

Overview

The Decentralized Rural Infrastructure and Livelihood Project (DRILP) has been successful in bringing much needed road and community infrastructure to Nepal's hill and mountain districts. An additional \$66 million worth of financing was approved in order to extend the project's scope and address the lessons learned from previous projects.

Three years after the project's approval, a resident from the Myagdi district filed a complaint to ADB asking to stop the project. He accused project staff and community leaders of pressuring and forcing his father to donate their land to the project. The Nepalese have a tradition of donating land for projects intended to benefit the community. The tradition was expected to continue with this project and may have compromised the consultation process. The grievance redress mechanisms were also inadequately prepared to keep track of how complaints were handled.

If these issues remain unresolved, the project may not continue and undo ADB's efforts to have a community-driven approach to development.

Keywords: land transfer, local customs, grievance redress, mediation, consultations

Current Situation

Nepal was slated to achieve a majority of the Millennium Development Goals despite the many challenging obstacles it faced. The country recently emerged from armed civil conflict as recently as 2006, which directly affected 2.4 million people. Since then, the country has been trying to rebuild itself towards a more politically inclusive and economically stable environment. Its mountainous and hilly terrain though made it difficult to link numerous districts to economic centers, limiting access to food supplies, health and education facilities, and other essential services. High transport costs discouraged the movement of people, goods, and services making poverty reduction even more challenging. Yet, Nepal was able to reduce poverty levels from 42% in 1996 to only 25% by 2011. They have made incredible progress in meeting most of

the Millennium Development Goals, especially in the areas of water supply and sanitation, HIV/AIDS, and hunger.

Since 2004, ADB has been investing in addressing these problems through the Decentralized Rural Infrastructure Livelihood Project (DRILP). Its four goals were comprised of:

- community development and rural livelihood restoration,
- capacity building and decentralized governance,
- rural transport infrastructure, and
- project management services.

The project focused on 18 communities in the Western, Midwestern, and Far Western regions, which were among the poorest and most affected by conflicts. It recognized the need to go beyond providing reliable road infrastructure by also tackling issues of governance and social access to opportunities. DRILP has had some successes. Household incomes rose by 57% against the original target of 25% within the project impact zone. Total road freight volume increased by 96%, only four points shy of the target. By 2011, 381 km of roads were constructed or rehabilitated, and almost 8.5 km of trail bridges were completed. Since construction activities took a labor-based approach, more than 5.3 million person-days of jobs for local residents have been created.

At the end of 2011, ADB, the Government of Nepal, and other development partners approved additional financing to scale-up the project's scope and implement lessons learned. It focused on implementing an innovative road maintenance program, improving access to microfinance for the rural poor, promoting the use of building groups (BG), restructuring skills training, and sharpening the focus on national and district capacity. You have been assigned as the team leader for the project team composed of a Natural Resources and Agriculture Economist, a Social Development Specialist, a Counsel, a Transport Specialist, and an Environment Specialist.

A Community-Driven Approach

Keeping in mind the goals of strengthening local capacity and developing resilient communities, you and your team adopted a community-driven approach to the project. Communities were given control over planning and implementation to have a more inclusive restoration of livelihoods and rehabilitation of infrastructure. Many project components had specific targets for including disadvantaged castes, ethnic minorities, and women as beneficiaries. Priorities were identified based on local demands, which could range from school building, health posts, rural market places, irrigation schemes, and micro-hydropower schemes. Training programs and workshops provided livelihood-related skills as well as social awareness, covering topics such as nutrition, health and sanitation. Local building groups would be supported to transform into formal savings and credit cooperatives in order to extend microfinancing to district residents. The project was also designed and implemented as an opportunity for peace-building and minimizing conflicts. Road upgrading aimed to provide reliable transport infrastructure to remote communities, regardless of the difficult weather. Rural residents would be able to access hospitals, schools, jobs, and government services found in larger urban centers. Since lack of employment, exclusion and discrimination have been previous sources of conflict, construction continued with labor-based equipment-supported methods from the previous project. Local women and other marginalized residents were prioritized in hiring workers. Strengthening the decision-making of capacity local government bodies not only supported the management of the rural road networks but also reduced implementation delays and improved responsiveness to resident concerns.

