

ADB

Capacity Building for
Resettlement Risk Management

Country Report

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Resettlement Risk Management

Cambodia Country Report

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CAPACITY BUILDING FOR RESETTLEMENT RISK MANAGEMENT SERIES

This publication was prepared in conjunction with an Asian Development Bank (ADB) regional technical assistance (RETA) project on Capacity Building for Resettlement Risk Management, covering three developing member countries in the region, namely, Cambodia, People's Republic of China (PRC), and India.

The RETA aimed to generate specific knowledge based on country studies to identify risks and improve the capabilities of ADB and developing member countries to address impoverishment risks associated with involuntary resettlement.

The series comprises the following outputs of the RETA:

1. Capacity Building for Resettlement Risk Management: Final Report by Sam Pillai
2. Capacity Building for Resettlement Risk Management: Cambodia Country Report by Chea Sarin
3. Capacity Building for Resettlement Risk Management: India Country Report by Parthophriya Ghosh
4. Capacity Building for Resettlement Risk Management: People's Republic of China Country Report by the China Land Surveying and Planning Institute
5. Capacity Building for Resettlement Risk Management: People's Republic of China Thematic Reports by the China Land Surveying and Planning Institute
 - Thematic Report No. 1: The Scope of Land Expropriation Rights
 - Thematic Report No. 2: Asset Valuation in Land Acquisition and Compensation
 - Thematic Report No. 3: Improving Resettlement Policies and Practices to Manage Impoverishment Risks
 - Thematic Report No. 4: Reforming the Legal and Policy Framework for Land Acquisition to Manage Impoverishment Risks
6. Handbook on Resettlement for Transport Projects in Cambodia by Chea Sarin
7. Handbook on Resettlement for Highway Projects in India by Parthophriya Ghosh
8. Risk Analysis and the Risks and Reconstruction Model in Population Resettlement: Training Course by Professor Michael Cernea
9. Compensation and Valuation in Resettlement: Cambodia, People's Republic of China, and India by Rural Development Institute
10. The Impoverishment Risks and Reconstruction Model: Resettlement and Benefit-Sharing by Professor Michael Cernea

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Abbreviations

ADB	Asian Development Bank
AP	affected person
BOT	build–operate–transfer
CAM	Cambodia
CBO	community-based organization
COI	corridor of impact
CRIP	Cambodia Resettlement Implementation Plan
DMS	detailed measurement survey
EA	executing agency
EMA	external monitoring agency
FGD	focused group discussion
ha	hectare
IRC	Inter-ministerial Resettlement Committee
IRC–WG	Inter-ministerial Resettlement Committee Working Group
IWTC	Infrastructure West Transport and Communications
JBIC	Japan Bank for International Cooperation
JICA	Japan International Cooperation Agency
km	kilometer
KR	Khmer riel
LAMDP	Land Administration, Management, and Distribution Program
m	meter
MEF	Ministry of Economy and Finance
MKID	Mekong Infrastructure Division
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MOWRAM	Ministry of Water Resources and Meteorology
MPP	Municipality of Phnom Penh
MPWT	Ministry of Public Works and Transportation
NGO	nongovernment organization
NR	national road
OP	Operational Policy
PDEF	Provincial Department of Economy and Finance
PDPWT	Provincial Department of Public Works and Transport
PIU	Project Implementation Unit
PMU	Project Management Unit
PRS	Provincial Resettlement Sub-Committee
PRSC–WG	Provincial Resettlement Sub-Committee Working Group
PPTA	Project Preparation Technical Assistance
RRAP	Resettlement and Rehabilitation Action Plan
RP	resettlement plan
RETA	regional technical assistance

RGC	Royal Government of Cambodia
ROW	right-of-way
RU	Resettlement Unit
RU-IRC	Resettlement Unit-IRC
TA	technical assistance

