

# DRAFT COMPARATIVE ANALYSIS OF NEPAL'S LEGAL FRAMEWORK FOR LAND ACQUISITION AND INVOLUNTARY RESETTLEMENT AND THE ASIAN DEVELOPMENT BANK SAFEGUARD FOR INVOLUNTARY RESETTLEMENT

Note: The following is based primarily on the provisions of The Land Acquisition Act 1997. The said Act has been amended and supplemented by the following:

- a) Administration of Justice Act, 2048 (1977)
- b) Act Amending Some Nepal Acts, 2048 (1992)
- c) Act Amending Some Nepal Acts, 2055 (1998) and
- d) Republic strengthening and Amending Some Nepal Acts, 2066 (2010).
- e) **Local Self-Governance Act, 1999**

The provisions of the Protection of Environment Act, 1997; the Environmental Protection Rules, 1997; and the National Environmental Impact Assessment Guidelines, 1993<sup>1</sup> also support the legal framework for land acquisition in particular with respect to screening, impact assessment, public consultation, disclosure and monitoring, to the extent that projects resulting in involuntary resettlement are also subject to the EIA Guidelines. .e

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<sup>1</sup>The National EIA Guidelines (EIA Guidelines) for Nepal were drafted, tested and finalized through a participatory approach and subsequently endorsed by the government through a Cabinet decision on 27 September 1992 and gazetted it on 19 July 1993. Accordingly, although they are nominally "Guidelines they are to be considered as mandatory legal instruments for purposes of this Equivalence Assessment.

<b>(A)</b> <b>ADB Safeguard Policy</b>	<b>(B)</b> <b>Corresponding Provisions in National Policy and Legal Instruments<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup></b> <b>Review comments</b>	<b>(D)</b> <b>Recommendations</b>
<p><b>Involuntary Resettlement Safeguards</b></p> <p><b>Objectives:</b> To avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.</p>			
<p><b>Key element (1):</b></p> <p>Avoid involuntary resettlement wherever possible</p>	<p><b>Land Acquisition Act 1977 (LAA)</b></p> <p>2. Definitions: In this Act, unless the subject or the context otherwise requires,</p> <p>"Public Purposes" means undertaken in the interest of or for the benefit or use of the general public, or functions to be undertaken by Government of Nepal and the term also included the following:</p> <p style="padding-left: 40px;">(1) Project approved by Government of Nepal.</p> <p style="padding-left: 40px;">(2) Project undertaken by local bodies in different levels.</p> <p>3. Power of Government of Nepal to Acquire Lands for Public Purpose: Government of Nepal may, if it so deems necessary, acquire any land at any place for any <u>public purpose</u>, subject to compensation under this Act.</p> <p>4. Power to Acquire Land for Institution:</p> <p>(1) In case <u>institution requests Government of Nepal</u> for the acquisition of land for any of the following purposes, subject to payment of compensation and all other expenses under this Act, Government of Nepal may decide to have the land acquired for such institution:-</p> <p style="padding-left: 40px;">(a) To construct residential quarters for the staff, workers or laborers of the institution, or otherwise provide for their welfare, or undertake any function in the interest of the general public.</p> <p style="padding-left: 40px;">(b) To operate a project connected with an institution fully owned by Government of Nepal, or to construct a go down for the storage of any commodities or material</p>	<p><b>Partial Equivalence</b></p> <p>Under the LAA, land acquisition is allowed for unspecified "public purposes that fall within the definition other than in the event of acquisition for an Institution..</p> <p>The EIA Guidelines require the assessment of impacts likely to be caused on the environment by certain projects. For projects involving involuntary resettlement, that are also subject to the EIA Guidelines, a decision could be made to avoid involuntary resettlement based on the results of the EIA</p>	<p>For Full Equivalence the legal framework should state as an objective, the need to avoid involuntary resettlement wherever possible.</p>

<sup>2</sup>Cited text is used to indicate key terms that demonstrate extent of equivalence.

<sup>3</sup> "Full Equivalence" denotes that the national policy documents and legal instruments are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element. "Partial Equivalence" denotes that the national policy documents and legal instruments are in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and "No Equivalence" denotes that no policy provision or legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element. In some cases, there may be full equivalence for one issue, but only partial equivalence or no equivalence for one or more of the other issues governed by a legal instrument. In those cases, the degree of equivalence for the issue is indicated.

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	<p>connected with or manufactured by any such institution.</p> <p>(2) Proceeding regarding the acquisition of land under this Act shall not be initiated unless the institution requesting for land acquisition has executed a deed...in respect to the following matters:</p> <p style="padding-left: 40px;">(c) If any other construction purpose, the estimated time for construction and mode of for use.</p> <p>(3) Notwithstanding anything contained pursuant to Sub-section (1), Government of Nepal shall not acquire the land except practical purpose of agricultural for research, if the institution requires the land for agriculture.</p> <p>28. Power to Acquire Land for Diplomatic Missions and International Agencies: (1) lands may be acquired under this Act for the use of diplomatic missions, including consulates, and of international agencies.</p> <p><b>The Environmental Protection Rules 1997 (EPR)</b> Schedule 6 (on basis of Rule 7)</p> <p>Item 4.Particulars of the proposal: (a) To specify the...., economic, social, cultural and <u>physical</u> aspects of the proposal.</p> <p><b>National Environmental Impact Assessment Guidelines, 1993 (EIA Guidelines)</b></p> <p>6. Environmental Impact Assessment to be Conducted: Before implementing a project, the impact likely to be caused on the environment by the project shall be assessed after conducting necessary studies of the impact.</p> <p>8. Project Screening Criteria: (1) In the course of project screening, it shall be determined whether or not environmental impact assessment is necessary generally based upon indicators such as prescribed parameters, financial threshold and sensitive area: (b) If the affected area extends beyond the immediate locality and is likely to cause adverse impact on the population outside the project area. (f) As it is possible that a small scale project may cause serious impact on the environment while a large scale project may not cause significant impact, due attention must be paid to various factors other than those mentioned in clauses (a), (b), (c), (d) and (e) while making environmental impact assessments for projects.</p>		

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	<p>(2) An <u>initial environmental examination</u> report must be prepared for those projects which may cause significant impact on environment, whose impact may be known easily and for which mitigation measures may be discovered easily, as mentioned in schedule 1.</p> <p>(3) An <u>environmental impact assessment</u> report must prepared for the proposed projects mentioned in Schedule 2.</p> <p>(4) Apart from projects mentioned in sub-section (1), environmental impact assessment must also be made on the basis of project areas, as mentioned in Schedule 3.</p> <p>But, an environmental impact assessment shall not be required for projects which fall within areas mentioned in Schedule 3 if exempted by the prevailing law.</p>		
<p><b>Key element (2):</b> Minimize involuntary resettlement by exploring project and design alternatives</p>	<p><b>EPR</b> Schedule -3(Relating to Rule 5) Work schedule of Initial environmental examinations 8. Alternatives for the implementation of the proposal: (a) Design (b) Project site</p> <p><b>EIA Guidelines</b> Schedule -4(Relating to Rule 5) Work Schedule Relating to Environmental Impact Assessment 8. Other alternatives for the implementation of the proposal: (a) Design (b) Project site 13. Scoping: (1) [S]coping shall be undertaken with the aim of discovering the alternatives to the proposed activities (2) Scoping for environmental impact assessment shall be conducted to attain the following objectives: (c) Enable agencies responsible for an environmental impact assessment study to properly brief the study team on the <u>alternative</u> and on impact to be considered at different levels of</p>	<p><b>Partial Equivalence</b> There is no requirement in the Land Acquisition Act to examine project and design alternatives in order to minimize involuntary resettlement. The legal framework for initial environmental assessment and environmental impact assessment contains provisions requiring assessment of alternative project design and sites that could result in a decision to minimize involuntary resettlement, although this is not stated as an objective of alternatives.</p>	<p>For Full Equivalence the legal framework for land acquisition should include specific requirements mandating the exploring of project and design alternatives, for the explicit objective of minimizing involuntary resettlement.</p>

