

# **LEASE AS AN ALTERNATIVE APPROACH FOR ACCESS TO LAND FOR INFRASTRUCTURE DEVELOPMENT**

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# LEASE AS AN ALTERNATIVE APPROACH FOR ACCESS TO LAND FOR INFRASTRUCTURE DEVELOPMENT

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## ABSTRACT

Infrastructure development such as road, railways or means of transportation is essential for the economic progress for any country, and such development requires a large track of land. For this purpose, the state usually acquires land using land expropriation. The literature review and the experience indicate that the issues on compensation, loss of ownership and livelihood, violation of right of the land owners always come together within the process of land acquisition. The purpose of this research is to investigate appropriate mechanism and approach for delivering land for public infrastructure development that balances the societal and economic needs of the country and its people.

Desk research and a case study supported by field research are two step approach adopted to meet the objectives of the research. The desk research firstly focuses on the study of the trend and practices of various land acquisition techniques and secondly to derive essential indicators for an assessment framework under good land governance principles. The framework consists of thirty indicators under the five main evaluation areas: policy, management, operation, influential factor and impact review process. These indicators are then used to investigate the situation on land acquisition approach used in a case “Kathmandu Terai Fast Track Road Project” in Nepal. The key informant interview technique is adopted for the primary data collection. Open ended questions were prepared for different category of stakeholders according to their field of expertise.

The qualitative assessment of the data from the field research in the case study area shows that in all evaluation areas governance characteristics are hardly taken into consideration. This is due to the fact that the governance elements, ownership right issues and sustainable land use were not considered as an issue at the time when the laws and acts were made. This research further indicates that land acquisition is not only technical and administrative issues but is also about a wide range of complex issues like human right, security and sustainable land development. Hence, the existing approaches are not enough to cope with the current challenges addressing the upcoming issues. Further, investigation on leasing option shows the presence of the good governance elements like participation, coordination, cooperation and involvement of citizens on decision making. This creates the win-win situation that makes easy to acquire land. The investigation reveals that temporary lease has potential to be used as a supplementary approach with the other approach, as it depends on the uses of the land, scatteredness of the land parcels and the benefits foreseen for the land owners and the state on adopting this approach. Temporary leasing is feasible and applicable economically if the costs incurred is less than overall costs of expropriation and vice versa.

**Key Words:** *Land Acquisition, Land Lease, Good Governance, Assessment framework, Economic Balance*

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*Shanti Basnet*

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## ABBREVIATIONS

ADB	: Agricultural Development Bank
CBLDP	: Community Based Rural Land Development Project
CBO	: Community Based Organizations
CDO	: Chief Districts Officer
CFC	: Compensation Fixation Committee
CSRC	: Community Self Reliance Centre
CIDA	: Canadian International Development Agency
DCE	: Divisional Chief Engineer
DDC	: District Development Committee
DFID	: Department for International Development
DG	: Director General
DLRO	: District Land Revenue Office
DoLRM	: Department of Land Reform and Management
DoR	: Department of Road
DSO	: District Survey Office
DoUDBC	: Department of Urban Development and Building Construction
ED	: Eminent Domain
FAO	: Food and Agriculture Organization
GESU	: Geo-Environment and Social Unit
GIS	: Geographical Information System
GoN	: Government of Nepal
GoI	: Government of India
GTZ	: German Technical Assistance Agency (Deutsche Gesellschaft für Technische Zusammenarbeit)
KTFTRP	: Kathmandu Terai Fast Track Road Project
KVTDC	: Kathmandu Valley Town Development Committee
LAS	: Land Information System
MoGA	: Ministry of General Administration
MoH	: Ministry of Home
MoLRM	: Ministry of Land Reform and Management
MoPPW	: Ministry of Physical Planning and Works
NEA	: Nepal Electricity Authority
NGO	: Non Governmental Organization
NORAD	: Norwegian Agency for Development Co-Operation
NPC	: National Planning Commission
OGC	: Open Geospatial Consortium
PAP	: Project Affected People
PM	: Project Manager
PSC	: Public Service Commission
Rs	: Rupees (Nepali and Indian Currency)
SDC	: Swiss Agency for Development and Cooperation
SDI	: Spatial Data Infrastructure
SIDA	: Swedish International Development Agency
UNDP	: United Nations Development Program
UNESCAP	: United Nations Economic and Social Commission for Asia and the Pacific
UNHABITAT	: United Nations Human Settlements Programs
USA	: United State of America
VDC	: Village Development Committee
WGI	: World Governance Indicators



# 1. INTRODUCTION

## 1.1. General Background

An initial step in the process of public infrastructure development is the acquisition of land. It is a process of acquiring privately owned land and providing for the public purpose for the implementation of planned development for the welfare of human settlement (Henssen, 1988). Large scale of land over large area is required when it comes for the development of infrastructure like highways, hydropower projects and power plants. On the other hand, since only the state land is not enough, acquiring such a large amount of land is necessary from the private owners as well. Moreover the land may not be on sale when required. In order to acquire land when and where it is needed, government have the power of acquiring land and they can enforce private land owners to sell it in order to be used for specific public purposes (FAO, 2008). There is in fact little or no room for avoidance once the state has decided to enter private lands after pursuing the set procedure. Hence, different instruments of land acquisition are practiced in different countries according to its legal, social, economical settings (Ding, 2007).

Most of the developmental projects are delayed or even terminated in the operation phase because of the conflict caused by expropriation of land with low market value (Oluwamotemi, 2010). The communities sometimes create serious interference to the project when unfair land acquisitions for progressive development. Therefore, public land acquisition has not been successful in developing countries and successful land acquisitions demands very well performed plan processes (Ogunlana *et al.*, 2001). Land acquisition approaches that are most prominent illustrate that access to information for land owners about the land acquisition is not provided. This enhances the conflict and ultimately obstructs progress for infrastructure development. The non-transparency and non-public participation at any level such as information collection, consultation and in decision making processes is the other problem for peaceful land acquisition for any infrastructure development (Ogunlana, *et al.*, 2001).

However, “The unfair procedures for the compulsory acquisition and readjustment of land and inequitable and inadequate compensation for its loss can decrease land tenure security” (FAO, 2008). It also increases tensions between the government, citizens and other stakeholders and reduces public confidence in the rule of law as explained in (FAO, 2008). Local land owners protest against the acquisition processes as experienced. Moreover, unclear, unpredictable and unenforceable procedures create opportunities for corruption. Therefore there is need of good governance to provide a balance between the need of the government to acquire land for infrastructure development for public purpose and also the need to protect the right of people whose land is to be acquired. There is no conflict or reduced conflict if the acquisition policies are clear enough to define the specific purpose for which the government acquires land and if there are transparent, effective, efficient and fair procedure for acquiring land with the public participation (FAO, 2008).

Also, the land acquisition phenomenon raised different fundamental questions on land rights, loss of land and property with no way of earning of livelihood, without access to necessary resources or support of the community and with the sentiment that they have suffered. Thus, as stated by Walacik and Zrobek (2011), public investment implementations cause interference with the individual property rights. Most importantly, the human right on land is hot issue, with diverse views held by different stake holders (FAO, 2008). Experience has shown that the land acquisition process brings tension for those who are threatened with dispossession of land. The development eventually may bring benefits to the society but at the same time it is also disruptive to people whose land is acquired. It dislocates families from their homes, farmers from their farms and business from their neighbourhoods. It may separate families, interfere with livelihoods, deprive communities of important religious cultural sites and destroy networks of social relations.

These dilemmas have led to a new orientation for the acquisition of land through leasing. Big investors and local land holders can collaborate in such a way that it can be mutually beneficial, creating self-

sufficiency and maximizing opportunities to the locals and still remaining attractive and sustainable to the investors and the state. This will ensure that acquisition is done only for the public purpose and not for the other purposes. Community driven plans and programs are helpful in reducing conflicts between communities and the government.

## 1.2. Research Problem

The land is acquired by using different techniques (Viitanen & Kakulu, 2009). However, it has to be considered which best fits the situation, the area and the socio-economic environment for the development, among the various alternatives. Irrespective of the methods used, the process is critical as it creates risks and the local people are marginalized in several ways. “Even if the better method applied the gap between the legality (whereby the government may own the land formally and allocate it for the development) and legitimacy (whereby local people feel the land they have used for generations is theirs) exposes local land owners to the risks of dispossession and development activities to that of dispute” (Cotula, 2011). This shows that the government which are meant to serve its people find themselves often in conflicts with their people for interfering with their land rights. “Disagreement over the implementation of the provisions of the land acquisition legislation is noted to be one of the main source of disputes” (Kusiluka *et al.*, 2011).

The above argument shows that the main problem in development of the projects originates from the disagreement in the land acquisition procedures. Whatever the size of the project, its importance for societal welfare, it cannot be conducted without having land at first hand through peaceful mechanism. Therefore it is necessary to analyse the technique for land acquisition. It can be assessed whether it contributes in particular reference to good land governance or not. Similarly the process to acquire large scale of land through land lease approach for public purpose from the land owners has not been in practice and no scientific research has been done so far in this issue. Moreover in the whole process of infrastructure development and especially in the planning and land acquisition phases, neither the involvement is taken into account nor is the system developed such that it creates basic framework for the local’s participation. Therefore there is not any standard norm to follow within the various stages and no methods to empower the local land owners in order to incorporate them in the partnership. How to empower the local land owners in the partnership process is also a problem.

## 1.3. Motivation

There is lack of proper mechanism for the procedure of acquisition of land. The land acquisition process is always debatable (Walacik & Zrobek, 2011). The land owners who have to provide land to the state for improving public goods are not satisfied and there is always conflict between parties/stakeholders (FAO, 2008). Because of which the project take more time than the estimated. This finally increases the costs of the project creating economic imbalance (Ogunlana, *et al.*, 2001). Interesting issue here is not only about the compensation but also how the benefits that infrastructure development brings could possibly be shared among the society, the communities or individuals. In this research, the question is how can the land leasing approach bring and share potential benefits (in term of economic development) so that land owners/users can sustain and enjoy their livelihood? Such approach requires strong land governance dimensions such as transparency, accountability, equity, public participation and access to all kinds of information.

This research has been motivated because of the similar problems in Nepal as there are examples of many public projects like roads and hydropower projects which are taking a lot of time to start and some which had already been terminated. The main problem starts from the phase of acquiring the land from the local people. Therefore the alternative procedure of acquiring the land through land lease approach would possibly be the better solution, where the owner of the land can transfer some of the rights leaving the ownership right to themselves. This could also be a solution for the developing country whose economy is not very strong. Moreover, land owners do not have to lose their land and can enjoy the ownership of their property for generations. The unfavourable and unsuccessful situation undergoing in the present condition with the currently applied methods of

acquiring land also motivates to find out the relevance of the land acquisition approach. The government of Nepal is also encouraging for “Private Government and cooperative/community sector partnership” (NPC, 2011) through the National Planning Commission. Therefore it is important to support, encourage and increase balance and fairness between land owner and state relation to enhance the development of the nation. To support the development of any nation is also the responsibility of its people.

#### 1.4. Research Objectives

##### 1.4.1. Main Objective

- To investigate land lease option as an alternative approach of land acquisition for public infrastructure development

##### 1.4.2. Sub Objectives

- To review the trend and practice of public land acquisition
- To analyse the land lease approach in particular reference to good land governance
- To investigate the feasibility of land lease approach for infrastructure development

#### 1.5. Research Questions

##### Questions for Sub-objective 1:

1. What are the current trend and practices of land acquisition?
2. How has the doctrine of acquisition change over time?

##### Questions for Sub-objective 2:

1. What are the different principles/characteristics of good land governance?
2. Does land lease comply with principles of good land governance?

##### Questions for Sub-objective 3:

1. What are the different possible options in leasing land?
2. Is land lease feasible approach for acquiring land for infrastructure development?

#### 1.6. Research Hypothesis

The research is based on the hypothesis that “Land lease is a feasible approach for acquiring land for new road development purpose”.

#### 1.7. Conceptual Framework

A conceptual framework has been developed in order to carry out this research in a methodological way.

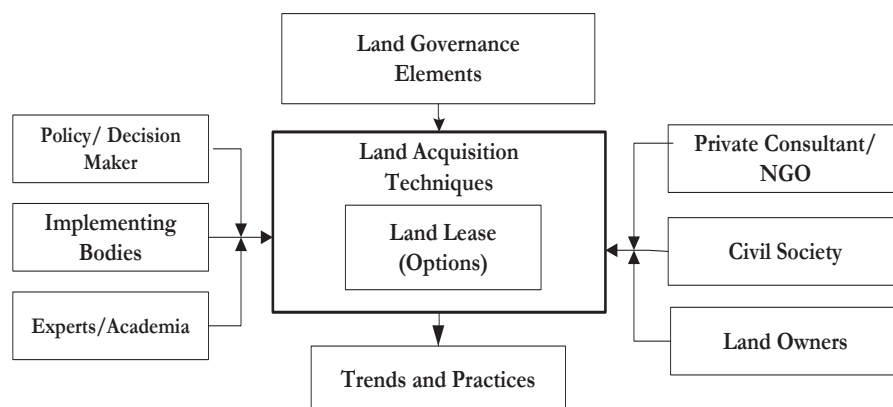


Figure 1-1: Conceptual Framework

The research contains two levels of analysis which leads to the objective for the study. One is about the land acquisitions trends and practices in general. The other is finding on the land lease. How can

be the lease incorporated to generate economic benefit to the society. This tries to analyse whether the acquisition techniques is associated with the objective of Good land governance principle. Figure 1-1 gives a general overview of the conceptual framework.

## 1.8. Research Methodology

In order to achieve the objectives of the research, qualitative method is adopted ( Figure 1-2). A case study supported by the desk research is the proposed methodology for this research.

### 1.8.1. Desk Research

Desk research is the initial approach adopted for the research. This is method of collecting secondary data and is based on the review of literatures. This focuses on different scientific papers, journal articles, policy papers, official reports and other relevant documents from different sources. This method is focussed on reviewing the trends and practices on the land acquisition and good governance. One of the most important steps in this phase is to prepare a framework for the assessment of land acquisition approach. The framework assesses the land acquisition for which the good land governance is the major aspects of the assessment.

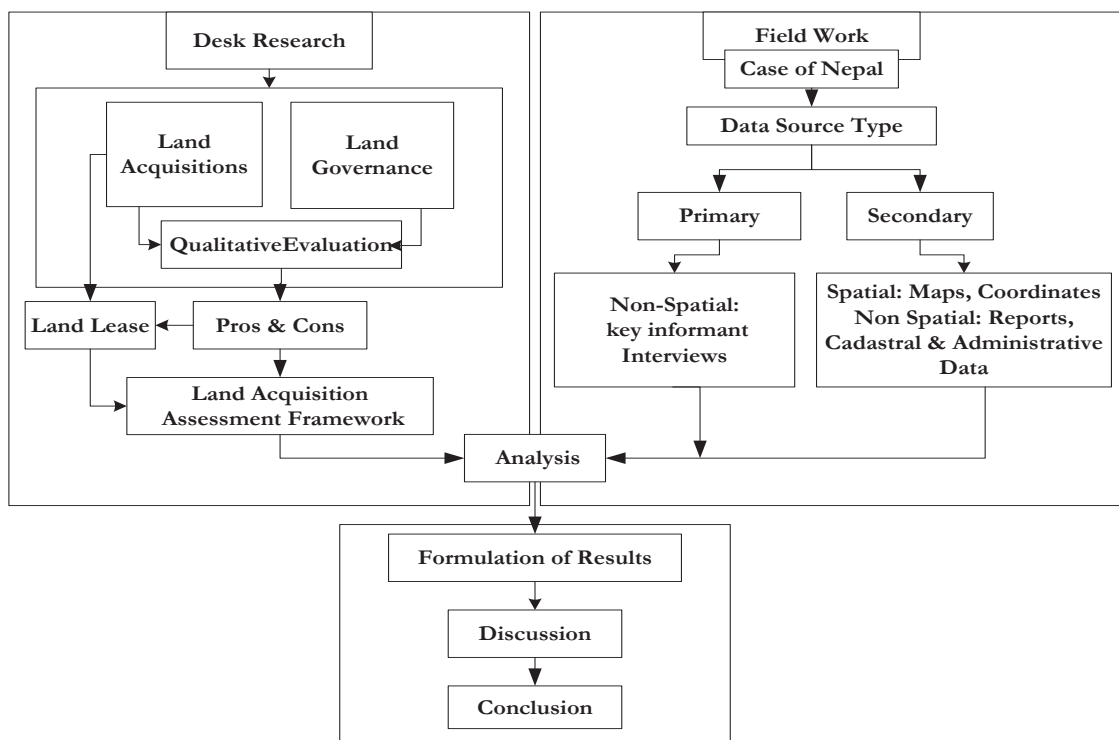


Figure 1-2: Research Methodology

### 1.8.2. Case Study

“A case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Yin, 2003). Since only single source of data collection may not be able to provide enough information to carry out the proper analysis to meet the objective of the research, it is stated that different data collection techniques like questionnaires, interviews, observation, document and text analysis can be used Yin (Yin, 2003). Since this research is to find the feasibility of land lease in Nepal for road to acquire land creating benefits to society as a whole, case study method plays very important role in providing deeper understanding of the phenomena in short period of the field work. The major focus of the case is to investigate the incorporation of good governance principles in the land acquisition approach by land leasing approach to construct road.

The research methodology (Figure 1-2) illustrates the different activities of the research project in brief. It is used to structure the whole project and work together and try to address the central research

objectives and questions. The research starts by defining research problems, research objectives and research questions which leads to form a research proposal. Literature review is the basis of whole process which back up with bulk of required information. The entire research is classified into three main phases according to the activities to be performed.

- **Pre-fieldwork activities**

In this phase research problems, research objectives and research questions are identified and assisted by the review of literatures. After completion of the proposal defence the questions for interviews were prepared and necessary field arrangement was done. Identification of the assessment elements and indicators were the major contribution of this phase. The data required and lists of potential respondent from different organizations and communities were prepared. Preliminary overview about the different aspects of land acquisition and elements of good land governance was expected to gain. This phase particularly focuses as a part of the desk research methodology.

- **Fieldwork activities**

This phase focuses in collecting primary and secondary data (spatial and non-spatial) from the listed respondents. Interviews were conducted for collecting primary data and collection of reports, maps and administrative data was done as secondary data.

- **Post-fieldwork activities**

This phase starts with the management of the collected data. In this phase both the data collected from the field work and extracted from the desk research was amalgamated for the analysis and drawing conclusion. This was completely a desk work. The qualitative data was analysed with the help of a software and manually.

### 1.8.3. Research Design

The following (Table 1-1) gives the design of the research. Research design involves the logic which connects the various data to be collected to initial research questions of study (Yin, 2003). The research objectives and questions were formulated accordingly.

### 1.8.4. Data Sources

There are two sources of data: Primary source and Secondary source. Primary source are the texts and data that need to interpret whereas secondary sources are those texts and information that interpreted upon primary source. Primary source data are first-hand information or original data that are collected by the researcher directly at the time of the event. Interviews were conducted to collect the primary data. The secondary source data are those derived from published or unpublished work that is one step ahead from the original source. It is the one which usually describes, summarizes, analyses and evaluates based on primary source.

### 1.8.5. Resources Used

Different resource is used in the research work for the collection, analysis and interpretation of the data. It helps to understand and perform different work and processes efficiently and fast as well. The lists of software and hardware that are used in the research process are:-

- ArcGIS- for visualization and interpretation
- Microsoft Word to prepare the text document
- Microsoft Visio- to visualize and display the concept
- Nvivo- for qualitative data analysis
- Voice Recorder
- Computer PC and Laptop



<b>Research Objective</b>	<b>Main</b>	To investigate land lease options as an alternative approach of land acquisition for the infrastructure development					
	<b>Sub</b>	1. To review the trend and practice of Land Acquisition	2. To analyse the land lease approach in particular reference to good land governance	3. To investigate the feasibility of land lease approach for infrastructure development.			
<b>Research Questions</b>	1. What are the current trends and practices Land Acquisition?	2. How has the doctrine of acquisition change over time?	3. What are the different principles of good land governance?	4. How does land Lease comply with good land governance?	5. Is Land lease feasible approach for acquiring land for infrastructure development?	6. What are the different possible options in leasing land?	
<b>Data Sources</b>	<b>Secondary data:</b> Scientific Literatures, journal articles, reports	<b>Primary data:</b> Interviews (Nepal's case) <b>Secondary data:</b> Scientific Literatures, journal articles, policy reports	<b>Secondary data:</b> Scientific Literatures, journal articles,	<b>Secondary data:</b> Scientific Literatures, journal articles, policy reports	<b>Primary data:</b> Interviews <b>Secondary data:</b> Policy reports, organizational reports.	<b>Primary data:</b> Interviews <b>Secondary data:</b> Scientific Literatures, Reports	
<b>Expected Outcome</b>	Findings on the trend and practice	Main focus for the reason of emerging new techniques in land acquisition	Listing of the good governance indicators	Positive aspects and features of land lease to fulfil good land governance principles	Views and comments on different key persons on the feasibility	Lists of options for land lease	

Table 1-1: Research Design

## 1.9. Thesis Structure

### **Chapter 1: Introduction**

This chapter gives the introduction on the background information of the research. It has discussed on the research problem and the motivation and the theoretical background based on which the research objectives and research questions are formulated. It has further introduced the conceptual framework of the research which is followed by the research methodology and also the design of the research.

### **Chapter 2: Land Acquisition and Good Governance**

This chapter describes the theoretical foundation of the study by reviewing literatures on land acquisition and good land governance. This is done on the basis of the secondary information. This presents different land acquisition techniques that are practised in general. Some international experience on the land acquisition is also discussed in the chapter. Additionally, this chapter also focuses on the theories, definitions and major principles of governance and particularly land governance. This highlights the correlation of land governance in different acquisition techniques. Finally a preliminary overview of lease as found in the literatures is presented.

### **Chapter 3: Land Acquisition Assessment Framework**

This chapter focuses mainly on designing and preparing the framework for assessing land acquisition techniques. The land governance principles found in the previous chapter 2 is the basis for the assessment. This finds different assessment methods in practice and develops a framework that suits best to assess the land acquisition procedures. This highlights the different elements of assessment in different evaluation areas, aspects, indicators and the best practise criteria on the basis of the literature.

### **Chapter 4: Data Collection and Field Work**

This chapter explains the case study area and the project chosen and also the methodology of the data collection. The techniques that was used for the primary and secondary data collection and the approach taken for selecting the respondent and technique in the case study area is also discussed. This further discusses the secondary spatial and non-spatial data collection methods. The different types of data collected and the way to process are also discussed.

### **Chapter 5: Assessment of Current Land Acquisition**

This chapter analyses the land acquisition method in practice on the basis of the assessment framework prepared in the third chapter. The element of analysis is the primary data collected from the from the field

### **Chapter 6: Feasibility of Land Lease**

This chapter highlight the findings on the lease as an alternative approach. It further discusses about the land lease and its association with good land governance principles.

### **Chapter 7: Conclusion and Recommendations**

This chapter finalizes the research work by drawing conclusion and recommendations are given for further research.



## 2. LAND ACQUISITION AND GOOD GOVERNANCE

### 2.1. Introduction

This chapter describes the theoretical foundation of the study by reviewing literature on land acquisition and good governance. This starts with the description of the land acquisition techniques in section 2.2. On section 2.3, includes a review on the land acquisition technique in different countries to know some experience with their respective land acquisition approaches. The issue of good governance and land governance in particular is discussed in the section 2.4. This section then highlights on the principles and importance of the governance concept. Section 2.5 tries to link the good governance concept with the land acquisition processes. Finally the chapter concludes with a summary in section 2.6.

### 2.2. General Techniques of Land acquisition

Land acquisition generally refers to how the state acquires the land proactively. Land acquisition can be done in many ways and can be broadly categorized into Direct and Indirect methods (Viitanen *et al.*, 2010).

Direct methods are those where direct tools are used for land acquisition where the state authority or public/private authority exercise it depending upon the legislation, culture on the basis of direct land policy. The techniques that come under the direct methods are- a) Compulsory Land Acquisition b) Voluntary Agreements c) Land Readjustment.

Indirect methods are those which support the direct method in one way or the other in delivering land and are normally used to support and stimulate private developments. The techniques that falls under the indirect methods are- a) Building Prohibition and Subdivision Prohibition or Subdivision Permission b) Pre-Emption Right c) Land Banking and d) Financial Incentives.

Other methods like land lease and the popular public-private partnership are also potentially useful.

#### 2.2.1. Direct Methods

The descriptions of the adopted techniques are discussed below:-

##### a) **Compulsory purchase or land expropriation**

Compulsory purchase or land expropriation is the most widely used tool for land acquisition in most of the countries (Norell, 2008; Oluwamotemi, 2010; Viitanen, *et al.*, 2010). “Land expropriation refers to the state compulsory nationalizing land in the collective possession of land owners for public interest” (ADB, 2006) which is exercised by the state through the power of eminent domain. The legal features of the expropriation are:-

“(I) It is an act of compulsorily expropriating collective land ownership and is an extreme special case of property right changes. Government as an entity gets land ownership from the hand of land owners collectively by way of administrative orders where the land owners has no other choice but to yield;

(II) It is conditional on strict regulatory requirements. It must strictly follow legal procedures, be only targeted at the development of public interest and kept away from any commercial purpose and the state should pay fair and reasonable compensation” (ADB, 2006).

Land expropriation is also considered as the process through which land is acquired for public purpose and compensation is paid to the land owner for property ownership (Viitanen, *et al.*, 2010). Its legal consequence is the transfer of all rights. However, acquiring land for public purpose through the process of expropriation require high caution (Belej & Walacik, 2008). Though compensation paid against the expropriation is generous, fair and efficient, it require significant human cost, i.e. unacceptable burdens, the land owner have to suffer more physically and mentally. Moreover if the process is designed or implemented poorly, there are still chances of enormous social and economic costs. The affected people have to move from their original place and society to a new one where they have to start their life and livelihood in a new way than they used to. They lose their livelihood in many cases.

Hence, literature reveals that the land ownership right, which is the most integrated bundle of right for the land holders to use the land within the legal provision, is not well respected during land expropriation. Since expropriation right is in fact the right that the state forces private property for public purpose. It is a kind of supreme power or sovereignty of the state. Thus the private land ownership contradicts with the land expropriation as it is mostly characterized by irresistible restriction (ADB, 2006). It is a severe interference towards the private property rights. This does not only affect the property rights of the people but also causes direct negative impact on the livelihood of the local people causing loss of land, loss of means of livelihood, disruption of economic activities, relocations and also cultural and environmental degradation (Kusiluka, *et al.*, 2011). According to Viitanen, *et al.* (2010), as mentioned in the Hanoi declaration, countries where the land ownership of the people is strongly protected by constitution there are sometimes negative implications for the public projects due to the restriction of the people for expropriation. And in other cases, it is a familiar method; the overarching capacity of the government to take private land for public purpose is easily accepted. The technique is regulated by legislative processes and with standards of acquisition. The general steps in the acquisition of land for development of road are (Belej & Walacik, 2008):-

- i. Planning and finalization of the location for the project or alignment for road.
- ii. Request for the land for expropriation to the related entity, ministry or organization.
- iii. Notification to the landowners by the related project staff and the responsible state or local government unit.
- iv. Negotiation with the land owners to purchase the land in the case of disputes.
- v. The compensation value determination and paying according to the legal principles.
- vi. Technical and administrative proceedings after the agreement between the parties.
- vii. After the proceedings become valid, the ownership right of the land changes from the private land owners to the project or state or local government unit.