Currency Equivalent

US\$1.00 = 4,000 Khmer riels

Contents

I.	GENERAL INTRODUCTION	1
	A. Project Background	1
	B. Objectives	1
	C. Study Design and Scope	1
	D. Contents of the Report	3
II.	NATIONAL LAWS AND POLICIES ON LAND ACQUISITION AND COMPENSATION	4
	A. Introduction	4
	B. Constitution	4
	C. Land Law	5
	D. <i>Sechkdey Prakas</i> No. 6 BRK	6
	E. MEF <i>Prakas</i> No. 961	7
	F. <i>Sechkdey Choundamnoeng</i> (Notification) No. 43 SCFIN KBCH	7
	G. Sub-Decree No. 19 ANK/BK	7
	H. Sub-Decree No. 62 ANK	8
	I. Decision No. 13 and <i>Prakas</i> No. 098	8
III.	RESETTLEMENT POLICY GAPS	9
	A. Introduction	9
	B. Policies on Involuntary Resettlement of International Development Partners	9
	C. Gaps between Domestic Laws/Policies and International Practices	11
	D. Stopgap Measures	11
IV.	LESSONS LEARNED FROM CASE STUDIES	13
	A. Compliance with Resettlement Policy	13
	B. Compensation and Entitlement	13
	C. Inventory of Affected Assets	14
	D. Asset Valuation	14
	E. Income Restoration and Economic Rehabilitation	15
	F. Gender and Vulnerable Groups	15
	G. Public Participation and Consultation	15
	H. Grievance Redress	16
	I. Monitoring and Evaluation	16
	J. Impoverishment Risks	16
V.	CONCLUSIONS AND RECOMMENDATIONS	22
	A. Policies and Regulatory Framework	22
	B. Institutional Arrangements	23
	C. Capacity Building and Training	24
	D. Legalizing Asset Valuation System	24

E. Strengthening Public Participation and Consultation	25
F. Mitigating Risks of Vulnerable Affected Persons	25
G. Monitoring and Evaluation	25
H. Grievance Redress Mechanism	26
I. Impoverishment Risks and Reconstruction	27
REFERENCES	28
BOXES	
1. ADB's Involuntary Resettlement Policy	10
2. Professor Michael Cernea's Risks and Reconstruction Model	17
TABLE	
1. ADB's Resettlement Policy and It's Application in Cambodia Resettlement Work	12

Executive Summary

The overall goal of this Regional Technical Assistance (RETA) 6091 is to develop instruments that will help minimize poverty risks for people dispossessed of assets, income, and other livelihood resources due to involuntary resettlement. Specifically, the RETA aims to generate knowledge on (i) the identification of impoverishment risks associated with displacement and dispossession; and (ii) practical suggestions on how to address those risks through development interventions and assistance. This country report sets out issues and options for resettlement risk management in Cambodia in projects with significant or sensitive resettlement, including recommendations to the Asian Development Bank (ADB) on tackling these issues.

Two ADB-assisted infrastructure projects that had involuntary resettlement provided the case studies. The resettlement audit of the Phnom Penh to Ho Chi Minh City Highway Improvement Project (Loan 1659-CAM) served as the main case study. The initial findings of the community needs assessment in the two adjoining relocation sites in Kab Srov (Loan 1824-CAM: Emergency Flood Relief Project, Kab Srov Dike Subproject) augment the insights and lessons learned from the resettlement audit of Loan 1659-CAM.

The analytical framework used in the country report is Michael Cernea's Risks and Reconstruction Model (RRM) and its concept of "decapitalization" (i.e., people lose natural capital, human-made capital, human capital, and social capital) due to involuntary resettlement especially in the implementation of infrastructure projects in the public and private sectors. Consequently, affected people, most of whom are already poor, are at risk of further impoverishment in the form of landlessness, joblessness, homelessness, economic marginalization, increased morbidity and mortality, food insecurity, loss of access to common property, and disintegration of community and social ties and organizations.

This country report describes and analyzes the resettlement of affected persons (APs) during the implementation of Loan 1659-CAM, also referred to in this report as Highway 1 Project. The report draws a number of lessons revolving around Cernea's

"decapitalization" risks that may be applicable to future infrastructure projects. Moreover, the audit of Highway 1 Project has made it possible to formulate a list of recommendations that have been adopted by the Government of Cambodia to address outstanding resettlement issues on that project.

Highlights of the results of the case study of Highway 1 Project are (i) the loan effectiveness of the Project was delayed until October 1999 to ensure the approval of the detailed Cambodia Resettlement Implementation Plan (CRIP) acceptable to ADB; (ii) resettlement work and civil works were separated, with the Inter-ministerial Resettlement Committee (IRC) assuming exclusive role of planning, implementing, and monitoring resettlement, confining the road project's Executing Agency (EA) to civil works; (iii) the provisions of CRIP were not consistently followed; depreciation and the value of salvaged materials were deducted from the compensation given for affected structures; affected trees and crops in the right-of-way (ROW) were not paid for; income loss arising from business disruption during resettlement was ignored contrary to the CRIP; landless APs losing residential and/or productive land were not permitted to relocate within the remaining ROW because of the recently issued *Sechkdey Prakas* No. 6,¹ were left with nowhere to move and were only provided with replacement lots after recommendations from resettlement audit; and grievance redress mechanisms were not set up; (iv) with IRC in possession and control of all data and records on resettlement in Highway 1, it was not possible to assess the actual magnitude of social displacement; and (v) the Government has agreed to implement the recommendations resulting from the resettlement audit to bring resettlement into compliance with ADB's Policy on Involuntary Resettlement by (a) providing remaining compensation for APs' structures that were deducted for salvage and depreciation, (b) providing resettlement site at Stoeung Slot to landless APs, and (c) the Government allows Green Gold, a nongovernment organization (NGO), to collect outstanding grievances of APs.