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	<p>analysis.</p> <p>27. Environmental Impact Mitigation Measures: Impact mitigation measures must be adopted with the objective of reducing and removing undesirable impacts and maximising project benefits. The following measures, which are appropriate relevant to most development projects, must be adopted:</p> <p>(a) <u>Consideration of Alternatives</u>: (1)... The proposal of a development project must consider the alternatives of the following aspects:</p> <ul style="list-style-type: none"> <li>(1) scale</li> <li>(2) technology</li> <li>(3) location</li> <li>(4) fuel</li> <li>(5) mitigation measures</li> <li>(6) raw materials</li> <li>(7) design</li> <li>(8) time schedule</li> <li>(9) economic aspects</li> </ul>		
<p><b>Key element (3):</b></p> <p>Enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels</p>	<p><b>LAA</b></p> <p>16. Criteria to be Considered While Determining Compensation:</p> <p>(1) The Compensation Fixation Committee shall take the following criteria into consideration while determining compensation for lands to be acquired for Government of Nepal, Local Bodies, and institutions fully owned by Government of Nepal.</p> <ul style="list-style-type: none"> <li>(a) The guidelines issued by Government of Nepal from time to time in respect to the fixation of compensation and,</li> <li>(b) <u>The losses suffered by the concerned person as a result of his having been required to shift the residence or the place of his/her business by reason of acquisition of the land.</u></li> </ul> <p>(2) While determining the amount of compensation for land to be acquired for <u>institutions other than Local Bodies, and institutions fully owned by Government of Nepal</u>, the compensation Fixation committee shall take the following criteria into consideration:</p> <ul style="list-style-type: none"> <li>a) The Value of the crops, houses, walls, sheds, etc, if any, acquired along with the land,</li> <li>(c) <u>The losses which the concerned person will suffer as a result of shifting his/her residence, or the place of his/her business, by reason of the acquisition of his/her land.</u></li> </ul>	<p><b>Partial Equivalence.</b></p> <p>The compensation criteria include consideration of livelihood impacts resulting from both physical and economic displacement. However, the legal framework does not require enhancement or restoration of the livelihoods of displaced persons in real terms relative to pre-project levels.</p>	<p>For Full Equivalence The legal framework should require livelihood enhancement or restoration of all displaced persons with reference to pre-project levels.</p>

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<p><b>Key element (4):</b> Improve the standards of living of the displaced poor and other vulnerable groups.</p>	<p><b>LAA</b></p> <p><b>16. Criteria to be Considered While Determining Compensation:</b></p> <p>(1) The Compensation Fixation Committee shall take the following criteria into consideration while determining compensation for lands to be acquired for Government of Nepal, Local Bodies, and institutions fully owned by Government of Nepal.</p> <ul style="list-style-type: none"> <li>(a) The <u>guidelines</u> issued by Government of Nepal from time to time in respect to the fixation of compensation and,</li> <li>(b) <u>The losses suffered by the concerned person as a result of his having been required to shift the residence or the place of his/her business by reason of acquisition of the land.</u></li> </ul> <p>(2) While determining the amount of compensation for land to be acquired for institutions other than Local Bodies, and institutions fully owned by Government of Nepal, the compensation Fixation committee shall take the following criteria into consideration:</p> <ul style="list-style-type: none"> <li>(a) The price of the land at the time of the publication of a notice of land acquisition under Section 9,</li> <li>(b) The Value of the crops, houses, walls, sheds, etc, if any, acquired along with the land,</li> <li>(c) <u>The losses which the concerned person will suffer as a result of shifting his/her residence, or the place of his/her business, by reason of the acquisition of his/her land.</u></li> </ul>	<p><b>Partial Equivalence.</b></p> <p>The compensation criteria include consideration of livelihood impacts resulting from both physical and economic displacement. However, the legal framework does not require improvement of standards of living of the displaced poor and other vulnerable groups.</p>	<p>For Full Equivalence the legal framework should require that the standards of living of the displaced poor and other vulnerable groups be improved.</p>
<p><b>Scope and Triggers:</b> The involuntary resettlement safeguards cover physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.</p>			
<p><b>Policy Principle 1:</b> Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p>			
<p><b>Key element (1):</b> Screen the project early on</p>	<p><b>Environment Protection Act, 1997 (EPA)</b></p> <p>2. Definitions: Unless the subject or context otherwise requires, in this Act; (a) "Environment" means the interaction and inter-relationship among the components of natural, cultural and social systems, economic and human activities and their components.</p>	<p><b>Partial Equivalence</b></p> <p>The legal framework for land acquisition and involuntary resettlement does not require screening of proposed projects for resettlement impacts. However, the legal framework for environmental protection defines environment to include social and</p>	<p>For Full Equivalence the legal framework should require that all projects, whether subject to IIE or EIA or not be screened for involuntary resettlement impacts.</p>

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	<p><b>EPR</b></p> <p>3. Initial environment Examination.....A proponent shall be required to carry out the initial environmental examination of the proposals mentioned in Schedule (1) ....</p> <p>7. Report of the Initial environmental examination and environmental impact assessment to be prepared:  (1) The proponent shall, on the basis of the approved work schedule pursuant to Rule 5, prepare the report of initial environmental examination in the format as mentioned in Schedule 5 and the report of environmental impact assessment in the format as indicated in Schedule 6.  (2) Whilst preparing the report, the proponent shall, in the cases of initial environmental examination affix a notice in the concerned Village Development Committee or Municipality , Office of the District Development committee school, hospital , and health post requesting the Village Development committee or Municipality and District Development Committee or concerned individuals or institution to offer their written opinion and suggestions within Fifteen days with regard to the possible impact of the implementation of the proposal on the environment where the proposal is to be implemented and prepare a deed . The said Fifteen days' notice shall also be published in a national level daily newspaper. After the publication of such notice the opinions and suggestions so received in relation to the same shall also be included in the report.</p> <p>Schedule -1(Pertaining to Rule 3)  Proposals Requiring Initial environmental examination  E. water resources and energy sector:  6. Any water resources development activity which displaces from Twenty Five to Hundred persons from permanent residence  G. Drinking Water:  6. Displacement of not more than One Hundred persons for operating a water supply scheme</p> <p>Schedule -3 (Relating to Rule 5)  Work schedule of Initial environmental examinations  7. Specific impact of the implementation of the proposal on the environment  (a) Social and economic</p>	<p>economic systems and contains some limited provisions that require screening of specified projects by means of Initial Environmental Examination (IIE) and EIA to identify social and economic impacts. Specific provisions for IIE apply to potential displacement and resettlement impacts of projects in the water supply and for EIA in the water supply and mining sectors</p>	

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	<p><b>EIA Guidelines</b></p> <p>6. Environmental Impact Assessment to be Conducted: Before implementing a project, the impact likely to be caused on the environment by the project shall be assessed after conducting necessary studies of the impact.</p> <p>7. Need for Project Screening: (1) Screening of a project is imperative to determine whether environmental impact assessment is necessary for a project.</p> <p>8. Project Screening Criteria: (1) In the course of project screening, it shall be determined whether or not environmental impact assessment is necessary...based upon indicators such as...</p> <p>b) If the affected area extends beyond the immediate locality and is likely to cause adverse impact on the population outside the project area.</p> <p>12. Appropriate Time for Project Screening and Initial Environmental Examination: Project screening and initial environmental examination should be usually undertaken during the pre-feasibility stage of a project.</p> <p>23. Types of Environmental Impact: In connection with the process of environmental impact assessment, attention must be paid to the following impact categories:</p> <p>(a) <u>Socioeconomic Impact</u>: A study of socioeconomic impacts of the concerned project should be conducted to examine the activities that would bring about changes to the existing economic and social conditions of the communities within the project area or its vicinity. The socioeconomic impacts may be beneficial or adverse.</p>		
<p><b>Key element (2):</b></p> <p>Identify past, present, and future involuntary resettlement impacts and risks</p>	<p><b>LAA</b></p> <p>11. <u>Right of Landowner to File complaint</u>: (1) Within a time-limit of seven days from the date of the publication of a notice under Section 9, plus the time required for the journey involved, the concerned landowner may file a complaint with the Ministry of Home Affairs, the Government of Nepal through the local officer, explaining the reasons, if any, why his/her land should not be acquired. If the tenant has built any brick-house on the land with the consent of the landowner, such tenant may also file a</p>	<p><b>Partial Equivalence</b></p> <p>Limited identification of present and future impacts could take place within the complaints process and the process for determining compensation as well as the environmental impact assessment approach.</p>	<p>For Full Equivalence the legal framework should explicitly require identification of past, present, and future involuntary resettlement impacts as well as risks.</p>