Several literature have shown that the disagreement of the land owners with the state originates during the planning period (step i above) as they are unaware of the activities that will take place in their own land. Large scale public projects faces conflict problem because the concerns of people are not addressed in a proper manner during the initial state of the project while they should be allowed to participate in public hearing programs to present their opinions before setting up any law or making major decisions.(Ogunlana, *et al.*, 2001). Apart from this, compensation (step v) is the most important where almost every project face challenges. There are several issues also in compensation itself e.g. the issue of unfair, inadequate and untimely compensation. These compensation leads to economic losses, subjective losses and dignitary harms (Garnett, 2006).

#### **b) Voluntary Agreements**

Voluntary agreements is a process on which the land owners agree to provide their land to a project, an act of informed consent, with or without compensation (World Bank, 2010). It is similar to the rules and the processes of compulsory acquisition but arranged through agreement with the land owners. One difference is that this process can be used also by the private bodies while the former can be used only by public authorities. Voluntary agreements can be used under the threat of expropriation if there is break down of negotiations. This is generally practical where the local public authorities acquire land through private agreement with the landholders to meet certain developmental objectives. This approach is also used by professional developers (Viitanen, *et al.*, 2010).

Generally the strength of this process is that activities are carried out through agreements with all the stakeholders, especially the land owners. But still, lots of negotiations and arguments remain and at the same time, the three types of losses mentioned above in (section a) is always there. Since the principle behind this is the same as the first method it is equally challenging for the infrastructure development. The private rights over the property are lost for the sake of public purpose. The ultimate step taken is compulsory purchase when it is difficult to reach agreement with large number of individuals especially in larger projects where large amount of land is required.

### c) Land Readjustment

“Land readjustment or land pooling or land consolidation is defined as a process where the public or private authority assemble numerous small parcels of raw land without paying monetary compensation to the owners subdivides the land and services it with infrastructures for human settlement use, returns most of the resulting houses sites to the original owners in proportional to the value of their contribution and sells the remaining sites to recover all public costs” (Henssen, 1988). It is a method where the ownership of scattered and irregular plots of land is consolidated, roads and main infrastructure are built and the land is then subdivided into plots (Sorensen, 2000). The landowner of the area must contribute their previous land holding to provide space for roads, parks and other public spaces and also for the reserve land which is sold at the end of the project to pay the costs of planning, administration and construction (Figure 2-1).

This method is desirable to the land owners because it substantially increases the value of the individual land even if they have to lose some portion of it and this is attractive to the planning authorities because the project can manage and provide land for public facilities, rationalise patterns of property division and build needed urban infrastructure. Therefore the methods have been widely used in a variety of circumstances, for urban expansion into agricultural areas, but also for downtown redevelopment, new town building, public housing projects, railways and mass transit development (Sorensen, 2000). Land readjustment is generally taken as an alternative method for the development of land in particular areas provided that legal and professional resources are sufficient (Tzu-Chin, 2005). It is also a useful tool for the promotion of land use through gathering of fragmented land ownership. It reduces financial pressure to the government in providing public facilities and facilitates the equal sharing of the benefits and costs of a project as experienced in countries like Japan, Indonesia, South Korea and Taiwan (Lin & Evans, 2000; Sorensen, 2000; Yukio, 1989). The method is legally established also in countries like Netherlands, Germany, France, Sweden, India, Australia America and Canada (Larsson, 1997). This is growing popularity these days because of its self-financing nature and protection of the social capital, where the other strategy of direct development by public authorities are failing (Turk & Korthals Altes, 2010). According to Larsson (1997), a great deal of infrastructure development programs are out of control, unplanned, inadequacy of resources and unaccompanied by legal establishment in many developing countries. Therefore land readjustment may be a remedy when there is failure on the infrastructure development by other means.

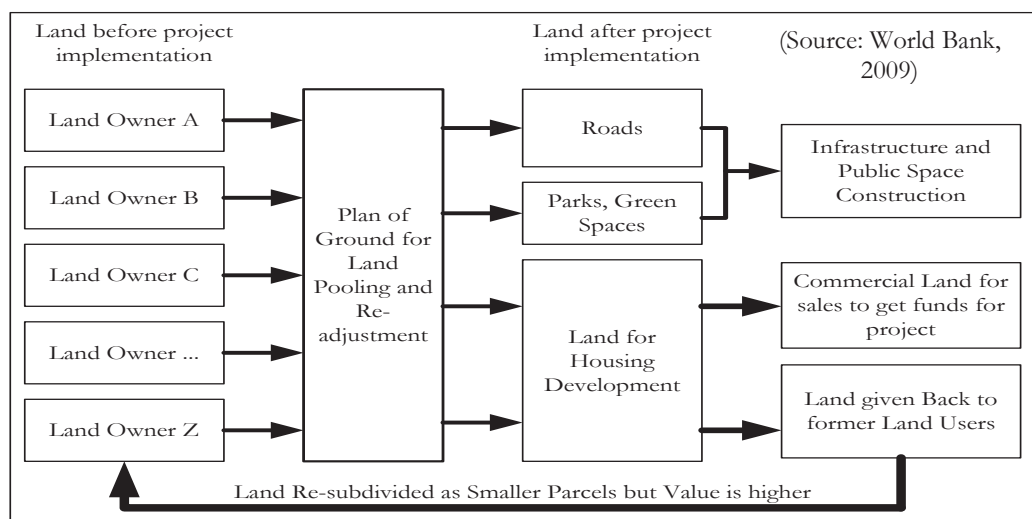


Figure 2-1: Schema of Implementation of Land Pooling/ Readjustment Mechanism

The steps taken for the land readjustment are (Davy, 2007):-

- i. Commencement of readjustment plan- Define and map area, indicate in the land register

- ii. Preparation for land readjustment- Merge all parcel, assess market value of land, subtract land designated for public purpose, select standard value or size for redistribution, determine share of each landowner
- iii. Value capture and reallocation- Determine value of readjustment gain, allocate readjusted plots to the land owners, determine compensation who have not received full share
- iv. Readjustment plan- Issue formal decision, determine rights and obligation, prepare map of new property boundaries, make legal remedies and issue a public notice
- v. Implementation of readjustment- file readjustment plan with land register, monitor legal and actual implementation of the readjustment plan

This is specifically applied in the area which is once developed and where infrastructure needs to be provided or upgraded (Agrawal, 1999; UN\_ESCAP, 1995)

### 2.2.2. Indirect Methods

The following are the outlines of land acquisition techniques under the indirect methods:

#### a) Building Prohibition and Subdivision Prohibition or Subdivision Permission

The land in some areas may be prohibited for sale, construction, major alteration or for subdivision of the land that causes added value on the land in the area to be developed. This type of prohibition is to avoid unwanted buildings or other kinds of land use which the authorities find inappropriate in the area. Planning permission is granted on this matter if the portion of the land is given to the government if it needs in any specific developmental activities.

#### b) Pre-Emption

“The pre-emption is a typical latent right, which lays silently on a property. Only when the present owner (or right holder) decides that he is interested in selling the property does the right wake up” (Zevenbergen *et al.*, 2007). The right holder cannot force the present land owner to sell. The pre-emption is the right that the land owners offer to the state or local government, to buy their property first as the market value rather than to other parties. The land can be sold to the third party only if the public authorities refuse to buy. Hence, this can be taken as the power or right of the government against the third party. This is the right of the authorities but not the obligation. This approach can be used to ensure that the interest of the public in particular area is protected (Williamson *et al.*, 2010b). Such right is registerable (as in the case of Netherlands). However, pre-emption right is exercised based on the intention of the owner’s to sell the land or not. If they do not intend to sell the land, expropriation is done as a last alternative to acquire the land for development.

#### c) Financial Incentives

Financial incentives are the facilities given by the government to the land owners that include subsidies to encourage specific developments at a certain location and time. These may include low prices, minimize or halt property tax, low costs development loans, and many other strategies. This is provided to the land owners whose land is acquired by the state for public or private purpose.

There are not such formal steps to carry out these indirect land acquisition techniques. The government can exercise these rights whenever it is seemed necessary. The land related to these rights and prohibitions are sparsely distributed, i.e. not concentrated only at a place and especially place where the infrastructure is to be developed. Therefore this cannot be used independently for in larger infrastructure like roads which has certain alignment. But certainly this will aid in direct acquisition.

#### d) Land Banking

“Land banking is the method of acquiring undeveloped land either through compulsory purchase or non-compulsory purchase in advance of the actual needs and for the purpose of later distribution to the private sector by sale, lease or rent for a wide range of development purposes” (Davis, 1976). Land Banking can also be defined as “The structural acquisition and temporary management of land by an impartial state agency, with the purpose to redistribute and/or lease out this land with the view to improve the

agricultural structure and/or relocate the land for other purpose with a general public interest” (Damen, 2004). Land banking serves multipurpose spatial planning specially in rural areas. The main concept of the land bank is to acquire and/or purchase the vacant land and the land which are underutilized with the future goal of productive reuse of the land (GLEFC, 2005). According to GLEFC (2005), it was found through their survey that land banks were established for housing, redevelopment and industrial/commercial purpose which was proved to be true also through their literature review. The top three reasons for land banking according to GLEFC (2005) were (i) to reverse urban blight, (ii) successful reuse of land and (iii) increase stability of both property and value where monitoring of the land on the banks can be done through a central database or monitored through geographic information system. The guiding principles of land bank in developing countries (GTZ, 1998) are:-

- “To improve access of the poor and other specific target groups to land
- To support the implementation of urban development projects
- To reduce inflation in land prices and reduce land speculation
- To promote public private partnership to improve the land tenure structure”.

There are three fundamental steps or actions to land banking (Harrison, 2007):-

- i. **Land acquisition:** This is the step for collecting land. Government entities can exchange, buy cheap land, acquire unused or underused land and can even expropriate in certain cases if it has to be done sometimes
- ii. **Land management:** Managing acquired parcel of land over certain period until it is used for some purpose. This requires maintenance, administrative and legal procedures, security issues mainly when the land in banks are in prime locations. Management is important since the land is kept in bank in order to make productive re-use.
- iii. **Land development:** This is the core function of the land banks to manage and redevelop the parcels of land in usable manner. Redevelopment can be ensured according to need or request of the community, private and public bodies. The land can be leased out or sold to interested parties.

But as argued by Harrison (2007) land banking is effective mostly only in cases where there is large amount of unused or underutilized land or when there are neighbourhoods with abandoned buildings that needs urban regeneration and mostly applicable in rural areas.

### 2.2.3. Other Methods

Many other methods like land lease and the popular public-private partnership are also potentially useful for acquiring land and implementing larger regeneration schemes

#### a) Land Lease

“Land lease is a process of voluntary transaction of land in which property rights such as use and income rights are transformed from land owners to tenant” (Slangen & Polman, 2008). It needs much co-ordination and motivation mechanism. The set of agreements that are made between the parties could be explicit or implicit and the relationship between tenant and landowner is often more important than in a market transaction. Leasing land is a two sided mechanism where the rights on the land are transferred from one party to another. As described by Slangen & Polman (2008) the bundle of rights transferred varies according to the arrangement made during contract and the rights and obligation of both the parties are finalized before the commencement of the contracts. Therefore, it is reasonable to have clear and transparent guidelines to comply with the transaction. As stated by Larsson (1997), it is often expensive and inefficient to get any area or land using conventional processes like buying land, compulsory purchase or expropriation, which meet fierce resistance. The land lease method may be feasible provided that proper laws, clear directions and strong local authority are in place. The steps of commercial lease are:-

- i. Define requirements
- ii. Locate suitable property
- iii. Tour/travel to look for the properties



- iv. Make lease proposal
- v. Planning and architectural evaluation
- vi. Negotiate the lease contract
- vii. Mutual execution of the contract

The above mentioned steps may not be directly used point-by-point for the process of the acquisition of land for developing roads and highway. These steps are for the commercial purpose especially focussed to the private buyers while in case of land lease from private land owners to the state it may contain other administrative and technical steps. However, it can be incorporated in the process according to the actual processes of the land acquisition.

#### **b) Public Private Partnership**

This is a form of new partnership arrangement between public and private entities in any kind of development work. This is useful when only public or private is not capable of carrying out any work alone and helps in better production and result (Levainen & Altes, 2005). The strengths and expertise can be utilized to get each other's benefit. "The origin of public-private partnerships builds upon the present reality that neither private nor public are individually capable of all necessary activities in developmental projects" (Roll & Verbeke, 1998). "[...] is a relationships formed between the private sector and public bodies often with the aim of introducing private sector resources and/or expertise in order to help provide and deliver public sector assets and services" (Carmona, 2010). In the land acquisition activities, the public authority can form a partnership with some private authority for investment and also for the other further developing processes. For instances, state can make partnership with large land holders to invest in the infrastructure like schools and hospitals and acknowledge them by introducing those organization by their name.

### **2.3. Review of Land Acquisition in other Countries**

The land acquisition of the countries like India and USA is reviewed to know the experience of those countries. Two distinct countries with varying social, economic, cultural context are chosen. The only thing common in them are that they have the largest road network in the world.

#### **2.3.1. Land Acquisition in India**

Different approaches of Land acquisition is found to be used in India- Land Expropriation, Land readjustment and land Banking for the public purpose (Ballaney, 2008; Dhru, 2010; Morris & Pandey, 2007). The State can take away land or any property for public purpose with doctrine to eminent domain on the basis of Land Acquisition Act (LAA)1894, though it raises debates of power of state versus the individual right (Dhru, 2010). According to Dhru (2010), this causes displacement forcing people out of their homes and land for the purpose of economic development, but it is viewed as a violation of human rights at international level. To acquire land to construct national highways, there is a separate law called National Highway act (NHA), 1956, and LAA only for state highways by which the expropriation is exercised (Sarkar, 2009). There are number of protest against the compulsory acquisition of land for the construction of manufacturing unit e.g. Tata's Nano car, special economic zone like Nandigram, construction of Dam on the river Narmada, which led to cancellation the grant provided by World Bank. Further the acquisition affects seriously which can spill over to generations in different ways e.g. losing traditional means of employment, disrupted community life and relationship, change of environment, marginalization, psychological trauma and more. But Morris and Pandey (2007) has stressed on the need for a parallel non-compulsory framework for the land acquisition and to develop the key elements for that in the context of infrastructure development. This is because of the risks and uncertainties, protests and resistance from the displaced people that has become the important bottleneck for investment especially in the infrastructure sector (Morris & Pandey, 2007). As stated in the recent Land acquisition draft bill-

- i. "The government acquires land for its own use, hold and control
- ii. Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose (including PPP projects but other than on national highway projects)

- iii. Government acquires land for immediate and declared use by private companies for public purpose

Where land acquisition under ii and iii above can take place provided that 80% of the project affected families give consent to the proposed acquisition” (GoI, 2011). The land acquisition act is changed over by resettlement and rehabilitation with compensation so that the land losers are facilitated with reduced problem of their livelihood. Mostly, the government plays a major role in the supply of land for infrastructure development under the LAA using eminent domain powers. For this, a comprehensive compensation package should be developed based on the market value and the value of the assets attached to land. The compensation details of the proposed new land acquisition are provided in the following Table 2-1.

Source: Land Acquisition Bill, 2011

<b>A compensation package for the land owners whose land is acquired</b>	
1.	Subsistence allowance at RS 3000 per month per family for 12 months,
2.	Rs. 2000 per month per family as annuity for 20 years, with appropriate index for inflation,
3.	If house is lost, a constructed house of plinth area of 150 square meters of house site in rural areas or 50 square meters plinth area in urban areas,
4.	One acre of land to each family in the command area, if land is acquired for an irrigation project,
5.	Rs. 50,000 for transportation
6.	Where land is acquired for urbanization, 20% of the developed land will be reserved and offered to land owners, in proportion to their land acquired,
7.	Upon every transfer of land within 10 years of the date of acquisition, 20% of the appreciated value shall be shared with the original owner whose land has been acquired
8.	Mandatory employment for one member per affected family or 2 Lakh rupees if employment is not offered,
9.	Offer shares up to 25 % of the compensation amount
<b>A compensation package for the livelihood loser (including landless)</b>	
1.	Subsistence allowance at Rs 3000 per month per family for 12 months,
2.	Rs. 2000 per month per family as annuity for 20 years, with appropriate index for inflation,
3.	If home-less, a constructed house (plinth area) on 150 square meters of house site in rural areas or 50 square meters in urban area, provided free of cost,
4.	A one-time ‘Resettlement Allowance’ of Rs. 50,000,
5.	Rs. 50,000 for transportation,
6.	Mandatory employment for one member per affected family or 2 lakh rupee.

Table 2-1: A Comprehensive Compensation Package for New Land Acquisition in India

The practice of other approach is also seen in India. Ballaney (2008) has mentioned the use of land pooling or land readjustment as a developed approaches to manage urban growth and develop infrastructure as an alternative approach for land acquisition. The land banking approach has already established and Delhi Development Authority is the largest land bank, but the land bank has been a failure due to the lack of clear direction, cumbersome and inefficient processes (Harrison, 2007).

### 2.3.2. Land Acquisition in USA

“Eighteenth-century English laws, which are the foundation of the American legal system authorized the use of eminent domain to acquire land for roads, bridges and other improvements” (Szypszak, 2009) which was discontinued in the nineteenth century and later continued again to use it to acquire lands. It has been used as a legislative right for centuries even if there are question and challenges. In USA, “Eminent Domain (ED) is the legal right provided by US Constitution, to acquire property by forced rather than voluntary exchange” but it is constrained by constitutional provision that private property taken for public purpose can only be taken after payment of just compensation (Munch, 1976). Also, jurisdiction have formally institutionalized the “Repurchase Right” or “First Refusal Right” to the land owners of buying back part or whole land that has been taken, if the project is cancelled or some unforeseen event has made it necessary to change the use of land. The fifth amendment of the constitution declared “[...] nor shall private property be taken for public use, without just compensation” (Moore, 2006). This intends that “individual property owners are required to sacrifice their property rights for the good of the public if the property taken is to be put to a public use because the good of society as

a whole outweighs the individual rights to property in that society and the property owner does not bear the entire burden of ED because the sovereign must provide the disposed owner with a just compensation in exchange for the property”.

In US, ED power is also delegated to private firms in the irrigation, electric transmission, transportation infrastructure-toll roads, canals, bridges and railroads, petroleum and gas pipeline firms (Turnbull, 2010) as they are common carriers of public utilities. However, the issue of compensation, undervaluation, avoidance of the landowners against the ED due to reason like economic losses, dignitary harms for losing one’s property, losing social ties etc (Garnett, 2006). A famous “Kelo Vs City of New London” case is an example which states that government can seize private properties if it can generate more tax revenues by creating malls (Bakst, 2007). Similarly, the application of land readjustment in USA for the public/private redevelopment projects is stated in (Sagalyn, 2007) where the government acts as a facilitator for the process for cooperation among the land owners. However Sagalyn (2007) and Liebmann (2000) has concluded that this approach is practical if very large scale urban development or urban renewal need to be done. The practice of land banking can be traced through (Harrison, 2007) in different states of US. As mentioned by Harrison (2007), “A distinct feature of the land banking process has been the collaboration between state, non-profit organizations and the local community in determining how the redeveloped land would be utilised in the future”. The land bank programs are active in Michigan, Dallas, Cleveland, Atlanta and Philadelphia with successful development.

Thus, literatures and experience of countries shows that the legal, technical and social problems of different development based acquisitions have stimulated the investigation and implementation for better approach, policy and legal framework.

## 2.4. Good Land Governance

### 2.4.1. Introduction

“Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies and the respect of citizens and the state for the institutions that govern economic and social interactions among them” (Kaufmann *et al.*, 2011). “The governance is the process whereby societies or the organization make their important decisions, determines whom they involve in the process and how they render account” (Graham *et al.*, 2003). It is much about how societies organizes and manages themselves in the social and economic landscape (Figure 2-2, Source: Graham *et al.*, 2003).

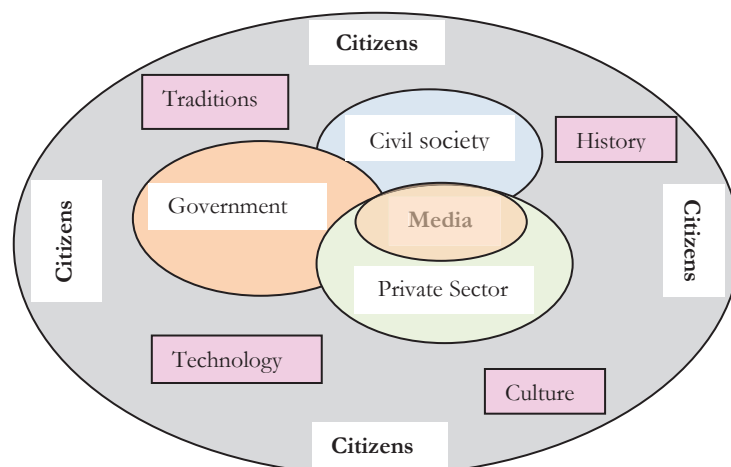


Figure 2-2: Different Actors in Governance Concept

The FAO defines Governance as “The process of governing. It is the way in which society is managed and how the competing priorities and interest of different groups are reconciled. It includes the formal institutions of government but also informal arrangements. Governance is concerned with the processes by which citizens participate in decision making, how government is accountable to its citizens and how

society obliges its members to observe its rules and laws” (FAO, 2007). Hence, the concept of governance may be applied in different context and area- global, national, and institutional and community level. The settings of the main entities that show the actors and their influence can be illustrated as in Figure 2-2 above. The nature of governance largely depends on the interaction between the state, private sectors and the civil society (Abdellatif, 2003). Though, UNDP (1997) has mentioned that it is a challenge for all the societies to create a governance system that help to support and promote the development ambitions of the society in general and that of the poor in particular.

However, Land Governance has become a new way of thinking about land in the last few years because of the lack of good governance in this sector (Augustinus, 2009). Also “There is an emerging recognition that land is a critical governance issue. Yet, both Land and Governance are familiar terms, their combination as Land Governance is more recent” (Palmer *et al.*, 2009). “Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed” (Palmer, *et al.*, 2009). It not only focuses on the outcomes but also on the processes and institutions. According to Palmer, *et al.* (2009), governance from the institutional perspective focuses at the rules and regulations that define the relationships, interactions and the games among the stakeholders. Land governance is defined as “the rule processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced and the way the competing interest on land is managed” (Palmer, *et al.*, 2009).

“Land Governance is basically about determining and implementing sustainable land policies and establishing a strong relationship between people and land” (Enemark *et al.*, 2009). “Land governance means the spatial dimension of governance that relates to land, property and natural resources” (Williamson *et al.*, 2010a). According to World Bank (2011), it is about the processes, policies and institutions which helps in making decisions on access to land, land use, land rights and land development for implementing sustainable policies and establishing strong bond between the land and the people. Good land governance is not only to control and manage the effective use of physical space but also be holistic to ensure sound economic and social outcomes. It is about managing land and other natural resources that are necessary to fulfil the political and social objectives and obligations to achieve sustainable development. The sustainable land governance should:

- **Provide** transparent and easy access to land for all and thereby reduce poverty
- **Secure** investment in land and property development and thereby facilitate economic growth
- **Avoid** land grabbing and the attached social and economic consequences
- **Safeguard** the environment, cultural heritage and the use of natural resources
- **Guarantee** good, transparent, affordable and gender responsive governance of land for the benefit of all including the most vulnerable groups
- **Apply** a land policy that is integrated into social and economic development policy frameworks
- **Address** the challenge of climate change and related consequences of natural disasters, food shortage etc. and
- **Recognise** the trend of rapid urbanisation as a major challenge to sustain future living and livelihoods” (Enemark, *et al.*, 2009).

Hence these points should equally be applied in case of land acquisition. Land acquisition involves many processes related to many stakeholders where the land owners are the ones who are important and affected most. There are lots of technical and administrative steps that have to be followed. Moreover, it is also a social phenomenon. Therefore land related policy should be integrated with social and economic terms; it needs to provide transparency and access to information, secure there right on land and compensation. The environmental factor which is also a factor to govern society should be taken into care that can guarantee responsive governance to all the land holders that provides sustainable development and livelihood.

## 2.4.2. Principles of Good Governance

FAO has highlighted many features to be the aspects of good governance. “The avoidance of corruption is one obvious aspect of good governance. However, features of good governance also include accountability, political stability, government effectiveness, regulatory quality and rule of law, as well as control of corruption. Good governance means that government is well managed, inclusive and results in desirable outcomes. The principles of good governance can be made operational through equity, efficiency, transparency, accountability, sustainability, subsidiarity, civic-engagement and security” (FAO, 2007)

However, all these aspects can enhance or affect good land governance in one way or another, either only with the single aspect or combination of the few. Therefore it is important to identify the factors that influence the governance quality and which really causes impact on the performances. The concept of good governance is not measurable in absolute terms rather it is a continuum between the weak and good governance (Deininger *et al.*, 2010). Therefore, methods can be developed to measure it in a country’s perspective and social context and compared with the others. Applying such principles is complex; also they are not only about the results of power but how well it is exercised. Although there are different definitions for good land governance, there is general acceptance that “good governance is based on a set of principles that include: participation, fairness, decency, accountability, transparency and efficiency” (LEI, 2008). Using the set of overlapping principles of good governance (Table 2-2), it can be used to define an ideal or a set by different organizations. Good governance in land sector helps for economic growth and job opportunities which lead to human development, for the poor, the environment, public sector management, conflict prevention and resolution and also for individual citizens and society as a whole (Zakout *et al.*, 2006).

FAO (Characteristic)	UNDP	WORLD BANK	WGI	UN- HABITAT
Accountable	Participatory	Integrity and accountability	Voice and Accountability	Accountability
Effectiveness & Efficient	Transparency	Efficiency and effectiveness	Government effectiveness	Effectiveness
Participatory	Accountability	Civic engagement & Public Participation	Regulatory Quality	Participation
Equitable	Fairness	Equity, Fairness & Impartiality	Political stability and absence of violence	Equity
Provides Security & Stability	Effectiveness	Legal security and rule of law	Control of corruption	Security
Legitimate	Equity	Subsidiarity, Autonomy & Depoliticization	Rule of law	
Consistent, Predictable & Impartial	Rule of law	Transparency, Consistency & Predictability		
Transparent	Strategic vision			
Dedicated to Integrity	Consensus Orientation			
Locally Responsive				
Sustainable				

Table 2-2: Adopted Governance Principles by Various Organizations

The table presents the adopted governance principles by variety of organizations with some specific linkages to land. These core characteristics are interrelated, mutually reinforced and do not stand alone. Access to information to all means transparency, broader participation and effectiveness. Participation leads to exchange of information and contributes to effective decision making. Institutions and organizations should be transparent and function according to the rule of law to be equitable to all.

#### 2.4.3. Good Governance Principles Adopted to Assess the Land Acquisition

Although there are different governance principles, the ones that are adopted for the purpose of assessment of land acquisition in this research are: participation, transparency, rule of law, accountability, efficiency, effectiveness, equity, strategic vision, consensus oriented, sustainable, civic engagement, control of corruption and security. Some of these are used directly while few are placed differently to make it meaningful to its context.

