provisions for Prompt Compensation
9. Ensure that people adversely affected by development projects are fully and promptly compensated and are successfully resettled.
10. Compensation for loss of land, structures, other assets and income should be based on full replacement cost and should be paid promptly.
Resettlement Assistance
11. Entitlements include interim support, transfer assistance, relocation and other benefits due to affected persons, depending on the nature of their losses, to improve their economic and social base.

Provisions for Compensation and Resettlement Assistance for Displaced Persons without Title to Land or any Recognizable Legal Rights to Land

12. Affected persons who do not have documented title to land should receive fair and just treatment.

Provisions for Preparing Resettlement Plans and their Disclosure

13. A comprehensive Resettlement Action Plan is required where 20 or more families are affected and that if less than 20 families are affected the policy still applies but a plan can be prepared to a lesser level of detail.

14. The Central Environmental Authority (CEA) will review and approve the Resettlement Action Plans prepared by the PEAs, and make plans publicly available.

15. A Resettlement Action Plan is a time-bound action plan with budget setting out resettlement strategy, objectives, options, entitlements, actions, approvals, responsibilities, monitoring and evaluation.

16. A system of internal monitoring should be established by PEAs to monitor implementation of Resettlement Action Plans.

Provisions for Conceiving and Executing Involuntary Resettlement as part of Development Activity

17. Resettlement should be planned as a development activity for the affected people.

Provisions for Monitoring and Assessing Resettlement Outcomes

18. A system of internal monitoring should be established by PEAs to monitor implementation of Resettlement Action Plans.

19. PEAs should make adequate resources available for monitoring and evaluation.

20. A further system of external monitoring and evaluation by an independent party should be established to assess the overall outcome of resettlement activities.

21. The monitoring and evaluation reports should be reviewed by the PEA, CEA and MLLD and action taken to make improvements where indicated.

22. Affected persons and other stakeholders should be consulted in monitoring and evaluation.

5. DETERMINING COMPENSATION FOR PRIVATE LAND ACQUIRED

The procedures for compulsory acquisition of private land and payment of compensation have a history which goes back to the Land Acquisition Ordinance No: 3 of 1886. It was replaced by the Land Acquisition Act No: 9 of 1950 (LAA). However, the professionals such as valuers, attorneys, and acquiring officers sometimes are not fully conversant with the detailed compensation procedures. This leads to ambiguities and misunderstandings about estimation and payment of cash compensation for acquired land. On the other hand, it is important that affected persons possess sufficient understanding of legal and practical aspects of compensation payments including valuation procedures in order to safeguard their entitlements. Communication of such information to the affected persons would not only help to minimize grievances arising from land acquisition and payment of compensation, but also delays in effective implementation of the process. This chapter provides a broad overview of the valuation procedures of calculation and payment of compensation.

5.1 Definition of Compensation

In case laws, compensation is defined as ‘the amount of money required to make the owner no better or worse off than if no land had been acquired from him’.

Payment of compensation can take place on three types of contexts

- i. Compensation for **land acquired**
- ii. Compensation for **injurious affection and severance**, and
- iii. Compensation for **disturbance and other losses**

Accordingly, a compensation equation can be built as follows.

Compensation = Market value of land acquired + Severance and Injurious Affection to land retained + Disturbance and other losses

5.2 Payment of Compensation

The procedures for the payment of compensation under compulsory acquisition of land are described in Part VI of the LAA.

Section 46(1) of the LAA prescribes that the amount of compensation payable to any person interested in a land should be determined on the basis of;

- Market Value of the land or servitude to be acquired, PLUS
- Severance [46(1)(i)]; Injurious Affection [46(1)(ii)]; Loss of Earnings [46(1)(iii)] and Reasonable Expenses for Change of Residence[46(1)(iv)]

The LAA defines market value as;

“.....the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that Notice (Sec.7) in the Gazette” [Section 45 (1)]

Furthermore, the LAA regulates the compensation for;

- severance and injurious affection to a maximum of 20 percent of the market value of the property acquired;
- loss of earnings for maximum of 03 times (300 percent) of the average net profit [but not for the sale of produce of the same land]

as shown in the books of accounts for three years prior to the publication of Section 7 Notice.

5.3 Valuation and Payment of Compensation

The enforcement of the provisions of the LAA in paying compensation for acquired private properties has raised several criticisms. They revolve around the main issues of the adequacy of compensation. The main issues in this regard are:

- ☑ When acquired strip of land is treated as 'separate entity' [based on separate entity principle under Section 45(1)] and not as a part of the main land in determining the market value of the strip, the strip of land gets a much lower value than its real market value. Such cases have been frequently observed in land acquisition programmes for road development projects.
- ☑ The prescribed compensation for injurious affection and severance with a ceiling of 20 percent of the market value builds up a low threshold for compensation, especially, in case where an acquired strip of land is considered as a separate entity.
- ☑ When compensation is determined for an acquired old building based on its *age* as a major criterion, it deprived the affected party in getting suitable alternative accommodation elsewhere. This raises several issues including the need for the payment of reinstatement value of the building or its replacement cost.
- ☑ Compensation paid for disturbances is hardly sufficient to reflect the impact. Compensation for disturbance caused by land acquisition has to be brought under the broad definition of compensation equation given in the Act. Usually compensation is

limited to loss of earnings and for change of residence.

5.4 Land Acquisition and Resettlement Committee (LARC)

The **Land Acquisition and Resettlement Committee (LARC)** was established in 2001 by a Cabinet Memorandum to facilitate the payment of replacement cost of acquired land and property in a project where acquisition of a large number land parcels took place for a highway development project executed by the Road Development Authority of the Ministry of Ports and Highways. The LARC system incorporated several measures to address the gaps emerging from the enforcement of the provisions in the LAA some of which were described in the preceding section. Another significant feature of LARC was to create space for the participation of the affected persons as legitimate members of the committee. This allowed the affected persons to proactively engage in a process of negotiation, express their grievances, and to ensure that their voices are heard in decision-making. Moreover it acted as an efficient grievance redress mechanism.