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	<p>complaint under this Sub-Section with respect to such house and the land occupied by it.</p> <p><b>EIA Guidelines</b></p> <p>23. Types of Environmental Impact:</p> <p>(a) Socioeconomic Impact: A study of socioeconomic impacts of the concerned project should be conducted to examine the activities that would bring about changes to the existing economic and social conditions of the communities within the project area or its vicinity....</p> <p>25. Impact Prediction: (1) The next step after impact identification is to predict the magnitude, extent and duration of the impact. ...</p> <p>(2) In the process of impact prediction, special attention must be paid to the following aspects:</p> <p>(c) <u>Duration of Impact</u>: As <u>environmental impacts have a temporal dimension</u>, they should be discovered through an environmental impact assessment. Impacts arising at different phases of the project cycle need to be appropriately considered.</p> <p>Schedule 5</p> <p>Environmental Impact Assessment Report Format</p> <p>4. Identification of Environmental Impact</p>		
<p><b>Key element (3):</b></p> <p>Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p>	<p><b>EPR</b></p> <p><b>Chapter -2</b></p> <p><b>4. Determination of Scope for the environmental impact assessment to be made:</b></p> <p>(1) In regard to any proposal requiring environmental impact assessment, the proponent shall publish a notice in any national level newspaper, requesting the Village Development Committee or Municipality where the proposal is to be implemented, as well as the schools, hospitals , health posts and concerned individuals or institutions of the area to offer in writing their suggestions concerning to the possible impact of the implementation of the proposal of the environment...</p>	<p><b>Partial Equivalence</b></p> <p>There are no provisions in the legal framework for land acquisition and resettlement directly mandating the determination of the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.</p> <p>The legal framework for environmental impact assessment provides an opportunity to project affected people, through their local representatives to</p>	<p>For Full Equivalence the legal framework should introduce provisions requiring the determining of the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks, regardless of whether or not the project is subject to EIA.</p>

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		provide input with respect to potential impacts on the environment, which is defined to include social and environmental impacts, such as physical or economic displacement. However, this provision applies only to those projects deemed subject to EIA, rather than a more limited Initial Environmental Assessment. Moreover, the EIA provisions do not require a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.	
<p><b>Policy Principle 2:</b> Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programmes. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations. Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns. Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.</p>			
<p><b>Key element (1):</b> Carry out meaningful consultations with affected persons, ...</p>	<p><b>EPR</b> Chapter 2 Rule 7 (2) Whilst preparing the [Initial environmental examination and environmental impact] assessment report, the proponent shall, in the cases of initial environmental examination affix a notice in the concerned Village Development Committee or Municipality, Office of the District Development committee school, hospital, and health post requesting the Village Development committee or Municipality and District Development Committee or concerned individuals or institution to offer their written opinion and suggestions within Fifteen days with regard to the possible impact of the implementation of the proposal on the environment where the proposal is to be implemented and prepare a deed.....Provided that, while preparing the report of environmental impact assessment, the proponent shall organize a public hearing about the proposal at the area of Village Development Committee or Municipality where the proposal is to be implemented and collect opinions and suggestions. <b>EIA Guidelines</b></p>	<p><b>Partial Equivalence</b> The EIA Guidelines provisions provide for a direct consultation process for projects subject to environmental assessment which must involve affected groups. However, there are no particular consultation provisions related to land acquisition and involuntary resettlement.</p>	<p>For Full Equivalence the legal framework should require the project proponent or approval authority to conduct meaningful consultations with persons potentially affected by involuntary resettlement impacts resulting from the project.</p>

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	<p>13. Scoping: (2) Scoping for environmental impact assessment shall be conducted to attain the following objectives:</p> <p style="padding-left: 40px;">(f) Provide an <u>opportunity for public involvement</u> in determining the factors to be assessed.</p> <p>14. Methods of scoping for Environmental Impact Assessment: While scoping for environmental impact assessment, attention should be paid particularly to the following subjects:</p> <p style="padding-left: 40px;">(a) Making a <u>Plan for Public Involvement</u>. ...</p> <p style="padding-left: 40px;">(c) Providing Necessary Notification and Information to the People Likely to be Affected by the Project:</p> <p>28. Release for Public Review: A draft environmental impact assessment report must be released for <u>public review and comment</u>. ...</p> <p>Chapter XIII</p> <p><u>Community Participation</u></p> <p>.48. Individuals, Groups and Agencies to be Involved:</p> <p style="padding-left: 40px;">(a) [A]ffected groups</p>		
<p><b>Key Element (2):</b></p> <p>Carry out meaningful consultations with..., host communities...</p>		<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should require the project proponent or approval authority to conduct meaningful consultations with..., host communities...that may be affected by involuntary resettlement resulting from the project.</p>
<p><b>Key Element (3):</b></p> <p>Carry out meaningful consultations with ...concerned nongovernment organizations</p>		<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should require the project proponent or approval authority to conduct meaningful consultations with... concerned nongovernment organizations. regarding involuntary resettlement impact resulting from the project.</p>

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<p><b>Key element (4):</b> Inform all displaced persons of their entitlements and resettlement options</p>	<p><b>LAAct</b></p> <p>9. Notification of Land Acquisition: (1) After receiving a report of preliminary Action submitted under Section 8, the local officer shall <u>issue a notification...</u> in respect to the land.</p> <p>...</p> <p>(2) One copy of the notice mentioned in Sub-Section (1) shall be affixed ...</p> <p>(3) In case the local officer is satisfied that the concerned person will not be able to know (about the land acquisition) notwithstanding the publication of a notice under Sub-Section (1), he/she may, if he/she so deems appropriate and feasible, personally send a notice to such person. <u>In case the amount of compensation has already been determined by the time such notice is delivered to such person, the local officer shall also indicate in such notice the period within which he/she should appear for receiving the compensation, and the name of the office from where he/she should do so.</u></p> <p>13. Form of Compensation and Officer powered to Determine It:</p> <p>(1) Compensation payable under this Act shall be paid in cash.</p> <p>18. List of Persons Entitled to Compensation and Complaints against it:(1) On the basis of the applications received within the time-limit prescribed in the notification issued under Section 9, the local officer shall <u>prepare a list of persons entitled to compensation, and issue a notice accordingly</u> for the information of the concerned persons.</p> <p>...</p>	<p><b>Partial Equivalence</b></p> <p>It is unclear whether the information to be provided to displaced persons is limited to compensation or includes entitlements and resettlement options.</p>	<p>For Full Equivalence the the legal framework should require that all displaced persons be informed of all of their entitlements and resettlement options not limited to compensation.</p>
<p><b>Key element (5):</b> Ensure the participation of displaced persons in planning, implementation, and monitoring and evaluation of resettlement programmes</p>	<p><b>EIAG</b></p> <p>28. Release for Public Review: A draft environmental impact assessment report must be released for public review and comments. The review of the draft environmental impact assessment report and the comments received should be made available for review by the project proponent, along with non-government organizations, agencies, independent institutions and concerned public.</p>	<p><b>Partial Equivalence</b></p> <p>To the extent that a project resulting in involuntary resettlement is also subject to the consultation provisions of the EIA Guidelines there would be an opportunity for displaced persons to participate through review in the planning of resettlement programs. However, this would not require or enable displaced persons to participate in the implementation, and monitoring and</p>	<p>For Full Equivalence the legal framework should provide an opportunity for displaced persons to participate in planning monitoring and evaluation of resettlement programmes irrespective of whether the project is also subject to an EIA.</p>