#### 2.5. Importance of Good land Governance for Land Acquisition

Literatures have shown that there are different approaches bringing many different issues related to land use, land ownership, land tenure, private and public interest on land, impacts on local land holders and then compensation to the land owners (Thomas, 2005). Land acquisition is also concerned with different aspects of legislation, establishment of authorities, implementation, technical approaches capacity of staffs and awareness among the general citizen. However, as indicated by Thomas (2005), running the development and land management and its instrument is introduced because of the actual public need in general and it is the result of the progress in work by practical and technical demand.

According to ADB (2006), the right of the state to take the land is exercised over the right of ownership of the local land owners for the public purpose. This shows conflicting rights of the two. Though the land owners are compensated in cash or in terms of land in some of the cases, it tends to disturb somehow the landowner in social, cultural and economic terms. Sometimes the purpose of the expropriation goes beyond the public interest. The compensation for example in China is provided not according to the market value but follows the actual use of the land of low values which enables the government to make a huge chunk of income (ADB, 2006). This leads not only the imbalance of economic relations between the land holders and the state but also goes beyond the view of expropriation right of the country. These are few of the considerable points that can be addressed sensibly if good land governance is strengthened and practiced by the state.

As mentioned in FAO (2007), good governance is derived from the idea of fundamental freedom and human right perspective containing protection of private property and aspects of good governance are embedded in international human rights. Good land governance helps to seek and explain the relationships between human and their right to land in terms or unfair procedures, unfair compensation, inequality and deprivation of property and ownership right. It also helps policy makers in making good land policy related to the acquisition of land. It opposes corruption and improve professional integrity (FAO, 2007).

Therefore good land governance can contribute to the state, land professionals, locals, community and user groups at large in democratizing land, land related activities for the well being of the whole society ensuring protection and fulfilment of human rights (Suarez *et al.*, 2009). This will help to address issues on the lack of effective empowerment, administration, ethics, service orientation and management in the land acquisition. Hence, it is necessary to have a link and relation between the land acquisition approaches with good land governance.

Considering the common principles of good governance established by different organizations (section 2.4) and linking it to the different approaches of land acquisition (section 2.2), the principles should necessarily be addressed in different level. As shown by literatures, land expropriation or compulsory purchase under the power of eminent domain is the most widely used techniques for acquiring land for public purpose or developing infrastructures. The government imposes its right to acquire the land over private land owners who have their right on it. This mutually exclusive right of the two parties tend to

exclude each other. When we consider the dimensions of good governance principles in this technique, it is lacking to a large extent. There is lack of information to the private land owners or citizen, ranging from the form in which the laws or rules are published, in the way it is defined, enforced and exercised (Farvacque & Auslan, 1992). The lack of information is against the transparency and participation. The benefits and costs of general people are overlooked. They are not seen as the reflections of relations between the state and its people where mutual right and obligations are constantly developed and readjusted. Instead it is taken as the formal part of the business of getting access to land and exercising the power.

Also, the land acquisition process has effectiveness and efficiency problems. It is bringing virtual halt and delays in the land acquisition processes. There are compensation problems about who is entitled to compensation and what the fair and adequate value is. Even if the compensation is paid, it is usually only for the loss of the land or house over it. The landowners, except the land and the structure over it, lose many other things like means of livelihood, sentiments attached to the land, deprive from jobs and separation from communities. The compulsory purchase deprives the land owner of the most important right “The right to exclude others” from the property (Garnett, 2006) including the loss of ownership right i.e. the whole bundle of rights. The voluntary agreement is also similar to expropriation but in this technique, people are tried to bring together in consensus. Thus participation is seen to some extent in this approach. The other impacts felt are the same.

The land consolidation and readjustment compared to this technique has a different principle. Since the land owner get a developed piece of land instead of undeveloped large area, they are not deprived of their land. The ownership or the whole bundle of right remains with them. The nature of the process itself calls for participation of all the involved land owners. Because of the participation of locals there is transparency in the processes and information. It could also be efficient and effective because the land owners want to get the land developed as soon as possible. They try to oppose against any unwilling activities that may take more time for the development procedure. The developers or the local government bodies responsible for the developmental activities and also the land owners or users are accountable for each and other activities. But this method is suitable to develop certain raw area into serviced land in urban areas. This is not suitable if only the infrastructures like roads are to be built.

Land lease can be used in acquiring land for small to large scale infrastructures. There should be consensus between the lessor and lessee from the initiation till the life of the project. Both the lesser and the lessee are involved in the project in one way or the other therefore the co-ordination and motivation should always be present. The land owners are always obliged towards their land and the activities going on it. Unless the land owners are informed about the project or the purpose of the development, they will not be aware and not be willing to provide the land. Therefore it is necessary that they are informed and participated in each and every phase of the development activity. This will definitely foster for more participation and hence transparency. Since the land owners are directly involved in each and every step they try to make the work more efficient and effective. They will not let the work to stop. Not only while receiving the land but also during the life of the project. The project will shift from potential conflict towards potential co-operation. The government as well as the project staffs cannot make any kind of speculations and delay since the owners are always alert to find what is going on with the work. In this method, few stick of the bundle of rights is provided to the other party, use/development right, and the most important, ownership right being with the land owners themselves.

The other indirect methods discussed under section 2.2 are not complete procedures for any kind of infrastructure like roads. It only supplements the direct methods in certain circumstances. Those techniques alone are not enough for any infrastructure development in large scale.

## **2.6. Preliminary Finding on Land Lease**

“Voluntary [land acquisition like lease] programs may induce lower costs than the traditional obligatory programs such as land takings [compulsory purchase]” (Juutinen *et al.*, 2008). Further Juutinen, *et al.* (2008), have stated that the limited states budget favours the leasing approach which requires less capital

than buying the land in the beginning of the program. However a long term contract is needed that reduces costs rather than the series of smaller contracts and the compensation or lease rents are based on value of land involved (Juutinen, *et al.*, 2008). In addition, voluntary agreement indicates that it is acceptable to the society thereby reducing conflicts between different stakeholders and promote positive attitude. This ensures maximization of benefits, at least by reducing costs and having done things on time.

To add more, a good co-ordination mechanism is one of the main important factor in the lease processes (Slangen & Polman, 2008). There is not only a one-to-one relation between the lesser and lessee but have many-to-many relationships especially in the road development. There could be hundreds of land owners and many public and private authorities involved in the activities. Therefore the co-ordination mechanism is the core issue and requirement to unite all the stakeholders for the common purpose provided that the lease contract specify the important factors and the process to be co-ordinated. But “By virtue of being voluntary it has broad acceptance in society” (Juutinen, *et al.*, 2008).

The Table 2-3 below gives the overview of different type of co-ordinating factors inbuilt in the contract. As In the “Invisible Hand”, price is the main factor for which co-ordination is required and made. This refers to the process of compensation and valuation in the land lease agreement. The “Hand Shake” mechanism has common values, mutual understanding and adjustment, norms and the identity of the parties involved. The “Visible Hand” mechanism is based on the hierarch or the levels of the different authority involved. This is mainly important for supervision and monitoring of different activities. This will provide the direction on who will do what? Finally the “Hand Book” that reflects on the factors like rules, directives and safeguard mechanism based on regulation or policy. Coordination in different activities takes place by a combination or by either of the mechanism (Slangen & Polman, 2008). In the acquisition of land through lease agreement emphasis is seen and required for all the co ordination mechanism. It is obligatory to have in policies at the upper level, strategies and objectives directed by definite rules and regulations by certain management authority to the local level and owners to be involved.

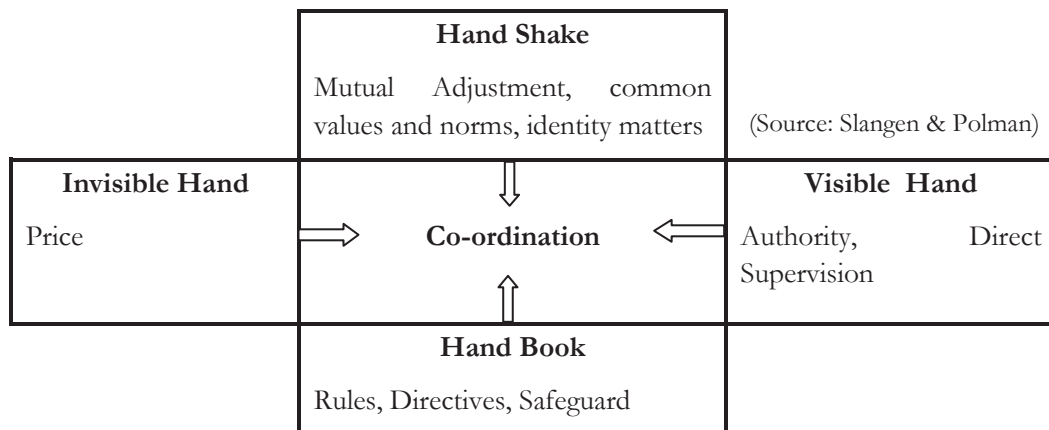


Table 2-3: Co-ordination Mechanism

Moreover, “Contracts are designed to regulate spot exchanges as well as long-term interactions” (Borgen & Hegrenes, 2005). Hence, a lease contract is a strong arrangement between two parties, about what each of them has to do to realize the value of land acquisition through their relationship and commitment. Borgen and Hegrenes (2005) have further emphasized three main essential functions of agreement to the scope of bounded responsibility:

- i. To enable contractors to co-ordinate their actions successfully
- ii. To ensure the enforcement of promises
- iii. To share the costs and benefits made

Unlike the traditional approaches, it is important that there is great deal of transparency in leasing land since it is clearly described, during the contract, how the different components are valued, mechanism of reporting on the performance of the activity in regular basis including the prices paid to the land owners (Juutinen, *et al.*, 2008).



The shift and use of different approaches of land acquisition other than the expropriation is seen in different countries. This is due to the realization of the deficiencies of the expropriation to address the different issues of human rights and they are looking for alternative approaches. The experience of the countries has thus emphasized on the need for other parallel land acquisition approaches that best fits the indigenous situation and the social and economic status of the country. As stated by Deininger (2003) most of the Asian markets has recently developed the long term use rights for which the empirical evidence suggested that it will help to improve the efficiency and equity. Also the literatures reveals that land lease imply characteristics of good land governance particularly the participation that enhances transparency, co-ordination and involvement to make decisions and influence decision making.

## 2.7. Summary

In this chapter we have presented theoretical foundations of land acquisition techniques in general and good land governance. Various approaches of land acquisition were discussed and the principles of good governance were listed out. The importance of good governance in land sector has been elaborated. However, the principle focus was to develop theoretical link between the land acquisition and good governance that helps to develop the assessment framework in the following chapter 3.

The reviewing of the land acquisition techniques has revealed that every sovereign country practice the expropriation which is often characterised by inadequate, unfair and untimely compensation that results in impoverishment. However, it might be that certain acquisition approaches are more appropriate for certain land uses than the other. Expropriation would be applicable only if the specific land is required for specific purpose e.g. widening of the existing road. The compensation is necessary to be income and livelihood protecting and enhancing rather than being only the costs for adjustment of the obstacles and friction. The main concern and disagreement in expropriation is on the valuation process, the recognition of intangible assets and resources, the transparency of the approach and the degree of participation of the land owners. Other non compulsory and voluntary acquisition approaches are being stimulated because of these factors. The perceptions of people and the state have been changing due to the awareness and also the adverse social, economic environmental and international effects. New ways are sought which help to balance the asymmetry of the information and at least protect the rights of land owners partially against the expropriation and that fit their local context. The core principle of taking land compulsorily or by force has to be displaced by voluntary & participatory approaches and negotiation that can prevent devastating outcomes.

Having good governance may help in better land acquisition solutions to the state and also the locals and civil society. It can play a significant role in minimizing the imbalance and conflicts between the stakeholders. It can contribute in formulating better participatory policies of the country minimizing inefficiencies and in effectiveness. The governance principles are from different renowned international organizations, out of which most of them were common. Therefore, the ones that best fits the requirement and the steps of the land acquisition were taken as important aspects, which further will be used in developing the framework for the assessment. Land acquisition has affect from the policy making prospect to management, operation in the field and also to the post acquisition phase therefore good governance principles are necessary to be examined in all the levels which can influence the objectives, procedures and the overall outcomes. Assessing the traditional land acquisition with these aspects will further provides the base and facilitates to assess the alternative approach.

Literatures have shown the need of an effective approach that refer to the right to adequate information, to participate in the decision making and also to appeal against the adverse decisions. Hence each state has its own unique problem and related solutions to it that should be addressed through their own specific and contextual measures. Hence the need of a voluntary approaches is clearly seen and lease is seen as promising alternative as revealed by the literature. The presence of the characteristics of good governance intrinsically makes the lease more potential.

### 3. LAND ACQUISITION ASSESSMENT FRAMEWORK

#### 3.1. Introduction

To enable to assess land lease, we first develop a framework to assess the land acquisition processes in terms of good governance principles. As the previous chapter has provided the detailed idea on different acquisition approaches, its characteristics and the outline and importance of different good governance principles, this framework in principle could be applied to any land acquisition approaches. In this research the framework will be applied to the case of a land acquisition for a road. The design of the framework for assessment of the land acquisition approach is completely based on the principles of good land governance in different management levels. This begins by outlining the needs of the assessment framework in the first section, 3.2. This identifies different assessment methods in practice in the section 3.3 and the different approach adopted, important aspects or elements taken into consideration is presented in section 3.4. The section 3.5 presents a final framework which is the basis for the assessment of land acquisition and section 3.6 summarizes the whole chapter.

#### 3.2. Requirement of Assessment Framework

A Framework as a guidelines or standards is required to assess the different activities in a consistent manner. However, there are no such methodologies developed which can evaluate and compare the activities of land administration systems (Stuedler *et al.*, 2004). The framework holds a comprehensive approach and considers issues related to all the stakeholders in any organizational pyramid and also reviews the objectives and strategies through assessment of performance regularly. This type of assessment framework serves to achieve an efficient, suitable and sustainable system rather than being a set of individual guiding principles.

The assessment is required to know whether we are doing the right thing, are we doing the things right and if we can learn any lesson from the experiences and what can one learn to help dealing the similar situation (SDC, 2000). In an informal sense, evaluation is the assessment that people make during the course of their daily activities, making decision on the values, merit or worth of something (Stuedler, 2004). According to SDC (2000), evaluation helps to review any process or activities only after the intermediate or final stage has been reached and may involves many steps like estimation, analysis, valuation and appraisal. Evaluations are primarily carried out to observe effects in the interest of creating and ensuring quality. The objective of the evaluation can be (SDC, 2000);

- “To examine collaboration in detail
- To verify the impacts or efficiency and thereby account for them
- To answer specific questions associated with the project/program context
- To draw lessons for the next phase of the project
- To prepare information”

This framework makes possible to inspect the criteria and aims of a plan/Policy: Sustainability, Impact,

Relevance, Efficiency and Effectiveness.

Figure 3-1 illustrates the relationship

between the different criteria and the aims for the outputs. Also in the land acquisition context, the overall aim is to achieve sustainability through efficiency and effectiveness. It should be relevant for the

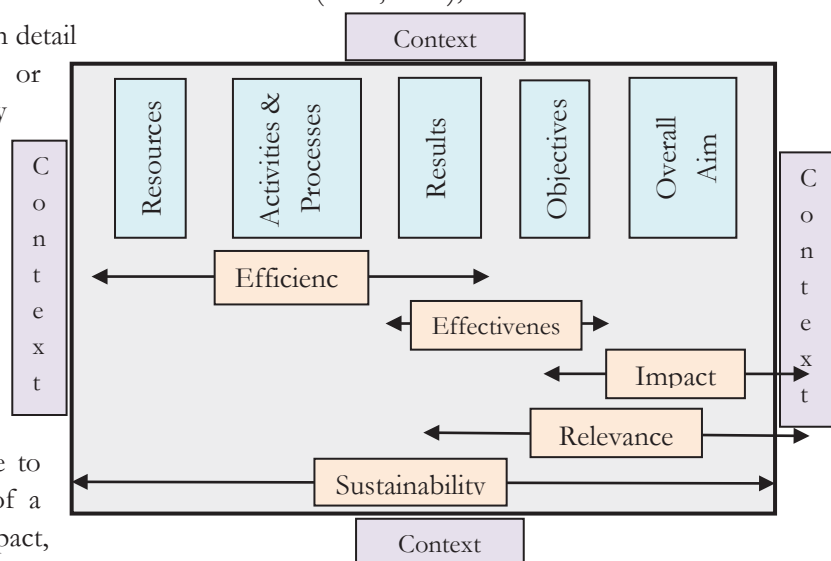


Figure 3-1: Evaluation-Relationships between Criteria and Aims, Adopted from SDC (2000)

local social and economic point of view that can minimize the negative impact as far as possible with regard to the resources that is on hand, activities and processes, results, objectives and the overall aim.

### 3.3. Assessment Framework Methods

There is no standard guideline and internationally developed framework available that can be used to assess the land acquisition techniques in particular. As mentioned by Bhatta (2010), there are different frameworks made and adopted by different projects that can evaluate in their own perspective. Hence, a framework has to be developed that is suitable for the context of land acquisition. Some of the assessment methods discovered are mentioned below.

- i. Logical Framework Analysis (LFA) Method
- ii. Mixed Method Approach
- iii. Comparative Evaluation Method
- iv. Good Practice Criteria Approach

#### i. Logical Framework Analysis (LFA) Method

The logical framework is used in documents prepared during proposals, feasibility Studies and progress reports. Different renowned organizations like Asian Development Bank, Danida, DFID, the European Commission, FAO, GTZ, NORAD, Canadian International Development Agency (CIDA), Swedish International Development Agency (SIDA) and the World Bank itself have make use of this logical framework to investigate and evaluate projects and programs in the field of development (Groenendijk & Dopheide, 2003; Steudler, 2005; Steudler, *et al.*, 2004). LFA structures the main elements e.g. the goal, purpose, outputs and activities in a project, highlighting logical linkages between anticipated inputs, activities that are planned and also the expected results. The Logical Framework forces the planner to analyse carefully the goal, purpose, inputs, outputs and all the activities to carry out the project.

#### ii. Mixed Method Approach

This approach was used by Datar *et al.* (2009) to evaluate the impact of market-assisted land redistribution program, before and after, in improving the lives of poor people in Malawi. This also investigates whether aspects of the program improves or worsened impacts. Both the qualitative and quantitative analysis was done to have clear understanding of the inputs and results. The qualitative method was focussed to obtain understanding of the concept and implementation of the program. While quantitative method was to inform and explain unclear findings and to enhance understanding of the project impact, the determinants of success or failure and the channels through which changes in productivity were achieved. This method has been used by World Bank project, Community Based rural Land Development Project (CBLDP) in Malawi.

#### iii. Comparative Evaluation Method

The Comparative Evaluation Method was developed by Bandeira *et al.* (2008) in order to evaluate the national Land Administration System and applied in case of Peru and Honduras. For this, each tool of land administration is analysed independently and assessed if it contributes or not to the outputs or expected results. The main idea in this approach is to first set up a goal followed by developing indicators, benchmarking method that correspond to each of the goals. Both Qualitative and Quantitative indicators supporting each goal can be formulated and then benchmark for all the indicators. Some of the best practice qualitative benchmarks based on a broad international consensus can be defined and the international averages were used as quantitative benchmarks for comparison purpose. This assessment tool would contribute to identify the management practices against the budgetary problems.

#### iv. Good Practice Criteria Approach

This method was developed by Steudler, *et al.* (2004) which is a holistic approach of evaluation representing the different organizational tasks and its responsibilities. These are assessed in all the levels of an organization- Policy Level, Management Level and the Operation Level- which provide the basis to define and evaluate areas in land acquisition in the actual context. These different levels can be correlated with the evaluation elements and also with the different groups of people carrying out the responsibilities.

Since the standard framework to assess specifically land related activities does not exist, this framework can be used to evaluate any kind of Land Administration Systems (LAS). All the evaluation areas provide the framework for the evaluation separately with respect to overall purpose of a system based on management model (Figure 3-2).

This approach can be equally applicable to land acquisition processes because, this is also highly

affected and related to policy management and operation levels. These levels can be considered as different evaluation areas. All the evaluation areas identified are broken down again into smaller units which are supported by performance indicators. The performance of key variables such as sustainability, impact, efficiency, effectiveness and relevance are measured in social, cultural and environmental terms. The evaluation of these areas and also the indicators can then be formulated by the predefined “Good Practice” criteria (Stuedler & Williamson, 2005).

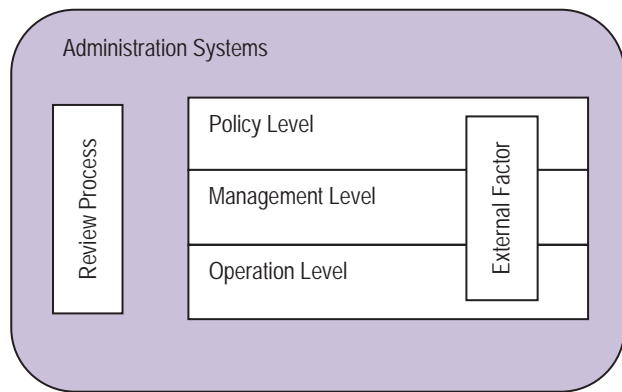


Figure 3-2: Evaluation Areas (Stuedler, 2005)

### 3.4. Approaches for Assessment Framework

According to the review made on different evaluation procedures, the Stuedler’s evaluation approach was chosen for the purpose of assessing of land acquisition techniques. It covers all the systems to be evaluated in holistic approach and all the elements of the system can be taken into consideration. Land acquisition is an issue that is related and influenced by policy level to the operation level, also the land owners whose land are taken and also the other stakeholders. Because of having many interlinked relationships between various stakeholders it is very much affected by the external factors and the review process in all the levels of the organization.

The evaluation framework developed by Stuedler is also supported by the concern raised by (Baird, 1998). The major issues on which emphasis is given are:

- “Well-defined Objectives---to know what to achieve
- A Clear Strategy--- to know how to achieve
- Outcomes and Monitorable Indicators--- to know if we are on track approaching the achievement
- Evaluation of results--- for measuring performed activities and to discover the strength and weaknesses”

These elements are also considered as important elements in land acquisition procedures and correlated with all the levels of the organization. These issues are important not only at one level but at several levels of the organization. The objectives, strategies, indicators and evaluation of the results can be done in each of the levels independently though it can also be seen in a holistic way. Each of these issues are related to the different evaluation areas i.e. objectives at policy level, strategies for management, the outcomes and evaluation of result in the operational phase.

Therefore it is sensible to develop the assessment framework on the basis of land administration assessment framework as developed by Stuedler incorporating the issues raised by Baird and correlating to principles of good governance, which can be applied for dynamism of land acquisition.

#### 3.4.1. Evaluation Areas

The basic evaluation areas considered in the assessment framework developed for this research work are Policy Level, Management Level, Operation Level, the external factors and the review process as shown in the figure 3-2. All these areas are separately evaluated and linked them with the different stakeholders and their different responsibilities.

### 3.4.2. Aspects and Indicators

As different evaluation areas are determined in the earlier section. This section adds different aspects and the indicators related to those aspects into the evaluation areas. The various aspects related to different evaluation areas has been identified from a qualitative analysis of literatures. Most commonly the issues that are highlighted by good land governance (section 2.4.3) are considered as important aspects to evaluate in the framework.

“Indicators are useful tools that help in drawing conclusion on the performance or implementation of a principle, objective, concept or standard which in itself is impossible to measure” (Radaelli & Meuwese, 2008). They are information that summarizes the characteristics or highlights what is happening to a system. USAID (1996) defines indicators as a tool to identify what to measure to determine if the objective have been fulfilled. According to Deininger, *et al.* (2010) indicators are generally Rule based and Outcome based and in the land sector indicators are often based on the opinion of the experts who are supposed to be conversant with the issue. UNDP (2006) has also developed their own land governance indicators focussing particularly on pro-poor and the endangered land policies according to which indicators help to address issues like how much is done and whether there is a progress towards a certain goal or not. Burns (2007) has also developed many types of indicators for measuring performance in the land administration field.

Radaelli and Meuwese (2008) has mentioned about three types of indicators- “Quantitative and Objective Indicators, Qualitative and Objective Indicators and Qualitative and Subjective Indicators”. The type of indicators chosen and developed depends on the purpose of the assessment. (Molden *et al.*, 1998). The most commonly used and widely available performance indicators are related to economic, governance, pro-poor and gender aspects (Arko-Adjei *et al.*, 2010; Corner, 2005; Deininger *et al.*, 2004; Kaufmann *et al.*, 2009). Indicators can be used at different levels as mentioned in (UNDP, 2006). The progress towards the general goal such as equity and status can be measured at the highest policy level. At the second level indicators can also be used to measure progress towards organizational objectives and at the third level to measure daily activities through which an organization can attain their objectives.

The different aspects and their related indicators are described below for each evaluation area:-

#### a) Policy Level

“Institutions are the rule of the game in the society or more formally, are the humanly devised constraints that shape human interactions” (North, 1990). North (1990) has tried to include both formal constraints e.g. rules and informal Constraints e.g. conventions, customs, traditions and codes of behaviour. Such institutional arrangement also include policy i.e. Land acquisition policy in this case, which needs good formulation and implementation. Land Policy is a part of national policy in any country (UN-FIG, 1996) and generally relates to the economic development, social justice and political stability. It also prevents land speculation and disputes. The aspects are determined based on the experience from literature. The issues those are subject of concern in policy making and are close to governance point of view are mainly focussed as the important aspects of policy level.

- **Status in National Policy**

Presence of clear policy helps to improve efficiency and effectiveness and should be created within institutional and legal framework that help to increase welfare and productivity rather than the opposite (Deininger, 2003). Thus, the land acquisition process is important to be included in a national broader policy framework. This will help to formulate good strategies and implementation programs as per the requirement and the priorities of the country. For the effectiveness of the land acquisition and land management the land policy is necessary to be included in the mainstream of the policy.

- **Policy Formulation Approach**

Under this issues one tries to find out how the policy is formulated. Have the interests and requirement of the different beneficiaries been taken into consideration or has it been just ignored? It is believed, from experience, that the policy formulated as a bottom-up approach rather than the top-down better incorporates the ground situation. It is important to ensure that the participation of local people is taken into care and the balance between the state and the land owners is maintained.

- **Viability of the Approach**

The social and economic issues are also very important considerable factors in the policy and necessarily be incorporated in the land acquisition. The approach necessarily has to address the three main issues explicitly social well being, environmental concern and benefit sharing concerns (Ram & Kakani, 2009). The policy has to consider different environmental issues, impact on the changes in the livelihood of the local people and if it is acceptable to the general people and also the costs and benefits and overall monetary impact to both investors and the people. It is important to consider that the beneficiaries and stakeholders are not negatively affected socially and economically.

- **Equity**

The policy formulated that is meant to serve the people has to take into care the equity factor. It is necessary to be free from bias and favouritism. The policy should include all the different group of people including vulnerable groups, promote equality and importantly take subsidiarity as a main concern i.e. the group or any individual, and their livelihood, who are backward and vulnerable should be kept in high concern rather than the elite and wealthy groups i.e. keeping responsibility as close as possible to the actual dilemma at the lowest hierarchical level.

**b) Management Level**

The management level prepares for different organizational, resource and institutional arrangement. It is very important to evaluate this area because this is the area which defines strategies that finds the way forward to reach and satisfy the objectives and priorities. In this level, the scanning of the environment is done and the strategy is formulated and implemented to meet the overall objectives and this bridges the policy and the operational level. The plans and programs are made to support the operational level as provisions given by the policy level. Therefore, the aspects determined at this level are important and also they have to incorporate other line organizations and stakeholders keeping also in mind the local land holders.