In road sector projects, the LARC introduced a compensation package in addition to the statutory compensation entitled by the affected persons. The package included compensation for;

- ☑ loss of land [at replacement cost]
- ☑ loss of houses/structures by tenants, dwellers/encroachers
- ☑ delays in providing replacement land for fully affected owner/occupant [a relocation allowance]
- ☑ vacation of houses on or before the prescribed timeframe by owner/occupants [an incentive allowance]
- ☑ shifting costs of affected families

- ☑ vulnerable groups e.g. female headed households, poor small farmers, persons with disabilities and elderly persons
- ☑ loss of buildings belonging to State organizations

Though originally intended to serve the purpose of land acquisition and payment of compensation for road sector development projects, the policies and principles of the LARC system were gradually adopted by several other Ministries who required engaging in similar land acquisition exercises for their respective development projects. Many of these principles and policies were incorporated into the 2008 Regulations resulting in the Regulations taking precedence over the LARC system.

5.5 National Policy for the Payment of Compensation

At the request of the Ministry of Land and Land Development, the Cabinet of Ministers approved the National Policy on Payment of Compensation in November 2008, in order to establish a uniform system of compensation payment [Memorandum No: CP 07/1183/336/011 dated 25.07.2007 and Cabinet Paper No: 07/2025/336/011-1 dated 02.11.2008]. It superseded all other *ad hoc* and special compensation packages that existed on the date of the Cabinet approval of the Policy. However, projects that had already introduced such relief schemes and published Section 2 under the LAA before 01.09.2008 were allowed to continue with the applicable packages.

Instructions on assessment of compensation under the National Policy on Payment of Compensation were communicated to all Acquiring Officers [Land & Land Development Ministry Circular No: 4/2008(1) dated 06.10.2008].

5.6 Land Acquisition Regulations 2008

The Land Acquisition Regulations 2008 ratified by the Parliament of Sri Lanka on 17th March 2009 as regulations under the LAA gave effect to the National Policy on Payment of Compensation. [Regulations issued by the Minister of Land and Land Development under Section 63(2) (f) of the Land Acquisition Act No: 9 of 1950, approved by the Parliament of Sri Lanka on 17th March 2009 and published in the Extraordinary Gazette No: 1596/12 dated 07.04.2009].

The regulations are applicable to any land acquisition where ‘intention of acquisition’ was published under the LAA on or after 17.03.2009. According to the LAA, the ‘intention of acquisition’ is expressed along with the publication of Section 4 Notice. In situations where Section 4 Notice is not published and Section 38(a) Notice has been published after the publication of Section 2 Notice, Section 2 Notice becomes ‘intention of acquisition’.

Summary of compensation assessment procedures applied

Period	Procedure Applied
Before 2001	Part II of Land Acquisition Act No: 9 of 1950
After 2001 up to 31.08.2008	LARC system for specific projects (road sector) and Part II of LAA
From 01.09.2008 up to 16.03.2009	National Policy for Payment of Compensation and LARC for projects which had commenced before 31.08.2008
From 17.03.2009 onwards	Land Acquisition Regulations 2008 made under the LAA

5.7 Key Components of the Land Acquisition Regulations

In the sections to follow, key components of the Land Acquisition Regulations of 2008 are presented with explanatory notes.

5.7.1 Assessment of the ‘Market Value’

The LAA prescribes that compensation for acquired land should be based on its ‘market value’ [Section 46(1)]. In instances where there are several interested parties, the compensation calculated on market value and payable to each party should be **proportionate to the respective interests** based on their type of ownership. A “person Interested” is defined in Section 65 of the LAA.

5.7.1.1. When the entire land is acquired

Compensation should be calculated according to the provisions of Section 46 (1) and 45(1) LAA.

The market value is defined as ‘the value of a land in respect of which a Notice under Section 7 has been published shall, subject as hereinafter provided, be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that Notice in the Gazette’ [Section 45 (1)].

5.7.1.2. When a part of a land is acquired

2008 Regulations	Explanatory Notes
<p>1.1 In the case of land where part of a land is acquired and when its value as a separate entity deems to realize a value proportionately lower than the Market Value of the main land the compensation should be proportionate to the value of the main land</p>	<p>Factors to be considered:</p> <ul style="list-style-type: none"> • physical condition of the land • extent of land acquired and the original land plot • the highest and best use of the main land • legally permissible market value, and • any encumbrances

Box 5a: Tips and guides for valuation**Scenario 1: When strips of commercial/residential lands are acquired**

Irrespective of the size of the main land, determine the site value of a buildable front block and adopt the same rate for acquired portion uniformly subject to the five conditions given under "explanatory notes" in the table appearing under section 5.7.1.2 above.

Scenario 2: When strips of coconut lands with site value are acquired

Here, the provisions in the *Tea and Rubber Estates (Control of Fragmentation) (Amendment) Act No: 20 of 2005 – Sec. 10* applies.

If the extent of the main land is less than 10 acres (4 hectares) and a part of it is acquired, site value could be paid, subject to availability of evidence of demand in the open market.

Scenario 3: When strips of coconut lands with site value are acquired, where extent of some of the main lands are over 10 acres

Compensation should be based on site value for parts of main land below 10 acres in extent when evidence is available as to the market value of the land. Prevailing market value for commercial and residential plots will be paid for lands below 10 acres in extent.

Scenario 4: When extent of the main land is less than the minimum plot size (6 perches) and part of it is acquired

Value the main land as it is and apportions the amount for the acquired portion. Compensation may be based on, (a) 75 percent of site value of a buildable block subject to the five conditions given in explanatory notes and (b) Rate based on Existing Use Value (EUV) if there is a building.

Scenario 5: Identification of main land when two lands have been amalgamated to form a buildable plot having a minimum plot size of 6 perches, where the extent of the main land of the acquired portion as a separate entity is less than 6 perches.

Both title deeds should be scrutinized and the total extent of the amalgamated two lands is to be taken together in order to determine the size of the main land.

Scenario 6: Lands with various shapes

When the front land is a narrow strip used as access/garden to rear main land and part of the front land is acquired, valuation should be based on 'Use' subject to highest and best use, but should not be below agricultural value.

Scenario 7: When a part of a building is acquired and the remaining part is still usable

Compensation should be based on DRC value (Depreciated Replacement Cost) only for the part acquired. Reinstatement cost [explained later] should be paid for the balance part of the building etc.