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		evaluation of resettlement programs, nor would they apply in cases where a project resulting in involuntary resettlement does not also require an EIA.	
<p><b>Key element (6):</b></p> <p><b>Ensure the participation in consultations of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land</b></p>	<p>Local Self-Governance Act, 1999</p> <p>Chapter 3</p> <p>Section 8 (2)(c) Six persons including one woman nominated by the Village Council from amongst those social workers, socially and economically backward tribes and ethnic communities, down trodden and indigenous people living within the village development area, belonging to the class whose representation 'm the Village Council does not exist and who are in possession of the required qualifications to become the Member of the Village Council....</p> <p>Section 12</p> <p>2) The Village Development Committee shall consist of the Chairman, Vice chairman and Members as follows:</p> <p>(c) Two Members including one woman nominated by the Village Development Committee from amongst the Members of the Village Council as referred to in clause (c) of sub section (2) of Section 8.</p>	<p><b>Partial Equivalence</b></p> <p>The Local Self Governance Act framework requires that each village Development Committee include one female member and six persons from among the poor, ethnic and indigenous communities.</p>	<p>For Full Equivalence the legal framework should require the project proponent or approval authority to ensure the participation in consultations of vulnerable groups, including (in addition to women, the poor, ethnic and indigenous communities), the landless, the elderly, children, and those without legal title to land</p>
<p><b>Key element (7):</b></p> <p>Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns</p>	<p><b>LAAct</b></p> <p>7. Compensation for Losses: (1) Compensation shall be paid for losses resulting from clearing of crops and trees, and of demolition of walls, etc., or for damage, if any, suffered as a result of the removal or digging of earth, stone, ditches, or boring.</p> <p>...</p> <p>(3) In case the concerned person is not satisfied with the amount of compensation determined under Sub-Section (2), he/she may file a</p>	<p><b>Full Equivalence</b></p>	

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	<p><u>complaint with the chief District Officer</u> on which he/she receives information thereof, and in such cases the decision of the Chief District Officer shall be final.</p> <p>11. <u>Right of Landowner to File complaint:</u> (1) Within a time-limit of seven days from the date of the publication of a notice under Section 9, plus the time required for the journey involved, the concerned landowner may file a complaint with the Ministry of Home Affairs, the Government of Nepal through the local officer, explaining the reasons, if any, why his/her land should not be acquired. If the tenant has built any brick-house on the land with the consent of the landowner, such tenant may also file a complaint under this Sub-Section with respect to such house and the land occupied by it.</p> <p>18. List of Persons Entitled to Compensation and Complaints against it:(1) On the basis of the applications received within the time-limit prescribed in the notification issued under Section 9, the local officer shall prepare a list of persons entitled to compensation, and issue a notice accordingly for the information of the concerned persons.</p> <p>(2) A person who is not satisfied with the list contained in the notification issued under Sub-Section (2) may <u>file a complaint with the Ministry of Home Affairs, the Government of Nepal</u> within fifteen days after the publication of such notification.</p> <p>...</p> <p>25. Special Powers to Acquire Land in Special Circumstance: (1) In case it becomes urgently necessary for Government of Nepal to acquire any land to maintain transport or communication facilities, or to ensure safety of life and property against extensive damage, or to protect any other public property in the event of sudden diversion of the course of any river, or any natural disaster, or any other extraordinary circumstances, it may, notwithstanding anything contained elsewhere in this Act, order the local officer to initiate Action for the acquisition of such land after making a decision to that effect.</p> <p>...</p> <p>(7) Any person who is not satisfied with the amount of compensation may <u>file a complaint with the Ministry of Home Affairs, the Government of Nepal</u> within fifteen days from the date of the issue of the notice of fixation of compensation, and, in such</p>		

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	cases, the decision of the Ministry of Home Affairs, the Government of Nepal shall be final.		
<p><b>Key element (8):</b></p> <p>Support the social and cultural institutions of displaced persons and their host population</p>	<p><b>EIA Guidelines</b></p> <p>23. Types of Environmental Impact: In connection with the process of environmental impact assessment, attention must be paid to the following impact categories:</p> <p style="margin-left: 20px;">(a) <u>Socioeconomic Impact</u>: A study of socioeconomic impacts of the concerned project should be conducted to examine the activities that would bring about changes to the existing economic and social conditions of the communities within the project area or its vicinity. The socioeconomic impacts may be beneficial or averse.</p> <p style="margin-left: 20px;">(c) <u>Cultural Impact</u>: Attention should be paid to the impacts likely to be caused on cultural heritage by project activities. Areas of study should include historical and religious sites and traditional practices likely to be affected by project activities.</p>	<p><b>Partial Equivalence</b></p> <p>The EIA Guidelines are not explicit as to whether the requirement to consider social and cultural impacts apply to social and cultural institutions of displaced persons as well as their host population and whether such a requirement would require actions to support such institutions..</p>	<p>For Full Equivalence the legal framework should require the project proponent or approval authority to support social and cultural institutions of displaced persons and their host population.</p>
<p><b>Key element (9):</b></p> <p>Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a <b>social preparation phase</b>.</p>		<p><b>No Equivalence</b></p>	<p>The legal framework should require the project proponent or approval authority to engage in a social preparation phase prior to making any compensation and resettlement decision in circumstances where involuntary resettlement impacts and risks are highly complex and sensitive.</p>
<p><b>Policy Principle 3:</b> Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv) additional revenues and services through benefit sharing schemes where possible.</p>			

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<p><b>Key element (1):</b> Improve, or at least restore, the livelihoods of all displaced persons through <b>land-based resettlement strategies</b> when affected livelihoods are land based, where possible,</p>	<p><b>LAA</b></p> <p>14. <u>Allotment of Other Lands in Exchange</u>: In case any person whose land is wholly acquired under this Act wants to obtain compensation in the form of land elsewhere, Government of Nepal may, in exchange for such land, allot him/her any waste land, or land belonging to itself, or any other land which it is going to allot or sell in accordance with prevailing Nepal law, if available.</p> <p>15. <u>Compensation for Guthi lands<sup>4</sup></u>: In the case of Guthi lands acquired under this Act, compensation shall be paid in accordance with the provisions of the Guthi Corporation Act, 1976.</p> <p><b>Guthi Corporation Act 1976</b></p> <p>42. Reimbursement for land acquired by the Government of Nepal: If the Government of Nepal acquires any Guthi land, it may <u>reimburse a land</u> instead of the amount of compensation of that acquired land.</p> <p>Provided that, in cases where a Guthi Raitana Numbari land is acquired, the Government of Nepal shall pay compensation to the Corporation in consideration for the land revenue leviable on that land.</p> <p><b>National Environmental Impact Assessment Guidelines, 1993</b></p> <p><b>EIA Guidelines</b></p> <p>Chapter VIII. Impact Mitigation Measures</p> <p>(2)(b) Adoption of Compensatory Measures</p> <p>(2) rehabilitation of displaced settlements</p> <p>(3) compensation to affected persons</p>	<p><b>Partial Equivalence</b></p> <p>The legal frameworks for resettlement and environmental assessment provide for rehabilitation of displaced settlements and compensation to affected persons through land-based resettlement strategies. However land-based livelihood is not used as a criterion for application of such land-based resettlement strategies wherever possible</p>	<p>For Full Equivalence the legal framework should consider whether the livelihoods of displaced persons are land-based in deciding to apply resettlement strategies where possible and apply land based resettlement strategies where livelihoods are land based in order to improve or at least restore such livelihoods.</p>
<p><b>Key Element (2):</b> Improve, or at least restore, the livelihoods of</p>	<p><b>LAA</b></p> <p>16. <u>Criteria to be Considered While Determining Compensation</u>: (1) The Compensation Fixation Committee shall take the following</p>	<p><b>Partial Equivalence</b></p> <p>The legal framework provides cash compensation based on estimated losses</p>	<p>For Full Equivalence the legal framework should ensure that the cash compensation criteria are</p>

<sup>4</sup>. The Guthi Corporation Act defines Guthi as follows:  
 "Guthi" means and includes a Guthi (trust) endowed by any philanthropist through relinquishment of his or her title to a movable or immovable property or any other income-yielding property or fund for the operation of any shrine (*matha*) or festival, worship or feast of any God, Goddess or for the construction, operation or maintenance of any temple, shrine(*devasthal*), rest house (*dharmashala*), shelter (*patti*), inn(*pauwa*), well, tank, road, bridge, pasture, garden, forest, library, school, reading hall, dispensary, treatment facility, house, building or institution for any religious or philanthropic purpose.