- **Well defined and Formulated Strategy**

The Strategies are means to reach the goals and to meet the objective. Therefore the strategy should be clear and well defined without having impression of double meaning. It should ensure that the purpose of the land acquisition is clear, achievable and considers all the short and long term impact.

- **Participation**

Participation at the management level is important to ensure that all the related organizations are brought together. This will ease in fulfilling common goal and without the exploitation of the extra financial, physical or other types of resources. Participation at this level can help reduce double work and helps to achieve economies of scale. Participation is necessary to encourage within and between cross organizations. All the involved organizations should have clearly defined tasks and methods of co-operation and should communicate with each other. Cooperation and collaboration should be embedded in policies implementation. Public participation is seen in different levels: informative, consultative, co-operative and mobilisation (Shrestha, 2009).

- **Intuition and Organizational Arrangement**

As mentioned by Deininger, *et al.* (2010) the responsibility to formulate and implement land policies is spread among various ministries and institutions among different sectors e.g. environment, agriculture, urban, mining, lands and the division of responsibility dispersed between central and local government. The involvement of different institutions and organization with their clear responsibilities and strategies should be mentioned. It is important to find out about where to coordinate whenever required in the whole land acquisition phenomena. The decentralized administrative arrangement is more efficient and effective towards the program and reduces the opportunity of corruption (Deininger, 2003).

- **Involvement of Private Sector**

The government is not individually capable of doing all necessary development work nor the private (Roll & Verbeke, 1998). This fosters participation and co-ordination of both sectors, which enhances better production and result. The expertise and capabilities of each other can be shared and utilized and also one can benefit from each other.

- **Co-operation and Communication Between local Stakeholder**

It is necessary to have a clear cut strategy regarding cooperation and communication between the other stakeholders, i.e. the local user groups and the civil society members. These can bring indigenous solutions according to local needs and circumstances. There should be well guided structure for their co-ordination. This should also include the land owners who are directly affected because of the land acquisition phenomena.

**c) Operation Level**

This is the level where actual policies, plans and strategies are really put into action on the ground to meet the objective. One may suffer with many obstacles that are beyond the imagination sometimes, therefore this is a very sensitive area of evaluation and careful attention is required in this phase. According to Zakout, *et al.* (2006), the consideration of the principles of good governance is helpful to facilitate better results in an efficient and effective manner. They also enable citizens and other stakeholders to monitor on what level the governance is efficient and effective to achieve the objectives and the targeted goals and how much accountable are the decision makers to take the decisions and to make optimum use of the resources (Corner, 2005). This can be examined in the processes and outcomes of the governance. The aspects are determined taken into care the aim and objective of the acquisition and the issues that are in debate and considered important by many internationally recognized organizations like FAO, World Bank, UN-Habitat etc. Therefore some of the elements of good governance have been used here for the assessment of this evaluation area:-

- **Participation**

Participation of the local stakeholders increases the sense of responsibility and orientation towards the processes. Without the involvement of major stakeholders and beneficiaries in implementation, programs are not sustainable. This is generally done by making information accessible, through provision of reports on progress of activities; on the corruption and misconduct on the behaviour of the staffs of the project. This can be an indirect participation while they can also be participated directly through jobs or shares in the project so that it helps in reducing conflict. Participation of the locals can help in reducing the delay of the project if done by the government or the other parties. If due to any ill interest the work is stopped, local people could try for the continuity even if the other parties are not very interested. Through participation all stakeholders can have a voice in decision making, either directly or indirectly, represent their interest. Participation is worthless if decisions cannot be influenced by it.

- **Transparency**

This is another important aspect that is very important for assessing any kind of projects or plan. This helps in creating and maintaining the trusts within the authority and local people or beneficiaries. Transparency is generally created on the basis of free flow of right and enough information to the concerned people. Molen and Tuladhar (2007) have also focused on transparency through access to information and this help in reducing the corruption. Therefore this plays a vital role in maintaining effectiveness during the implementation phase of any project or phenomena. In the process of land acquisition transparent process on service standards, information flow may help in successful implementation of the project.

- **Rule of law**

During the implementation of the land acquisition phenomena the legal provision should be enforced in a consistent and coherent way. The process necessarily has to follow legal provisions in fair, impartial and transparent manner. Equal preference should be given to each beneficiaries and stakeholders that encourages them to obey the rule of law and avoid the unfavourable situation or any kind of conflict. Basic human and property right should be protected.

- **Accountability**

Accountability ensures that the implementing bodies are responsible and highly sensitive towards the processes. This can be achieved through maintaining uniform service standards that can monitor each and every procedure and the staffs. Accountability should not be only towards the social and environmental

issues or towards the beneficiaries or stakeholders but also towards the internal matters of the project and the organization. It is essential to serve all the stakeholders.

- **Efficiency**

Procedures that are taken into consideration during the land acquisition process is necessary to be simple and short. This is also about how economically the resource has been utilized optimal to get the positive result in order to fulfil the objectives. The fewer the steps, the less opportunity for the informal actions..

- **Effectiveness**

Effectiveness is maintained if the resources in hand are sensibly utilized to meet the target and if the objectives of the beneficiaries are met. Effectiveness is achieved if results are made according to the objectives set. This depends on capacity building, financial provision and also on general socio-economic condition, rule of law and political stability etc (Zakout, *et al.*, 2006).

- **Equity**

All people or stakeholders irrespective of their caste, groups, status, power, essentially have the same type of access to the service, information, basic facilities and also in the involvement of the implementing project. Equity considers equality in all respects to all. The people who are supposed to be vulnerable or backward on social and economic terms should also be brought on the mainstream so that they can equally participate in all processes. Equity ensures fairness and impartiality (Robin P, 2007).

- **Valuation/ Compensation**

Valuation is one of the most difficult and important steps in the whole process that needs to be settled in responsible manner. Most countries adopt the method of fair market value, income or capitalization approach or the comparable sales method (ADB, 2007). This is the root of all ill thoughts and conflicts in land acquisition procedures. Since land owners are losing their piece of land, which is their property and upon which they have deep feelings, the compensation provided should be fair, adequate and timely. This should at least not be less than the pre-acquisition phase and with which they can sustain their livelihood as previous situation. There should also be scientific, fair and transparent valuation procedures. The valuation and compensation should be in the right proportions of social, economic and moral incentives and rewards. Not only for the loss of the land but for all the associated structures, standing crops, damages, moving expenses and for new construction of structures (ADB, 2007).

#### **d) Influencing Factors**

These are the external factors that have direct impact across all the evaluation areas of the assessment and that needs to be addressed (Stuedler, 2005). Since these are nowadays most influential factors from policy making to the operation phase, these have to be given high attention as the other factors. The major aspects that are considered to be included are:-

- **Awareness**

Awareness is very important to let people know about the importance of the acquisition process and its ultimate benefits. In the process of land acquisition no land owners wish to lose their property for any kind of public purpose causing conflict between the implementing bodies and the locals. Therefore to ease the process and carry out the developmental project without any obstacles the awareness generating program is essential to be conducted frequently. Awareness seems more vital in the land acquisition process for roads and highways, where direct benefits are not easily realized. This has to be realized on both processes and outcomes.

- **Capacity Building**

Capacity building programs is necessary for the personnel directly related to the implementing project and also to the general people or local land holders. This is important for the staff because they might not be aware of new technological advancements that are suitable to new circumstances because of which work could not be performed well. Capacity development should also be provided for maintaining the social relationships with the general people. This is equally important for the land holders so that they can achieve some skills and trainings which help them to work on off farm activities and other employment opportunities.



- **Land Owners Demand**

The other influential factor in the land acquisition process is the land owners demand other than the compensation. In some cases land owners demand for jobs, want resettlement instead of monetary compensation and sometimes may also demand for other facilities like building schools for their children.

- **Other Community Voices**

In addition to the actual land owners there are also other locals who are directly and indirectly involved and dependent on the land. The user groups, civil society groups, agricultural labours and tenants can be taken as an example. Their voice is also important as they are important stakeholders. In many cases the land owners who do not work in the land are compensated heavily but the actual workers in the land in the form of tenants or contracts workers are neglected. So it is important that their right on land are considered and can be brought on line with the land owners.

e) **Review process**

The review process looks at how the whole system performs and how the strategies and objectives are implemented and met (Stuedler, 2005). This doesn't only refer to the objectives and goals that are met or not but also towards the society and locals who are directly affected from the land acquisition phenomena. Mostly whose land is taken as a whole forcing to resettlement? Not only ex ante but also the provision of reviewing and carrying out ex post examination is important in land acquisition (ADB, 2006).

- **Objectives are Met**

It is very essential to review at the project level whether the objectives are met or not. This helps to further evaluate own strengths, weaknesses and errors that can provide an opportunity to improve. It also has to be reviewed if the purpose for which the land had been acquired is met and if the land is not used for any other purpose.

- **Change in Socio-Economic Condition**

Land acquisition process makes many people landless, homeless and even jobless. Some are directly while others are indirectly affected. Therefore there it is important to have a review process of the social and economical aspects of the people and the area as well. Not only should the area where the road is developed be reviewed but also the area where the local land owners are resettled. This really shows the responsiveness and accountability of the state or the implementing organization.

- **Land Owners Satisfaction**

If land owners are satisfied the project remains successful throughout the life, but this will not be the case if the locals and land owners still protest against the state or the implementing agency. Therefore the provision of reviewing the land owners and other stakeholders' satisfaction is another important duty of the responsible government.

### 3.4.3. Developing Good Practices

The assessment of whole land acquisition processes is based on the best practices criteria which also refer to good governance. The best criteria represent the presumed ideal system (Stuedler, 2005). The criteria of the ideal system are based on the actual objectives and strategies of the system, on the result of previous lesson learning and comparison of the other similar projects as well. The good practices of all the aspects of different evaluation have been summarised in the table 3-1.

## 3.5. Final Framework

The above previous sections ascertain the evaluation areas and aspects for evaluation, to develop and define indicators and good practices. This section now presents the above description of the different evaluation areas, their aspects, possible indicators to measure them and the good practices collectively in summarised form. This contributes for the evaluation of land acquisition by taking it into account as a

whole entity. Here the lists of all those variables are together in the form of a complete assessment framework.

<b>Evaluation Areas</b>	<b>Aspects/Element</b>	<b>Indicator</b>	<b>Good Practice</b>
<b>Policy</b>	• Status in national policy	• Existence of government policy	• Incorporated in national policy
	• Policy formulation approach	• Modality (top-down/ bottom-up) • Autocratic, Democratic	• Bottom-up approach
	• Viability of the approach	• Social Viability – Environmental issues – Acceptable to people	• Social and Environmental condition are taken into care
		• Economic Viability – Costs & Benefit – Overall monetary impact	• No loss to any stakeholders (win-win situation)
	• Equity	• To all the social groups and classes • Subsidiarity	• Satisfied Stakeholders/ Groups
<b>Management</b>	• Well defined and formulated strategy	• Clearly defined strategy and characteristics of approach • Ensure that the purpose of acquisition have been fulfilled	• Structure of the approach is useful and clearly defined • Land is used only and only for the reason for which it has been acquired
	• Participation	• Participation of related stakeholders	• Involved institutions and organizations have clearly defined tasks and co-operate and communicate with each other
	• Intuition and Organizational arrangement	• Clearly defined list of organizations, strategies and responsibilities	• Participation of the stakeholders in the management level
	• Involvement of private sector	• Links between institutions (legal, organizational, technical)	• Partnership between public and private bodies • Appropriate balance between public & private
	• Co-operation and communication between stakeholder (land owners)	• Well guided structure for the cooperation	• Community Participation
<b>Operation</b>	• Participation	• Good Participation of stakeholders	• The land owners and other stakeholders participation
	• Transparency	• Information to related stakeholders	• All the information related is true, timely and prerequisite to acquire land and benefits is made known
	• Rule of law	• Legal provisions enforcement	• Legal provisions are fairly enforced
	• Accountability	• Responsible staffs and methods	• Highly responsible staffs involved in the acquisition process
	• Efficiency	• Simplicity, Timeliness, Completeness	• Short and simple process • Timely completion
	• Effectiveness	• Utilization of land,	• Best and optimal use of

		human and financial resources for achieving results and objectives	resources
	•Equity	• Equal treatment to all • Inclusiveness • Empowerment	• Satisfied general public in terms of treatment
	•Valuation/Compensation	• Adequate, Timely and Fair compensation	• Satisfied general public in terms of fair, timely, and adequate compensation
<b>Influencing Factors (External)</b>	•Awareness	• Presence of awareness programs	• Stakeholders are aware of the process and outcomes
	•Capacity Building	• Trainings conducted	• Competent and dedicated staff
	•Land owners demand	• Provision to collect complains	• Fulfil the landowners demand to the level of satisfaction
	•Other communities voice	• Provision to hear complains and voices	• Demand or other community and user group are met
<b>Impacts Review process (Post Acquisition Phase)</b>	•Objectives are met	• Provision of reviewing objectives	• Regular review process
	• Change in Socio-economic condition	• Provision of reviewing	• Improved social status • Better facility, more productivity
	•Landowners satisfaction with the project and its activities	• Measure the satisfaction	• Satisfied land owners and stakeholders

Table 3-1: Land Acquisition Assessment Framework with Indicators and Best Practices

### 3.6. Summary

A well designed assessment for the land acquisition process that incorporates all the evaluation areas, related aspects and corresponding indicators with its best practices are vital for the comprehensive assessment process. Hence this chapter presents a complete framework for evaluation. The evaluation of any activities is important because it serves to achieve objective and provides lesson for future reference. It appraises the impacts and effectiveness and finds if there are points for improvement. Different types of evaluation methods practised were discovered. Each of the approach serves to the different requirement and applications. Hence one of those approaches which enable to evaluate systems as a whole is selected based on which the final framework is designed.

The framework can evaluate the aspects or elements of a system in different organizational level, from the policy level to the operational then to the post operational phases. Hence different evaluation areas were identified as in section 3.4.1. Various aspects on each of the evaluation areas were determined, to evaluate the land acquisition, basically based on the characteristics of good land governance. The indicators were qualitative rule based and outcome based. The good practice criteria were developed based on the experience of activities from the literatures. These evaluation areas and its corresponding elements can cover and help broadly to assess the land acquisition procedures from policy to the ground in the following chapter 5. The good practice criteria are the main factors against which different activities on the land acquisitions are measured. Hence it highlights the actual situation of the land acquisition in place showing its strengths and weakness. It further enhances for the relevance of finding alternative land acquisition approach.

## 4. DATA COLLECTION AND FIELD WORK

### 4.1. Introduction

This Chapter describes the case study area and the project that was chosen as a case for data collection purpose. The first section 4.2 briefs about the project area, status of the project and the features of the fast track. This also describes the approaches for designing questions and for the selection of data collection techniques and lists the respondents and on the types of data collected in order to achieve the few objectives of the research in the sections 4.3 and 4.4 respectively. Section 4.4 gives the idea on the processing and analysis of the data. The ethical consideration taken into care and limitations in the field work are presented in the sections 4.5 and 4.6 and finally concludes by a summary in section 4.7.

### 4.2. Case Study Area

The study was based on the two districts on the Kathmandu valley- Lalitpur and Kathmandu in which the road is being constructed (Figure 4-1). The road and the particular section was chosen because it plays very important role in economic development of the country and the society and a large amount of land is required and to be acquired from the local land owners. Out of the whole section this lies near the main city and the value of the land is comparatively more than the other sections. The population in this area are more compared to other parts and are aware of their needs and their right which makes the selection of the area interesting. This road project is known as Kathmandu Terai Fast Track Road Project (KTFTRP) which starts from Sano Khokana of the Lalitpur district in the valley and ends in Nijghad of Bara district. The alignment runs from north to south through four districts- Lalitpur, Kathmandu, Makwanpur and Bara. A large portion of the alignment passes through very sparsely populated areas. The new highway, green colour with black line in the middle, would result in a saving of 152 kilometres and over five hours of travel time to the eastern part of the country compared to the existing route (Figure 4-2).

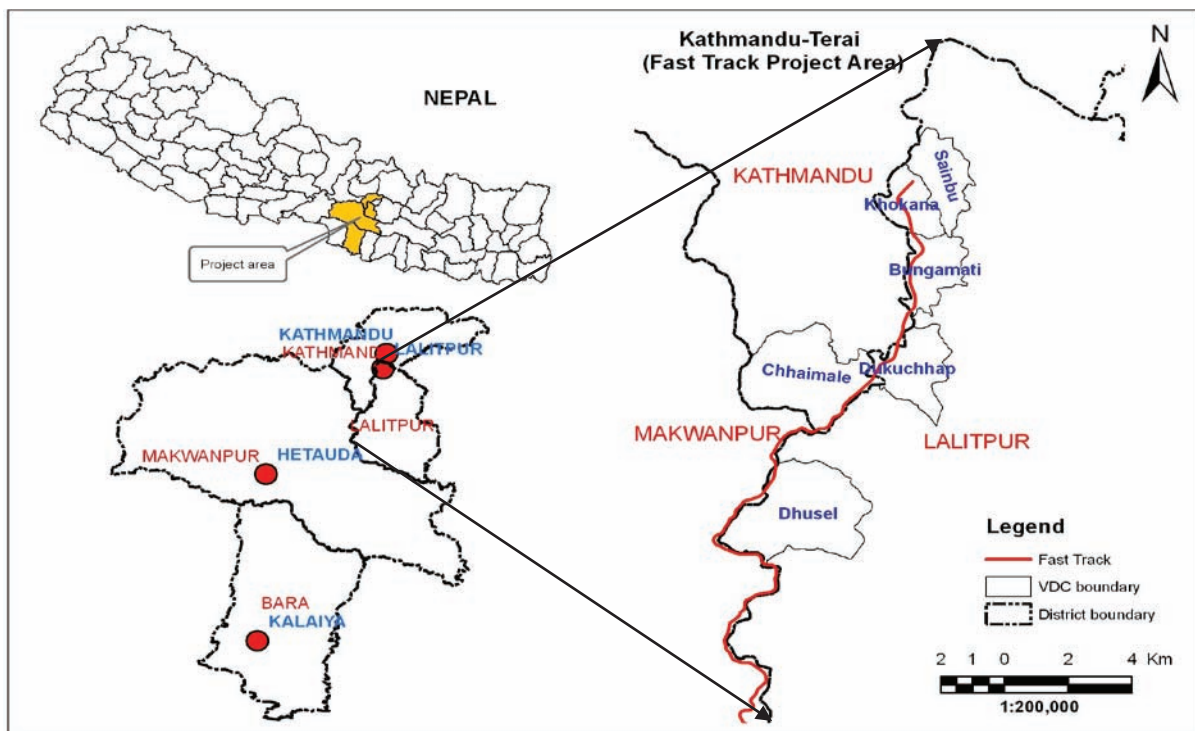


Figure 4-1: Map of Nepal Showing the Project Area

#### 4.2.1. Overall View of the Project

The proposed road passes through five VDC's within Lalitpur districts- Saibu, Khokana, Bungamati, Dukuchap and Dhusel and Chaimale of the Kathmandu district (Figure 4-1). The area through which the proposed road passes is relatively poor. This is because the villagers from two Village Development

Committee (VDC's) are in poverty line; 29-43 percent of the rural people earn less than NR 7,700 per year. Ethnic minorities, mainly Newar, Tamangs and Tharus, account for some 35 percent of the population and about the same percent of the poor population. People depend mainly in subsistence farming. Outside of the Kathmandu valley the area's remoteness and inadequate road infrastructure are among the main cause of the area's poverty. In the project area, neither of the rural VDC's is served by an all-weather road and 40 percent of rural villages have no highway access. The roads which do run through the project area have steep slopes, sharp turns, and low allowable speed. Nearly all roads are intermittently closed during the monsoon season and there are frequent landslides.

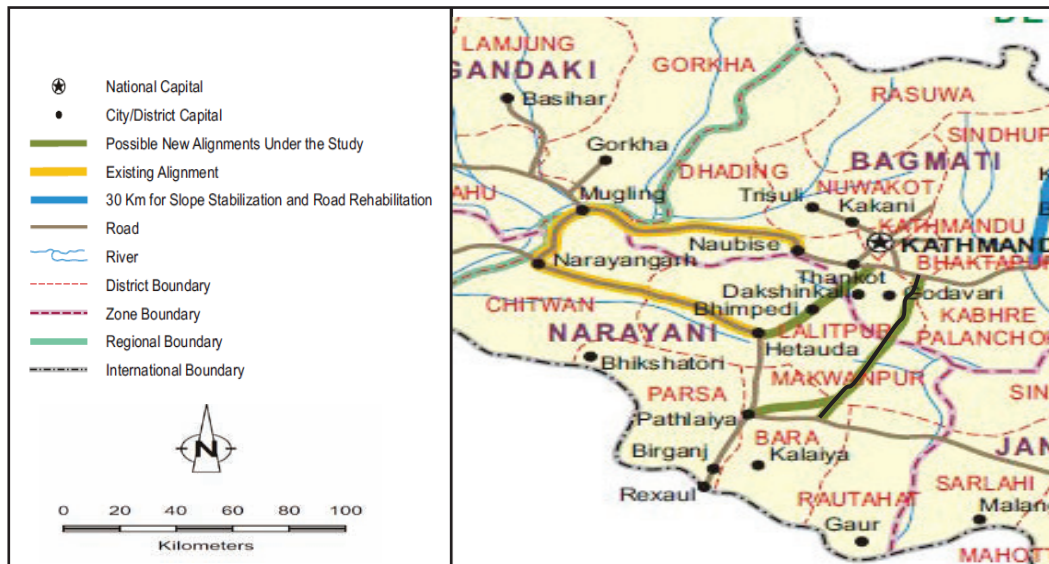


Figure 4-2: The Existing (Orange) and New (Green) Track to be Developed

Hence, the poor conditions of the road have resulted in inadequate and unaffordable transportation services in the area. The poor quality of the road prevents many licensed bus and truck operators from choosing the routes to villages. As a result, villages in the project area still have no direct transportation service. Inadequate road access is an obstruction to higher agricultural productivity and prevents the poor from taking advantage of job opportunities in the major towns in the area. A high speed access through the project area is needed to promote economic growth and integrate the poor, isolated regions with the economic centres of Kathmandu and Hetauda through improved transport services.

Women's socio-economic condition in the project area is worse in comparison to their male counterparts. This is, in a way, a general situation in Nepal. Women in the region are highly involved in the household work, cultivation and other agricultural activities. Women's literacy rate in the project districts is less as compared to that of the male. There are also other kinds of discriminations in that women bear a heavy burden work.

#### 4.2.2. Salient Features of the Fast Track

This new road will be built in international standards of a high class road. It is planned to construct to Asian Highway Design for a class 1 road i.e. with four or more lanes for which pavement type is asphalt or cement concrete. The track will allow vehicles to travel quick and safe. This is ensured by limiting the interaction between the traffic through the route and local traffic and pedestrians. Access to the track is allowed only at interchanges, located near traffic generation centres and that local traffic, including pedestrians, tractors, bicycles and no animals will be allowed on the highway except where the highway make use of the existing way. Operation and the maintenance costs and debt for servicing will be covered by toll systems that make use of open toll plazas. Possible alignment for fast track includes use of tunnels and a number of high bridges to ensure smooth ride along the track.

### 4.3. Data Collection

Data collection means assembling information to address the critical evaluation of the questions that had been identified earlier stage of the research processes. This study is based on primary and secondary data. A desk research and a field visit are the major approach for the data collection.

#### 4.3.1. Approaches for Data Collection Technique

Data was collected in an established systematic fashion that would enable to answer stated research questions and evaluate outcomes. Despite the consequences of the field of study or the preference for defining data whether be qualitative or quantitative, accurate data collection is crucial to maintain the reliability of research.

Consequently, Key informant interview technique was selected as the best method for the primary data collection. Since the issue of the research is quite sensitive in the case study area and in-depth knowledge on the land acquisition issues were required. Key informant is defined as “a person who is especially knowledgeable, at least regarding some subjects or topics of interest. They provide information about others or about specific situations, events and conditions in the study area” (Groenendijk & Dopheide, 2003). The purpose of the key informant interview was also to collect information from a wide range of experienced key people-including local welfare groups, community leaders, professionals and experts who have first-hand knowledge about the community and the activities. The key informant will help to get an idea on a broad range of perspectives on the undergoing activities while acquiring land from the point of view of their participation and level of involvement in the processes. The main objective of the research is to examine the feasibility of new land acquisition technique. Therefore, a candid opinion and very profound knowledge of land acquisition on the social, economic, political and environmental aspect is required. The key informants were selected in representative numbers in order to achieve the necessary information from individuals who is considered to be particularly knowledgeable about the topic of interest and phenomena in different perspective of acquisition. Specially who understands the situation and can analyse it. They were from the policy level to the local community groups and VDC members.

#### 4.3.2. Approaches for Designing Interview Questions

Questionnaire is simply one instrument that is employed for the collection of data. Well formulated and designed questions are believed to give superior data for the study and outcome. The selection of appropriate data collection instruments reduces the likelihood of occurring errors (Ranjit, 2005). Hence, according to the requirement of the qualitative research, open ended questions were prepared to acquire quality data. From the research objectives and research questions formulated in the proposal phase and also the literature review, form the basis on what type of data were required and who would be the possible respondent to get the required data.

The requirement of the information was from the policy to the ground situation. To know the facts, opinions, expectations and targets of different group of people on land acquisition were the main intention. Hence, the interview questions were designed differently to address the corresponding issues in different level and field of expertise of the respondents. It was developed in such a way that information on the entire approach could be obtained through all those levels. The major focus was on different types of land acquiring approaches in practice, their problems and on feasibility on leasing options with the inclusion and possibility of good governance principles which is the key concern. This was particularly based on the framework prepared for the assessment of the land acquisition techniques in the previous chapter 3. The assessment framework was developed in order to be focussed on the data collection requirement and to accomplish it in the provided timeframe.

Thus the questions were maintained towards the achievement of the objective (Annex 2: Checklists for Interview/ Interview Questions). Therefore different set of open questions were formulated for different groups of respondent. Questions having broader scope in policies and decisions were prepared for policy level, decision makers and central implementing body. The question for the experts, academia and NGO's were focussed on the critical part on the activities of the state and the current acts and rule. The private consultant and the member of the project were asked on the suitability to work in the current acts, laws

and current arrangements. The positive and negative aspects of current situation were focussed. These are the people linked between the implementing bodies and the people in the ground therefore they are believed to have good knowledge of the actual conditions. Finally the last group consists of the community members, co-operatives, VDC members and civil society members. They were approached for their feelings on the current situation, what they desire and actual situation of the area and their awareness of the ongoing project. Testing of the questions was done with 5 staffs on the department of the survey, Nepal.

#### 4.3.3. Primary Data Collection

The method used for primary data collection was a key informant interview. Different personality from different levels, involved for the land acquisition phenomena were included. They comprise of the policy level from the ministries and planning commissions, management level from the different departments under the ministries to the operation level like projects members and Village Development committee members. Land experts and professionals, local welfare group and civil society members were also selected as key respondent. Because of the sensitivity of the land acquisition process in the case study site, private land owners in household level were avoided. The combination of informative, knowledge and opinion questions were the major focus. The various aspects of the prepared assessment framework were tried to cover. The most of the interview was recorded with the respondent's permission.