Scenario 8: - When a part of a building is acquired and the remaining part is unusable

Justification is required that the balance part cannot be used further. After justification, DRC value of the entire building should be paid. Reinstatement cost [explained below] should be paid subsequently as additional compensation.

5.7.1.3 When a servitude is acquired

According to Section 45 (2)

- (a) When a servitude is created over a land, it would adversely affect the market value of the land and should be considered an encumbrance. Therefore the market value of the land would decrease. Therefore when a **new servitude** is to be created by the acquisition under the LAA the amount by which the market value of the **servient tenement** of the servitude will be diminished by the creation of the servitude.
- (b) When a servitude is acquired or cancelled, it will affect the use of the adjoining land decreasing its market value. Therefore, it is recognized where it is an **existing servitude** which is to be extinguished, be the amount by which the market value of the **dominant tenement** of the servitude will be diminished by the extinction of the servitude.

Method of Valuation: First, decide whether the damage is temporary or permanent and thus compensation should be assessed accordingly. If damage is permanent, 'Before and After Method of Valuation' should be adopted to calculate compensation for acquisition of servitudes.

5.8. Additional Compensation

Buildings that are used for occupation and or business purposes or are intended to be used for occupation and or business purposes at the date on

which the intention to acquire is published are entitled for compensation based on reinstatement value.

However, buildings/structures which are fully or partially completed and appeared to have been abandoned will be excluded from compensation based on reinstatement value/re-construction cost. In verifying whether a building/structure is abandoned or not, the valuer may make use of;

- (a) his/her personal opinion,
- (b) approved building plan, and
- (c) date on which the construction of the building was stopped as a result of the intended acquisition. Dates of the Sections 2 or 4 Notices can be used as points of reference.

5.8.1. Computation of Additional Compensation

- Step 1 - Calculate the cost of re-construction
- Step 2 - Deduct the value of building based for determination of Market Value under Section 1.1
 - i Building value on investment basis (i.e. Market Value **less** Land Value, based on comparisons)
 - ii. Value of building on Contractor's Basis (Depreciated Replacement Cost)
- Step 3 - Balance is taken as an additional compensation

2008 Regulations	Explanatory Notes
1.2 Where at the date of intention to acquire was published, the building is used for occupation and or business purposes or is intended to be used for occupation and or business purposes, the difference between the cost of re-construction and the value of building based for determination of Market Value under Section 1.1, should be paid as an additional compensation.	A building will qualify for payment of any additional value based on cost of reinstatement if and only if it has not been abandoned.

5.8.2. Reinstatement cost for buildings and compensation for other developments on encroached lands

The following steps should be followed in determining compensation for improvements on encroached lands.

- ☑ The Acquiring Officer should include the encroacher as an interested party under Section 10 (1) (a)
- ☑ In the case of **encroachments on state lands**, with the concurrence of the Divisional Secretary in writing, reinstatement value for developments/improvements done by the encroacher may be paid.

- ☑ **Encroachments on private land** where the owner has not contested the encumbrances in a Court of Law, the person carried out the improvements will qualify to receive the value upon adequate proof of that improvements made by such person.

5.9. Compensation for paddy lands- Value based on development potential

The Land Acquisition Regulations of 2008 also set the provisions for determining compensation for paddy (rice) lands.

2008 Regulations	Explanatory Notes
<p>1.3 Value based on development potential could be considered for paddy lands acquired where permission to fill such lands have been granted by the Agrarian Services Commissioner General.</p>	<p>Officers designated should:</p> <ul style="list-style-type: none"> • Review Section No: 32, 33 & 34 of Agrarian Development Act No: 46 of 2000 and the procedure for obtaining filling permission laid down in the Circular No: 4/8/9 dated 13.5.2005 by the Secretary to the Ministry of Agriculture, Livestock, Lands & Irrigation addressed to the Agrarian Services Commissioner General • Obtain copies of formal approval for filling • Ensure that permit is produced at Section. 9 inquiry • Base the valuation on conditions pertaining to: <ul style="list-style-type: none"> ■ permitted use (residential, commercial and any other) ■ extent of the land allowed for filling ■ time validity of filling permission - Special attention should be drawn to stop filling due to intended acquisition - i.e. date of Sections 2 or 4.

Box 5b: Conditions under which permission is granted to fill paddy land

If the request to fill the land is for residential use;

- extent of the land does not exceed 10 perches [in rural areas] or 6 perches [in urban areas]
- certificate by Divisional Secretary to the effect that the applicant has no other house or suitable highland to build a house

If the request is for commercial use;

- certificate by the Divisional Secretary to the effect that the applicant has no highland for the purpose

If the request is for the use of a project;

- recommendation from the relevant institution with the project report
- reasons for not having access to highland [if the purpose is to provide access]
- recommendation from the authority who could authorize such conversion

Other requirements;

- cancellation of permits already issued from January 2004 and previous years where such permissions have not been utilized
- cancellation of conditional permits already issued for a specific period and where such conditions have not been fulfilled
- consent from co-owner, life holder and tenant cultivator

Box 5c: Types of paddy lands for which permission is not granted for filling

- Situated within a “Yaya”
- Paddy land bordering an irrigation Cannel
- Paddy land bordering a tank bund or directly cultivated under the tank
- Paddy lands where three sides are surrounded by paddy lands
- Customarily a land using/used as a threshing floor
- A paddy land under cultivation / cultivable or cultivated in immediate past seasons
- Paddy land used for cultivation of perennial crops

5.10. Tenant / Statutory Tenant

2008 Regulations	Explanatory Notes
<p>1.4 When an acquired building is occupied by a tenant / statutory tenant, protected under the provisions of the Rent Act No: 7 of 1972 (as amended thereafter) the compensation should be ascertained in proportion having regard to the provisions of Rent (Amendment) Act No. 26 of 2002.</p>	<p>Four steps should be followed</p> <p>Step I Unencumbered freehold interest should be calculated</p> <p>Step II and III The statutory entitlement of the landlord and the tenant under Rent Amendment Act No.26 of 2002 should be calculated</p> <p>Step IV Unencumbered value should be apportioned between tenant and the landlord accordingly</p>

The compensation is assessed based on the assumption that vacant possession can be obtained under the provisions of the Rent (Amendment) Act No: 26 of 2002.