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<p>all displaced persons through [through] cash compensation at replacement value for <b>land</b> when the loss of land does not undermine livelihoods</p>	<p>criteria into consideration while determining compensation for lands to be acquired for Government of Nepal, Local Bodies, and institutions fully owned by Government of Nepal.</p> <p>(a) The <u>guidelines issued by Government of Nepal</u> from time to time in respect to the fixation of compensation and, (b) The <u>losses suffered by the concerned person</u> as a result of his having been required to shift the residence or the place of his/her business by reason of acquisition of the land.</p> <p>(2) While <u>determining the amount of compensation for land to be acquired for institutions other than Local Bodies, and institutions fully owned by Government of Nepal</u>, the compensation Fixation committee shall take the following criteria into consideration:</p> <p>(a) The <u>price of the land at the time</u> of the publication of a notice of land acquisition under Section 9,</p> <p>(b) The <u>value of the crops, houses, walls, sheds, etc, if any, acquired along with the land</u>,</p> <p>(c) The <u>losses</u> which the concerned person will suffer as a result of shifting his/her residence, or the place of his/her business, by reason of the acquisition of his/her land.</p> <p>17. <u>Determination of compensation for Land Acquired Out of Surplus Land</u>: Notwithstanding anything contained in Section 16, in case the land to be acquired for Government of Nepal, Local Bodies, or institutions fully owned by Government of Nepal happens to be part of the land taken excess of the ceiling on landholding prescribed in the Lands Act, 1964 the amount of compensation therefor shall not exceed the amount payable under the Lands Act, 1964.</p> <p><b>Guthi Corporation Act 1976</b></p> <p>42A. <u>Power of Government of Nepal to acquire Guthi land</u>: If the Government of Nepal thinks that it is necessary to provide, or cause to be provided, any Guthi land owned by the Corporation for social welfare or community interest, it may, in view of practicality, acquire such a land at a concessional rate.</p> <p><b>EIA Guidelines</b></p> <p>27. Environmental Impact Mitigation Measures: Impact mitigation measures must be adopted with the objective of reducing and removing undesirable impacts and maximising project benefits.</p>	<p>resulting from displacement including the land price at the time of notice of acquisition; the <u>value of the crops, houses, walls, sheds, etc, if any, acquired along with the land and whether adequate attention has been paid to compensate for loss or damage of property</u> or to the provisions of resettlement. However, these criteria may not ensure that cash compensation would equal replacement value for the land acquired or that the livelihoods of displaced persons are improved.</p>	<p>harmonised to ensure that compensation would be paid at replacement value and that there is improvement of or at least restoration of the livelihoods of all displaced persons.</p>

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	<p>The following measures, which are appropriate relevant to most development projects, must be adopted:</p> <p>(b) Adoption of Compensatory Measures: ... Compensatory measures must specifically include the following activities:</p> <p>(2) rehabilitation of displaced settlements, and</p> <p>(3) <u>compensation to affected persons</u></p> <p>30. Review Parameters: The following parameters should be carefully checked while reviewing the environmental impact assessment report.</p> <p>(b) Mitigation Measures:</p> <p>(3) Whether adequate attention has been paid to <u>compensate for loss or damage of property</u> or to the provisions of resettlement.</p>		
<p><b>Key element (2):</b></p> <p>Improve, or at least restore, the livelihoods of all displaced persons through <b>prompt replacement of assets with access to assets of equal or higher value</b></p>	<p><b>National Environmental Impact Assessment Guidelines, 1993</b></p> <p>27. Environmental Impact Mitigation Measures: Impact mitigation measures must be adopted with the objective of reducing and removing undesirable impacts and maximising project benefits. The following measures, which are appropriate relevant to most development projects, must be adopted:</p> <p>(b) Adoption of Compensatory Measures: ... Compensatory measures must specifically include the following activities:</p> <p>(2) rehabilitation of displaced settlements,</p>	<p><b>Partial Equivalence</b></p> <p>Rehabilitation as per the Guidelines could include replacement of assets. This is in respect of projects where the Guidelines are applicable.</p>	<p>For full equivalence introduce provisions pertaining to prompt asset replacement as may be relevant.</p>
<p><b>Key element (3):</b></p> <p>Improve, or at least restore, the livelihoods of all displaced persons through prompt compensation for...assets that cannot be restored</p>	<p><b>LAA</b></p> <p>12. <u>Power to Occupy Land:</u> (1) The local officer shall <u>take possession of the concern land</u> and hand it over to the office or institution for which it is acquired after a decision has been made on complaint, if any, filed under Sub-Section (1) of Sub-Section 11 after the publication of the notice under Sub-Section (1) of Section 9, or at any time after the expiry of the time limit for filing a complaint, if no complaint has been received. Such land may then utilized for the purpose for which it is acquired. After taking possession of the land in this manner, the local officer shall notify Government of Nepal accordingly.</p> <p>(2) <u>Notwithstanding anything contained in Sub-Section (1), in case any house is to be acquired along with the land, and if it is being occupied personally by the owner thereof, it shall not be taken possession of (by the local officer) unless (the owner thereof) is</u></p>	<p><b>Partial Equivalence</b></p> <p>The legal framework provides for payment 50 percent of compensation due to displaced persons prior to displacement from a house occupied by the owner. However such partial compensation is unlikely to be sufficient to restore or improve their livelihoods</p>	<p>For Full Equivalence, the legal framework should require prompt compensation at a level sufficient to improve or at least restore the livelihoods of displaced persons.</p>

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	<u>paid 50 percent of the amount of compensation payable to him/her, if such compensation has already been determined, or reasonable expenses in advance as required to enable him/her to shift his residence, if the amount of compensation has not already been determined.</u>		
<p><b>Key element (4):</b> Improve, or at least restore, the livelihoods of all displaced persons through additional revenues and services through benefit sharing schemes where possible</p>		<b>No Equivalence</b>	For Full Equivalence the legal framework should require the provision of additional revenues and services through benefit sharing schemes where possible.
<p><b>Policy Principle 4:</b> Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.</p>			
<p><b>Key element (1):</b> Provide physically and economically displaced persons, ...with <b>secured tenure to relocation land...</b>,</p>	<p><b>LAA</b> 14. <u>Allotment of Other Lands in Exchange:</u> In case any person whose land is wholly acquired under this Act wants to obtain compensation in the form of land elsewhere, Government of Nepal may, in exchange for such land, allot him/her any waste land, or land belonging to itself, or any other land which it is going to allot or sell in accordance with prevailing Nepal law, if available.</p>	<p><b>Partial Equivalence</b> While the law provides for the allotment of land in exchange, it does not refer to secured tenure.</p>	Introduce provisions allowing for the providing of physically and economically displaced persons, if there is relocation, with secured tenure to relocation land.
<p><b>Key element (2):</b> Provide physically and economically displaced persons, ...<b>better housing</b> at resettlement sites</p>		<b>No Equivalence</b>	For Full Equivalence the legal framework should require provision of better housing at resettlement sites for physically and economically displaced persons.
<p><b>Key element (3):</b> Provide physically and economically displaced</p>		<b>No Equivalence</b>	For Full Equivalence the legal framework should require provision of comparable access to

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persons, ...with... <b>comparable access to employment and production opportunities,</b>			employment and production opportunities to physically and economically displaced persons.,
<b>Key element (4):</b> Provide physically and economically displaced persons...with...integration of resettled persons economically and socially into their host communities, and <b>extension of project benefits to host communities</b>		<b>No Equivalence</b>	For Full Equivalence the legal framework should require integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities.
<b>Key element (5):</b> Provide physically and economically displaced persons with <b>transitional support and development assistance,</b> such as land development, credit facilities, training, or employment opportunities		<b>No Equivalence</b>	For Full Equivalence the legal framework should require provision to provide physically and economically displaced persons of transitional support and development assistance such as land development, credit facilities, training, or employment opportunities.
<b>Key element (6):</b> Provide physically and economically displaced persons with <b>civic infrastructure and community services</b>		<b>No Equivalence</b>	For Full Equivalence the legal framework should require physically and economically displaced persons to be provided with civic infrastructure and community services..