#### 4.3.4. Secondary Data Collection

Secondary data of different types from different organizations were collected. The major types were Spatial Data and Non-Spatial Data.

- **Spatial Data**

The spatial data collected were Ortho Map, cadastral map, co-ordinates of the central line of the proposed alignment of the fast track, and digital topographic map of the project area. These were received from different organizations like survey department, district survey offices Lalitpur and Kathmandu and Kathmandu-Terai Fast Track Road Project (KTFTRP), head office. An analogue topographic map was also collected. This was basically to get an overall idea of the location and landscape of the VDC's to plan the field visit.

- **Non-Spatial Data**

A number of Non-Spatial data in the form of document and reports were collected. The copies of land laws especially land acquisition act, urban development act, land acquisition bill on progress and land pooling manual were made. Other relevant document like contract act published by Nepal Law Commission, Environment and Social Management Framework published by Department of Roads and report submitted by KTFTRP high level committee on the Fast Track project was also collected.

#### 4.3.5. Respondent for Data Collection

The Table 4-1 below shows the total number of respondents. The respondents were of different levels and different organizational types. The detailed list of the respondents and the organizations has been shown in the Annex 1: List of Respondents with Field Work Plan.

Respondents →	Government Officials		Experts/ NGO/ Academia	VDC Members	Civil Society	Others
	Ministries/ Policy makers	Departments /Project				
<b>Numbers</b>	3	12	5	5	4	3
<b>Activities</b>	Interview, Document Collection	Interview Document Collection, Maps, Reports	Interview, Document Collection	Interview	Interview	Interview, Document Collection

Table 4-1: Respondents Contacted from Different Fields

#### 4.4. Data Processing and Analysis

The main data collected through the open ended questions are of qualitative nature. The voice recorded during interview was first transcribed in textual format in Ms Word. The text was then processed and analysed by using different functionality of Nvivo data processing software (Sample shown in the Annex 5) after importing and also manual analysis was performed. To visualize the maps of the project area, ArcGIS is used.

#### 4.5. Ethical Consideration and Quality Control

Ethical considerations across the research field have come to the first position. This is partly an outcome of legislative transform in the human rights and data protection, but also as a result of increased public concern about the limits of inquiry to show the responsible behaviour. No activity is exempted from this consideration in this research and specially data collection. Interviews were organized only after the permission was received and no force has been done. The recordings were made only with the permission of the respondents. The views given by the government officials in policy and management levels were crosschecked by the operating level staffs and also with the local leaders and civil society members.

#### 4.6. Limitations During Data Collection

The interviewees were the key persons in their respective organization. This was good because their experience and expertise in their work provided me better responses but at the mean time it was very difficult to arrange appointment from them. Even the appointment time was provided, because of their busy schedule I had to wait long or even postpone the appointments. Interview schedule could not be followed in few cases. The members of VDC's were not willing to response because of their irritation on the subject matter. Being very few number of staffs appointed in the office, it was difficult to meet either of them. The number of respondent in VDC's is limited to one. Two of the VDC was in very remote distance where it was not accessible to reach with regular vehicles. The newly opened track was only the access to the VDC office which was not in a good condition because of the steep slopes. Because of the absence of staffs in the office hours and lack of time, one of the VDC which is the farthest of all, at the district closer to Makwanpur district was not able to visit. Because of poor internet connection and electricity problem, it took lots of time to download the data and get printed. Few respondents did not agree on taped interview therefore interviewer had to be very attentive to their response.

#### 4.7. Summary

The approaches taken for the data collection purpose of the research has been described in this chapter. Key informant interview was the technique applied for the primary data collection purpose. The selection of the key informant was done to have an in-depth knowledge on the acquisition and its laws and acts. Their selection was done for the profound knowledge and the candid opinion. They were selected in representative numbers so that enough information is obtained. The questions for the respondents were categorized according to the expertise of the respondents and were basically based on the aspects and indicators used in the assessment framework prepared for assessing the land acquisition techniques. The lowest unit selected were the VDC. Five from Lalitpur and one VDC from Kathmandu district were under the study area. Out of which only four VDC's of Lalitpur were covered in the data collection phase. The processing and analysis of the qualitative data is done manually and also by the data processing software, Nvivo.





## 5. ASSESSMENT OF CURRENT LAND ACQUISITION

### 5.1. Introduction

This chapter focuses on the analysis and the assessment of the land acquisition technique in practice. The analysis is based on the data collected in the field and the assessment is done according to the framework prepared in the chapter 3. The assessment is done in different evaluation areas with the help of aspects and indicators developed in particular reference to the good governance principle. First the section 5.2 introduces the current status of acquisition of Nepal describing the practices of land acquisition, the guiding acts, and acts particularly focussed for road development. The section 5.3 deals with the status of land acquisition of the project. The assessment of the acquisition technique is done in the section 5.4. Section 5.6 presents the summary the chapter.

### 5.2. Description of Land Acquisition Nepal

#### 5.2.1. Practices of Land Acquisition

The fieldwork is done to examine and explain the behaviour of land acquisition practices in the real life context. The field work experience in Nepal has shown that basically there are two different approaches widely in practise for land acquisition- a) Compulsory Purchase and b) Land Readjustment which is also known as Land Pooling.

#### a) Compulsory Purchase/Expropriation

No matter what the type of the project be- e.g. roads, bridges, irrigation, hydropower the approach mostly adopted and the oldest is the compulsory purchase or expropriation. The “Land Acquisition Act, 1977 (LAA)” provides the legal basis for the acquisition procedures in the country (described in the sub-section 5.2.2) by paying adequate compensation. Most of the infrastructures that have been developed by the government funding or be it by the funding of other development agencies have used this method. The Land Acquisition Act specifies a number of steps and actions for road development in Nepal (Table 5-1). The total duration of theses sequence of steps sums to a minimum of 26 months as revealed by the table. The gaps on the compensation issues compared to the World Bank’s compensation standards are presented in the table 5-2.

#### b) Land Readjustment/ Land Pooling

Land readjustment is a new approach basically applied for land development purpose and initiated in 1988 in the Kathmandu valley (Karki, 2004). According to Oli (2010), Land readjustment also known as Jagga Ekikaran or Chaklabandi in Nepali, is fairly developed in Nepal because of its high potential in assisting urban development but not yet utilized in the agricultural land uses.

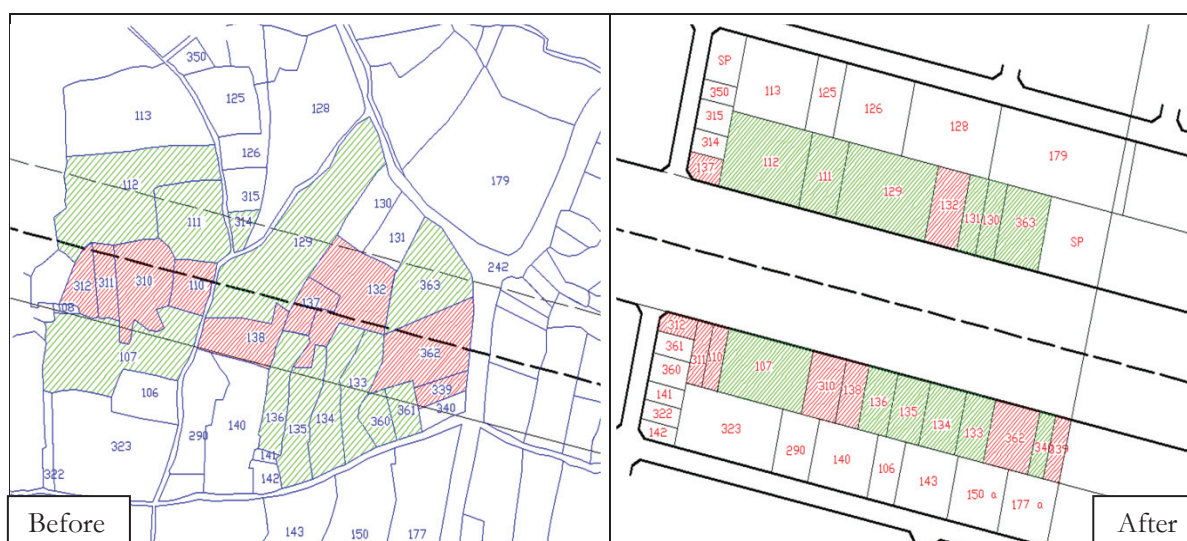


Figure 5-1: Example of an Area before and after the Readjustment Plan

The section 12 (1, 2) of the Town Development Act, 2045 provides the legal basis for this activity in the country. The Outer Ring Road Project, the Kathmandu Valley Town Development Committee (KVTDC) and other Town Development Committee in different municipalities have plans to carry out land pooling programs (Oli, 2010). Figure 5-1 (Source: Outer Ring Road Project) provides a glimpse of area before and after development using land readjustment approach.

The other methods having good prospect in acquisition are: a) Land lease and b) Land banking.

#### a) Land lease

The lease approach has a short history and adopted in small scale for the infrastructure like buildings, residential complexes and in hydropower sites. This is basically preferred for the temporary use of land and is exercised based on the contract law. Leasing is practiced formally in recent years after the restoration of the democracy in the country 2046 BS and the abolition of the *Mohiyani Haak* – Tenant right from the land act. Since there was no provision of the written records on the activities of lease, it is estimated to come into existence roughly around 25/30 years ago. There were no trace of formal lease but grey-lease was in practise as experienced by many respondents. It is undertaken for state owned and privately owned project. The freehold system of land tenure aids to own large area of land by the private land owners. People are migrating to cities living behind their land and many are changing professions from their farm works to other non-farm sector. Large percentages of people are migrating abroad for education and in search of job. All these evidences, as responded by the interviewees, prove that there is a large potential and opportunity of land lease in the country. Therefore the trend of the lease in different sectors and scale seen in the country is enough to prove its potentiality.

The land that has not been utilized by the actual owners for any kind of social and economic purposes were leased so that there is some economic gains rather than keeping it unused. When the lease was known it was carried out in smaller forms, between the familiar parties but these days it is undertaken between unknown entities on the basis of the contract made. The land is leased for minimum of one to seventy-five years. Trust Corporation leases it land to private and public entities from fifteen to thirty-nine years depending on the purpose and size of the land. The rent varies in amount and tome span from project to project and also the location. After the contract period is over it can be renewed or given back to the corporation along with the infrastructure built on it. There is another example towards a step forward in leasing land in a hydropower project, Middle Marsyangdi Hydropower project. Out of the total 78 ha of land about 14 ha was acquired through leasing. This was for the purpose of construction of office, storage building other than the main components of the hydropower. However the lease is not registered as the cadastral procedures, a contract paper is signed as an agreement.

#### b) Land banking

The Land banking was also conceptualized but because of the lack of acts and guidelines it could not be implemented. This has high potential for agricultural purpose but also specifically in infrastructure development like roads and irrigation channels (Tuladhar, 2004).

There is no trace or formal documentation about the other approaches like pre-emption rights, financial incentives, building permission because there is no any law regarding such approaches in land related acts.

The acts and rules related to land acquisition are described briefly in the following section 5.2.2

#### 5.2.2. Current Acts and Laws

The acts and laws currently being applied for land acquisition purpose for the public purpose are listed under:-

##### a) Land Acquisition Act, 1977 (2034 BS)

Land Acquisition Act, 1977 (2034 BS) with amendment in 1993 (2049 BS) guides the compulsory acquisition of land in Nepal. The “Land Acquisition Act, 1977” and the “Land Acquisition Rules 1969 (2026 BS)” are the two core legal instrument that specify procedures of land acquisition and provide compensation. Government can take land at any place in any amount by providing compensation as referred in the Act for the acquired land for any public purpose or for operation of any development project commenced by the government institutions (Section 3 and 4). The power given under these

sections are very broad as government has the power to acquire any land in the name of public works or public purpose. The “public purpose” means to undertake 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.

- i. Project approved by Government of Nepal
- ii. Project undertaken by local bodies in different levels.

**b) The Interim Constitution of Nepal, 2063 (2007)**

The interim constitution of Nepal, 2063 (2007) in the clause 2 and 3 of article 19 related to the “Right to Property” has stated that “The state shall not, except in the public interest, requisition, acquire or create any encumbrance on the property of any person. Provided that this clause shall not be applicable on property acquired through illegal means and compensation shall be provided for any property requisitioned, acquired or encumbered by the state in implementing scientific land reform program or in public interest in accordance with law. The compensation and basis thereof and operation procedure shall be as prescribed by law” (GoN, 2007).

**c) Town Development Act, 2045 (1998)**

The Town Development Act, 2045 with its third amendment, 2054 (1997) guides the basic infrastructure development in the urban areas. The Land Readjustment approach undertaken for the development of areas is directed by this act, in the context of population growth and urbanization, it is useful to provide the necessary provisions in order to service and provide facilities to the citizen by rebuilding, expanding and to develop existing landscape i.e. physical development by redeveloping new infrastructures and to maintain health, ease and monetary concern of general people.

According to the section (4) of this Act Government, it may form town development committee in any area, rural or urban or regional development centre as per necessity. The committee thus formed may form sub-committees as per necessity for smooth operation of the activities. According to section (8) the committee, by issuing a clear public notification time to time, can impose restriction on fragmentation or any type of physical change of any immovable property situated in the planning area for a period as prescribed in the notification.

**d) Contract Act, 2056 (2000)**

Access to land in Nepal can also be done through lease. Since there is no act or rules regarding lease, it is practised on the basis of this Contract Act, 2056 (2000). Generally, contract according to this Act means an agreement enforceable by law conducted between two or more parties to perform or not to perform any activities. According to the section (4) of the act, The contracting parties subject to this act is free to decide the structure and content of contract and decide considerations that has to be made. The requisites and the nature of the remedy upon violation of the contract and determination of the measures for resolving disputes under the contract are also present in the act. The section (9) of the Act has also made provision of cancelling the contract proposal in different circumstances where the contract is not followed.

**5.2.3. Other Acts and Laws for Infrastructure (Road) Development**

There are different guiding documents and laws and acts that direct the development of infrastructure, especially for the development of road in Nepal. The major ones as mentioned (Geo-Environment and Social Unit (GESU), 2008) are:-

The Land Acquisition Act, 1977 and rules 1969; the Interim Constitution of Nepal, 2007 as mentioned in the section 5.2.2 are the basics and most important ones that has to be followed. The others that should also taken care are Local Self Government Act, 1999- which empowers and provide legal mandate to the local government bodies like VDC’s for conservation of natural resources of the area. The Environmental Protection Act, 1996 and rule 1997 which recognizes the interdependence between the developmental activities and focus on minimizing impacts on different lives and its environment is also applied. This also includes soil and watershed, forest, national parks and wildlife, buffer zone which provides a broad framework on the need of carrying out Environment Impact assessment. Indirectly, all these are focussed on the effect that the local people and their life can have because of the construction activities.

(Source: Public Works Directives, Land Acquisition Act, 2034 (1977) and Field Work)

Steps	Actions	Responsibility	Time Required	Clause in LAA
1	The area of land to be acquired is identified and requested to the concerned ministry/department to precede the acquisition.	Project manager (PM)	Determined during feasibility/design work	3,4
2	Official authority is given to the PM to initiate preliminary action for land acquisition by the Ministry/Department	Min/Dept.	½ month	5
3	Issue notice of preliminary action and publish the notice in proper public places for information	PM	1 month	6(1)
4	To estimate the total compensation, Land is surveyed and maps prepared, measure dimensions of house-walls, count trees to be felled and assess the amount of standing crop to be cut etc. Submit all documents to Chief District Officer (CDO) for further action after completing the preliminary findings within 15 days.	PM	1-2 months	6(2,3) 7 8(1)
5	A complain to the CDO can be made about the compensation regarding the total losses to be incurred by the Project Affected Person (PAP)	Land Owner	½ month	7(3)
6	The CDO reviews the document of the preliminary findings submitted by PM and make final decision and notify about the purpose, location, plot number and area and other necessary particulars for land acquisition publicly	CDO	2 months	9(1)
7	Notice on land acquisition is published at the following places: <ul style="list-style-type: none"> <li>The local office of the concerned project</li> <li>District Administrative Office</li> <li>The concerned VDC/Municipality office</li> <li>Land Administration or Revenue office</li> <li>Thoroughfares located around the concerned lands</li> <li>Other places as the CDO may deem appropriate</li> </ul> The notice should also indicate that the land owners can submit an application claiming compensation within a minimum time limit of 15 days, with evidence of the land ownership certificate.	CDO	2-3 months	9(2)
8	Personal notice can be sent to the concerned land owners who may be unaware of the public notice about the acquisition	CDO	½ month	9(3)
9	After publishing the land acquisition notice, land transaction of the particular land is suspended until the CDO directs it to lift the suspension	Land Revenue Office	½ month	9(4)
10	CDO forms a Compensation Fixing Committee (CFC) consisting of the following officers to determine the amount of compensation to be paid: <ul style="list-style-type: none"> <li>CDO</li> <li>Land Administrator or Chief of the Revenue office</li> </ul>	CFC	2 months	13(2)
42				

	<ul style="list-style-type: none"> <li>• PM in the case of a project ad officer designated by the CDO for other purpose</li> <li>• A representative of the District Development Committee (DDC)</li> </ul> <p>The CFC will determine the amount of compensation considering</p> <ul style="list-style-type: none"> <li>• The current price of the land</li> <li>• Value of crop, walls, houses, sheds etc</li> <li>• Loss made as a result of shifting residence or place of business</li> </ul>			
<b>11</b>	The CDO prepares list of persons entitled to compensation and issue notice on the basis of application received within prescribed time limit	CDO	½ month	18(1)
<b>12</b>	Any person not satisfied with the notification of the compensation may file a complaint to Ministry of Home (MoH) within 15 days	CDO	1 month	18(2)
<b>13</b>	Concerned land owner or tenant may complain with MoH, through CDO, within 7 days giving reason why his land should not be acquired	Land owner	½ months	11(1)
<b>14</b>	The MoH shall consult the officer responsible for preliminary action and, if necessary, also with the CDO before taking any decision on the complaint filed. MoH shall exercise the powers vested in a district court, such as summoning witness, local investigation recording statements or procuring document. The MoH notifies the CDO about the final decision of the complaint.	MoH	3 months	11(2) 11(3)
<b>15</b>	CDO takes possession of the concerned land and hands it over to concerned office for which it is acquired after: <ul style="list-style-type: none"> <li>• Decision has been made on complaint,</li> <li>• Finalizing the amount of compensation by the CFC</li> <li>• At any time after expiry of the time limit for filing complaints or if no complaint received and notify to the GoN on the activities</li> </ul>	CDO	2 months	12(1)
<b>16</b>	The CDO notifies GoN on the amount of compensation payable as determined by CFC	CDO	½ months	19
<b>17</b>	Authorization to the project manager for compensating the land owners in cash	Min/ Dept	½ months	13(1)
<b>18</b>	PM makes payment to the concerned land owners in the presence of Revenue officer, CDO and DDC representatives	PM	2 months	13(2)
<b>19</b>	Landowners who failed to receive compensation within a time limit, receives final time limit of 3 months after which he shall not be entitled to any compensation	Land Owner	3 months	37
<b>20</b>	The ownership of the land goes to GoN or the concerned Ministry or Department after the CDO takes possession of the land after paying compensation	CDO	2 months	22
<b>21</b>	The PM obtains land ownership certificate and deposits copies with concerned ministry, department and project office/s	PM	1 month	

Table 5-1: Procedural steps in the Land Acquisition Process

### 5.3. Land Acquisition of the Project

The land required for the project is acquired through expropriation. The total length of the road after construction will be 76.2 kilometres. There is no considerable progress in the whole project since the project first conceptualized during 2005 for which the first feasibility study was carried on 2007 and the second on 2008 by international agencies. By the end of 2008, the report of the action plan was completed on the public private partnership arrangement. A third feasibility study was carried out by involving the Nepalese experts and submitted to the Ministry of Physical Planning and Works (MoPPW) on 2011. The track opening activities in the Bara district has been completed since all the land within these districts is state land. There was no problem of land acquisition therefore the work run smoothly in the district. The track opening in the remaining three districts is yet to be done because of the compensation and land acquisition problem. These districts consist of private land that has to be acquired. The work out for the finalization of the compensation of the Chaimale VDC of the Kathmandu District is recently being done and the acquisition will be carried out in the beginning of the 2012 after the compensation is distributed. Similarly, the Dhusel VDC of the Lalitpur district had also towards finalizing the compensation and soon acquisition process will be on going. The remaining section of the road in Lalitpur and Makwanpur district are yet to be finalized.

Moreover, there are number of informal dwellers, i.e. living there since several years but do not have land owner certificates, in Makwanpur districts, which have to be resettled from the area. Though the dwellers are living there since few decades most of them do not have the land owner certificate for which proper mechanism has to be sought out to solve their problems. Without the certificate providing compensation will be difficult because it is difficult to prove who the actual owners are. This shows the poor recording systems of the country to protect property right. In the Khokana-Bungmati region, private land owners are protesting against the acquisition process. This is causing difficulties in the further processes. Also the approval for the project from the VDC is not given yet. The work cannot be started unless the approval is received. Though the target of the project was to complete the project by 2014, current situation shows that it will not accomplish the work on the targeted time. Therefore new target of 2016 have been fixed as a year of completion of the project. The 93 hectare (approximate) of total land is to be acquired through expropriation to construct the road where Rs 350 million is required to pay the compensation. Out of the total land required, private land is 59.1705 hectare only from two districts- Kathmandu and Makwanpur, 1.3195 hectare is trust land and the rest the state land. Approximately 1610 parcels are from the Lalitpur district only, which covers almost 34 hectare of land (unpublished source).

### 5.4. Assessment of Land Acquisition

The assessment of the land acquisition procedure that has been applied in the case project i.e. the Kathmandu Terai Fast Track Project has been done as following:

#### a) Policy Level

Literatures have shown that policy is related to the economic development, social justice, proper implementation and co-ordination and political stability as well. To achieve all of these, the consideration of the aspects in the case of land acquisition in the policy level has been found and explained as follows:-

- **Status in national policy**

The land acquisition for the KTFTRP is also explicitly defined and exists in the policy and government has allocated yearly budget for its implementation because of its high economic importance for the development of the country. Currently it is the first priority project. The acquisition has to follow the defined act related to the land acquisition in the framework of land policy. All of the acquisition procedures of the projects have to comply with it. It had guidelines on how different activities in different stages can be carried on.

- **Policy formulation approach**

The policy formulation approach is top-down. This means that the interest and requirement of the different beneficiaries has not been considered. The needs of the stakeholders at the bottom of the project are ignored. Therefore, if the real problems and challenges have to be realized, the approach of the policy formulation should be bottom-up which can consider of each of the beneficiary's voice. The autocratic

system prevails and subsidiarity is not so much considered so that the marginalized and the people who are really backward can come to the frontline. None of the local level respondents were found to be participated in the policy formulation.

- **Viability of the approach**

The environmental issues are somehow considered but not the social viability. This can be said because environmental impact assessment report has to be submitted before implementing the real work and has to be approved by the VDC in local level but social impact assessment is not performed. What are the direct and indirect consequences of the acquisition to the lives and livelihood of people, in the short and long term, of area is not taken into consideration. This shows that the acceptability of the project to the people is not taken as a major concern. The economic viability is determined in terms of cost and benefit for the project as a whole but not for the economic gains and losses of the people and the area as a whole in terms of land acquisition.

- **Equity**

The issue of equity is a factor that has not taken into consideration. There is absence of specific clause or points in the act itself that mentions about the equity of all especially the vulnerable group. If any portion of land has to be taken in any area, there is no such provision that the one who has more land should contribute more and vice versa. The one who has lease hold or are tenant or the farmers working for their land owners other than the land owners have who suffer much of the program has no consideration in the policy. What should be done to the stakeholders other than the land owners is not known. There is no law, policy or programs providing protection against such groups.

#### b) **Management Level**

Proper management helps finding right way forward to reach and satisfy objectives and priorities. The different aspects of the management level in the case of the land acquisition have been found as below:-

- **Well defined and formulated strategy**

Though the approach has been incorporated in the national land policy with high priority, the definitions and characteristics of the system and the strategies for the implementation are not very clear. Because of the lack of clear strategies on the acquisition of the land the action has not been possible yet. The weak planning on the selection of the alignment is seen because of the unclear strategy. Therefore a new and updated prescription has to be formed time to time where lack of clear strategies is felt, get circulated to the line organizations and then used whenever it seems necessary.

- **Participation**

The participation in making plans and programs between the involved implementation organizations is not so much in practice. The project plans are made, finalized, but the local organizations like survey offices, revenue offices and VDC's where the projects is going to launch were unaware of the plan of action that is going to be held. It was known when the project was implemented in the field. The stakeholders like local offices, e.g. district survey and revenue offices which have more technical ideas related to land, on the ground knowledge about the area were always underestimated and were not brought to the main line during planning phase. Because of the lack of participation of the locals during the planning phase they have to realign the route because the existing one passes through the very productive land. The locals were against the decisions and wanted the route to pass by the less productive land other that what had been finalized. Had there been the participation of local stakeholders, this would not have been the case.

- **Involvement of private Sector**

The involvement of the private sector in the management level and in the process of land acquisition is not in practice. This is supposed to be a states right and responsibility, though the land acquired can be transferred to other private organizations if they use it for public purpose. Or the land acquired can also be given to private parties for development and operating purpose. Therefore in this project as well there are no private sectors as an organization or at private level involved for acquisition of land. But the initial feasibility study of the entire project was carried out by a private organization.



- **Co-operation and Communication between Local Stakeholders/Landowners**

There is no trace of co-operation and communication with the local land owners, community based organizations and user groups particularly in the management level. Though, these are real source of the knowledge, what is good or bad about and for the area, what the requirement is and a lot more where and for which the attention of the management level hasn't reached? There are no clear cut strategies and well guided structures in this matter. These groups were involved only when there were local problems during the operational level.