¹ *Sechkdey Prakas* No.6 (27 September 1999) is explained in Chapter II, D.

With regard to the Kab Srov Dike Subproject, a total of 390 households in 2001 were provided individual plots in the three adjoining relocation sites of Anlong Ka Ngan 1, Anlong Ka Ngan 2, and Kab Srov. There were 261 households relocated in Anlong Ka Ngan 1, 43 households in Anlong Ka Ngan 2, and 86 households in Kab Srov. At present, only 135 households are living permanently in the relocation sites, while 26 households are semipermanent, presumably depending on the availability of income opportunities in Kab Srov. There are 122 vacant plots, some of which have been sold. Additionally, there are 45 nonoriginal settlers, while the rest are new lot owners. Also, 35 plots in Anlong Ka Ngan 2 are vacant and unused. The results of the survey show that slightly more than 64% of the 178 households covered in the study earned a monthly income ranging from \$10 to \$50 in 2005.

The findings of the study lead to a number of questions that must be answered in finding an appropriate and sustainable livelihood restoration program for APs at Kab Srov. These questions include (i) why did APs sell or abandon their plots? (ii) What are the livelihood activities of the 114 AP households whose monthly income is less than \$50? (iii) What skills and resources do APs have, and what are the opportunities available to them?

These questions remain unanswered. However, while an earlier survey conducted from 29 July to 7 August 2005 by the Municipality of Phnom Penh (MPP) at the relocation sites in Anlong Ka Ngan and Kab Srov identified 40 AP households as living below the national poverty line (i.e., monthly income of \$20 or less), a repeat survey conducted by the Resettlement Unit of IRC (RU-IRC) and MPP in early December 2005 reportedly found only 21 AP households living below the national poverty line. During consultation with the 21 APs about their preferences for livelihood training or cash instead of a program, those APs chose to receive a one-time cash assistance of \$200 in lieu of a short-term, livelihood-related training. All risks identified by the resettlement audit (discussed below) have been reduced as a result of the Government implementing the recommendations from the case study. Moreover, during a subsequent ADB Resettlement Review Mission, consensus was reached with APs, the Resettlement Specialist from ADB, and representatives from MPP, the Ministry of Water Resources and Meteorology (MOWRAM), and RU-IRC that the 21 AP households would be provided (i) health book that would help them have better access to government health services; (ii) access to the municipal government's credit program—the Urban Poverty Development Fund (UPDF)—when putting up

small businesses; and (iii) access to potable water.

More importantly, with lessons learned from past experience of the Highway 1 Project and Kab Srov Dike Subproject and with improved compliance with ADB's Involuntary Resettlement Policy, the resettlement planning and implementation for ongoing projects has improved in terms of compensation rates, relocation sites for the landless, income restoration programs, and grievance procedures, etc. The ADB review mission from 19 to 27 April 2006 found that the implementation of the recommendations of the Highway 1 audit and Kab Srov Dike review have been carried out by the IRC working group in a transparent manner. The interviewed APs expressed their satisfaction with regard to consultation and compensation related to the audit and review. APs are also now aware of the grievance process.

Although the resettlement planning and implementation on other ADB-financed projects have improved, the findings and recommendations from the two case studies made it possible to formulate a list of recommendations for consideration by the Government. Those recommendations are summarized below:

- (i) The Government should adopt the proposed National Resettlement Policy, to be codified later into a Sub-Decree. Since the passage of the Resettlement Sub-Decree is expected to take time, the Government should consider adopting in the interim the proposed Resettlement Handbook prepared under this RETA.
- (ii) The roles and responsibilities of government bodies involved in various capacities in projects with involuntary resettlement must be clarified. Appropriate training in resettlement should be given to the personnel in these agencies.
- (iii) The external monitoring agency (EMA) should be independent of the Government. For projects financed by a loan, the EMA could be contracted by the Government under counterpart funds and for projects financed by a grant. The EMA, with Government approval, must be contracted out of project funds and supported by the development partner agency.
- (iv) Project authorities should be more transparent in handling resettlement and should provide APs adequate information about the project and their rights under the resettlement policy.
- (v) Grievance redress mechanisms must be organized at the grassroots level, with the participation of NGOs and APs.