This Amendment is effective from 24.10.2002 and these provisions will apply where Section 7 Notice is published on or after that date.

5.10.1. Obtaining vacant possession

When a property is occupied by a protected tenant under the Rent Act, it will adversely affect the market value of the property, as only a legal rent can be recovered from such properties. Therefore obtaining tenant free status is vital. According to the Rent Act, there are two ways by which the vacant possession can be obtained.

1. Obtaining a demolition order under Section 18A and
2. Ejection of a tenant under Section 22

Obtaining a Demolition Order [Section 18 A – Rent (Amendment) Act No: 26 of 2002]

The Commissioner of National Housing has the authority to issue an order to the owner to demolish buildings over 40 years old, but subject to the following conditions:

- owner to provide alternative accommodation to the tenant, or
- pay two years rent as an advance to the tenant to find alternative accommodation, or
- owner pay the tenant 10 years annual value of the premises as at the date of application for demolition or 20 percent of the market value of the premises as determined by the Chief Valuer or pay Rs. 150,000, whichever is higher.

Obtaining a demolition order is preferred to an ejection order of a tenant. In the event of obtaining a demolition order, it is necessary first to verify that the building is 40 years old. This should follow three valuations and four different steps. The following procedures are recommended for conducting the three valuations.

Valuation 1: Determination of market value of unencumbered freehold interest

Ignore the building and conduct the valuation only for the land, based on the highest and the best use of the land. If the value of the land with building is higher than the bare land value, take the higher value.

Valuation 2: Determination of market value of encumbered freehold interest and probable market value of the statutory tenancy

It is necessary that the an assessment of the market value of the premises is conducted as per the following guidelines:

- ☑ Apply only the investment basis of valuation
- ☑ Assess a suitable rent based on the current use and the condition of the building
- ☑ Adopt the lowest possible Years Purchase in Perpetuity (YP) for the type of property to be demolished

- ☑ Determine a **reasonable amount** to be paid for obtaining vacant possession but not less than the highest amount stipulated in the Act, i.e. 10 years annual value of the premises as at the date of application for demolition or 20 percent of the market value of the premises as determined by the Chief Valuer or Rs. 150,000, whichever is higher.

Valuation 3: Apportion the Market Value of unencumbered freehold interest to the ratio of amount for encumbered freehold interest and compensation to be paid to the statutory tenant according to Rent Act(Sec. 46 (1) LAA)

Box 5d: Tips for calculating ‘reasonable amount’ and ‘market value of encumbered freehold interest’

Calculating reasonable amount

- Rental benefit should be assessed by calculating the difference between the rental value assessed by the Chief Valuer to determine market value under the Rent Act and the Authorized Rent of the premises.
- Determine the future tenancy expectancy period depending on the condition of the building and adopt the lowest possible rate of return (YP) for the type of property and determine the Probable Gross Value of the rental benefit; i.e. rental benefit multiplied by Years Purchase (YP) in Perpetuity)
- Deduct a percentage, preferably for non-marketability factor and determine the market value of the rental benefit, which is considered the **Reasonable Amount**, as specified in the Act. As a practice 25 percent of the probable gross value is considered reasonable. However, it should not be less than the highest amount stipulated in the Act. i.e. 10 years annual value of the premises as at the date of application for demolition or 20 percent of the market value of the premises, as determined by the Chief Valuer or to pay Rs. 150,000, whichever is higher.

Calculating market value of encumbered freehold interest

- Take the unencumbered market value already calculated above
- Deduct compensation to be paid to the statutory tenant (**reasonable amount**) as calculated above together with the estimated litigation cost
- The balance amount should be discounted by taking into account the period from the time of making the application to the National Housing Commissioner for a demolition order and the time the demolition order is obtained. In discounting the rate of return for deferment will be based on market borrowing rate, i.e. about 2 percent above the Treasury Bill Rate.

5.10.2. Entitlement of compensation for premises with protected tenants

The Land Acquisition Regulations of 2008 makes the following provisions.

Regulation No	Application
1.2	Reinstatement cost is not applicable as valuation is on the basis of demolition of building
2	Freeholder for reconstruction of the front wall only
3.1	Both freeholder and tenant
3.2	Both tenant and freeholder when freeholder is also an occupier
3.3.	Both tenant and freeholder when freeholder is also an occupier
3.4	Tenant, if commercial
3.5	Tenant, if commercial
3.6	Tenant
3.7	Tenant
3.8	Tenant
3.9	Tenant
3.10	Both parties
3.11	Both parties
3.12	Both parties proportionately

5.11. Injurious Affection and Severance

Injurious affection can cause from when only a part of the land is acquired or no land is acquired at all [McCarthy Rules]. However, the LAA does not make provisions for the latter.

Severance can cause when the land is severed by the acquisition. In such situations, the claimant is entitled to receive compensation not only for the

part of the land that was acquired but also for severance and other injury which may cause to the remaining land formerly held with it.

The LAA prescribes that 20 percent of the market value determined for the acquired land should be paid as compensation for injurious affection and severance [Sections 46(1) (i) and (ii)]. Meanwhile, the Land Acquisition Regulations 2008 stipulate that damages caused by ‘severance and injurious affection’ should be fully compensated.

It is recommended that ‘Before and After Method of Valuation’ is applied for each single case when calculating compensation for severance and injurious affection.

5.12. Payments for Disturbances and Other Expenses

Judicial decisions over the past decades have established the following important principles in respect of the assessment of compensation for disturbance.

- The losses must arise as a result of serving a notice for land acquisition
- Disturbance compensation should be based on the **value to owner** basis and should be limited to the actual loss suffered, as proved by the owner or to an estimate of that loss if it has not been incurred at the time.
- The loss must be capable of assessment. Very speculative losses or losses which are too remote must be ignored.
- The compensation for land and other losses should be regarded as one compensation package.

The claimant has a legally recognized duty to make every effort to minimize his losses due to acquisition by seeking and accepting suitable alternative premises. There are also some general principles that

apply to the entitlement to, and assessment of a claim for disturbance compensation.