- **Institutional and Organizational Arrangement**

Though the policy reveals about the institutional and organizational arrangement, the implementing organization carry their work according to their own mandate without considering the relation to the other organization e.g. if any utility companies have to provide their service in certain area, they do not care about the road department or other companies. They do their own task irrespective of the others concerns. The same activity is carried by the department of road. The Figure 5-2 shows the area where there are different projects scheduled. Plans of three different

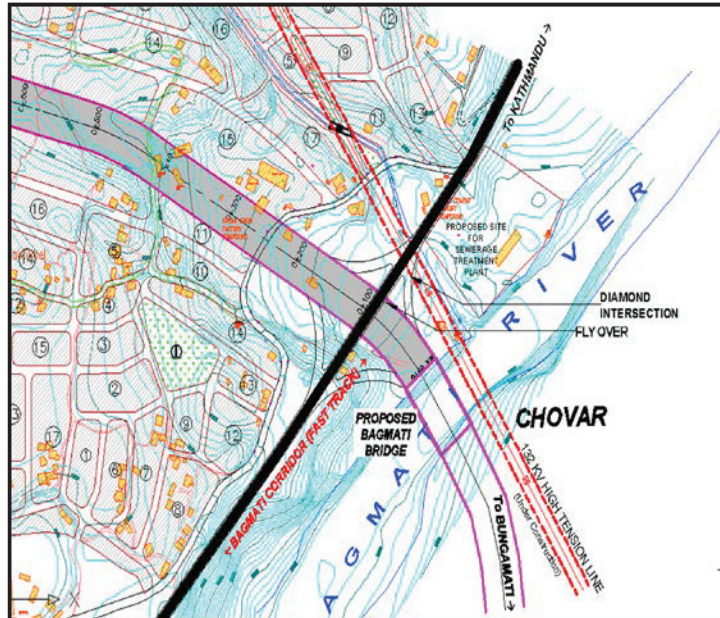


Figure 5-2: Map Showing Different Projects in an Area

projects can be seen, the KTFTRP and railway in the planning phase has not

been included, in the map. Three projects, if KTFTRP is included, out of these are road projects in the area but in three different ways. It is complained by the local land holders that if all the projects have to acquire land from the project area, almost all land of the area has to be provided to each of the projects, losing all the land. But if there is co-ordination between these projects, less land has to be devoted by the locals. Institutional arrangement is centralized.

c) **Operational Level**

The actual plan, policies and strategies formulated in the previous policy and management level are put into action in this stage. This is the stage where the implementer and the beneficiaries, two side of the coin, actually have to be together. The following points explain about the actual situation on the ground in various aspects:-

- **Participation**

There is no work done in full-fledge regarding the land acquisition but only the field survey of the strip of the alignment in my study area. The experience of the local VDC's respondent has revealed that there was no participation of the local people during the survey. None of the respondents were involved in any kind of activities in their locality. Some of them could see the signals and marks used by the surveyors in their field after the completion of the survey. Therefore there was no collaboration and cooperation. The expropriation is not consulted with the locals. One way information was only a way where the locals were informed about the activities.

- **Transparency**

There is no transparency up to this level of activities. There are complains of the land owners to the VDC about the unclear status on the amount of land to be contributed to the project and by whom, as stated by the respondent of all the VDCs. Lack of public information has been a major issues of problem among the land owners. There are no facilities to complain or appeal for the dissatisfaction. Because of having

one way flow of the information from the public authorities it is hard to believe for the acquisition approaches being transparent.

- **Rule of law**

There were no such complaints found regarding the enforcement of legal provision during the time of the field visit. Therefore we can say that the legal provisions are impartially enforced, though the activities to be undertaken were not in a fair and transparent manner. Till date the provisions and activities were consistent and coherent. However, lack of far sightedness in making rule was a major lacking factor.

- **Accountability**

The staffs in the operation level are found to be self-accountable towards their duties. The experience of the respondent in other parts of the project says that the implementing staffs are highly responsible and sensitive towards the process of acquisition. They tried to maintain uniform behaviour to the entire stakeholder. But since in the Kathmandu and Lalitpur area not much work has been done, there is not enough instances showing the accountability in operation level.

- **Efficiency**

The processes that have to be undertaken during the land acquisition are complex. There are lots of organizations involved with unclear responsibilities. Project belong to one organization, surveying done by other and land registers are kept in land revenue offices which creates difficulties in coordination. Since the alignment passes through different districts and VDCs different committees has to be formed in each and every VDCs and districts for land acquisition and also for compensation fixation. Because of the lengthy procedural steps and different types of committees the procedures is not so efficient. This is proved by the experience that the inauguration opening of the track was done during 2009 but still today acquisition in almost all part where there is private land has not been done. The delay of the project for more than three years mainly due to the land acquisition procedures can be said as inefficient.

- **Effectiveness**

Because of the inefficiency in the operational level, the local land owners are unaware of what is actually going to happen. Even the operational bodies are stack between their procedures. Therefore, all these activities show that there is no satisfactory effectiveness. Moreover there is no immediate works for the field staffs, but they have to be paid even if there is no work. Extra lengthening of the time with extra expenses also shows that it is not so effective. The process can somehow call as being non-effective because the desired outcome is not produced yet and is creating a negative impression towards the local stakeholders.

- **Equity**

The operational team are very much sure to say that all the castes, groups, status and power of people have the equal access on the service, information, basic facilities and involvement. There is equality in treatment to these entire groups. But the respondent in local level do not agree with this e.g. the interaction program with the program chief in only one of the VDC have been organized once because the locals in the area are defending against the project since they have strong political influence. But in the rest of the VDCs, they know about the project through different news coming in the newspapers and rumours from informal channels. Moreover they have to say that the voice of the powerful is always taken into consideration but not of the poor ones. When it comes to eviction the low income group people are evicted forcefully with lower compensation and relocation is done in the peripheral areas which are insecure, informal and unstable. There is biasness for the poor and favouritism towards the rich and who have influencing political and financial power

- **Valuation/ Compensation**

This is the most important and critical aspects to be considered since it is directly related to the cash or kind instead of the land provided. There is no scientific valuation procedure. The act says that the compensation should be fair and adequate but what determine the fairness and adequateness is not clear and defined. This makes difficult to determine valuation in the field. There are different valuation committees in different parts of the project area creating inconsistencies. The compensation issues in acquisition of land by the GoN compared to the World Bank has been mentioned in the Table 5-2. Respondents have revealed that there are instances where the compensation is not equal distributed to all.

The one having much say and power can bargain and can have more value than the one who have no power.

d) **Influencing Factor**

• **Awareness**

There are no awareness programs on the importance and benefits of the processes and the projects to be commenced. Only one interaction programs was organized when the obstacles and conflict from the local land holders was experienced after launching the program in order to make conditions on their favour. Even no direct benefit can be seen or felt by providing the land to the road project, awareness programs plays very important role for the successful implementing of the project. Organizing awareness program is not really in practice.

• **Capacity building**

There is no provision for capacity building for the staffs in operating or management level that is required especially for land acquisition. The staffs may not be aware of the new techniques. Even if they are technically sound they should know how to socialize and behave with wide varieties of local people. Neither it is there for the local people who are losing their land and means of livelihood. It is important to train them for in other means of livelihood so that they can earn for themselves even if they lose their previous work. There are many other people who are not the land owners but are dependent on the land e.g. land labourers, these group of people are the one who are in need of the capacity building program, i.e. extra skills and trainings the most. Therefore it is important in both the case of the staffs and the one who are related to the land. But unfortunately this is missing in all the areas of evaluation. This is not even mentioned in the acts and guidelines.

• **Land owners demand**

This is the most important influencing factor because the land owners can change the course if they want to do so. They can even stop the project from implementing. The few of the demands like job in the project, land instead of land in the area having equal facilities like the previous ones have been tried to fulfil. But some of the land owners demand for skyrocketing price of their land which possibly cannot be fulfilled.

• **Other community voices**

These days there are several community groups, civil society groups, user groups, NGO's in different parts of the project area working for the right of the local people. The voices of such groups are also considered sometimes. The interaction program that was held with the land owners in an area are the result of the influence of these groups.

e) **Review Process**

• **Objectives are met**

There are no such review processes in the act, nor is it done in management level in order to find out that the objectives are met. But after the completion of the project they prepare a final report and submit to the concerned ministry or department. But as such there are no plans and programs that really review about meeting the objectives in any level. Since the work is not completed and may take few more years, it was difficult to find whether the objectives are met or not during the field visit.

• **Change in socio-economic condition**

There is possibility of drastic changes in the socio economic condition of people because of the land acquisition phenomena. They have to change their settlement, livelihood patterns; they are abandoned by their cultural cohesiveness with their neighbours. Not only these, there are also some positive changes like having better facilities and access to other places after the whole project is completed. However, there is no provision of reviewing these significant changes on the beneficiaries and the whole effected social community. During the field, since the work is still incomplete, there was no information about the change in the condition in social and economic terms.

• **Land owners satisfaction**

Despite various conflict on matter like compensation land holders have to provide land for the project. One of the VDC among the field site was having interaction with the responsible authority to receive the

amount of compensation after a long dispute with the project. Even though, they have to be satisfied with whatever amount they receive than getting nothing for the sake of development. Land owners dissatisfaction was clearly seen from one of the respondent's expression on what the project had done to them. Though inauguration of the project was done three years ago but still there are less sign of development, towards land acquisition. Because of the delay of the work in progress neither they can sell the land or can develop anything on their land.

## 5.5. Identification of Gaps

The assessment of the land acquisition technique done in the previous section shows that there are some gaps in the activities that are undertaken comparing to the best practices. However the important issues in different evaluation areas are discussed under:-

### a) Policy Level

There exists the explicit land acquisition policy in the broad national policy framework for KTFTRP. But the policy is formulated on top-down approach according to the needs and requirement of the development of the country. Only one side of the activities are taken into care. The other side, i.e. the local people and their related interest are underestimated. The social viability is not considered which is important in good practices. The right of people on their land is underestimated and nothing has been mentioned to protect the right. The win-win situation was not really applicable, because the locals and especially the poor always have to suffer from losing the land and hence their livelihood.

### b) Management Level

The inefficiency and ineffectiveness shows that there is no well defined and formulated strategy and mandate with the organizations. There is lack of co-ordination and participation within the line organization, stakeholders, communities, locals and other concerned or related organizations. Co-ordination is not maintained to the required level. It was experienced that they seek for co-ordination only when there are obstacles which cannot be solved by themselves. The planning is also very poor in this particular project. Due to which the main alignment in the Kathmandu, Lalitpur area has to be given a second thought and changed finally. The initial alignment was chosen which passed through the very productive land and that divides the area into two, isolating from their culture and neighbourhood.

### c) Operation Level

This is the level where actual work is performed and the beneficiaries are in direct contact with the project or operational staffs. More than the previous ones this needs more effective dialogue mechanism that promote the good relation for performing activities. This is necessary because the land acquisition is not only the technical issue but equally a political and social concern. This is a phase where the actual interest and the real picture can be seen that can be implemented also in the evaluation of the issues in policies and management level. However, this also has many gaps. Mainly there is no participation mechanism which makes the procedures non-transparent. Since the experience of the project till date shows that the project will not be accomplished on the target time, it is not supposed to be efficient. Most importantly the issue of compensation is the most critical one which determines the efficiency and effectiveness of the project.

### d) Influencing Factors

There are very few and important influential factors considered for evaluation in the framework prepared for the evaluation of land acquisition processes. But the field experience shows that stakeholders, especially the land owners are not very much aware of the land acquisition processes. The operational staffs are not competent with the new ideas and in the matter of socializing with the locals since most of them are technical. Demand of the land owners and the local communities has also not very much considered.

### e) Review Process

Responses of the interviewers in the policy and management level and review of the acts shows that there are no reviewing process regarding the objectives, change in the socio-economical conditions of the land owners and the land owners satisfaction. Once the work is completed everything is over. Immediate review is performed only on the budgetary items; a report is prepared and submitted to the ministry.

		Source: GESU, 2008	
Type of Impact	Entitlement Unit	GoN Policy	WB Policy
<b>Gaps</b>			
<b>A. Land</b>			
Loss of private land	Families, households	<ul style="list-style-type: none"> <li>Cash compensation established by a Compensation Committee (CFC) which consist of Chief District Officer, Revenue Board Land Administrator and a District Development Committee (DDC) representative</li> </ul>	<ul style="list-style-type: none"> <li>Compensation at full replacement cost.</li> <li>For agricultural land value of pre-project or pre displacement, whichever has higher market value of land of equal productive potential, within the same vicinity.</li> <li>For urban land, pre-displacement market value of equal land size and use, with similar facilities and sources within the same vicinity.</li> <li>Replacement land of equivalent productive potential</li> </ul>
Loss of untitled land	Non-title holder (squatter & encroacher)		<ul style="list-style-type: none"> <li>Resettlement assistance with compensation for land occupied (land cash, other assets, employment) to at least restore their livelihoods and standards of living to pre-displacement levels</li> </ul>
<b>B. Home and Structure</b>			
Loss of home and structure	Families, household, structures, owners	<ul style="list-style-type: none"> <li>Cash compensation determined by CFC on the current value of houses and structures according to LAA and Land Acquisition Regulations</li> </ul>	<ul style="list-style-type: none"> <li>Resettlement assistance to those most vulnerable to restore pre-displacement level livelihoods. Vulnerable groups may include but not be limited to ethnic minority groups present in the terai and hill districts as categorized by GoN, women headed HH, the most poor (based on poverty line and the local wealth ratings), the displaced, the elderly and landless/Kamaiya families</li> <li>Encroachers are not entitled to any form of compensation for their unauthorized/ illegal extensions over the public land.</li> <li>Vulnerable encroachers with economic losses may be entitled to assistance as a vulnerable.</li> </ul>
			<ul style="list-style-type: none"> <li>Cash compensation in accordance to the LAA. To ensure compensation is at replacement cost, additional resettlement assistance in cash equivalent to cover depreciation over and above compensation amounts provided</li> </ul>

<b>C. Economic Assets</b>		
Income losses for affected household	Families, households	<ul style="list-style-type: none"> <li>• Compensation at full replacement costs.</li> <li>• Compensation and replace lost assets at their replacement cost.</li> <li>• Compensation for crops and trees (perennial) is calculated as annual sum product value multiplied by number of years taken for new crop and trees to start producing.</li> <li>• Compensation provided for lost standing crop in cash</li> </ul>
<b>D. Income</b>		
Local households	Affected person, families, household	<ul style="list-style-type: none"> <li>• Measure to assist affected people in improving their former living standards, annual earning and level of production or at least repair their loss.</li> <li>• Rehabilitation assistance for lost or severely affected livelihoods</li> </ul>
Local communities	Affected communities and families	<ul style="list-style-type: none"> <li>• Measure to assist impacted communities to re-establish or re-develop lost community resources</li> <li>• Compensation for re-establishing or reconstruction lost community resources such as religious and cultural structures.</li> </ul>

Table 5-2: Comparison of GoN policy and World Bank policy in terms of Compensation

## 5.6. Summary

This chapter focussed on the assessment of the land acquisition technique applied in the Kathmandu Terai Fast Track Project based on framework and the responses of the interviewees from different organizations and local respondents. This assessment shows that presently the land governance elements are hardly taken into consideration in land acquisition. Respondents in the policy level explain this by the fact that these governance elements were not considered as an issue at the time when these laws and acts came into existence. Today, the land is not only limited to technical and administrative terms but it is associated with wide range of complex issues like human right, security and, sustainable land use. The existing land acquisition tools are not adequate enough to cope with current challenges and to address the new upcoming issues. Though experience of countries demonstrate that land sector problems are highly complex, sensitive politically and socially and indeed difficult to resolve.

The assessment on the management and the operation both level reveals that the human and human related factor like social and economical part have not been considered. However, the environmental factors which are also directly related to the people are taken into care. The human rights principles like the right to information, participation, making decisions, accountability transparency, non-discrimination and equity is not taken into care and the locals and marginalized are deprived from these main factors. The compensation which is the major focus and core concern of both land owners and the state is not appropriate. Compensation is given mainly for land and the home and structure over the land and only for the title holder. There is no provision of compensation for loss of untitled land or for non-title holder. There are number of people and communities who lose their income, livelihood and economic assets, but they have to bear the land acquisition phenomenon negatively as there is no provision of compensation for these group. Even compensation is given to the land owners and title holders the compensation is low, not adequate to maintain the previous condition. The summary in tabular form on the land acquisition assessment is presented in the Annex 3: Land Acquisition (Expropriation) Assessment Summary.

Therefore there is need in land acquisition for a concept that includes and addresses the complex processes, mechanisms in land acquisition, the empowerment of citizens to articulate their interests, exercise their right and obligation, decentralization of power and mediate the differences. This shows the need for an alternative approach that supports very much with the good land governance principles that embed the power relations between and among individuals and social groups and that can show and transform the power structure of the society and people. That can be done through the updating/change in policy, legal alterations and/or institutional reforms according to the countries context. That the country can make this balances the need and also the interests of the people. Hence, land lease can potentially help to address a number of these issues that make the investigation on land lease relevant.

## 6. FEASIBILITY OF LAND LEASE

### 6.1. Introduction

The previous chapter found out different land acquisition techniques in practise in Nepal and evaluated the land acquisition mostly in practice and the one that has been used in the KTFTRP on the basis of land governance principle in particular. The major characteristics of the approach were found uncorrelated to the principles of good land governance. This gives rise and necessitates finding about the approach of leasing land that potentially have the properties of good land governance. Hence this chapter will recall the main aspects the previously discussed technique in few points briefly and highlight the findings on the appropriate alternative approach. Section 6.2 lists important points for the rationale of the need of new land acquisition tool. The main characteristics of the lease are described in the section 6.3 while its strength and weakness are listed in the section 6.4. The section 6.5 relates the characteristics of the lease with aspects and elements of the framework prepared in the previous chapter 3 which links with the good land governance principles. While the section 6.6, tries to adhere to the spatial characteristics necessary to lease land. Section 6.7 presents the conceptual model of the lease as an alternative method of land acquisition. Section 6.8 describes the economics of lease. Finally a summary is presented on the last section 6.9.

### 6.2. Rationale for the Need for New Land Acquisition Tool

From assessment of the existing land acquisition system expropriation in particular, the characteristics of the land acquisition technique i.e. land expropriation or compulsory purchase can be summarised as under:

- a) The present approach of the land acquisition technique seems to be unacceptable because of its unsociable nature
- b) The interest of the related stakeholders mainly the land owners has not been addressed and protected
- c) Procedures are complex and slow, time consuming
- d) There is inconsistency and discrimination on the amount and procedures of compensation
- e) No vertical and horizontal co-ordination among organizations
- f) The plans and policies made by higher authorities are not strategic to be followed/applied
- g) No coordination between government authorities whether it is the central or local body with the local land owners, local community groups and user groups.

These above mentioned reasons placed in context trigger for a new acquisition system that can:

- a) Change and form the power and relationship between the public (central or local) and private body
- b) Form new relationships between the local citizen and the public body or the state
- c) Form new bonds between/ amongst the citizen
- d) Change relationship amongst the public sector (vertical and horizontal)
- e) Opportunities for participation of the stakeholders
- f) Minimize huge chunk of capital investment to the states
- g) Preserve the property right of the land owners through ownership right on land
- h) Safeguard the continuity of the development of the projects against political instability
- i) Balances the needs and interest in terms of compensation provisions for the land and livelihood losers

Thus the improved land policy incorporating lease act is necessary which can bring:

- a) Clear and sharp rules and regulation
- b) Simple and speedy legal procedures
- c) Influence to the national and local land use plans
- d) Empowerment to the local government bodies and local people for any kind of infrastructure development of the area



- e) State as a facilitator, strict observer and well monitoring body
- f) Clear compensation rules
- g) Improved coordination mechanism among the related stakeholders
- h) Provisions for publishing of the annual reports on the progress of each and every kind of planning and development activities

### **6.3. Characteristics of Lease**

Characteristics of lease as found from the overall responses from the interviews with the respondents in different levels and experience can be listed as follows:--

#### **i. Voluntary Exchange**

Experience of the lease in Nepal in sectors other than the road development shows that lease contract is a voluntary exchange, in which both the parties agree and see some mutual advantage. Therefore it is required that all the interested parties come to common understanding before commencing the leasing activities.

#### **ii. Co-ordination**

The lease contract can be carried out only if the related stakeholders agree between each other for the proposed condition. Therefore co-ordination is the most necessary condition in this mechanism. This is one of the important aspects of the lease which is also a core issue in a good governance mechanism. The land owners can form a single co-ordination body with the statutory legislated power which is responsible to drive and organise the integration between government bodies and other entities during the land acquisition phenomena, developmental stage and post developmental stage.

#### **iii. Motivation Mechanism**

Another important feature of lease is that it contains a motivation mechanism. Whether it is a short or long term lease contract, it is driven by different internal and external factors. Internal factors include feelings or sense of responsibility to carry out the bond well, trustworthiness and having a good reputation. The external factors include the financial incentives and regulations. Unlike expropriation where after the transaction there is no further obligation of giver and taker to each other. In lease, since the contract remains for a longer period the parties are obliged to remain together and their relation has to be maintained. This shows the opportunity and requirement of participation and coordination more than the usual. This triggers for motivation for better involvement and responsibility.

#### **iv. Enforceability**

The value of the property rights on lease depends on the contract made during signing the agreement. According to the division of the rights on the property and the control mechanism the enforcement can be carried out through different functions like monitoring, conflict solving, facilitating, providing services etc. There should be strong legally enforceable principles that keep binding all the related stakeholders, mainly too large number of land owners that are involved. It is important not to have any weak points that leads to dilemmas or confusion that gives rise to more conflict or disorder. The main enforcement is to the land owners, possibly on involvement on the project because of having their ownership right.

#### **v. Control and division over property rights**

The bundle of property right contains the right to a) use the land, b) to make income from the land, c) to exclude others, d) ownership right, e) and to change the form or substance of the land. The control and division of the property right is the main governing factor in lease where income and transfer right are related to the economic aspect in lease. While leasing land, one important right, the ownership right is retained by the land owners and the remaining can be given away. Because of the ownership right land owner can have control on the activities of acquisition. Therefore the rights are divided. The control on the right determines up to what level the parties, mainly the land owners and the state or the project, can make decisions on using the bundle of rights.

**vi. Compensation**

The right transferred in the lease is not same as other approaches. The main important right, the ownership right, remains with the land owners. Because of this reason the compensation that is paid in lease is less than purchasing of the land for the same amount of land. However, the payment is periodic that continues over time on yearly or quarterly basis according to the agreement made.

**vii. Duration**

This is a specific time period where the right on the property can be given partly. One of the characteristics of the lease is that it is carried out for certain period of time which can be renewed timely as required and it has to end at certain moment in time. But the nature of road is that it lasts for several years, may be several 100 years. Therefore the nature of lease contract and the road contradicts to each other at this point.

**viii. Incompleteness**

In this mechanism some event can occur during the contract period that is foreseen while making the contract arrangement. Some kind of opportunist behaviour may also be seen by any of the related parties. Legal, social, financial or technical principles may limit potential consequences. For this entire reasons lease has consequences of being as incomplete. Therefore lease regulation should consist safeguard mechanism to get rid from these types of circumstances.

**ix. Flexibility**

Flexibility refers to the possibility of the changes and updates of rules and regulation that have once set if it is felt important. Since parties are together in touch this is possible Lease has more flexibility if certain change has to be done in certain circumstances. But if the rules and regulations are more legally enforced and rigid, there will be no flexibility.

**x. Transferability**

The bundle of right can be transferred in difference cases. It can be done by sale, purchase, inheritance within different party. But in the case of lease transfer of other right is done to the project. Regarding the ownership, it can be transferred in the above mentioned fashion but the tenant cannot transfer the right. However the transferability mechanism has to be clearly mentioned during the agreement period. In the case of lease the first and only priority to sell the land by the land owner is to the tenant i.e. the state authority that is responsible for the road.

Hence, from the above analysis of the features of lease we can summarize it in the following points.

- a) Lease is majorly a temporary phenomenon, people ought to buy property if wants permanently, not lease
- b) Voluntary mobilization or transfer of the land for infrastructure
- c) The leaser and lessee have to agree with each other before making any kind of agreement or contract, exercised only after the consent and agreement between parties are made
- d) The foundation of lease is the bottom-up approach where land owners involvement and consultation is important and that requires very good cooperation and co-ordination
- e) This cooperation between various stakeholders has to work in a planned way throughout the period of the project, not only during initiation and implementation of any project
- f) This is a participatory approach which is the requirement and new paradigm in today's context to involve people who are actually affected directly from the acquisition
- g) There is potential for lease because of the structural constraint and dissatisfaction of the land expropriation. This is believed, in the conventional approach, to be states dishonestly imposing its right to people and right of the general people are not well thought-out. This leads to find a way out and best solution, for land acquisition

**6.4. Strengths and Weakness of Land Lease**

Hence the strengths and weakness resulted from the analysis of the responses about land lease to apply for the land acquisition in case of project like road can be listed as follows:-

**Strengths**

- i. Maximize opportunities for local landholders.
- ii. Collaboration of big investors and local smallholders that can be mutually beneficial
- iii. Less financial burden to the state
- iv. Local self-sufficiency
- v. Quality maintenance because of the involvement of the land owners
- vi. Ensure that acquisition is done only for the public purpose
- vii. Land owners livelihood is crucial (decisive) with the development
- viii. Acknowledgement of property/human rights
- ix. Being community driven, plans and program are helpful in reducing conflicts
- x. To benefit local land owners, while still remaining balanced, attractive and sustainable for the state and other authority

**Weaknesses**

- i. It is a temporary phenomenon
- ii. Costs can be higher than buying if the land if the lease duration is too long
- iii. Too many stakeholders to deal with
- iv. Conflict may occur due to frequent changes in the value of land, unstable market
- v. Unfamiliarity within the citizen, needs for an awareness programmes
- vi. Can be applicable only for vacant land or unsettled area. Residential premises are not given for this purpose. Therefore depends on the use of Land.

**6.5. Examining the Characteristics of Lease with respect to the Assessment Framework**

While reviewing the elements or aspects in different organizational levels of the framework and fitting the characteristics of the lease into it, they are found to be overlapped. The thorough inspection of the characteristics reveals the following result: -

**a) Policy Level**

Since lease for the acquisition of land in permanent structures like roads is in the feasibility stage, there is no existence of acts and rules in national policy. Though, the experience of lease for the temporary acquisition has the demand to include it in the mainstream of national policies. The characteristics have shown that the foundation of the lease is a bottom up approach since agreement with the land owner is the necessary condition to perform leasing activities. Unless it is agreed by the locals and found to be socially and economically viable, this is not possible. Therefore it is believed that going to the beneficiary's level and organizing public hearing program can help in better understanding and requirement that can aid in the policy formulation. The responses of the representatives of the locals and civil society members shows that this is socially viable to include in the policy with necessary acts rules and regulations that can address the interest of all focussing on the countries development. The other benefit of involving the locals in this phase is that awareness is created among them. The respondents on policy making level believe that leasing land will minimize the state's huge initial investment at once by dividing costs that can be used for other purposes while maintaining the land right with the land owners and hence involving them as a joint venture.

**b) Management Level**

Various stakeholders are to be brought together in this level in order to transfer the policies in practice through strategies. The participation and co-operation of local land holders is a very powerful source of management. With the involvement of all the stakeholders with consensus, it will be easier to define and formulate strategy. With their participation in this level it is believed to be developed a sense of belongingness which is very important for the development of any project. Because they are the one who knows very well about the resources and the real need of the area, they will help to formulate plans and strategies accordingly. This will helps to ensure the proper purpose of the land acquisition and helps to reach the target and meet the goal and objectives. Not only within themselves, they will encourage to bring the other line organizations together for the achievement of the goals. Participation of the general public fills up the administrative voids creating efficiencies of the government activities. This will always require check and balances.

**c) Operation Level**

The most important factors that bring the lease closer to the principles of good land governance are the voluntary exchange and co-ordination mechanism which leads to participation giving rise to transparency of the activities and processes, accountability of all the related stakeholders leading to efficiency and effectiveness mostly during the operation phase of the project. This is the most important phase where direct participation plays role during the actual implementation of the land acquisition. This is the phase where direct involvement and interaction of the locals are possible because of the activities that undergo on the field i.e. on their land. The lease can bring possibility of positive response for the operation phenomenon. From this phase lesson learnt applied to further update and strengthen the policy.

**d) Influencing Factors**

Since the Land owners are always attached to the project the influential factors matters a lot. There is the requirement of all the possible influencing factors like awareness, capacity building, their demands and the voices of other community as they are also involved. It helps to keep themselves aware of all the activities going with the project. These factors help to motivate themselves and get more attached with the projects, its activities and the benefits that can be reaped from.