For the Community's Benefit

Preliminary studies showed road construction and rehabilitation needed an 8-meter right-of-way (ROW). As result, the project required significant amounts of land throughout its 260 km alignment. You were glad to learn that the Nepalese have an ongoing tradition of donating land for projects benefiting the community. You thought it would make the resettlement process a lot easier and more straightforward. The resettlement plan (RP) though had several safeguard provisions based on lessons learned from previous projects. It required that all land donations be voluntary; nobody would be forced to participate in the project. Compensation would be

given to those whose land would be unavoidably affected. All affected people (AP) would be fully consulted about the project's design, requirements for land acquisition and compensation. Lastly, no construction would start until the land compensation and resettlement assistance processes were completed.

In order to strengthen the resettlement safeguards, you needed to hire an independent third party verifier. They would be required to witness the land donation document signings and verify that AP were not coerced into donating their land. Grievance redress committees (GRC) were also setup in all road sections, chaired by local leaders and representatives of APs. Residents who were not satisfied with the land donation or valuation for compensation were encouraged to file complaints. If the complaint was found to be genuine, complainants would be excluded from the land donation process. All stakeholders were required to agree on a time-bound action plan to resolve the grievance.

Meeting Some Successes

Three years since the project's approval, different sub-projects were in different stages of construction. You encountered some of the project's successes during your missions to different districts. You met Dambar from the Solukhumbu district who used to be a rice porter between different bazaars. He joined a BG where he earned enough money to start a new business as a rice wholesaler. The new road that he helped build has made it easier for farmers to deliver their products to him, while trade between villages became easier and simpler.

You also met Piuri from Bajhang district who also participated in a BG together with four other members of her family. The BG transformed into a savings and credit group, which helped them save enough money to buy a buffalo and grazing land. These helped not only pay back their previous loans but also their medical bills. They have even been able to send her grand children to school. Their next step was to participate in life skills training to help start a small business. You heard stories like these throughout the project's alignment. You were proud of the positive changes it has brought to the lives of local residents.

Not the Owner

Three years into the project, you were surprised to find out a family from the 3 km sub-project in the Myagdi district filed a complaint against ADB regarding DRILP. You were given a copy of the email whose subject was read as:

"Request to stop/investigate corruption and terrorizing of my family and neighbors to acquire land for road construction by DRILP under ADB-SDC funded project in Nepal"

They accused the project of falsifying a report that APs were fully informed and consulted about the land donation process. More shocking to you was the accusation that there was coercion during the land donation process. The son who wrote the letter said his father and mother were put under "intense pressure" from the local community leaders and project staff to donate their land. The father was pressured to sign the land transfer document. The complainants also said that project staff were taking advantage of the parents' illiteracy. Lastly, construction has already taken up 35-40% of the complainants' land without compensation. The complainant had the following demands:

Stop the project as it harms the family and other APs health physically and mentally;
Investigate the legitimacy, bias and accuracy of the reports released to the media that consultations took place;

Investigate the possibility of government corruption in regards to the project.

Together with neighbors who said they were also forced to donate their land, they threatened to file a case against DRILP, ADB, and the Swiss Agency for Development and Cooperation as the co-financing partner. You took the necessary precautions, followed the safeguard policies, and focused on local residents' needs. You thought you were doing so well but the complaint said none of these were done. Since the complainants said their neighbors also experienced similar circumstances, you fear that the problems were more widespread than you imagined. You believed in the project's goals and saw the positive impact it had on other districts. You wondered how will you address these issues and move the project forward.

Investigating Further

After discussing it with your team, you went to speak with the complainants as part of a review mission. You met with the father, the mother, and the son at their house. You started to ask them about the complaint and what can be done to resolve it. Both the father and the son said that they were more than willing to participate in the project, contrary to what was said in the complaint letter. They argued however that they had a right to be compensated for the land to be needed for the right of way. You thought to yourself of course they had a right to be compensated! This was included in the RP but how come nobody informed them of the options? Both of them continued on, they raised their voices to demand the project be halted if they were not compensated at all.