There are three main principles to be taken into consideration when compensation for disturbance is determined.

1. All losses to be recovered should not be too remote, and should arise from the consequences of the dispossession of the owner
2. There is a causal connection between dispossession and the loss, and
3. The claimant's duty to mitigate has been satisfactorily discharged.

According to Regulations of 2008, compensation for the acquired land and severance and injurious affection resulting from land acquisition should be determined by the 'market value' of the affected properties. However, the same regulations prescribe a different methodology for calculating compensation for 'Disturbance' caused by land acquisition. Accordingly, compensation should be determined taking into account the 'value to owner' of the property affected as per the written claims submitted by the affected persons. Compensation for Disturbance could be paid under the following sub-headings.

Payment for disturbances and other expenses

2008 Regulations	Explanatory Notes
3.1 Expenses incurred for appearing at the inquiry under Section 9	The payment should not exceed Rs. 10,000/-
3.2 Cost of finding alternative accommodation	<p>These expenses should be paid considering the type of house occupied.</p> <ol style="list-style-type: none"> 1. maximum rental of Rs. 10,000/- per month for properties situated in Municipal Council areas 2. Maximum rental of Rs. 7,500/- per month for properties situated in Urban Council areas 3. Maximum rental of Rs. 5,000/- per month for properties situated in Pradeshiya Sabha areas 4. If the anticipated displacement is temporary occupation maximum of 3 months rental is payable 5. If the anticipated displacement is permanent a maximum of 6 months rental is payable¹. Rs. 10,000/- for houses where floor area is less than 1000 square feet

<p>3.3 Cost incurred in change of residence - shifting</p>	<ol style="list-style-type: none"> 1. Rs. 10,000/- for houses where floor area is less than 1000 square feet 2. Rs. 15,000/- for houses where floor area is between 1000-2000 square feet 3. Rs.25,000/- for houses where floor area is more than 2000 square feet 4. If there are sub families in the above households payment should be divided proportionately 5. For other properties, maximum amount of Rs. 25,000/- depending on the nature of occupation
<p>3.4 Cost of advertising</p>	<p>Applicable for businesses where permanent displacement occurs</p> <ol style="list-style-type: none"> 1. Informal business - Rs.2,500/- 2. Formal business - Rs.15,000/-
<p>3.5 Re-fixing cost of fixtures and fittings</p>	<ol style="list-style-type: none"> 1. For a house/residence - Rs. 5,000/- 2. In case of business premises or any constructions of specified nature the amount should be based on actual computations and steps should be taken to avoid any double counting
<p>3.6 Expenses incurred for transport</p>	<p>Included in 3.1 and 3.3</p>
<p>3.7 Loss of earnings from business (within the limits given in the prevailing Act)</p>	<ol style="list-style-type: none"> 1. Rs. 15,000/- per month for informal businesses 2. For formal businesses compensation amounts should be based on accounts and tax returns pertaining to preceding 3 years
<p>3.8 Increased overhead expenses</p>	<p>Should be recommended as per the circumstances</p>
<p>3.9 Double payments e.g. rents, rates etc.</p>	<p>Should be recommended as per the circumstances</p>
<p>3.10 All other expenses to the owner resulting from the acquisition</p>	<p>For example;</p> <ol style="list-style-type: none"> 1. The loss sustained because of the compulsory sale of the business due to the acquisition e.g. sale of stock

<p>3.11 Any other additional expenses for disturbance or compensation not considered under any other subsection of this Act which is directly not connected to market value of the land</p>	<p>Disturbances for tenants should be assessed under this category. In addition the following can be considered.</p> <ol style="list-style-type: none"> 1. Payment in respect of vulnerable persons such as old and disabled people who are dependent on APs 2. Self-employment <p>The maximum payment for any of the above category is Rs. 15,000.</p>
<p>3.12 When an owner of a house or of an investment property is displaced, additional 10 percent payment based on market value.</p>	<p>Additional 10 percent payment can be made,</p> <ol style="list-style-type: none"> 1. for a residential property when the possession is given at the relevant date 2. for let on and leased properties when the valuation is based on the investment method 3. where the value is purely based on the agricultural potential considering the displacement and loss of income

Note: Amounts recommended under explanatory notes in the table are subject to change, according to the actual expenses incurred and the time factor.

5.13 Conclusion

The Country Safeguard Policy pertaining to involuntary land acquisition ensures that persons affected by land acquisition receives adequate compensation so that they could maintain the same socio-economic status that they enjoyed prior to land acquisition, or that their living standards are raised to a higher level compared with the pre-acquisition level particularly in the case of poor. The Land Acquisition Regulations of 2008 under 'Disturbance' make the necessary provisions for compensating every possible costs incurred by the affected persons in compulsory acquisition of their

properties. Section 3.11 of the 2008 regulations within the framework of the 'value to owner' encompasses a range of disturbances which allows space for considering a wide range of benefits to project-affected persons and commercial establishments. The total package of compensation and other payments would bring compensation under the LAA, and its regulations to the level of 'replacement cost' which is also a best international practice. However, in paying compensation and providing other cash assistance, it is necessary to verify that the recipient would get 'replacement cost' for any loss of property.

6. ACQUISITION PROCESS AND PROCEDURES

Compulsory acquisition of private land for a 'public purpose' is a common phenomenon in most countries. Lands thus acquired are utilized for development projects initiated and supported by government agencies. Such projects include the construction of highways and road networks, railways, ports, housing schemes, power projects and rural development projects. The Land Acquisition Act (LAA) No.9 of 1950 prescribes the steps that are to be followed by the Government of Sri Lanka or any of its agencies in acquiring private land for a public purpose. The estimated time frame for the completion of land acquisition process is 72 weeks. However, in practice, this process takes much longer duration and sometimes runs over to several years. This chapter describes the different steps to be followed in the land acquisition process, as stipulated in the LAA⁵

6.1 Land Acquisition Process and Procedures

Step 1: Investigation of the land, preparation of acquisition proposal and obtaining approval [Section 2 of LAA]