**Policy Principle 5:** Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.

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<p><b>Key element (1):</b> Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards</p>		<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should adopt provisions pertaining to improvement of the standards of living of the displaced poor and other vulnerable groups, including women at least to national minimum standards.</p>
<p><b>Key element (2):</b> In rural areas provide them with <b>legal and affordable access to land and resources</b></p>	<p><b>LAA</b> 14. <u>Allotment of Other Lands in Exchange</u>: In case any person whose land is wholly acquired under this Act wants to obtain compensation in the form of land elsewhere, Government of Nepal may, in exchange for such land, allot him/her any waste land, or land belonging to itself, or any other land which it is going to allot or sell in accordance with prevailing Nepal law, if available.</p>	<p><b>Partial Equivalence</b> The LAA implies that the rural displaced poor and other vulnerable groups, including women, would be legally vested with replacement land as any such transaction would be allotted “in accordance with prevailing Nepal[i] law.”However, it is not explicit regarding the economic affordability or the legal relationship between the displaced poor and the replacement land.</p>	<p>For Full Equivalence the legal framework should explicitly provide that the rural displaced poor and other vulnerable groups, including women be provided with legal and affordable access to land.</p>
<p><b>Key element (3):</b> in urban areas provide them with <b>appropriate income sources and legal and affordable access to adequate housing</b></p>		<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should provide that in urban areas displaced poor and other vulnerable groups, including women, be provided with appropriate income sources and legal and affordable access to adequate housing.</p>
<p><b>Policy Principle 6:</b> Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.</p>			
<p><b>Key element (1):</b> Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement</p>	<p><b>LAA</b> 27. Acquisition of Land Through Negotiations: Notwithstanding anything contained elsewhere in this Act, Government of Nepal may acquire any land for any purpose through negotiations with the concerned landowner. It shall not be necessary to comply with the procedure laid down in this Act while acquiring lands through negotiations.</p>	<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should require that procedures applicable to negotiated settlement be developed transparent, consistent, and equitable manner.</p>

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<p><b>Key element (2):</b></p> <p>Ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status</p>	<p><b>LAA</b></p> <p>27. Acquisition of Land Through Negotiations: Notwithstanding anything contained elsewhere in this Act, Government of Nepal may acquire any land for any purpose through negotiations with the concerned landowner. It shall not be necessary to comply with the procedure laid down in this Act while acquiring lands through negotiations.</p>	<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should require that those who enter into negotiated settlements maintain the same or better income and livelihood status.</p>
<p><b>Policy Principle 7:</b> Ensure that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.</p>			
		<p><b>No Equivalence</b></p> <p>It is noted that there are provisions relating to tenants but not to categories of displaced persons without titles to land or any recognizable legal rights to land.</p>	<p>For Full Equivalence the legal framework should provide that displaced persons without titles to land or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.</p>
<p><b>Policy Principle 8:</b> Prepare a resettlement plan elaborating on displaced persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.</p>			
<p><b>Key Element (1):</b></p> <p>Prepare a resettlement plan elaborating on displaced persons' entitlements</p>	<p><b>EPR</b> <b>Schedule 2 (Relating to Rule 3)</b> <b>Proposals requiring Environmental Impact Assessment</b></p> <p>C. Mining Sector: (a) Relocation or resettlement of permanent residence of more than 100 people for the purpose of mine excavation</p> <p>E. Water resources and Energy sector: 6. Any water resources development activity which displaces more than One Hundred people with permanent residence</p> <p>6. Displacement of more than One Hundred persons for the operation of water supply scheme. 7. Settlement of more than Fifty persons on the upper reaches of water sources.</p> <p>Schedule -4(Relating to Rule 5)</p>	<p><b>Partial Equivalence</b></p> <p>Although the legal framework does not require the preparation of a resettlement plan the EPR requires an EIA for certain designated types of projects in the water sector that result in displacement of more than 100 persons.</p>	<p>For Full Equivalence the legal framework should require the preparation of a resettlement plan elaborating on displaced persons' entitlements.</p>

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	Work Schedule Relating to Environmental Impact Assessment 7. Impact on the environment on the implementation of the report: (a) Social and economic 9. Measures to remove any negative impact that may be noticed while implementing the proposal.		
<b>Key Element (2):</b> Prepare a resettlement plan elaborating on...the income and livelihood restoration strategy for displaced persons		<b>No Equivalence</b>	For Full Equivalence the legal framework should require that the resettlement plan elaborate on the income and livelihood restoration strategy for displaced persons.
<b>Key Element (3):</b> Prepare a resettlement plan elaborating on ...institutional arrangements		<b>No Equivalence</b>	For Full Equivalence the legal framework should require that the resettlement plan elaborate on the institutional arrangements for resettlement.
<b>Key Element (4):</b> Prepare a resettlement plan elaborating on [the], monitoring and reporting framework	<b>EIA Guidelines</b> Chapter X Environmental Impact Monitoring 32. Need for Monitoring: ... 33. Principles of Monitoring: ... 34. Types of Monitoring: (a) Baseline Monitoring (b) <u>Impact Monitoring</u> (c) Compliance Monitoring  35. Regular Monitoring: ... Environmental impact monitoring provides information required to ensure that project implementation has the <u>least possible adverse environmental impact on the people and environment of the area concerned.</u>  Chapter XI Evaluation of Environmental Impact Studies	<b>Partial Equivalence</b>  In circumstances where the EIA Guidelines are applied to a project involving involuntary resettlement the legal framework would require preparation of a monitoring and reporting framework.	For Full Equivalence the legal framework should require preparation of a monitoring and reporting framework for those projects resulting in involuntary resettlement that are not subject to EIA.

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	<p>39. Introduction: (1) Environmental impact assessment evaluation is a continuous process through which project impact can be assessed objectively. ... Environmental impact assessment evaluation determines if mitigation measures adopted by implementing agencies have been implemented according to the requirements of the environmental impact assessment report.</p> <p>...</p> <p>Chapter XII</p> <p>Environmental Impact Auditing</p> <p>42. Environmental Impact Auditing: (1) The environmental impact auditing must be undertaken after the project has been operational for some time.</p> <p>EIA Guidelines Schedule 5. Environmental Impact Assessment Report Format 5. Alternative Analysis. Design, site, technology and operational alternatives should be compared systematically in term of their potential ...monitoring requirements</p>		
<p><b>Key Element (5):</b></p> <p>Prepare a resettlement plan elaborating on...[the], budget [for resettlement costs]</p>	<p><b>LAA</b></p> <p>4. Power to Acquire Land for Institution:</p> <p>(2) Proceeding regarding the acquisition of land under this Act shall not be initiated unless the institution requesting for land acquisition has executed a deed in respect to the following matters:</p> <p>(a) <u>Payment to Government of Nepal of all the expenses incurred or likely to be incurred</u> for the acquisition of the land.</p> <p>Schedule 5. Environmental Impact Assessment Report Format 5. Alternative Analysis. Design, site, technology and operational alternatives should be compared systematically in term of their potential capital and recurring costs</p>	<p><b>Partial Equivalence</b></p> <p>Preparation of deed committing the institution requesting land to provide payment to the Government for all expenses incurred or anticipated for land acquisition purposes would require preparation of a budget for such costs as are required under the legal framework. This however, may not result in a resettlement plan.</p>	<p>For Full Equivalence the legal framework should require that any budget prepared to meet acquisition costs would need to be included in a resettlement plan.</p>