Amidst all of the arguments, you asked them who the legal owner of the land was. The father said he gave the land to his wife. You turned to her and asked what she wanted from the project. She said, she did not want anything from the project. She did not want to be compensated at all because she did not want to participate in the first place. Her answer surprised you but nobody was more stunned than the father and the son. They tried to convince her but she was steadfast in her decision. As the arguments went on, their voices became louder and the conversation difficult.

You tried to diffuse the situation by saying that unfortunately, the final decision laid in the mother's hands as she was the legal titleholder, the only one who could sign the land donation documents. This unfortunately displeased the father even more. As the arguments continued, you started to think about how you would be able to resolve this issue. You felt that you had to think about what said next as anything could worsen the situation. At the same time, you also wondered why the mother was not consulted at all before. How come nobody knew she was the legal land owner? How was the father able to sign the land donation document? You took comfort that this maybe an isolated case but at the back of your mind, you started to doubt yourself. How would you even find out? Do you even have time to find out?

Casting a Wider Net

You decided to consult with other villagers after you left the family's house. Your conversations confirmed your previous concerns. Many did not know that compensation was even an option available to them. Moreover, they thought they had to participate in the project; saying no was not an option. They assumed that since the community would benefit from the project, they would simply provide the needed land for the ROW.

You asked the residents if there was somebody present when they signed the land donation documents. They mentioned that there was an NGO there to observe everything. Everyone knew the NGO since they had done a lot of community building projects and leadership workshops in the district. They were well-known and were highly regarded by the residents. Some even said that they were convinced to support the project because the NGO participated in the awareness raising campaign.

A stream of questions started popping into your head. Why were the compensation options not shared with the AP? Did the presence of the NGO pressured land owners to sign the documents? Did the NGOs coerce them to sign? Was there something you could have done to prevent this? What can you do now? You had to do something or else the project can be mired in numerous valid complaints. You went to meet with members of the GRC to check if AP did file grievances. Thirteen cases were received and the complaints were diverse. Some wanted the road project to be realigned since it would leave their land economically non-viable. Another said that they were not informed of the compensation options. Others requested that changes be made so that certain structures on their properties would not be destroyed during construction.

Members of the GRC said not to worry since they were working on resolving all the grievances filed with them. Seven cases were already reviewed and decided upon but none of the complainants were informed. According to them, other grievances would have been dealt with eventually. You asked them how if they documented what their process was in resolving these cases. Unfortunately, they did not keep any records on what actions they took or what conversations happened.

You stepped outside the GRC office to get some fresh air. As you looked at the terraced mountains with their mix of green and gray, you wondered where you were even going to start solving these problems.

Overview

Nepal, ADB and other development partners approved an additional \$66 million financing for the Decentralized Rural Infrastructure and Livelihood Project (DRILP). The Nepalese have traditionally donated land for projects benefiting the community. It was assumed this practice would continue when acquiring the right-of-way (ROW) for the road construction and rehabilitation component. A "no coercion" clause and other safeguard principles were put in place.

A complaint was filed against ADB, claiming that local leaders and project staff coerced their family into signing the land transfer document. They asked that the project be stopped as it harms them and their neighbors. They threatened to file a case against ADB and other development partners if the project continues.

The Office of the Special Project Facilitator (OSPF) conducted a review and assessment mission, which involved document reviews, group meetings with all stakeholders, and one-on-one interviews with complainants and affected households (AH). Group and individual meetings with AH provided opportunities to build trust and find facilitated solutions that all stakeholders can agree with. Several recommendations were also put forward regarding a new resettlement plan, changes to the land transfer process, budgets for compensation and capacity building, and terms of reference (TOR) for third party verifiers.

Action Issues

Family Problems

When the initial complaint was received by ADB, the family was asked which of the processes in the Accountability Mechanism they wanted to pursue. They chose to follow the problem solving process, which after desk reviews and discussions with NRM staff, found the complaint to be eligible. OSPF proceeded to a review and assessment mission where the facilitation specialist met with the family at their home in Nepal.