**e) Review Process**

The presence of the right and the control of the landowner on the project makes it possible for the review process ongoing. Because once they are involved and have invested their property in the project, they will not please the unnecessary obstacles due to political or other reasons. They will try to maximize the potentiality of the resources conducting various review processes in terms of the objectives, their own satisfaction and the changes of the economic condition of each of them. They will always keep eye on the actual purpose of the land acquisition is being fulfilled or not.

The summary of the assessment of the characteristics is included in the Annex 4: Land Lease Assessment Summary.

**6.6. GIS Screening of the Current Land Use in the Case Area**

The objective of the screening of the area is to understand the general spatial characteristics appropriate for lease. Only one spatial criterion has been focussed by the respondents about the use of the land. They stressed that it is not applicable for all acquisitions because of the use of land. Especially it is feasible for rural and sub-urban land than the residential or human settled area (urban). This is because of the size and nature of land holdings. Urban land parcels are small and scattered to numerous owners while the rural land parcels are big. There is lack of roads in rural or sub-urban areas of Nepal and due this reason the productions do not reach the market. Therefore the benefits foreseen because of the development of road in those areas, is also potential for the leasing options. Since during the field visit the actual alignment on the ground was not visited, it is necessary to have an idea on the aspects of the area as mentioned by the respondents. The analysis of the location is done to find out the nearby residential area and the uses of land within a certain distance along the alignment. For this purpose a Geographic Information System (GIS) aided methodology with the overlay technique was used. In this process two different information layers were superimposed to each other to form an integrated source of information. They are the Google imageries (2010) of the study site and the central alignment of the proposed road. The Google map contains almost all the basic features that help to identify the uses of land with residential and other major infrastructure facilities. The resolution was fixed to 1 m so that the features on the images can be identified with ease. The rapid evaluation of the 15 kms length of the alignment of the study area shows that the alignment passes through two major types of land uses, mainly the agricultural and the forest area. No residential area falls on the way. Two buffers are created one 25 meters and other 500 meters to each side of the alignment to have a detailed impression within it. There are only two settlement areas/villages; houses within the buffer of 500 meter on each side otherwise there are very few and sparsely distributed houses.

From the analysis it is indicated that the area is suitable for lease as it do not contain settled area. But as can be seen in the Figure 6-1/3 below, the selection of route would be better if it is shifted to left more towards the river disturbing less the agricultural area and a little far away from the settlement area. The sum of compensation to be paid in the form of lease is comparatively less in this type of land use than the area used for housing purposes.

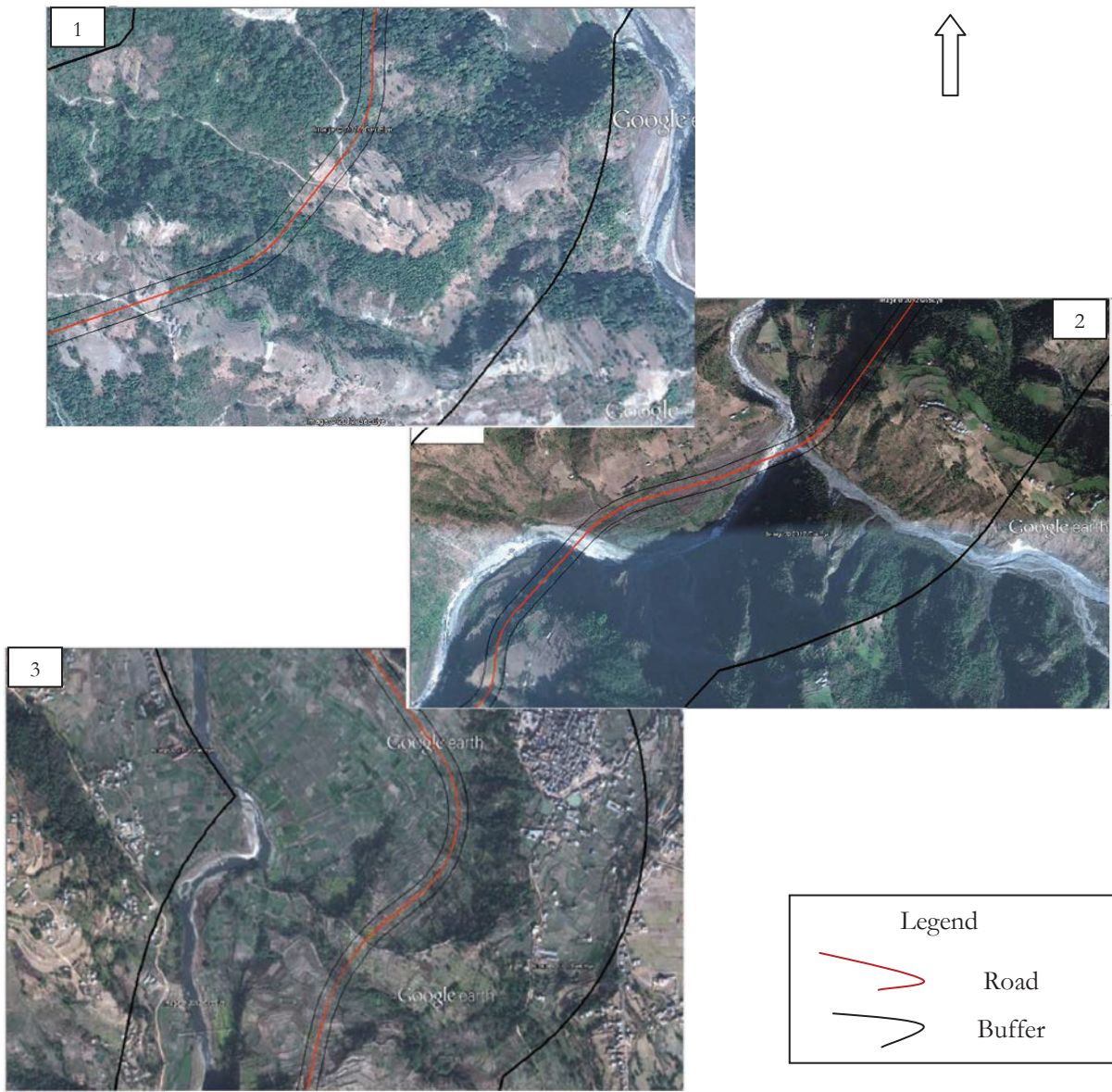


Figure 6-1: Images of the Study Area with Buffers along the Alignment

### 6.7. Options of Lease

From the experts opinion, it was known that for the permanent infrastructure like roads and highways land has to be required permanently therefore it needs buying the land for the purpose. Because in this type of infrastructure once the development activities is carried on it is nearly impossible to give back the land to the owners by demolishing the roads or highways etc. also viewing it economically paying for anything throughout the period of its life costs much than buying it. But if a very strong policy supported by very well monitoring and controlling facilities is made which favours very much to the land owners and also the state to form a good cooperation and can be used in country's development purpose it may be possible to come up as an alternative modality for land acquisition. Otherwise the lease can be maintained temporarily for certain duration. When the whole amount of compensation is paid the lease will terminate provided in both the cases that the joint venture or the partnership keeps continuing. When the country is not in a position to enforce rules strictly and also lack or resources, this will enable local authority and local people to come to the mainstream of development where all the parties cooperate and create win-win situation where flexibility, innovation and focus on people will remain the main characteristics. The

most important aspect being humanitarian and social concern rather than only technical therefore the states focus should be on people more than the physical land.

Thus the experience of lease and the respondents view suggests two types of leasing options in the case of infrastructure like road. Though different respondents have their own views, some are against and some are for either of the options. The suggested options are:-

- i. **Long term Lease:** This means that the agreement continues throughout the life of the project where the land owner gets the lease rent yearly. The ownership of the land remains with the original land owners. (Option 1)
- ii. **Temporary Lease:** The lease contract where agreement is made for certain years, for example 30 years. After which the ownership of the land/road transfers to the state or the project. Provided that within the period, the amounted value of the land is paid to the owners. (Option 2)

In either of the cases, since the main idea behind the mechanism is participation and to empower the local land owners, the main stakeholder of the road will be the original land owners. All the income made by the road will go for the maintenance for post development phase. Since the road is toll road the activities of collecting and managing toll shall be done by the local forum/land owners associations.

The general steps taken for leasing the land temporarily (Figure 6-2) within the partnership arrangement and the potential stakeholder (Figure 6-3)Error! Reference source not found. related within the framework have been presented.

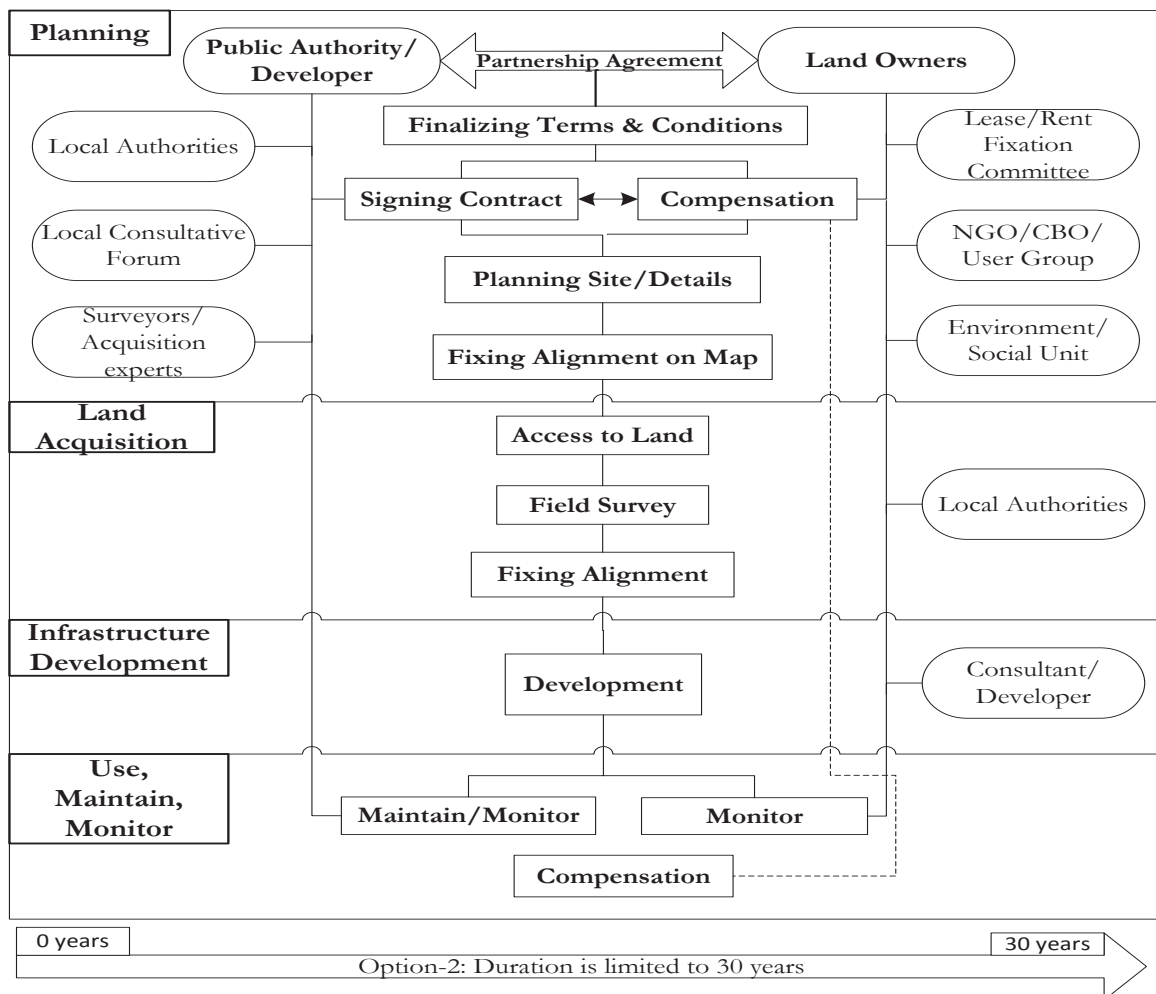


Figure 6-2: Steps for Temporary Leasing

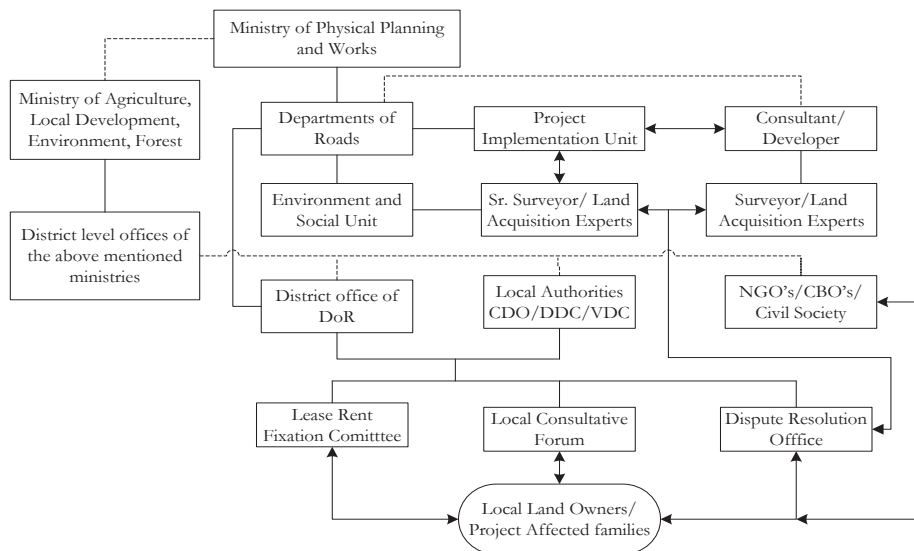


Figure 6-3: Potential Co-ordinating Organizations for Leasing Land

### 6.8. Economic Settings

Empirical results of the research supported by literature shows that compensation is one of the main governing factors in the land transactions and so does in the lease approach. Compensation should be such that at least all the losses made because of the giving up of the assets are recovered and the social and economic conditions can be kept balance. The main guidelines for the compensation are outlined as -

- The compensation should be determined in such a way that the owners do not bear extra costs and that it is enough to maintain the owners original standard.
- If by any way, families have to be replaced by voluntary agreement, where expropriation cannot be avoided, during the land acquisition the compensation should be the market costs of all the assets, crops, plus the costs of transaction, moving costs so that no extra costs are beard by the owner.
- The absence of the proof of the ownership certificate should not be a bar for compensation.
- Consultation about the compensation is important with the owners themselves and other experts and relevant organization entitled for it.
- As an international practice on compensation it should be of fair market value which means the amount that is expected by the owner when sold in the open market.
- Valuations as a whole include valuation of land, structures and overall average value of annual output made by the crops throughout the lease period.
- Compensation should be arranged for livelihood losers and contract farmers as well other than the actual land owners who are directly involved with the land.

Whether the acquisition procedures is expropriation or lease the same amount of the land, crops or the income generated is foregone. But the amount of compensation they receive as annual rent is sustainable for their livelihood. If provisions is made to transfer the inheritance right, to sell and to provide credit facilities it can add economic advantage to the land owners. These activities not necessarily are encouraged but not prohibited either. The benefits between stakeholders are mostly intangible which are partnership, cooperation enhancement, trust worthy environment and rapid development with very less or no conflict. While for the state, there are both direct and indirect costs. The major are lease compensation or instalments, contract management fee, contract renewal fee and administrative costs against administrative fees, purchasing value, transaction costs, tax fees for the expropriation. The benefit is the amount of investment made at the beginning of the project which is lower than as done during expropriation. The costs are distributed throughout the years rather than incurring it all at a time. Timely completion of the project with the support of local people will reduces costs than having unnecessary delay of the project. Because of this reason the lease seems to be more cost effective than the traditional approach to the state. The amount can be utilized for other income generating purpose elsewhere. The main source and difference in the costs for both the approaches can be qualitatively outlined as listed in the Table 6-1:-

Approach & Costs	Yr1	Yr2	Yr3	...	Yr(n-1)	Yr n
<b>Expropriation</b>						
• Initial investment/ Buying	*					
• Transaction Costs	*					
• Tax fees	*					
• Administrative fees	*					
<b>Lease</b>						
• Initial payment	*					
• Yearly rent		*	*	***	*	*
• Administrative fees	*			***		*
• Contract management costs	*	*	*		*	*
• Contract renewal fee						*

Table 6-1: Qualitative Costs Comparison

**6.9. Cost of Expropriation Vs the Cost of Lease**

In case of expropriation, costs are made at the beginning of the project at once while the costs are distributed throughout the contract period while leasing land (Table 6-1). The present value of the costs that incur during the contract period can be determined by discounting the costs. “Discounting refers to the process of assigning a lower weight to a unit of benefit or cost in the future than to that unit now” (Pearce *et al.*, 2006). It provides the present value of a known future amount. Hence the present value of lease can be computed from the relation (i) below.

We have,  $X_0 = \sum_{t=1}^n \frac{X_t}{(1+i)^t}$  .....i

Where,  $X_0$  = Present Value,

$X_t$  = Value in Year  $t$  (Future value)

$i$  = Discount/Interest Rate

and  $1/(1+i)^t$  = Discount factor.

The discount factor from above can be determined as always less than one. The more the number of years increased; the value of the discount factor is decreased considering the discount rate constant. This relation is to illustrate on finding the present value. Hence if the present value of the lease for the contract period is determined, irrespective of the time and the interest factor, it can be compared with the costs of the expropriation and calculate the net costs. The condition may be-

either, Total value of Expropriation > The present value of the costs of leasing.....ii

or, Total value Expropriation < The present value of the costs of leasing.....iii

or, Total value Expropriation = The present value of the costs of leasing.....iv

In order to accept lease, in monetary terms, the first case may be beneficial to state but not to the owners while the second one can be beneficial to the owners but not to the state. Only the third situation will be acceptable to both. Therefore consideration is required on which approach will be the best to adopt that the balance can be made. Benefit for whom and in what terms is also a determining factor. Even if both do not benefit monetarily, the case may be that the society as a whole benefits if some adjustments are made.

**6.10. Critical Elements for Implementation**

The result of the analysis reveals that the lease cannot displace the expropriation but can be aided only as a supplementary land acquisition approach. It is not mutually exclusive to other approaches of land acquisition. If there are periodical fluctuations of land values, it may cause some difficulties with possibilities of public or community resistance for high demand of lease rent. Too many land holders to deal with is another problem which needs careful management and concentration making the approach ineffective. Problem may arise for the assembly of numerous ownerships into a single unit. A single consultative forum of land owners can be a solution for the case. The cost of managing the number of land holders and also the system may prove to be more than buying if not very good care is taken. Being a new concept; it may encounter technical problems and political resistance. A very special legislation has to



be formed as a legal framework to lease land otherwise it will be difficult to convince people to lend their land. Since it is flexible in nature, a strong system to check and balance is necessary to put in place and to assure the balance. An ideological belief of the society can also become an obstacle for change. Leasing may require a professional and expert for valuation to appraise the lease accurately unlike compulsory purchase or other approaches and for continued maintenance.

### 6.11. Summary

The focus of this chapter was mainly on the feasibility of lease. This presented the main characteristics of lease as responded by the interviewees according to their experience of lease. The trend of leasing land is seen between private to private, private to public, public to private and public to public and the purpose was for the construction of building for commercial, residential, social purposes like school and hospital and in a hydropower project. The duration varies from minimum of five years to seventy-five years at maximum. Thus the different characteristics were listed where participation and co-ordination are the main issues which lead lease closer to the principles of good land governance and which is also one of the most positive aspect and strength of the lease. Being voluntary in nature there is the acceptance of the approach and no high demand for the compensation. Some of the weaknesses were also highlighted that may lead lease to ineffectiveness to manage due to the large number of stakeholders. However, that can be resolved if proper awareness is created among the stakeholders and land policies with strong legislative design is made realizing the existence of large number of land owners. The comparison of the characteristics of lease with the elements in the assessment framework confirmed that it is very closely associated and high potential for overall collaboration within the stakeholders and possibility of bringing local level empowerment. This is lacking in the conventional acquisition techniques that bring tension and is the main cause of the risks and controversies. The cost sharing nature makes it feasible approach because the costs of the state is divided throughout the lease period and the land owner in one way or the other help to share the cost. This is by creating the win-win situation that they help the state in sharing cost by providing their land where they receive rent of the land in financial terms. The land owners are subjected to provide periodic payment over time for livelihood support. The feature of continuation of the ownership and also the rent makes it important for land holder.

Hence in the very long term lease, where land owner receives lease rent throughout the long period is economically not feasible because the costs for the state will be much higher in the long run. The majority of respondents from different public authority organizations and expert groups are for the temporary leasing option. General screening of the land use over the area has shown that the private land where the alignment passes is not used for settlement but used for farming purposes. Also the general trend of people freeing their land rather than keeping by themselves because of the inability to **perform** farming, other business or income generating activities on the land and as a good source of non-stop income over years reveals that temporary leasing is feasible in general and also particularly in the case of KTFTRP in the indigenous context of Nepal. The benefits foreseen are in the intangible forms: partnerships, cooperation enhancement, trust worthy environment and rapid development.

Hence the key factors that determine land lease for the road are the use of the land, size and nature of the land, participatory and coordination approach where land giver and taker are obliged to be together and most of all the demand due to economic condition of the country. The benefits of lease are the lower initial investment to the state and the continuation of the ownership and human right and annual income to the land owners. Overall, the involvement of people, their participation and coordination with the authorities restricts negative externalities that are seen in the traditional approach. Their involvement triggers for the timeliness and judicious use of the land. This enhances reduction of unnecessary costs made due to the intentional and unintentional delay of the project. The ultimate aim is not to benefit land owners or the state alone but to bring benefits to overall society by maintaining the balance between the costs and benefits of both parties in most sensible way. Hence, temporary lease is believed to have potential to bring and maintain the balance between the developmental need and economic condition of the country, its people while still remaining beneficial to the land holders.

## 7. CONCLUSION AND RECOMMENDATIONS

### 7.1 Introduction

We have, in the previous chapters five and six, presented the assessment of the currently used land acquisition techniques on the ongoing road project and the feasibility on the new approach. The assessment and feasibility of land expropriation and lease was basically focused on good land governance perspective mostly in the operational level and also in the other by mixing with other important factors, by employing the developed framework in the third chapter. Below the conclusions of the research is provided according to the research objectives set in the first chapter followed by recommendations.

### 7.2 Conclusion

In this section conclusions are presented based on the sub-objectives designed for the research in the earlier chapter one and aimed at answering their corresponding questions.

**Sub-objective 1: To review the trend and practice of Land Acquisition.**

#### 1. What are the current trend and practices of land acquisition?

A similar kind of trend in a developed and developing countries is seen in the use of the land acquisition for infrastructure development through literature. Government of states, across the world including Nepal, possess and exercise the power of eminent domain to get access to land as an inherent power to acquire land especially for the public purpose. As seen from the literature it is one of the approaches which have been undertaken from decades and is still in practise. Despite of its characteristics and belief that it does not follow individuals' human right issues, enforcement of the government against ownership right, low compensation. Therefore several other alternative land acquisition approaches like voluntary purchase; land readjustment (land pooling) has been found and is adopted. Some other approaches like land banking, land lease, public private partnership, pre-emption rights, building prohibition and subdivision prohibition and financial incentives are also used to supplement the other widely used land acquisition approaches according to the specific context of the country and the environment. The pre-emption rights, building prohibition and subdivision prohibition and financial incentives are not complete by themselves but can aid to the other forms of acquisition. Focussing on the development of roads, expropriation is most widely used along with voluntary purchase and land readjustment more democratically where road is developed along with the other service facilities in a particular limited area.

However, expropriation is still adopted and essential whenever a specific area for specific purpose is required. Especially in developed country it is not a big issue because of the economy and states power to enforce the law to the people, as in case of USA. While in the developing countries there are problems in such activities in many issues as mentioned above.

#### 2. How has the doctrine of acquisition change over time?

Land expropriation is practised as an inherent power of the state which is imposed to the general people. Consultation, participation and compensation have been the major issues lacking in this method in both the legal framework and its implementation. The problem is the orientation of the government or law to impose people rather than the fair application of the approach. The traditional method was not able to balance the need of the development of a country and the actual social need of the people. There are many literatures to prove that the obstacles, interruptions and conflicts are its consequences. Expropriation is gradually changing in terms of compensation at present. The experience of Nepal shows that no compensation was provided to the land owners for the expropriated land for the road and in some cases negligible amount was given. However, these days' regulations for adequate compensation; resettlement & rehabilitation programs can be seen in favour of the life and livelihood of the land losers even if it is difficult to implement to its most. This can be said on the basis of new land acquisition bills that are prepared recently in Nepal and India. This triggers the need for more favourable approach in this regard that can provide facilitates like participation, transparency, making and influencing decisions to the stakeholders and overall that can balance the requirement and the social context.

Later significant steps in acquisition have been taken in the direction by adopting it voluntarily where at least consultation and discussion with land owner is done for their consensus. More democratic application of the acquisition approach has been done by introducing land readjustment/land pooling which bring close all the land owners together. All the land owners are equally participated in terms of costs and benefit of any program. But this can be applied only for the land development of particular area unlike a necessity of narrow and long corridor for making roads. This is specially adopted in the area which is once developed and where infrastructure needs to be provided or further upgraded.

Hence the significance of the involvement of human factor i.e. issues related to people and society, is seen throughout the development. The need of social impact assessment that ensures the consequent social problems, society and social trauma are slowly being accounted. The platform is given for the opinions and involvement of the affected families. Initially the land acquisition used to be focused only towards the development while now the development is also associated with the social and environmental need, right of people and sustainability.

**Sub-objective 2: To analyse the land lease approach in particular reference to good (land) governance.**

**1. What are the different principles/characteristics of good land governance?**

There are various organizations that have expressed their views and have been working for the good governance and each of them has their own lists of the principles. Forty principles set by five different international organizations like FAO, UNDP, World Bank, WGI and UN-HABITAT are listed which are common and overlapping. These core characteristics are interrelated, mutually reinforced, do not stand alone and are not measurable in the absolute terms. The list of principles that has been considered as main aspects for the assessment of land acquisition in different organizational levels for this research are: participation, transparency, rule of law, accountability, efficiency, effectiveness, equity, strategic vision, consensus oriented, sustainable, civic engagement, control of corruption and security.

**2. Does Land Lease comply with principles of good land governance?**

The result of the analysis of the lease shows the following characteristics: Voluntary exchange, co-ordination, motivation mechanism, enforceability, incompleteness, control and division of property right, compensation, duration, enforceability, flexibility and transferability. The presence of these characteristics shows that the lease complies with few of the principles like participation, transparency, equity, cooperation and communication of good land governance. These factors are also seen closely related to the human right factors like interest and priority of people, involvement in making decisions and influence the decision making process. Though, the management of the numerous land owners in the form of important stakeholders throughout the contract period could be ineffective. Therefore this does not comply with the governance principles.

However, applying such principle is complex and the success depends not only because of its presence but also on how well it is exercised.

**Sub-objective 3: To investigate the feasibility of land lease approach for infrastructure development.**

**1. What are the different possible options in leasing land?**

There are two options for leasing land as suggested and proposed by the respondent. They are - Long term Lease- that continues throughout the life of the project, Temporary Lease- that continues for certain period of years. However, out of the two, the second option is suggested to be feasible in economic terms.

