

Draft

**PROJECT IMPLEMENTATION AND
RESETTLEMENT OF AFFECTED PERSONS
ORDINANCE 2001**

February 2002

Government of Pakistan
Ministry of Environment, Local Government & Rural Development
(Pakistan Environmental Protection Agency)

PROJECT IMPLEMENTATION AND RESETTLEMENT OF AFFECTED PERSONS ORDINANCE – 2001 (UP DATED)

1. Short title extent and commencement:
 - (1) This Ordinance may be called the Project Implementation and Resettlement of the affected persons Ordinance 2001.
 - (2) It extends to the whole of Pakistan,
 - (3) It shall come into force on such date as notified by the Federal Government.

NOTE:

The Federal Govt. may at its discretion notify and it will become operative through out Pakistan from the date specified in the Notification

2. Definitions-

In this Ordinance, unless there is any thing repugnant in the subject or context:-

 - a) "Affected person" - Include:-
 - 1) Any person or household adversely affected by any project related change in use of land, water or other natural resources, or who loses any asset or property movable or fixed, in full or in part including land, with or without displacement after the commencement and during execution of a project.
 - 2) Any vulnerable and affected person including women, destitute, artisans, tribal communities, squatters, and those with usufruct rights, poverty groups depending for livelihood upon the community in the project area and all those persons who may be exploited by the stronger or privileged persons located within the project area.
 - 3) Any other person who may prove and establish his right as an affected person to the satisfaction of the Director General Projects.
 - (b) "Ministry" means the Ministry of Environment, Local Govt. and Rural Development or any other Ministry responsible for the subject of the "Environments" under the Rules of Business.

- (c) "Replacement cost" means and include an amount needed to replace an asset at current market value including depreciation and overhead expenses of the transaction as follows:-
- (1) Agricultural land based on its productive potential.
 - (2) Houses and other structures, including boundary walls, built up areas, other structures and fixtures thereto, crops, trees and other commodities based on current market value, sufficient to build a house or any structure, without any deduction on account of depreciation or salvageable materials and labour cost or overheads for any transaction whatsoever connected therewith according to law.
 - (3) Other production assets like shops and commercial value of location i.e. premium etc.
- (d) "Compensation" includes cash payment, deferred payment, a bond, an insurance policy, stipend, payment in kind, rendition of services, grant of privileges and disturbance money, entitlement to special treatment by Government and Semi Government Departments, grant of alternative land, grant of import licenses, business, trade and commercial facilities in addition to the rehabilitation and resettlement of an affected person.
- (e) "Entitlement" means the sum total of compensation and other assistance assessed according to the status of each individual belonging to the project area or related therewith or dependant thereon, by the designated Evaluation Committee or any other authority.
- (f) Income restoration – includes reestablishing income sources and livelihood of the affected persons according to their status and all compensatory measures contained in the National Resettlement Policy but does not include compensation for the acquired assets.
- g) "Rehabilitation – includes all compensatory measures to re-establish at least the lost income, livelihood and living standards but does not include any payment for acquired assets.
- (h) "Resettlement" means all measures taken to mitigate any and all adverse impacts of execution of a Project on the livelihood of the project affected persons, their property, and includes compensation, relocation and rehabilitation.

- (i) Cutoff date shall mean and include:
 - i) The date notified in the Official Gazette declaring institution of a project and the related area.
 - ii) When used in relation to the identification of all the affected persons, the date of commencement of census of the affected persons and finalisation of the lists by the Project Officer, the provincial revenue department and NADRA.
- j) Director General Projects means Director General Resettlement and Urban Development of the Ministry or in his absence any other officer holding the post of an Additional Secretary designated by the Secretary of the Ministry as Director General Projects and so notified in the Official Gazette.
- (k) "Project Officer" means the Officer nominated by a Ministry, Division, Department or a Corporation under the Federal Government responsible for the execution of a Project.
- (l) "Environment and Social Development Officer" means the Officer designated as such by the Director General Projects for a particular project from the Ministry.
- (m) "Project Area" means the area specified by the Project Officer in the Official Gazette Notification and includes the areas within the administrative limits of the Federal Government or a Provincial Government.
- (n) "Financial commitment" means the total funds available for a project including finances needed for compensation, resettlement, rehabilitation and training etc. of the affected persons.
- (o) "General measures for resettlement" mean and include general measures as against specific measures for determination of different categories and status of affected persons in the project area.
- (p) "Specific measures of resettlement" include institution of special or 'Jehaiz' fund, training pertinent to the project, housing and living facilities to destitute, schooling of children, special preferential treatment to specified affected persons in government offices and schools, colleges, professional colleges, courts etc. or any other assistance to such specified persons.
- (q) "Host community" means the inhabitants of the area or locality wherein affected persons are allotted land or otherwise proposed to be resettled.