I. General Introduction

A. Project Background

Approval for the provision of technical assistance (TA) for Capacity Building for Resettlement Risk Management was granted in December 2002. Regional Technical Assistance (RETA) 6091 commenced in the fourth quarter of 2004, with Cambodia, the People's Republic of China (PRC), and India as participating countries. The overall goal of the RETA is to develop instruments that will help minimize poverty risks for people dispossessed of assets, income, and other livelihood resources. Specifically, RETA activities in each participating country aim to generate knowledge on (i) the identification of impoverishment risks associated with displacement and dispossession, and (ii) practical suggestions on how to address those risks through development interventions and assistance. A major output of the RETA is a country report that sets out issues and options for resettlement risk management country-wide and in projects with significant or sensitive resettlement, including recommendations to the Asian Development Bank (ADB) on tackling these issues. In this Country Report, two ADB-assisted infrastructure projects involving involuntary resettlement provided the case studies. The resettlement audit of the Phnom Penh to Ho Chi Minh City Highway Improvement Project (Loan 1659-CAM) served as the main case study.¹ The initial findings of the ongoing community needs assessment in the two adjoining relocation sites in Kab Srov (Loan 1824-CAM: Emergency Flood Rehabilitation Project, Kab Srov Dike Subproject) will augment the insights and lessons learned from the resettlement audit of Loan 1659-CAM.

Other outputs of the RETA that should be consulted alongside this report include a resource

data bank on current laws and policies relevant to involuntary resettlement, and a resettlement handbook for road projects.

B. Objectives

The country report describes and analyzes the resettlement of project-affected persons (APs) during the implementation of the Phnom Penh to Ho Chi Minh City Highway Improvement Project (also referred to in this paper as Highway 1 Project). The report draws a number of lessons related to livelihoods and impoverishment risks, asset losses, access to resources, compensation, and other income restoration assistance. These lessons would be applicable to future infrastructure projects that have involuntary resettlement. Moreover, the audit of the Highway 1 Project has made it possible, in the short term, for ADB to formulate a list of recommendations that have been adopted by the Government with the goal of addressing outstanding resettlement issues.

The country report is based mainly on the case study of the Highway 1 Project for National Road (NR1). Additional lessons were also learned from the experience of the Kab Srov Dike Subproject. However, the lack of human and financial resources significantly delayed the community needs assessment, which is a requisite in the identification and planning of an appropriate rehabilitation program for resettlers at the Kab Srov relocation sites.

C. Study Design and Scope

The purpose of the study was to identify mitigation measures that would help reduce impoverishment risks affecting resettled populations. In this particular study, however, special attention was focused on the poor and other vulnerable groups since, experience shows, that for them, the restoration of livelihoods is

¹ A resettlement audit of Loan 1659-CAM was conducted starting in November 2004 by the Infrastructure Division of the Mekong Department, Asian Development Bank (ADB), with funding support from Regional Technical Assistance (RETA) 6091.

particularly difficult and new forms of impoverishment are frequently an outcome of involuntary resettlement. Generally, better-off households are able to draw on a wider range of livelihood resources and social relations that help rehabilitation.

1. Scope of Work

Preparation of this country report involved the following activities:

- (i) Conducting gender-sensitive consultations with key stakeholders in government, development organizations, nongovernment organizations (NGOs), community-based organizations (CBOs), private sector agencies, and project APs;
- (ii) Analyzing the existing database on involuntary resettlement and rehabilitation in Highway 1 Project to identify risks associated with dispossession, displacement, and the lack of access to sources of income and livelihood;
- (iii) Conducting household-level interviews with APs; and
- (iv) Compiling legal documents on land acquisition and involuntary resettlement; profiles of public and private sector agencies and civil society groups; and creating a Resettlement Resource Data bank of legal documents, researchers, civil society representatives, and government agency personnel with expertise in resettlement.