**2. Is Land lease feasible approach for acquiring land for infrastructure development?**

The literatures as well as empirical study of this approach have revealed that temporary lease is feasible for the acquisition of land for the development of infrastructures in general and road specifically. This has potential to be an alternative approach because of the presence of few of the characteristics of good governance. The presence of the characteristics of the good land governance like participation, voluntary agreement and coordination implicitly has favoured the lease as a feasible approach. Because of the nature of the contract the lessor and lessee cannot avoid each other. Since the land is not completely taken the owners are always associated and aware of timeliness and sensible use of the acquired land. This enhances

reduction of unnecessary costs made due to the intentional and unintentional delay of the project. Since the rent will be coming in the regular basis land owners cannot react negatively as well. Other benefits to the owners is that the land ownership which is the most important remains with them. To the state, it is appropriate because of the costs that spread throughout the contract period. Not much financial burden at the beginning of the project and for the land owners, an annual income in a sustainable manner. However this depends on the time value of the money and the actual arrangements or amounts settled.

Hence, it can be said that lease has potential to generate benefit to stakeholders including conflict reduction since it is accomplished voluntarily thus enhance processes. But this is feasible only in the particular type of land use and has limited applicability. It cannot be used in urban areas where there are numerous land owners and parcels. Though it has positive characteristics, its success depends on how it is exercised. Temporary lease, only by having few of the good governance characteristics is unlikely to bring balancing benefits unless there is well implementation and operation function. The proper policy has to be formulated and implemented with good strategic vision so as to create balance by considering its positive competence. The success of the lease approach depends on its design and development of appropriate institutions and organizations with clearly defined roles and responsibilities with effective administration. It depends on how the positive aspects of lease is being realized, given importance and implemented practically. Situation may be that if the good governance characteristics are incorporated well in the existing approach and practised, it can have high potential for public acceptance. Therefore sensible and appropriate decision has to be made what is important where?

Therefore, the lease implementation will not be trouble free and is likely to meet all obstacles as in other approaches. It is also not free of exertion. However, neither are the other land acquisition approaches. Perhaps the positive aspects of the lease approach would hopefully be an adequate bridge to support and balance the social and economic need of all stakeholders and also aid other approach for land acquisition.

### 7.2.1 Overall Conclusion

To sum up it can be said that there are enough evidence which proves that there is a potential for temporary lease as a supplementary approach i.e. only in a case where expropriation is still practised. Because of its limited applicability in different land use category, it cannot stand alone as a land acquisition approach.

## 7.3 Recommendations

Corresponding to the previous finding and the conclusion, the following are the important recommendations that are meant to improve and for the further researches.

- i. The overall issues of lease addressed here is more of theoretical and qualitative nature which needs further precise considerations. Economic analysis can be done in quantitative terms in a broad manner comparing it with the other land acquisition approaches.
- ii. The possible contractual forms of the lease that can address the governance and human right issues can be found and categorized.
- iii. The valuation and compensation technique of lease would also be interesting subject matter.
- iv. The assessment framework was used comprehensively for assessing the land acquisition. Further research can be done to strengthen the framework with the aspects and indicators used to develop it.
- v. Further research on lease in other sectors like hydropower where more experience has been gained as an acquisition technique.



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## ANNEXES

Annex 1: List of Respondents with Field Work Plan

Date	Place	Personalities/Designation/Organization	Activities	Transportation
4 Oct	Enschede		Travel	Airplane
5 Oct	Kathmandu			
<b>6, 7, 8 Oct</b>		<b>Preparation of data collection&amp; appointments</b>	<b>Public Holiday</b>	
9 Oct	Kathmandu	Listed organization and personalities	Visit for Appointments	Taxi
10 Oct	Lalitpur	Listed organization and personalities	Visit for Appointments	Taxi
<b>11 Oct</b>			<b>Public Holiday</b>	
12 Oct	Kathmandu	Mr. Krishna Raj BC, Director general, Survey Department Mr. Hupendra mani KC, Under Secretary, Land Administration Section, MoLRM	Interview, Topo Map Collection Interview	Taxi
13 Oct	Lalitpur Kathmandu	Dr. Sagar Raj Sharma, Researcher, KU School of Arts Ms. Rama Manandhar, Engineer, ORR Project	Interview	Taxi
14 Oct	Kathmandu	Mr. Gamvir Man Shrestha, CDE, Dept. of Road Mr. Madan Kumar Shrestha, DCE, Dept. of Road	Interview (Topic focused / open)	Taxi
15 Oct	Kathmandu	Mr. Buddhi Narayan Shrestha, Former DG Mr. Punya Prasad Oli, Former DG	Interview (Topic focused/open)	Taxi
16 Oct	Kathmandu	Mr. Govinda Prasad Sapkota, Director, DoLRM Mr. Baburam Acharya, former DG and Secretary	Interview (Topic focused/ open)	Taxi
17 Oct	Kathmandu	Land Revenue Office Kathmandu and Lalitpur Mr. Punya Prasad Oli, Former Deputy DG	Interview/Cadastral map and Cadastral Information Collection	Taxi
18 Oct	Kathmandu	Mr. Jeet Bahadur Thapa, DG, DoLRM Mr. Dinesh Sharma, Land Reform Office, Kathmandu	Interview (Topic focused/open)	Taxi
19 Oct	Kathmandu	DoUDBC Mr. Saroj Man Shrestha, Project chief, Kathmandu-Terai Fast Track Road Project, Ministry of Physical Planning and Development	Document Collection Interview (Open),	Taxi
20 Oct	Kathmandu	National Land use project	Map/Spatial data Collection	Taxi

		Mr. Jagdish Prasad Yadav, Senior Surveyor Officer, NEA		
21 Oct	Kathmandu	Mr. Biju Kumar Shrestha, Under Secretary, NPC, Mr. Gopi Mainali, Joint Secretary, NPC	Interview (topic focused/open)	Taxi
22 Oct	Kathmandu	Mr. Saroj Man Shrestha, Project chief, Kathmandu-Terai Fast Track Project, Ministry of Physical Planning and Development	Interview (topic focused/open), Report / Map collection	Taxi
23 Oct	Lalitpur	Mr. Purushottam Thapa, Saibu Bhaisepati VDC Member Mr. Ramesh Maharjan, Khokana-Bhaisepati, civil society Mr. Purna Maharjan, Khokana-Bhaisepati, civil society	Interview (topic focused/open)	Taxi
24 Oct	Lalitpur	Mr. Ganga Lal Dangol, Khokana VDC Member Mr. Sunil Maharjan, Bungmati VDC Member	Interview(topic focused/open)	Taxi
25 Oct	Lalitpur	Mr. Mukunda Ghimire, Dukuchap VDC Member Mr. Dil Bahadur Bogati, Chaimale VDC Member	Interview (topic focused/open)	Taxi
26,27,28,29 Oct		<b>Data Verification</b>	<b>Pubic Holiday</b>	
26 Oct		Mr. Jagat Bahadur Basnet, CSRC, Managing director		
30 Oct	Lalitpur	Mr. Rabindra Maharjan, member of Civil Welfare Group Looniva Concern Group, Saibu Bhaisepati, Lalitpur Kathmandu University	Interview (topic focused/open)	Taxi
31 Oct	Dhulikhel	Compilation of the collected data/ Preparation of departure	Presentation	Bus/Tempo
1 Nov	Kathmandu		Travel	Airplane
2 Nov	Enschede			

## Annex 2: Checklists for Interview/ Interview Questions

Elements	Expected Questions
<b>Policy</b>	
<ul style="list-style-type: none"> <li>• Status in national policy</li> </ul>	<ul style="list-style-type: none"> <li>• Do national policies contain land acquisition?</li> </ul>
<ul style="list-style-type: none"> <li>• Policy formulation approach</li> </ul>	<ul style="list-style-type: none"> <li>• Does it follow any law?</li> <li>• What approach is adopted, top-down or bottom-up?</li> <li>• Does the approach fit the actual ground situation?</li> <li>• Was the representative number of stakeholders present during policy formulation if any?</li> </ul>
<ul style="list-style-type: none"> <li>• Viability of the land approach               <ul style="list-style-type: none"> <li>– Social</li> <li>– Economic</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Does it consider social norms and values?</li> <li>• Does this consider what wrong is going on the current system?</li> <li>• Can it follow logical solutions to the problem?</li> <li>• Does it have provision of check and balances?</li> </ul>
<ul style="list-style-type: none"> <li>• Equity</li> </ul>	<ul style="list-style-type: none"> <li>• How do the policies address the equity in social and economic terms?</li> <li>• Does it maintain balance in the society?</li> </ul>
<b>Management</b>	
<ul style="list-style-type: none"> <li>• Well defined and formulated strategy</li> </ul>	<ul style="list-style-type: none"> <li>• Are the strategy well defined and formulated?</li> <li>• Is it capable to meet the requirement of general people?</li> </ul>
<ul style="list-style-type: none"> <li>• Participation</li> </ul>	<ul style="list-style-type: none"> <li>• Is the participation representative and continuous?</li> </ul>
<ul style="list-style-type: none"> <li>• Intuitional and Organizational arrangement</li> </ul>	<ul style="list-style-type: none"> <li>• Do these show clearly the roles and responsibility of stakeholders?</li> <li>• Are there proper guidelines available and know to all?</li> <li>• Are institutions capable enough to bring/bind organizations together?</li> </ul>
<ul style="list-style-type: none"> <li>• Involvement of private sector</li> </ul>	<ul style="list-style-type: none"> <li>• How trust worthy and capable is the private sector?</li> <li>• Is the policy enough to bind and deal with private sectors?</li> <li>• How important is the involvement of these sectors?</li> </ul>
<ul style="list-style-type: none"> <li>• Co-operation and communication between stakeholder (land owners)</li> </ul>	<ul style="list-style-type: none"> <li>• Does the rule and regulations support cooperation and communication?</li> <li>• How is it maintained and what if not maintained?</li> </ul>
<b>Operation</b>	
<ul style="list-style-type: none"> <li>• Participation</li> </ul>	<ul style="list-style-type: none"> <li>• Is it local landholder oriented or only oriented to elite group only?</li> <li>• What are the provisions of participation?</li> <li>• Are the local land owners aware of their right?</li> <li>• Are the stakeholders' esp. land owners given equal participation opportunity?</li> </ul>
<ul style="list-style-type: none"> <li>• Transparency</li> </ul>	<ul style="list-style-type: none"> <li>• Do all the stakeholders are aware of the purpose of the ongoing activities?</li> <li>• How easy is it to access the required information about any of the matter?</li> <li>• How well are the stakeholders informed about the benefits and facilities?</li> </ul>
<ul style="list-style-type: none"> <li>• Rule of law</li> </ul>	<ul style="list-style-type: none"> <li>• Is the legal framework consistent and coherent?</li> <li>• Does it protect (consider) property rights, human rights?</li> </ul>
<ul style="list-style-type: none"> <li>• Accountability</li> </ul>	<ul style="list-style-type: none"> <li>• Is there any criterion or outline for the procedures adopted? Uniform service standard, costs of services, check and balances etc.</li> <li>• How accountable and responsible are the manpower engaged?</li> <li>• Is the system accountable until the level where impact is felt most?</li> </ul>
<ul style="list-style-type: none"> <li>• Efficiency</li> </ul>	<ul style="list-style-type: none"> <li>• How short and simple are the methods/ procedure?</li> <li>• Is it possible or not to accomplish work on time, what measures are taken?</li> <li>• Is there any opportunity of informal steps within the procedures?</li> </ul>

• Effectiveness	<ul style="list-style-type: none"> <li>• Is there any regulatory quality, if yes how effective?</li> <li>• How effective is the social and political will and commitment?</li> </ul>
• Equity	<ul style="list-style-type: none"> <li>• Does it treat all members of the society equally? in terms of compensation, participation, gender</li> <li>• Do the land owners receive same service standard independent of their political and economic status?</li> <li>• What is done to maintain equity?</li> </ul>
• Valuation/Compensation	<ul style="list-style-type: none"> <li>• How is valuation done, on what basis, any scientific procedures?</li> <li>• Are the land owners compensated adequately fair and on time?</li> <li>• Valuation done only for the land or also the other structures present on it?</li> <li>• Is there any engagement of land owners during valuation?</li> </ul>
<b>Influencing Factors (External)</b>	
• Awareness	<ul style="list-style-type: none"> <li>• What is done for creating awareness?</li> <li>• How affective is/was the program?</li> <li>• How can it be measured</li> </ul>
• Capacity Building	<ul style="list-style-type: none"> <li>• How is it done?</li> <li>• Who are the participants?</li> </ul>
• Land owners demand	<ul style="list-style-type: none"> <li>• Is the demand of land owners met or not?</li> <li>• Is the demand reasonable and achievable?</li> </ul>
• Other communities voice	<ul style="list-style-type: none"> <li>• How importantly is it realized in different phases of the project?</li> <li>• How forceful is the voice of the community?</li> </ul>
<b>Impacts Review Process</b>	
• Objectives are met	<ul style="list-style-type: none"> <li>• Are there any procedures of reviewing whether objectives are met?</li> <li>• What is done if not?</li> </ul>
• Change in Socio-economic condition	<ul style="list-style-type: none"> <li>• Is there any attempt to review the overall socio-economic status before and after the acquisition procedures?</li> <li>• Does the change in the socio-economic status have any link with the types of techniques used?</li> </ul>
• Landowners satisfaction	<ul style="list-style-type: none"> <li>• How is it/can it be measured?</li> <li>• How importantly is it felt that their satisfaction affects the success and failure of the process projects?</li> </ul>

#### A. Questions for Policy/Decision Makers/Implementing bodies

1. What factors are considered most while formulating any (land) policy? What is the major focus? What are the procedures? Legal tools, Modality, people, requirement analysis, investments
2. Is suggestions, information sought from elsewhere
3. How do you make sure that all the groups, elite and poor, are taken well care while making any decision?
4. Do you also consider social and economic factor. What are the most important aspects that should not be ignored?
5. In your opinion, how can the government, community and local land owners can be brought together? Is the idea good or not?
6. Is the law and policy regarding the land acquisition adequate? Do any gaps exist? Are the relevant legislation and/or policy being applied in practice?
7. Have there been any recent changes in the law or government policies regarding land acquisitions? Will you please describe the reason in brief if any
8. Have all government bodies (related to acquisition) been accommodated on the land acquisition act? Is there any chance or situation of being abused?

9. Is there adequate institutional and organizational capacity to manage or resolve land disputes? What type of conflict mechanism needed to be strengthened? e.g. Courts, alternative dispute resolution process or.....
10. In case new approach of land acquiring i.e. leasing land is agreed by the majority of the public, shall it be incorporated, why/ why not
11. What do you think will be the major difference of this approach compared to others? Which phase (policy formulation, management, operation, external factors, and post acquisition) in your opinion will be the most critical and difficult to handle in lease?
12. Will there be the difference in the overall investment, in lease and expropriation
13. What structure comes into mind when land leasing options is heard?
14. What do you have to say about..... inland leasing options? (less than/ more than/ no difference)
  - Participation
  - Transparency
  - Rule of law
  - Accountability
  - Efficiency
  - Effectiveness
  - Equity
  - valuation
15. Please give your final opinion/comment on the idea of land leasing options.

**B. communities, co-operatives, VDC members, civil society members**

- 1 How important is the infrastructure (e.g. road) for you and your place?
- 2 What is the difference in having or not having roads in the daily lives and activities?
- 3 Are you aware of the “land acquisition” (That government may take land when required for public purposes)
- 4 What do you think, in case government wants your land for developing infrastructure, should you provide land or not?
- 5 Do you think it’s also the people’s duty for this or only the government is responsible for all these activities? U don’t care
- 6 What is good or bad about the land acquisition, do you think development is possible/impossible without it?
- 7 In case if you have to provide land which one do you prefer? After explaining e.g. in case of road. Expropriation, Land Lease or others
- 8 Why/ why not...
- 9 Do you think you should receive something for the land you have provided to the state for the infrastructure for public purpose? What?
- 10 How often is there rise in the price of the land in the area? On what basis the land value is determined?
- 11 What valuation method is applied in land transaction? (i.e. who determines the value of land?) Government based, Market based, Community based
- 12 When did you know about the project, how did you know about it?
- 13 Is there any awareness program organized by the government during the planning or any phase of this project?
- 14 Being member of ..... (Group) were you involved in any of the phase of the project to get or deliver any idea/ suggestions/ information/ formally or informally by the projects member or any other?
- 15 Do you think if there is any difference if the land is acquired using lease, expropriation and resettlement or...
- 16 What are people going to gain/lose if the land has been given for public purpose, by any method like lease and expropriation or other, does this makes any difference
- 17 How different will be the matter of tenure security? Different or Same
- 18 Can you briefly discuss what you think about the advantages and disadvantages

- 19 In which method do you think people will exercise their power more and can influence the management and decisions of the activities if found against the wellbeing of the locals.
- 20 Concluding remarks on land leasing options

### C. Experts/Academia/NGO

1. Will you please briefly describe about the current land acquisition procedures and practices in Nepal? (Types, reasons, different methods for different types of project)
2. What is the reason behind the conflict, disagreement of the locals with the state or land acquisitions officials?
3. What do you say about the policy in practice? (Status, approach, viability, equity)
4. What do you think about the land leasing options for acquiring land?
5. In what way do you think it is advantageous and disadvantageous over the other methods or mostly practiced methods?
6. What do you have to say about..... in land leasing options? (less than/ more than/ no difference)
  - Participation
  - Transparency
  - Rule of law
  - Accountability
  - Efficiency
  - Effectiveness
  - Equity
  - valuation
7. What different forms of leasing options do you suggest?
8. In which type of the public projects will this be most and least feasible? Is it equally applicable to all
9. What can be the main reason for the land owners to go for and against this land acquisition procedures (Land Lease)
10. Since government is encouraging co-operative partnership, what do you have to say about the co-operation of land owners in the project?
11. Do you believe that people's participation in any project leads to less or no conflict? Or conflicts occurs, but of different nature.
12. Can we consider land lease as a right based people centric approach? Or will there be no difference in lease than the other methods?
13. Land leasing is a win-win situation for land owners and the investors, do you agree?
14. Can we say that the property rights (such as right to use, benefit, make decision and influence decision) can be exercised by the owners if land is leased for the public purpose?
15. On what level can we say that leasing land ensures that the decisions are made closely possibly with regard to the impacted ones i.e. Land owners?
16. Concluding remarks on land leasing options!!!!!!!!!!!!!!

### D. Private consultant/Members of the project

1. How long have you been involved in the project? Main responsibility?
2. What different types of stakeholders are involved in the work?
3. If a stranger or local from the area wants to have information about the work, progress, procedures, or any matter in the project, what do you do, is there any specific person for that or anyone can provide it?
4. Please briefly describe on the experience on the land acquisition phenomenon on the project? How easy or difficult task is it? Why/ why not?
5. What do you think of applying land leasing options in the project?
6. What advantages and disadvantages do you foresee?
7. How do you compare lease with the expropriation?
8. On which aspect will it have similarities and differences?
9. How does it differ in management and operation phase?

10. What can be the main reason for the land owners to go for and against this land acquisition procedures (Land Lease)
11. Since government is encouraging co-operative partnership, what do you have to say about the co-operation of land owners in the project?
12. Do you believe that people's participation in any project leads to less or no conflict? Or conflicts occurs, but of different nature.
13. Can we consider land lease as a right based people centric approach? Or will there be no difference in lease than the other methods?
14. Land leasing is a win-win situation for land owners and the investors, do you agree?
15. Can we say that the property rights (such as right to use, benefit, make decision and influence decision) can be exercised by the owners if land is leased for the public purpose?
16. On what level can we say that leasing land ensures that the decisions are made closely possibly with regard to the impacted ones i.e. Land owners?
17. What do you have to say about..... in land leasing options? (less than/ more than/ no difference)
  - Participation, Transparency, Rule of law, Accountability,
  - Efficiency, Effectiveness, Equity, Valuation
18. In terms of Investment, one-time payment in expropriation but in case of leases several payment (in installment) throughout the project period, what do you think will be the difference in investment comparatively, will that be manageable?
19. Do you believe that people's participation in any project leads to less or no conflict? Or conflicts occur but of different nature.
20. On what level can we say that leasing land ensures that the decisions are made closely possibly with regard to the impacted ones i.e. Land owners?



### Annex 3: Land Acquisition (Expropriation) Assessment Summary

Aspects/Element	Possible Indicator	Good Practice	Result
<b>Policy</b>			
• Status in national policy	• Existence of government policy	• Incorporated in national policy	Yes
• Policy formulation approach	• Modality (top-down/ bottom-up) • Autocratic, Democratic	• Bottom-up approach	No
• Viability of the system	• Social Viability – Environmental issues – Acceptable to people	• Social impact considered • Environmental impact considered	No Yes
	• Economic Viability – Costs & Benefit – Overall monetary impact	• No loss to any of the stakeholders (win-win)	Not sufficient
• Equity	• To all the social groups and classes • Subsidiarity	• Satisfied Stakeholders/ Groups	Not sufficient
<b>Management</b>			
• Well defined and formulated strategy	• Clearly defined strategy and characteristics of approach • Ensure that the purpose of acquisition have been fulfilled	• Structure of the system is useful and clearly defined • Land is used only and only for the reason for which it has been acquired	Not sufficient
• Participation	• Participation of related stakeholders	• Involved institutions and organizations have clearly defined tasks and co-operate and communicate with each other	Not sufficient
• Intuitional and Organizational arrangement	• Clearly defined list of organizations, strategies and responsibilities	• Participation of the stakeholders in the management level	No
• Involvement of private sector	• Links between institutions (legal, organizational, technical)	• Partnership between public and private bodies • Appropriate balance between public & private	Not sufficient
• Cooperation/Communication between stakeholder (land owners)	• Well guided structure for the cooperation	• Community Participation	No
<b>Operation</b>			
• Participation	• Enough Participation of stakeholders	• The land owners and other stakeholders participation	Not sufficient
• Transparency	• Information to related stakeholders	• All the information related is true, timely and prerequisite to acquire land and benefits is made known	No
• Rule of law	• Enforcement of legal provisions	• Legal provisions are fairly enforced	Yes
• Accountability	• Responsible staffs and methods	• Highly responsible staffs involved in the acquisition	Not sufficient
• Efficiency	• Simplicity, Timeliness, Completeness	• Short and simple process • Timely completion	No
• Effectiveness	• Utilization and management of land, human and financial resources for achieving results and objectives	• Best and optimal use of resources	No

• Equity	• Equal treatment to all • Inclusiveness • Empowerment	• Satisfied general public in terms of treatment	No
• Valuation/Compensation	• Adequate, Timely and Fair compensation	• Satisfied general public in terms of fair, timely, and adequate compensation	Not sufficient
<b>Influencing Factors (External)</b>			
• Awareness	• Presence of awareness programs	• Stakeholders are aware of the process and outcomes	No
• Capacity Building	• Trainings conducted	• Competent and dedicated staff	No
• Land owners demand	• Provision to appeal and collect complains	• Fulfil the landowners demand to the level of satisfaction	No
• Other communities voice	• Provision to hear complains and voices	• Demand or other community and user group are met	No
<b>Impacts Review process (Post Acquisition Phase)</b>			
• Objectives are met	• Provision of reviewing objectives	• Regular review process	No
• Change in Socio-economic condition	• Provision of reviewing Socio-economic condition	• Improved social status • Better facility, more productivity	No No
• Landowners satisfaction with the project and its activities	• Determine the satisfaction	• Satisfied land owners and stakeholders	No

#### Annex 4: Land Lease Assessment Summary

<b>Evaluation Area</b>	<b>Aspects/Element</b>	<b>Possibilities</b>
<b>Policy</b>	<ul style="list-style-type: none"> <li>• Status in national policy</li> <li>• Policy formulation approach</li> <li>• Social /Economic Viability</li> <li>• Equity/ Subsidiarity</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> <li>• Bottom UP</li> <li>• Yes/highly possible</li> <li>• Yes/highly possible</li> </ul>
<b>Management</b>	<ul style="list-style-type: none"> <li>• Well defined and formulated strategy</li> <li>• Participation</li> <li>• Intuitional and Organizational arrangement</li> <li>• Involvement of private sector</li> <li>• Cooperation/Communication between stakeholder (land owners)</li> </ul>	<ul style="list-style-type: none"> <li>• Depends how it is formulated</li> <li>• Yes</li> <li>• Depends as required</li> <li>• Depends as required</li> <li>• Yes</li> </ul>
<b>Operation</b>	<ul style="list-style-type: none"> <li>• Participation</li> <li>• Transparency</li> <li>• Rule of law</li> <li>• Accountability</li> <li>• Efficiency</li> <li>• Effectiveness</li> <li>• Equity</li> <li>• Valuation/Compensation</li> </ul>	<ul style="list-style-type: none"> <li>• The aspects highly possible because of the direct involvement of people/land owners but the involvement of large number of stakeholders may make it ineffective and inefficient.</li> </ul>
<b>Influencing Factors (External)</b>	<ul style="list-style-type: none"> <li>• Awareness</li> <li>• Capacity Building</li> <li>• Land owners demand</li> <li>• Other communities voice</li> </ul>	<ul style="list-style-type: none"> <li>• High</li> <li>• Depends as required</li> <li>• Yes</li> <li>• Yes</li> </ul>
<b>Impacts Review process (Post Acquisition Phase)</b>	<ul style="list-style-type: none"> <li>• Objectives are met</li> <li>• Change in Socio-economic condition</li> <li>• Landowners satisfaction with the project and its activities</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> <li>• Yes</li> <li>• Yes</li> </ul>

## Annex 5: Data Processing Software Nvivo

The screenshot shows the NVivo software interface with the 'Internals' view selected. A 'Select Project Items' dialog box is open, displaying a tree view of project items and a table of selected items.

**Select Project Items Dialog:**

- Automatically select subfolders
- Automatically select hierarchy

Name	Nickname	Created	Modified
Accountability	A	1/15/2012 3:47 AM	1/15/2012 3:47 AM
Compensation	C	1/15/2012 3:44 AM	1/15/2012 4:06 AM
Efficiency&Effectiveness	E	1/15/2012 3:47 AM	1/15/2012 3:47 AM
Equity	Eq	1/15/2012 3:48 AM	1/15/2012 3:48 AM
Participation	P	1/15/2012 3:43 AM	1/15/2012 3:43 AM
Problem	Pr	1/15/2012 3:58 AM	1/15/2012 4:03 AM
Rule of law	R	1/15/2012 3:46 AM	1/15/2012 3:46 AM
Transparency	T	1/15/2012 3:44 AM	1/15/2012 3:44 AM

Buttons: Filter, Clear Filter, Select All, Clear, OK, Cancel

The screenshot shows the NVivo software interface with the 'Reports' view selected. The main area displays a table of reports.

**Reports Table:**

Name	Created On	Created By	Modified On	Modified By
Coding Summary Report	1/15/2012 3:06 AM	S	1/15/2012 3:06 AM	S
Node Classification Summary Report	1/15/2012 3:06 AM	S	1/15/2012 3:06 AM	S
Node Structure Report	1/15/2012 3:06 AM	S	1/15/2012 3:06 AM	S
Node Summary Report	1/15/2012 3:06 AM	S	1/15/2012 3:06 AM	S
Project Summary Report	1/15/2012 3:06 AM	S	1/15/2012 3:06 AM	S
Source Classification Summary Report	1/15/2012 3:06 AM	S	1/15/2012 3:06 AM	S
Source Summary Report	1/15/2012 3:06 AM	S	1/15/2012 3:06 AM	S