- (r) "Local Government" means Local Government and elected officials belonging to the area pertaining or adjacent to the project area.
- (s) "NADRA" means National Database and Registration Authority.
- (t) "National Resettlement Policy" means the National Resettlement Policy as prepared under the supervision of the Ministry.
- (u) "Project" means the Project as defined in Environment Protection Act 1997, Act XXXIV of 1997, and includes any Government or Semi Government Plan to set up an -Industry, Housing Scheme, Dam, Tunnel, Excavation Work, or a major Road, Railway Line, Canal, Waterway, Culvert, Aerodrome., Port or any defence installation. resulting in acquiring of land or other assets and involuntary movement of affected persons of the project area.
- (v) Land Acquisition. Means the process whereby a person is compelled by a public agency to alienate all or part of the land a person owns or possesses, to the ownership and possession of that agency, for public purpose in return for a compensation.
- (w) "Relocation" means moving of monuments, shrines, educational institutions, playgrounds, pastures, a village 'Shamlat', etc and rebuilding commensurate housing, assets, productive land and public infrastructure etc in another location.
- (x) "Special Court" means special court constituted and convened under this Ordinance.
- (y) "Rules" means rules made under this Ordinance.
- (z) "Regulations" means regulations made under this Ordinance
- (aa) "Resettlement Action Plan" Means a plan for the resettlement, compensation and rehabilitation of affected persons and includes, identification of categories of impact, number of affected persons with inventory of effective assets and other losses, entitlement to compensation, and other mitigation and rehabilitation assistance measures, resettlement strategy, objectives, entitlement for compensation and other assistance to restore their livelihood, budgetary allocation, implementation schedule monitoring and evaluation etc.

- (bb) "Ombudsman" means Ombudsman appointed under the President Order No.1 of 1983 Establishment of the Office of Wafaqi Mohtasib (OMBUDSMAN) Order 1983 in the federation and Ombudsmen appointed under respective provincial laws.
 - (cc) "Stakeholders". Include, affected persons, communities, private and public businesses, NGOs, host communities, EPA etc.
3. "Ordinance to override other laws". This Ordinance and rules, regulations or orders made thereunder shall have effect notwithstanding any thing inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

NOTE:

Paragraph (3): In exercise of the powers contained in paragraph 3 of the Ordinance the Director General Projects in specific cases where the implementation of the Ordinance is hindered may make an order to overcome the difficulty including measures not specifically provided for in the Ordinance and required for the implementation of the Resettlement Policy. For each such situation a separate order will be made.

4. "Action in aid of Director General Projects. All executive authorities Federal Agency and Provincial Agencies connected and concerned with the notified specific area of a Project shall act in aid and according to the directions given by the Director General Projects.

NOTE:

Paragraph (4): The directions contained in paragraph 4 of the Ordinance are mandatory and punitive action may be taken by the Director General Projects in cases of defiance under paragraph 23 of the Ordinance.

5. "Director General Projects and his functions:
- (a) On Notification in Official Gazette the Director General Resettlement and Urban Development of the Ministry shall assume the appointment of Director General Projects.
 - (b) The Director General projects on receipt of the intimation from the Project Officer shall issue the following instructions through a Gazette Notification amongst others regarding:

- i) The specific area of the project and the general nature of the project.
- ii) Specify Cutoff date for alienation of property in the project area.
- iii) Instructions to Project -Officer and NADRA to intimate the list of registered persons in the area, especially a list containing details of vulnerable Affected Persons, in the Project area already completed as a result of the census and demarcation of the project area.
- iv) (1) The Project Officer will be instructed to carry out and complete all field investigation, survey etc, initial social assessment and preparation of resettlement plan with the connected documents.
 - (2) (a) Instruct the Revenue authorities to work out land holdings and other properties for acquisition under paragraph 22 of the Ordinance.
 - (b) The Project Officer will work in close coordination with the Revenue Authorities who shall acquire land and properties and hand these over to the Project Officer to pay compensation in accordance with the replacement cost and simultaneously undertake measures for rehabilitation and resettlement of the affected persons.
- v) Appoint a local liaison officer with his team as prescribed, for helping and resolution of minor, disputes.
- vi) Instructions for the local police for prompt availability, assistance and maintenance of law and order on as required basis.
- vii) Intimation to any, other department or organization which in his opinion is also a concerned Department like Auqaf, Education, Public works,- Social work, NGO's etc as considered necessary and appropriate in particular for the relocation of monuments, shrines, schools etc.
- viii) Appoint the Environment and Social Development Officer for the Area from within the Ministry.

- ix) Intimate the details of the project to the Local Government officials and the services required especially with regard to relocation of play grounds, pastures, village 'shamlat' etc.
 - x) Instructions to the concerned Departments for provision of extra manpower office and other premises, transport, as required depending upon the magnitude of a project.
 - xi) Any other instructions considered necessary to any Government or Semi Government official.
 - xii) Ensure that no civil works commence in project area unless affected persons have received full compensation in accordance with the National Resettlement Policy.
- (c) His other duties and functions shall be as prescribed in the rules.
 - d) The Director General Projects shall oversee all the documents to ensure that action taken by the Project Officer includes identification of all types of adverse impacts and preparation of appropriate mitigating measures formulated for implementation in accordance with the National Resettlement Policy.
 - (e) He, may be assigned to perform such other functions as the Government may prescribe.

NOTES:

- (1) *Paragraph 5 (b) (ii). With reference to the cut-off date in paragraph 5 (b) (ii) the cut-off date will in addition to the notification in the Official Gazette will be announced by the Director General Projects on the electronic media, local news papers and display of posters on conspicuous sites in the project area.*
- (2) *Paragraph (5) (b) (iii). The Project Officer will on receipt of the instructions from the Director General Projects will complete and submit the following details to the Director General Projects:*
 - a) *A list of all registered persons in the project area after collecting it from NADRA and comparing it with his own investigations.*
 - b) *A separate list of vulnerable affected persons.*
 - c) *The boundaries of the Project Area.*
 - d) *Any other information considered necessary.*

- (3) *Paragraph (5) (b) (iv). Instructions to Revenue Authorities referred to in this paragraph will be issued through the concerned provincial Govt. The provincial Govt. may then direct the relevant Commissioner and the Collector to proceed in the matter of acquisition of land for public purpose in close coordination with the designated Project officer.*
- (4) *Paragraph (5) (b) (v). While appointing a local Liaison Officer the Director General Projects will ensure that some NGO in consultation with affected persons is also asked to work in coordination with the Liaison Officer and will also liaise with the local police and concerned Department referred to in paragraphs 5 (b) (vi), 5 (b) (vii), and 5 (b) (ix).*
- (5) *Paragraph (5) (b) (viii): While appointing Environment Protection and Social Development officer endeavour shall be made that an officer from the existing offices of the Ministry in the concerned Province is appointed who will be having maximum knowledge of the area.*
- (6) *Paragraph 5 (1). The Director General Projects may constitute a committee that may include NGO representative also to help him in implementing paragraph 5 (d) of the ordinance.*

6. "Project Officer and his duties. As soon as, any Ministry, Division, Department or a Corporation under the Federal Government has been financially enabled, receives the complete financial commitment and is equipped with necessary planning details and studies to institute and start preparation for execution of a project it shall designate and appoint a project Officer and issue a Gazette Notification that shall include his duties peculiar and pertinent to the nature of the project inter alia:-

- (a) On Notification in the Official Gazette the Project Officer when so authorized by his Ministry, Division, Department or Corporation under the Federal Government shall report to the Director General Projects alongwith complete details including the lists of affected persons as a result of the completed census of the Project area, necessary documents and reports pertaining to initial social assessment and resettlement plans except a project relating to a defense installation in which case only such details shall be provided which may be considered necessary to facilitate compensation and resettlement of the affected persons.