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<p><b>Key Element (6):</b></p> <p>Prepare a resettlement plan elaborating on ...[the] time-bound implementation schedule.</p>	<p>LAA</p> <p>4. Power to Acquire Land for Institution:</p> <p>(2) Proceeding regarding the acquisition of land under this Act shall not be initiated unless the institution requesting for land acquisition has executed a deed... in respect to the following matters:</p> <p>(c) If any other construction purpose, the estimated time for construction and mode of for use.</p>	<p><b>Partial Equivalence</b></p> <p>The requirement for the institution seeking to acquire land to specify by deed the estimated time for construction and mode of for use would provide a timetable for land acquisition. However, this provision would not provide a timetable for implementation of resettlement obligations such as compensation and other entitlements.</p>	<p>For Full Equivalence the legal framework should require the institution seeking to acquire land to prepare a time-bound implementation schedule for all resettlement activities subject to preparation of a resettlement plan.</p>
<p><b>Policy Principle 9:</b> Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.</p>			
<p><b>Key element (1):</b></p> <p>Disclose a draft resettlement plan, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders</p>	<p><b>EIA Guidelines</b></p> <p>Chapter IV. Scoping for Environmental Impact Assessment 14. Methods of Scoping for Environmental Impact Assessment</p> <p>(c) Providing Necessary Notification and Information to the People Likely to be Affected by the Project: The data and information ....should be forwarded by the concerned project proponent to the reevant persons for necessary comments.....The people likely to be affected by the proposed project must be notified directly.</p> <p>Chapter IX. Review of Draft Environmental Impact Assessment Report</p> <p>28. Release for Public Review: A draft environmental impact assessment report must be released for public review and ocmments.</p> <p><b>EPR</b></p> <p>11. Power to Grant Approval to Implement Proposals:</p> <p>(2) [The] Ministry shall publish a public notice in any one of the daily newspaper[s], granting a time limit of [t]hirty days, to the general public to make a copy of the report themselves received along with the proposal on their own or to study it for offering their opinions and suggestions on it</p>	<p><b>Partial Equivalence</b></p> <p>The EPR and EIA Guidelines require public disclosure of the information collected at the scoping stage as well as the draft environmental impact assessment. To the extent that a project resulting in involuntary resettlement is subject to the EPR and EIA Guidelines requirements, it is reasonable to expect that disclosure of proposed measures to avoid, minimize, mitigate and/or compensate for resettlement impacts would be required. However, such disclosure, limited to the context of an EIA cannot be considered equivalent to disclosure of a full resettlement plan.</p>	<p>For Full Equivalence the legal framework should require disclosure of a draft resettlement plan, (in an accessible place and a form and language(s) understandable to affected persons and other stakeholders) before project approval,whether or not the project requires an EIA.</p>

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<p><b>Key element (2):</b> Disclose the final resettlement plan and its updates to affected persons and other stakeholders.</p>		<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should require that disclosure of the final resettlement plan and its updates to affected persons and other stakeholders.</p>
<p><b>Policy Principle 10:</b> Conceive and execute involuntary resettlement as part of a development project or programme. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.</p>			
<p><b>Key element (1):</b> Conceive and execute involuntary resettlement as part of a development project or programme</p>	<p><b>LAA</b></p> <p>3. Power of Government of Nepal to Acquire Lands for Public Purpose: Government of Nepal may, if it so deems necessary, acquire any land at anyplace for any <u>public purpose</u>, subject to compensation under this Act.</p> <p>4. Power to Acquire Land for Institution:</p> <p>(1) In case institution requests Government of Nepal for the acquisition of land <u>for any of the following purposes</u>, subject to payment of compensation and all other expenses under this Act, Government of Nepal may decide to have the land acquired for such institution:-</p> <p>(a) To construct residential quarters for the staff, workers or laborers of the institution, or otherwise provide for their welfare, or undertake any function in the interest of the general public.</p> <p>(b) To operate a project connected with an institution fully owned by Government of Nepal, or to construct a go down for the storage of any commodes or material connected with or manufactured by any such institution.</p> <p>(2) Proceeding regarding the acquisition of land under this Act shall not be initiated unless the institution requesting for land acquisition has executed a deed in respect to the following matters:</p> <p>(a) Payment to Government of Nepal of all the expenses incurred or likely to be incurred for the acquisition of the land.</p>	<p><b>Full Equivalence</b></p>	<p>None required</p>

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	<p>...</p> <p>28. Power to Acquire Land for Diplomatic Missions and International Agencies: (1) lands may be acquired under this Act for the use of diplomatic missions, including consulates, and of international agencies.</p> <p>(2) Compensation for lands to be acquired under Sub-Section (1) shall be determined in accordance with Sub-Section (2) of Section 16.</p> <p><b>National Environmental Impact Assessment Guidelines, 1993</b></p> <p>27. Environmental Impact Mitigation Measures: Impact mitigation measures must be adopted with the objective of reducing and removing undesirable impacts and maximising project benefits. The following measures, which are appropriate relevant to most development projects, must be adopted:</p> <p>(e) Implementation of Mitigation Measures: ... All proposed mitigation measures must be <u>integrated in the project design</u> so that these measures may automatically form part of the construction and operational phases of the project. ...</p>		
<p><b>Key element (2):</b></p> <p>Include the full costs of resettlement in the presentation of project's costs and benefits</p>	<p><b>LAA</b></p> <p>3. Power of Government of Nepal to Acquire Lands for Public Purpose: Government of Nepal may, if it so deems necessary, acquire any land at anyplace for any <u>public purpose, subject to compensation</u> under this Act.</p> <p>4. Power to Acquire Land for Institution:</p> <p>(2) Proceeding regarding the acquisition of land under this Act shall not be initiated unless the institution requesting for land acquisition has executed a deed in respect to the following matters:</p> <p>(a) <u>Payment to Government of Nepal of all the expenses incurred or likely to be incurred</u> for the acquisition of the land.</p> <p>...</p> <p><b>EIA Guidelines</b></p> <p>27. Environmental Impact Mitigation Measures: Impact mitigation</p>	<p><b>Partial Equivalence</b></p> <p>The LAA requires that the cost of resettlement is the responsibility of the project proponent. The EIA Guidelines require that "cost-benefit" of environmental mitigation be included as an evaluation parameter However there is no provision for including cost-benefit analysis in the resettlement planning stage.</p>	<p>For Full Equivalence the legal framework should require that the full cost-benefit analysis of resettlement mitigation measures be included in the resettlement plan.</p>

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	<p>measures must be adopted with the objective of reducing and removing undesirable impacts and maximising project benefits. The following measures, which are appropriate relevant to most development projects, must be adopted:</p> <p>(e) Implementation of Mitigation Measures: ... All proposed mitigation measures must be <u>integrated in the project design</u> so that these measures may automatically form part of the construction and operational phases of the project. ...</p> <p>41. Evaluation Parameters</p> <p>(1) In the process of evaluation, indicators derived from...project parameters should be checked on a regular basis. These parameters include;</p> <p>(g) Cost-benefit of environmental mitigation</p> <p>Schedule 4. Format of Terms of Reference [for EIA]</p> <p>4.c Cost-benefit of project in terms of its environmental implications should be analysed.</p>		
<p><b>Key element (3):</b></p> <p>For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation</p>		<p><b>No Equivalence</b></p>	<p>For Full Equivalence the legal framework should include an option to implement the involuntary resettlement component of a project with significant involuntary resettlement impacts as a stand-alone operation.</p>
<p><b>Policy Principle 11:</b> Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.</p>			