The conversations drew out important family dynamics which were at the root of the complaint. Contrary to what was written in the email, the father and the son were willing to participate in the project. What they asked for was to be compensated for the land to be used for the ROW instead of asking for a donation. It was learned though that the affected land though was originally owned by the father. Yet, he gifted it to his wife upon their marriage in order to receive tax breaks from the government. As the legal owner, she held the final decision. She did not want to participate in the project but both her husband and son tried to convince her otherwise. Tensions rose and had to be diffused.

The facilitation specialist halted the meeting in order to calm the situation. A separate meeting was held with the wife to ask her individually what her decision was. She repeated that she did not want to be involved in the project. According to her, the land was precious and was something she intended to pass on to her daughters someday. The facilitation specialist informed every one of the decision, which had to be followed. Project engineers were consulted to evaluate how their withdrawal would affect the project's alignment. It was concluded that the section belonging to the family would be reduced to 4 meters instead of the 8 meters needed. This would not need a costly realignment. The family's land was also restored to what it was before the project started.

A Sign of Something Bigger

OSPF also confirmed that the lapses in the resettlement framework in the initial complainants' case were more widespread. They conducted document reviews, group meetings with all stakeholders, and one-on-one meetings with other AP. These meetings enabled them to draw out specific issues regarding the land donation process:

Assuming that land donation would continue may have compromised the consultation process, while compensation options were not shared upfront.

The NGO hired as the third party verifier had been involved in the community for many years. Their participation in the project, especially at the awareness-raising campaign may have comprised their independence. Many people tacitly assumed their involvement as a sign of approval for the project.

There was no structured process for the NGO to determine if AH donated the land without coercion.

The land ownership verification was inconsistent while construction already started. Some original land titles were lost and were in the process of being replaced. Both instances occurred because land donation was assumed to happen and at a relatively quick pace.

Some of these concerns were already reflected in the cases filed with the local Grievance Redress Committee (GRC). Unfortunately, GRC members only attempted to resolve the issues within the grievance redress mechanism. They did not recognize wider patterns, issues, and challenges. Additionally, they were not able to record any of the grievances, the actions they have taken, and the feedback to the AP.

Group and One-on-One Meetings

In order to bring the project back in line with the resettlement framework, previous land donation documents were voided. OSPF organized community meetings with between all AP and government officials, clearly restating the land transfer process and that compensation options were available to everyone. Landowners were still willing to donate their land but had other concerns that needed to be addressed. OSPF decided to mediate one-on-one meetings between each AH and the government. These one-on-one meetings were a venue to discuss specific grievances and facilitate mutually agreed solutions. Other AH were able to get agreements regarding their specific concerns. For some, the government agreed to not demolish their buildings and to compensate for temporary structures that needed to be built. Compensation would also be provided to those whose land would become fragmented and economically nonviable.

Other Recommendations

OSPF also made recommendations that the project has agreed to implement:

- The resettlement plan should be updated and shared with AH in a participatory and consultative manner. Compensations and entitlements should be agreed with AH through facilitated discussions.

- A budget for compensation should be established, especially since some AH will have more than 10% of their land impacted by the project.
- Construction should only continue in public lands and areas where the land transfer has been completed.
- Build the GRC's capacity to handle complaints through workshops, document templates, and staff increases.
- Develop TOR for the third party verifier of the land donation in order to build credibility and standardize good practice.

Lessons learned from the project were:

- Even though land donations are customary in Nepal, due diligence (e.g. land verification, presenting of compensation) must still be conducted.
- Group meetings were helpful in informing large numbers of people but one-on-one meetings were necessary to draw out specific concerns that could not be voiced in a group setting.
- The presence and participation of third party verifiers in specific activities can influence AH's perceptions of the project. TOR can clarify roles and responsibilities to prevent potential conflicts of interest.
- There is a need to design grievance redress mechanisms based on a community's context. GRCs problem solving capacities need to be continuously supported and strengthened.
- Fostering collaboration with stakeholders can lead to a speedy resolution to grievances and complaints.

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