

Social Impacts: Land use and resettlement

In the case of a concession, the land purchased will be returned to the State at the end of the concession period. The act of purchasing this land by the operator is then of the same legal nature as if it were purchased by the public authorities.

Depending on the case, land is purchased either by the road authorities or by the operator, or by both in succession according to the stage the project has reached at the time of purchase. (See also: Module 4 -> Contracts -> Contract Provisions-> Land use rights).

To enable them to acquire all the land necessary for the project, they should be able to rely on the support of legislation relating to Expropriation.

Expropriable categories of land are determined by national rules and jurisprudence. It is essential that the expropriation of all the land required for building and operating the road is conducted fairly under the relevant legislation and rules.

Expropriable land

It should be possible to acquire all the land required for building, maintaining and operating the road and its ancillary services by negotiation and/or design. However, there may be land which the owners refuse to sell. In such a case, appropriate legal means are required to force recalcitrant owners to sell: this is the object of the expropriation procedures.

This procedure, which transgresses property rights, is based on the notion of public interest. In a desire to avoid expropriation rights being abused, the extent of land declared to be of public interest is generally strictly defined and controlled.

Too narrow a definition of land categories which can be declared to be of public interest is likely to cause serious difficulties, so governments should be careful not to define the notion of expropriable land too restrictively.

Land may be required for:

- the road and its access roads,
- rest and service areas,
- toll equipment,
- operation centers,
- maintenance centers, equipment storage areas and/or buildings,
- storage areas for de-icing and/or other products or equipment necessary for road maintenance,
- accommodation for staff on stand-by for emergency duties,

- transverse roads, until construction has been completed. When the road is opened, this land is usually handed over to the owner of the transverse road in accordance with pre-agreed conditions. The wording of this agreement should be very precise, particularly as regards handing over and sharing responsibility for the bridges carrying the transverse road,
- the status of the quarries and borrow areas should be examined in accordance with national legislation. A distinction is also to be made between quarries and deposits of materials operated solely for building the road and those which will be used later for commercial purposes.

The case of a road crossing land belonging to minorities with special land property rights, namely collective soil property (Indigenous and traditional populations) requires special consideration and is described further below.

Resettlement

On account of the difficulties and distress caused by involuntary displacement of populations, it should first be underlined that the desire to minimize the need for resettlement should be taken into account during the examination of the various alternatives and that the cost of this resettlement should be taken into account in the overall cost of the project. The private operator should be informed of the charges incumbent upon him.

Furthermore, it is advisable to keep to the following principles:

- resettlement conditions should be analyzed in the earliest phases of the project and considered both from the social, economic and financial (compensation) angles.
- even if, in the case of a PPP, the private operator is one of the actors in the operation, it is the public authorities which are ultimately responsible for the conditions under which resettlement will take place. Very close collaboration between the operator and the public authorities is therefore necessary.
- the populations concerned should be consulted concerning the possibilities for their reinstallation, directly or through their leaders, representatives or NGO representatives. This consultation supposes a thoroughly well thought out consultation mechanism. It should integrate not only the displaced populations, but also the host populations.
- in large towns, it will be necessary not only to re-house the displaced people but also to endeavor not to aggravate home-work journeys. The problem of the occupants of commercial premises should be given particular attention.
- the road authorities are not necessarily in the best position to deal with these problems on their own and will benefit from establishing the necessary contacts with the social administrations as early as possible in the project cycle. Naturally, action by all these entities should conform strictly to the national laws as regards expropriation and compensation.
- in poor districts, financial compensation is very rarely a good solution to the problem of housing expropriation. The beneficiaries may have a tendency to use

the funds for things other than purchasing a new home and thus the problem of re-housing them will remain unsolved.

The difficult problem of resettling people, including squatters, living on the alignment of the road must also be addressed.



Involuntary Resettlement in Development Projects: Policy Guidelines in World Bank-financed projects, Michael M. Cernea, World Bank Technical Paper No 80, 1990.

On Poor and Indigenous

Indigenous or traditional populations require special attention in road projects because they have limited ability to assert or defend their interests and rights to land and other productive resources.

These people are sometimes defined in national legislation, or are identified by a close attachment to ancestral territory, and often have a subsistence-oriented lifestyle. There is no clear definition that fits all countries and regions; the important issue is to identify groups which have no land tenure legislation and are particularly vulnerable to rent increases.

Assessments and actions should protect the interests of these populations to ensure that their dignity, human rights, and cultural uniqueness are respected and that they do not suffer adverse effects because a road crosses through their traditional territory.

Where impacts are unavoidable, road agencies should act to protect and preserve the traditional rights of these populations.

The main way of mitigating any harmful impacts of a road is through consultation and participation. Consultation can help road planners understand and incorporate local views and opinions; for example, so that the road follows the most mutually acceptable and least destructive route and mitigation measures are realistic and culturally compatible with the needs of the indigenous community.

Local consultation also provides an opportunity to determine whether traditional groups wish to remain in the area or relocate to some other area. In the former case, some restrictions of access may be considered, and authorities may wish to employ indigenous populations as guards in order to ensure that any incoming populations do not over-exploit the area. In the latter case, the authorities can assist the group to relocate. In both instances consideration should be given to helping indigenous populations obtain a formal title deed of their territory.

From a legal point of view, national legislation needs to be examined to determine whether, and, if so, how, indigenous populations are to be compensated for the loss of part of their ancestral area. The highway authority or private operator should propose to the public authorities that they should take exceptional measures to ensure the cultural integrity of those populations and defend them from encroachment by new settlers.



Road and the Environment: A Handbook, the World Bank, September 1997.



Environmental And Social Safeguards Framework (ESSF),
India Infrastructure Financing Company Limited (IIFCL) 2007