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<p><b>Key element (1):</b></p> <p>Pay compensation and provide other resettlement entitlements before physical or economic displacement</p>	<p><b>LAA</b></p> <p>12. <u>Power to Occupy Land:</u> (1) The local officer shall <u>take possession of the concern[ed] land</u> and hand it over to the office or institution for which it is acquired after a decision has been made on complaint, if any, filed under Sub-Section (1) of Sub-Section 11 after the publication of the notice under Sub-Section (1) of Section 9, or at any time after the expiry of the time limit for filing a complaint, if no complaint has been received. Such land may then utilized for the purpose for which it is acquired. After taking possession of the land in this manner, the local officer shall notify Government of Nepal accordingly.</p> <p>(2) <u>Notwithstanding anything contained in Sub-Section (1), in case any house is to be acquired along with the land, and if it is being occupied personally by the owner thereof, it shall not be taken possession of (by the local officer) unless (the owner thereof) is paid 50 percent of the amount of compensation payable to him/her, if such compensation has already been determined, or reasonable expenses in advance as required to enable him/her to shift his residence, if the amount of compensation has not already been determined.</u></p>	<p><b>Partial Equivalence</b></p> <p>There is provision for partial payment<sup>5</sup> in certain circumstances prior to physical possession being taken of a house occupied by the owner. However the LAA allows for prior payment of transitional expenses only; should the amount of compensation due be undetermined at the time of possession. Nor does the LAA provide for prior payment of compensation for economic displacement.</p>	<p>For Full Equivalence the legal framework should provide for full payment of compensation prior to physical or economic displacement.</p>
<p><b>Key element (2):</b></p> <p>Implement the resettlement plan under <b>close supervision</b> throughout project implementation</p>	<p><b>EIA Guidelines</b></p> <p>Chapter X</p> <p>Environmental Impact Monitoring</p> <p>32. Need for Monitoring: ...</p> <p>33. Principles of Monitoring: ...</p> <p>34. Types of Monitoring:</p> <ul style="list-style-type: none"> <li>(a) Baseline Monitoring</li> <li>(b) <b>Impact Monitoring</b></li> <li>(c) Compliance Monitoring</li> </ul>	<p><b>Partial Equivalence</b></p> <p>In circumstances where the EIA Guidelines are applied to a project involving involuntary resettlement the monitoring requirements would require close supervision. However, there are no supervision or monitoring requirements that would apply to projects resulting in involuntary resettlement that are not subject to EIA.</p>	<p>For Full Equivalence the legal framework should include supervision requirements that would apply to projects resulting in involuntary resettlement even when they are not subject to EIA..</p>

<sup>5</sup>SPS, Appendix 2, Involuntary Resettlement, states in para. 14 that “[n]o physical...or economic displacement will occur until (1) compensation at full replacement cost has been paid to each displaced person for project components or section that are ready to be constructed....While compensation is to be paid before displacement, full implementation of resettlement plan [e.g, a comprehensive income and livelihood rehabilitation program] might take longer.” [Comment: Clause 14 requires that that no physical displacement or economic displacement is to occur until (i) compensation at full replacement cost has been paid for project components or sections that are ready to be constructed as well as that (ii) **other entitlements listed in the resettlement plan have been provided.** Hence the above deletion ]

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	<p>35. Regular Monitoring: ... Environmental impact monitoring provides information required to ensure that project implementation has the <u>least possible adverse environmental impact on the people and environment of the area concerned.</u></p> <p>Chapter XI</p> <p>Evaluation of Environmental Impact Studies</p> <p>39. Introduction: (1) Environmental impact assessment evaluation is a continuous process through which project impact can be assessed objectively. ... Environmental impact assessment evaluation determines if mitigation measures adopted by implementing agencies have been implemented according to the requirements of the environmental impact assessment report.</p> <p>...</p> <p>Chapter XII</p> <p>Environmental Impact Auditing</p> <p>42. Environmental Impact Auditing: (1) The environmental impact auditing must be undertaken after the project has been operational for some time.</p> <p>(2) In the context of an environmental impact assessment, the environmental impact auditing assesses actual environmental impact, accuracy of prediction, effectiveness of environmental impact mitigation and enhancement measures and functioning of monitoring mechanisms.</p> <p>...</p>		
<p><b>Policy Principle 12:</b> Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.</p>			
<p><b>Key element (1):</b></p> <p>Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and</p>	<p><b>EPA</b></p> <p>Chapter 2</p> <p>Rule 13</p> <p>(1) The concerned body shall monitor and evaluate the impact of the implementation of the proposal on the environment.</p> <p>(2) In case where it is found in the course of carrying out</p>	<p><b>Partial Equivalence</b></p> <p>In circumstances where the EPA and the EIA Guidelines are applied to a project involving involuntary resettlement the legal framework would require that project implementation has the <u>least possible</u></p>	<p>For Full Equivalence the legal framework should include monitoring requirements that would apply to projects resulting in involuntary resettlement and requirements that baseline conditions be taken into account in</p>

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<p>whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring</p>	<p>monitoring and evaluation ...that the actual impact is higher than the one specified in the conditions prescribed at the time of approving the proposal, the concerned body shall issue necessary directives to the proponent to adopt measures to reduce or control such impact and it shall be the duty of the concerned proponent to comply with such directives. (3) The concerned body shall also inform the Ministry about the directives issued to the proponent under Sub-Rule (2).</p> <p><b>EIA Guidelines</b></p> <p>Chapter X</p> <p>Environmental Impact Monitoring</p> <p>32. Need for Monitoring: ...</p> <p>33. Principles of Monitoring: ...</p> <p>34. Types of Monitoring:</p> <ul style="list-style-type: none"> <li>(a) Baseline Monitoring</li> <li>(b) <u>Impact Monitoring</u></li> <li>(c) Compliance Monitoring</li> </ul> <p>35. Regular Monitoring: ... Environmental impact monitoring provides information required to ensure that project implementation has the <u>least possible adverse environmental impact on the people and environment of the area concerned.</u></p> <p>Chapter XI</p> <p>Evaluation of Environmental Impact Studies</p> <p>39. Introduction: (1) Environmental impact assessment evaluation is a continuous process through which project impact can be assessed objectively. ... Environmental impact assessment evaluation determines if mitigation measures adopted by implementing agencies have been implemented according to the requirements of the environmental impact assessment report. (2) Monitoring and evaluation are two complementary processes of the environmental impact assessment study.</p> <p>(4) Environmental impact assessment evaluation and results are necessary if mitigation measures are to be effectively maintained and revised as necessary.</p>	<p><u>adverse environmental impact on affected people and whether the mitigation measures (including those applicable to involuntary resettlement have been achieved</u> However, there are no monitoring requirements required for projects resulting in involuntary resettlement that are not subject to EIA, nor is there any legal requirement to take baseline conditions into account in monitoring impacts and compliance.</p>	<p>assessing whether resettlement objectives have been achieved.</p>

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	<p>Chapter XII</p> <p>Environmental Impact Auditing</p> <p>42. Environmental Impact Auditing: (1) The environmental impact auditing must be undertaken after the project has been operational for some time.</p> <p>(2) In the context of an environmental impact assessment, the environmental impact auditing assesses actual environmental impact, accuracy of prediction, effectiveness of environmental impact mitigation and enhancement measures and functioning of monitoring mechanisms.</p> <p>...</p>		
<p><b>Key element (2):</b></p> <p>Disclose monitoring reports</p>	<p><b>EIA Guidelines</b></p> <p>Chapter X</p> <p>Environmental Impact Monitoring</p> <p>38. Institutional Aspects: (1)... Agencies responsible for the monitoring process must be firmly committed, particularly with regard to the following:</p> <p style="padding-left: 40px;">(f) <u>Making the information obtained from monitoring available to all agencies concerned.</u></p> <p>47. <u>Time for Community Participation</u>: Community participation is necessary during the following phases of project planning:</p> <p style="padding-left: 40px;">(d) <u>Monitoring, evaluation and auditing.</u></p> <p>49. <u>Methods to involve the Public</u>: The following methods may be used to involve the public during various stages of the project:</p> <p style="padding-left: 40px;">(e) Review of the draft environmental impact assessment report and <u>monitoring/evaluation</u> results by the local community.</p>	<p><b>Partial Equivalence</b></p> <p>In circumstances where the EIA Guidelines are applied to a project involving involuntary resettlement the legal framework would require disclosure of monitoring reports.</p>	<p>For Full Equivalence the legal framework should require disclosure of monitoring reports for projects resulting in involuntary resettlement.</p>