- 1.1 Land can be acquired only under the LAA by the MLLD. Prior to making a request, the Project Implementing Agency should investigate the suitability of the land from that area and gather required information including the description of the land, location of the land, its suitability for the relevant public purpose, name, extent and boundaries of the land (with a sketch plan), name/s of the owner of the land, and the name of the district, divisional secretariat division, *gramaniladari* division and the village where the land is located.
- 1.2 The Project Implementing Agency (PIU) develops a proposal for acquisition of the said land based on the outcome of this investigation. A special format entitled 'Application for Acquisition of Land for Public Purpose (Land Order 248 (B) 3)' is used for preparing this proposal. The PIU submits this proposal to its line ministry. The secretary of the line ministry prepares a request to the secretary of the MLLD. This request is prepared using a special format entitled "Application for Land Acquisition under Land Acquisition Act, (Chapter 460), B.A.L.29 and Land order 248(B) 1." These formats can be accessed via the website of the MLLD⁶
- 1.3 The Secretary of the MLLD submits his recommendations to his/her minister seeking his/her approval for the acquisition of the land.
- 1.4 The Minister of Land and Land Development then will make a decision that the land is needed for a public purpose and a Notice under Section 2 of the LAA will be issued.

⁵ Supplementary information on land acquisition procedures can be obtained from the official website of the Ministry of Land and Land Development <http://www.landmin.gov.lk>

⁶ http://www.landmin.gov.lk/web/index.php?option=com_phocadownload&view=category&id=2%3Aaquisition&Itemid=68&lang=en

Step 2: Publication of Section 2 Notice and preparation of advance tracing [Section 2 of LAA]

- 2.1 The Secretary of MLLD communicates Minister's order to the Acquiring Officer of the respective division where the land authorized for acquisition is located. Normally, the Acquiring Officer is the Divisional Secretary of the area where the land identified for acquisition is situated. However, under special circumstances, the Minister of Land and Land Development has the powers to designate another official to function as the Acquiring Officer.
- 2.2 The Acquiring Officer exhibits the decision of the Minister in public places in the proposed project area where the land is located through the *gramaniladhari* of the Division. This is called Section 2 Notice. A copy of the Notice prepared in Sinhala, Tamil and English is also sent to the land owner via mail if his/her identity and address are known. This Notice shall state that land specified in the Notice is required for a public purpose and that all or any of the acts authorized by sub-section 3 of Section 2 to ascertain the suitability and adequacy of the land for the proposed public purpose, i.e., survey and take levels of the land, dig or bore into the sub-soil, setting out the boundaries of the land, and demarcation of the area required for the proposed activity will be carried out.
- 2.3 The Acquiring Officer requests the Surveyor General to survey the land and prepare a survey plan of the land which is called 'advance tracing'. The advance trace includes information such as (a) name of the owner /

tenant / lessee of the land and servitude; (b) extent of the land and its boundaries; (c) buildings, structures and cultivations on the land; and (d) name of the person who showed the boundaries of the land.

Step 3: Intention of acquisition and calling for objections [Section 4 of LAA]

- 3.1 For the purpose of LAA, Section 4 Notice is considered the Notice of 'Intention of Acquisition'
- 3.2 Within a period of twelve months of issuing the Section 4 Notice, actions that lead to sell or otherwise dispose of that land or do any act which, directly or indirectly depreciates the value of that land as at the date of such issue of Notice should not be carried out in respect of the particular land. Any such sale or disposal of land becomes null and void. If improvements are done after the date of the notice, they are ignored (unless it is specifically mentioned under Section 48(f) of LAA) when assessing compensation for the land acquired. A person who is responsible for sale or dispose of a particular land can be charged with a fine not exceeding Rs.1000 by the court.
- 3.3 After issuing the Section 4 Notice to the owner/interested parties of the land, they are granted fourteen days to submit any objections.
- 3.4 The owner of the land or any other interested party submits their objections (if any) in writing to the Secretary of the relevant line ministry.
- 3.5 The Secretary of the line ministry or by an officer so directed conducts an inquiry into

the objections raised by the interested parties under the provisions of Section 4(4) of the LAA on a pre-fixed date and time [If complainants requested for a fresh date for the inquiry, it should be granted]. Taking into consideration the reasons explained by the interested parties for their objections to acquisition, Secretary to the line ministry/or the officer appointed compiles a report together with his/her recommendations as to whether the land should be acquired or not.

- 3.6 The Secretary submits his/her recommendations to his/her Minister for his/her decision. The Minister in turn forwards his recommendations to the MLLD.
- 3.7 The Secretary of the MLLD submits this report to the Minister of Land and Land Development for his final decision under Section 4(5) as to whether the land should be acquired or not.

Step 4: Decision to acquire land and preparation of preliminary plan [Section 5 & 6 of LAA]

- 4.1 The Minister of Land and Land Development determines whether to acquire or not the land under Section 4(5) of LAA for a public purpose through Section 5.
- 4.2 The determination by the Minister of Land and Land Development to acquire should be published in the government Gazette in Sinhala, Tamil and English.
- 4.3 The Acquiring Officer exhibits the gazette notification of the decision of the Minister of Land and Land Development in public

places on or near that land through the *gramaniladari* of the division. This is called Section 5 Notice. The Section 5 Notice describes the purpose for which the land is acquired.

- 4.4 The Acquiring Officer requests the Survey Department to survey the land and to prepare the preliminary plan (PP) under the provisions of Section 6 of LAA.
- 4.5 The Survey Department surveys the land and prepares the preliminary plan, preferably based on the advance tracing. The information of the plan should be the same as the information given in the advance tracing. This plan also determines whether the land is a state land.
- 4.6 The Surveyor General certifies the preliminary plan and submits the copies of the Plan to the MLLD, divisional Acquiring Officer and the Valuation Department.