- (b) The Project Officer will work under the directions of Director General Projects till the completion of the Project, rehabilitation and resettlement of all affected persons including the payment of the compensation at replacement cost and all other allowances and assistance in consultation and participation of the stakeholders.
- (c) Further duties and powers shall be as prescribed by rules and till such time the rules are framed, as directed by the Director General Projects.

NOTE:

Paragraph 6 As any of the Govt. offices intends to execute any project under paragraph 6 of the Ordinance it will first complete the requirements contained in paragraph 6 (a) and paragraph 6 (b) of the Ordinance before the Project officer designated for the project reports to the Director General Projects.

- 7. "Environment and Social Development Officer.- An officer from the Ministry of the status of Deputy Secretary or Director so notified in the Official Gazette who shall as far as possible remain in the project area and shall carry out his duties under the supervision and directions of the Director General Projects and as prescribed.
- 8. "Host Community and Privileges - Those of the host community population who help, cooperate and accord facilities to the affected persons shall be considered for suitable awards as found eligible by the Evaluation Committee, constituted by Director General Projects and in accordance with rules.

NOTE:

Paragraph 8: Where alternative land is available for the resettlement of the affected persons residing in the project area the host community will be considered for suitable awards as ascertained by the Evaluation Committee constituted under paragraph 8 of the Ordinance. The Committee may recommend awards:

- a. *In Cash*
- b. *Work permits facilities in the Project*
- c. *Stipends for school / college students etc*
- d. *Any other incentive considered appropriate*

9. "Cutoff date and effects.

- (a) The Notification of the Cutoff date in the Official Gazette shall have amongst others the following effects:
 - (i) No further construction of any structure whatsoever in the project area.
 - (ii) Only limited temporary repairs to structures absolutely necessary and with permission of the Project Officer granted in his discretion.
 - (iii) No private digging of canals, roads, bridges, culverts or other earth work..
 - (iv) No further plantation of trees including fruit trees etc.
 - (v) No alienation of property, land or other construction or property.
 - (vi) Any person occupying any land or assets within the limits of the Project area without any legal title or right would not be entitled to any compensation or any other benefit or assistance under the Resettlement Policy.
- (b) The Gazette Notification shall not be a for a period of more than two years at a time and extensions shall be made, as considered appropriate by the Director General Projects.

NOTE:

Paragraph 9: For the purposes of implementation of the instructions contained in paragraph 9 of the Ordinance the Director General Projects may send written orders to the local police and revenue authorities to keep a watch in the project area so that defaulters are apprehended and dealt with under the law.

- 10. "Power to make rules.- The Federal Government may, by notification in the Official Gazette make rules to carry out the purposes of this Ordinance.
- 11. "Power to make regulations. The' Federal Government may by Notification in the Official Gazette, make regulations not inconsistent with the, provisions of this Ordinance or the rules made thereunder.
- 12. "Bar of Jurisdiction:- Save as otherwise provided in this Ordinance, no Civil Court shall have jurisdiction in respect of any matter which the Federal Government or an officer appointed under this Ordinance and is empowered under this Ordinance to determine, and no injunction, process or order shall be granted by any court or other authority in respect of any action taken or to be taken in exercise of any power conferred by or under this Ordinance.

13. "Indemnity. No suit, prosecution or other legal proceedings shall be instituted against any of the executive authorities, Director General Projects, Project Officer, Environment Officer, Local Government officials, Stakeholders including concerned NGOs, officers, employees, experts, advisors, committees or consultants connected or concerned with the project or any other person for any thing which is in good faith, done or intended to be done under this Ordinance or the rules or regulations made thereunder.
14. "Finality of orders:- Save as otherwise expressly provided in this Ordinance, every order made by any officer appointed under this Ordinance shall be final and shall not be questioned in any court except as provided hereinafter.
15. "Reference to Court.
- (1) An affected person who feels himself aggrieved and not given equal treatment in accordance with the provisions of this Ordinance or the decision of Grievances Resolution Committee, may by written application to the Project Officer require that the matter be referred by the Project Officer for the determination of the court.
- (2) The application shall state the grounds on which the applicant feels himself aggrieved by an order passed by any of the officers exercising authority under this Ordinance.
- Provided that every such application shall be made:
- (a) If the person making the application was present or represented before the officer passing the order in the matter within four weeks from the date the said order was passed.
- (b) In all other cases within eight weeks from the date the said order was passed.