Step 5: Publication of Section 7 Notice, submission of claims for ownership and compensation and the conduct of inquiry [Section 7 & 9 of LAA]

- 5.1 Based on information provided in the preliminary plan, the Acquiring Officer publishes Section 7 Notice calling for submission of claims for ownership and compensation from the owners/interested parties. A copy of this Notice is sent to the MLLD and the Valuation Department.
- 5.2 The Section 7 Notice is published in three news papers in Sinhala, Tamil and English; in the Gazette; and exhibited in a prominent place near the land in all three languages. The Notice calls for details of (a) particulars

- of land and servitude (name of the owner of the land, boundaries of the land, extent of the land); (b) compensation to be claimed by the respective owners; (c) amounts of compensation claimed and how it was calculated; and (d) current status of the ownership of the land (whether owner of the land has a private deed or lease or other document).
- 5.3 The date of Gazette notification of Section 7 is considered as the Relevant Date for assessment of compensation for the land acquired.
- 5.4 Only those who have responded to this Notice and made representation before the Acquiring Officer will be entitled to appeal to the Land Acquisition Board of Review under Section 22 (1), if they are not satisfied with the award for compensation made under Section 17.
- 5.5 Section 7 Notice requires persons having an interest in the land or servitude to be acquired to appear personally or through an authorized agent before the Acquiring Officer on the day fixed by the Acquiring Officer and provide information of their interests in the land. The date fixed for hearing should be at least 21 days after the date of the Notice. The Acquiring Officer could extend the hearing date by another 28 days for a valid reason.
- 5.6 The Acquiring Officer summons all interested parties for an inquiry. A Notice issued for an inquiry is similar to the summons issued under civil procedure of a district court. An Acquiring Officer can issue summons to any person including an authorized valuation officer nominated by him to produce any documents or appear as a witness for the inquiry before him.
- 5.7 This inquiry is called a “Section 9 Inquiry”. The Acquiring Officer will administer an oath from all the persons who give evidence (witnesses) before recording their evidence.
- 5.8 The Acquiring Officer can postpone an inquiry if necessary. However, the date and time of the subsequent inquiry should be communicated to all witnesses at least 7 days prior to the inquiry.
- 5.9 If no person or a representative appears for an inquiry following the Section 7 Notice, the Acquiring Officer should postpone the inquiry to another date. That date should be after a minimum of 14 days and Notice of the new date should be prepared under Section 15 and displayed in a prominent place near the land at least seven days prior to the new date of inquiry.
- 5.10 The Acquiring Officer records all evidences. At the end, the witness places his/her signature on the evidence record testifying to the evidence given.
- 5.11 The Acquiring Officer prepares a summary of evidence of each witness together with a schedule of certified copies of each document produced by the parties at the inquiry.

Box 6a: Guidelines for conducting Section 9 Inquiry

- Adequate notice must be given of the intended acquisition so that all interested parties would be made aware of the acquisition.
- At this inquiry, the owner of the land should present his ownership rights and the expected compensation to the Acquiring Officer. The owner of the land can nominate a representative to act on his/her behalf.
- Inquiry should be fixed after giving at least 21 days from the date of publication of the Notice
- The Acquiring Officer can adjourn an inquiry depending on the circumstances and if necessary fix another date and time for the inquiry.
- Claimants should submit the (a) deed/lease/ permit/ rent agreement of the land; (b) certified copy of the abstract from the folio of the land registry where the land is registered; (c) any other documents in support of land ownership; and (d) compensation claimed and the method of calculation.
- At an inquiry, several persons may appear to claim the ownership to the land. In such an event, the Acquiring Officer should hear and record all their submissions. The Acquiring Officer should also verify the exact extent and the ownership rights of the land by reviewing the available documents such as property deeds. His verifications from the records should be communicated to the individual claimants and clarify the status of ownership. If all the parties agree to accept the ownership rights of each individual, the Acquiring Officer should record their individual submissions. The claimants should sign and confirm the contents of the record as correct.
- When individual claimants disagree over the ownership rights, their submissions should be recorded separately. The Acquiring Officer should verify these claims against available documentary evidence.
- Based on the written and verbal submissions received, the Acquiring Officer should prepare a report on the rights of the individual claimants. The report should also include the final decision of the Acquiring Officer.

Step 6: Determination of ownership status and request for valuation [Section 10.1.A of LAA]

- 6.1 The Acquiring Officer issues the Notice determining the ownership status and servitude of the land to the owner/owners and any other parties who claimed ownership to the land in terms of Section 10(1)A.
- 6.2 If the claimants are dissatisfied over the decision of the Acquiring Officer, claimants request the Acquiring Officer to refer their case to the district court for jurisdiction. This request has to be made within 14 days of the Notice issued by the Acquiring Officer on the ownership status.
- 6.3 The Acquiring Officer submits all relevant documents to the Attorney General's

Department. Reference will be made by the Acquiring Officer in the manner as set out in section 11 of the LAA. The Attorney General's Department refers the request to District Court.

- 6.4 The Acquiring Officer refrains from issuing Section 17 award letter until such time the court decides on the ownership/servitude of the land.
- 6.5 The Acquiring Officer requests the Chief Valuer where the land is located to conduct the valuation for the land to be acquired if there is no objection from the claimants. The Acquiring Officer submits a copy of Section 10(1)(a) Notice and a summary of Section 9 Inquiry to the Chief Valuer.
- 6.6 The Chief Valuer directs one of his district or other officers to visit the land and prepare a 'Condition Report' of the land which among other includes details of all structures (e.g. square feet area, construction materials used, condition of the building) tree species (number, age and diameter) and cultivations, if any, on the land. The extent of the land is recorded in the 'Condition Report' based on information provided in the preliminary plan.
- 6.7 The Chief Valuer or a designated valuer prepares the valuation report of the land based on the condition report. The amount of compensation to be paid is communicated to the Acquiring Officer by the Valuation Department. The methodology to be adopted for valuation is explained under Sections 45, 46, 47 and 48 of the LAA and in the Regulations of 2008.

Step 7: Award of compensation, payment of compensation and appeal process [sections 17, 22 and 23 of LAA]

- 7.1 The Acquiring Officer having received the valuation report must inform the claimants of the compensation that they are entitled to by giving adequate notice including written notice. As a matter of practice in certain instances if the claimants are dissatisfied with the compensation offered, they can request the Acquiring Officer to refer their valuation assessments to the Chief Valuer for a further review.
- 7.2 After completing Sections 10(1)(a) and 10(1)(b), the Acquiring Officer will make his determination on compensation under Section 17 and issues the award letter. The award letter includes details of persons eligible for compensation for land or servitude; share of compensation entitled to by individual claimants; total value of compensation for land and servitude determined by the Valuation Department; and the total compensation to be paid by the Acquiring Officer. Section 17(3) places a limit on the total compensation that could be given. The total amount of compensation should not exceed the amount of compensation claimed by the interested parties of the land or property.
- 7.3 If there were no claimants to the land, the Acquiring Officer deposits the amount of compensation with the district court. For land cases that are referred to the courts under Section 10, compensation is paid in accordance with the decision of the courts.

7.4 If claimants are dissatisfied over the proposed compensation or they are not entitled to a part or total payment of compensation, they under the provisions of Sections 22 and 23 can appeal to the Land Acquisition Board of Review (LABR) within 21 days of issuing Section 17 award letter. This appeal should be submitted in writing clearly stating the (a) name and address of the claimants; (b) ownership or relationship to the particular land; (c) amount of compensation offered by the Acquiring Officer; and (d) the amount of compensation requested by the claimant. The appeal should also name the Acquiring Officer as one of the respondents in the case. The appeal should be submitted to the chairman of the Board of Review. When the appeal is fixed for hearing, the claimant should lead evidence before the LABR, preferably through an expert witness in support of his/her case. Generally, a District Valuer represents the Acquiring Officer before the LABR. The LABR has powers to enhance or reduce the compensation offered by the Acquiring Officer.

7.5 If claimants are dissatisfied with the decision of the LABR, they could appeal to the Supreme Court on legal grounds. The decision of the Supreme Court is final.

Step 8: Taking over the possession of the land [Sections 38 and 38(a) proviso of LAA]

8.1 There are two methods to take possession of land under the LAA.

a) Under Section 38 → any private land can be taken over after Section 17 award has been made. Possession is taken over by a Ministerial Order Published in the Gazette.

b) Under Section 38(a) proviso → Where the Minister of Land and Land Development is of the opinion that the land is urgently needed and cannot wait until the compensation inquiry is over, then possession can be taken over any time after Section 2 or Section 4 Notices have been issued. Possession is taken over by a Ministerial Order Published in the Gazette.

8.2 Having paid the compensation, the Minister of Land and Land Development issues Section 38 order to take over the possession of the land. This order directs the Acquiring Officer or another officer authorized to act as the Acquiring Officer to take possession of that land for and on behalf of the state.

8.3 Where it becomes necessary to take over immediate possession of any land on grounds of urgency, the Minister of land and Land Development may issue an order under Section 38(a) proviso after Notices under Section 2 or 4 are exhibited in the area or in the vicinity of the land to be acquired. The Acquiring Officer should request the Chief Valuer to prepare a Condition Report of the property, as at the date of taking over, in order to facilitate assessment of compensation to be paid once Section 7 Notice is published later on.

8.4 It should be noted that Section 38(a) proviso (urgent possession) is the exception to the general procedure as laid down in the LAA. Therefore, Section 38(a) proviso orders must be used only in limited instances where there is a genuine urgency for possession of the land. The decision to acquire the land and whether its possession is urgent is a policy decision to be taken by the proponent Minister.

- 8.5 Once Section 38 Notice is published, the Acquiring Officer sends a letter by registered post to the landowner requesting him/her to hand over the possession of the land. Generally, a period of two weeks is given before taking over of the possession. Taking over the possession of the land is the responsibility of the Acquiring Officer. Before taking over the possession of a building or a part of a building occupied, at least 48 hours of notice should be given to the occupier.
- 8.6 In the event of a landowner not willing to handover the possession of the land, the Acquiring Officer can obtain an order from the Magistrate's Court under Section 42(2) to engage a Fiscal Officer to take over the possession.

Step 9: Revocation of vesting orders and divesting of lands [Sections 39, 50(1) and 39A of LAA]

There are two ways of returning the acquired land to its owner. The Minister of Land and Land Development could take one of the following actions:

- a) **Revocation of vesting order** - When a land has been vested absolutely in the State after the publication of Section 38 order and yet the possession of the land is not taken over, the Minister can revoke the vesting order under Section 39. This is done by an Order published in the Gazette revoking the vesting order. This too has to be published in at least in one newspaper in each of the languages (English, Tamil and Sinhala) and should also be exhibited at a prominent place near the land.

In terms of Section 50(1) of LAA revocation can be effected by the Minister at any time

prior to issuance of order under Section 38. This decision should be notified to all parties concerned. In such a situation if any person interested in the land has incurred costs in view of the land acquisition proceedings, he/she is entitled to payment of those costs from the Government at a rate as may be determined by the Court or the Board of Review.

- b) **Divesting of lands where actual possession has been taken over** - Under Section 39A, the Minister of Land and Land Development can issue a Divesting Order if he is satisfied that:
1. no compensation has been paid,
 2. land has not been used for the public purpose for which it was acquired,
 3. no improvements have been effected after taking over, and
 4. the person or persons interested have consented in writing to take possession immediately after the divesting order is published in the gazette.

Step 10: Vesting of land [Section 44 of LAA]

The Acquiring Officer issues a 'vesting order' to the local authority or the government institution which has requested the acquisition of land. The vesting order is a written document; i.e. a certificate issued by the Acquiring Officer which specifies the purpose for which the land has been acquired, and the conditions under which the land would be vested with the requesting agency. No vesting order can be issued to any other institution other than the institution which requested the acquisition of land. The preliminary plan prepared by the Survey Department under Section 6 is used for the preparation of the vesting order. Only possession

of the acquired land is given under this vesting order, and it does not imply that the ownership of the property was transferred to the institution. For absolute ownership of the property should be obtained through the Commissioner General of Lands under the provisions of the State Land Ordinance.

Step 11 – Registration of land acquired by the State

11.1 Every land acquired by the State must be registered in the Land Registry. For this purpose the four copies of the Section 17

order along with the following documents should be sent to the District Registrar of Lands by the Acquiring Officer with a request for registration. The documents are;

- (a) Copies of the acquisition order made under section 38(a) or 38(a) proviso
- (b) Schedule containing the details of the land as required by Section 13 of the Registration of Documents Ordinance

ISBN 978-955-470-801-3



9 789554 708013