NOTE:

Paragraph 15. The Director General Projects will while referring a case to the court make a self contained statement with all relevant details including the action already taken, the recommendation / proceedings of the Grievances Resolution Committee and any other information which may have come to his knowledge and not produced before the said Committee.

16. The Director General Projects shall as and when necessary constitute a Grievances Resolution Committee consisting of:-
- (a) A representative of Project Officer.
 - (b) A representative of Environment and Social Development Officer.
 - (c) Two representatives of NGOs.
 - (d) Complainant and any person he desires to assist him.
 - (e) Any other person considered appropriate by the Director General Projects.

NOTES:

- (1) *Paragraph 16. In any Grievances Resolution Committee constituted under paragraph 16 of the ordinance the Local Liaison Officer will be an ex officio member of the Committee.*
- (2) *In suitable cases the Project Officer may be nominated as a member of the Committee which the Director General Projects may constitute under paragraph 16*

17. "Cognizance of offence by courts, No Court shall take cognizance of any offence punishable under this Ordinance save upon a complaint in writing made to the special Court by an officer appointed or exercising authority. under this Ordinance.

18. "Composition and appointment of Presiding Officer of Special Court.

A Special Court shall consist of a Judge being a person who is or has been a District Judge or an Additional District Judge or has for a period of not less than ten years been Advocate of a High Court.

19. Procedure and powers of the special court:- The Special Court shall have powers of a District and Sessions Court of original jurisdiction.

NOTE:

Paragraph 19. The rules of procedure keeping in view the local conditions for day to day working of the court will be formulated by the presiding officer in consultation with the Director General Projects.

20. "Place of sitting:- A special court shall ordinarily sit at the site of the project or the place as the Government may by order specify in this, behalf.

21. "Appeal.

- (1) An appeal against the final judgment of a special court shall be to a High Court.
- (2) An appeal under subsection(l) may be preferred within seven day's of the final order of the special court.

22. "Amendment of the Land Acquisition Act, 1894.

- (1) In Section 40, subsection (l), clause(b) and Section 41, subsection(5), of the Land Acquisition Act 1894(1 of 1894) the term "work" shall be deemed to include institution of a project or its execution by means of work to be constructed.
- (2) The Provincial Government may, on the request of the Project Officer direct that he may acquire required land under the provision of the Land Acquisition Act 1894 (1 of 1894) in the same manner and on the same conditions as it might be acquired for a public purpose.

23. "Penalties,

- (a) Whoever contravenes or fails to comply with the provisions of this Ordinance, and the rules and regulations made thereunder or
- (b) Any affected person or his representative who in any proceedings under this Ordinance or on an application under paragraph 15 furnishes or abets the furnishing of any information which he. knows to be false or fraudulently conceals or misrepresents facts or abets such concealment or misrepresentation shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

24. "Removal of Difficulties.1f any difficulty arises in giving effect to any of the provisions of this Ordinance, the Federal Government may make such Order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty.

NOTE:

Paragraph 24. If any difficulty is experienced for the implementation of any of existing provision or any new provision which is added to the Resettlement Policy, the Federal Government may make an order whereby the existing provision or as the case may be the new provision added to the Resettlement Policy is implemented.

25. "Procedural.

- (1) Every officer appointed under this Ordinance shall for purposes of making any enquiry have the same powers as are vested in a Civil Court under the Code of Civil, Procedure 1908, Act V of 1908, when trying a suit in respect of the following matters, namely:
 - a) Summoning and enforcing the attendance of any person;
 - b) Requiring the discovery and production of any documents;
 - c) Requisitioning any public record from any Court or office;
 - d) Appointing guardian, or next friend of a vulnerable affected person;
 - e) Any other matter, which may be prescribed.

- (2) Every officer appointed under the Ordinance shall be deemed to be a Civil Court for the purposes of section 480 and 482 of the Code of Criminal Procedure 1898, Act V of 1898, and any proceedings before any such officer shall be deemed to be a judicial proceeding within the meanings of Sections 193 and 228 of the Pakistan Penal Code, 1860, Act XLV of 1860 and for the purposes of sections 196, 199 and 200 thereof.