2. Data Gathering

Data gathering methods involved a combination of reviewing available government records, documents, and policy guidelines pertaining to resettlement issues; conducting a resettlement audit of Highway 1 Project; interviewing concerned personnel of the Ministry of Economy and Finance (MEF), Ministry of Public Works and Transport (MPWT), the NGO Forum on Cambodia, and Legal Aid Cambodia (LAC); and holding focused group discussions (FGDs) with APs in selected communities.

FGDs were organized through the NGO Forum on Cambodia, which has a network of community-based

NGOs.² Participants to FGDs were purposely selected in communities where there is a large number of APs and based on the availability of affected people. As it turned out, while a number of the participants had unpaid claims, they cut across the various types of APs in terms of assets lost, severity of impacts, and standard of living. FGDs revolved around the following concerns: level of information about the Project, public information, consultation and participation, affected assets and valuation, awareness of resettlement policy and entitlements, grievance redress mechanism, level of satisfaction, impacts on the lives of the people, and suggestions of the people. The sessions for female and male APs were held separately to provide the women greater latitude to speak out their minds and participate in the discussion.³

3. Review of Literature

Materials reviewed for this study included government laws, policies, and guidelines in relation to resettlement and rehabilitation; resettlement plans (RPs); research papers; and policy and operational guidelines of multilateral and bilateral Development Partner agencies, such as ADB's *Policy on Involuntary Resettlement*, and its *Handbook on Resettlement: A Guide to Good Practice*; the World Bank's Operational Manual BP 4.12 and OP 4.12; and the Guideline for Environment and Social Considerations of the Japan Bank for International Cooperation (JBIC).

Four relevant laws were reviewed in detail: the Cambodian Constitution, the Land Law 2001, Forestry Law, and Law on Environmental Protection and Natural Resource Management. The review was carried out to provide better understanding of the rights of an entity over immovable properties, and the right to fair compensation and livelihood restoration, if affected by development projects. The review also looked for legal provisions that particularly address the situation of the poor and other vulnerable groups when affected by development projects.

Additionally, a number of government policies and procedures pertaining to involuntary resettlement were reviewed. These were *Sechkdey Prakas* (Order) No. 6, dated 27 September 1999; Notification No. 43, dated 6 September 2001; Ministry of Economy

² NGO Forum on Cambodia also has established a resettlement working group, which has received some training from ADB.

³ In focused group discussions (FGDs) conducted for affected persons (APs), there were 10 female and 10 male participants from Chi Pho Commune, 21 female and 10 male participants from Preack Khsay Kha, and 31 female and 15 male participants from Stoeung Slot.

and Finance (MEF) *Sechkdey Prakas* No. 961, dated 6 April 2000; Sub-Decree No. 19 ANK on Social Land Concession, dated 19 March 2003; Sub-Decree No. 62 ANK on Organization and Functioning of the Ministry of Land Management, Urban Planning, and Construction, dated 20 July 1999; Policy Paper on Social Land Concession, issued on 19 March 2002; and Statement on Land Policy, issued on 6 September 2002. Other government working papers, such as the resettlement policy framework for provincial and rural infrastructure projects and the draft National Resettlement Policy for Cambodia, were also reviewed.

RPs for the following road projects were also reviewed: National Road (NR) 1, prepared in 1997 by Scott Wilson Kirkpatrick and Bureau Central d'Etudes pour les Equipements d'Outre-Mer (BCEOM); NR 5, 6, and 7, prepared in June 2000 by Snowy Mountains Engineering Corporation (SMEC) International; and NR 51, prepared in December 2002 by Green Group. Also reviewed were the abbreviated RP for the Provincial Town Improvement Project (PTIP), prepared in 2003 by SAWAC Cambodia; the Poverty and Social Impact Assessment of Planned Social Land Concessions Program, prepared in March 2004; the Social Impact Assessment of Social Land Concessions in Cambodia, prepared by Cambodia Development Resource Institute (CDRI) in 2002; and the 14 February 2002 report of the NGO Forum on Cambodia on the complaints of APs in the Highway 1 Project, and which was submitted to ADB and to the Government of Cambodia.

4. Case Studies

Two case studies were conducted and the lessons learned from these two studies have been incorporated in this Country Report. The need for a resettlement audit of Highway 1 Project was suggested by ADB to the Cambodian Government in 2002, but it could not be

carried out until the second half of 2004 because of the Government's initial reluctance and because of funding problems. When the Government finally agreed, it was about the same time that activities for RETA 6091 in Cambodia were to commence. RETA 6091 opted to cofinance with the Infrastructure Division, Mekong Department of ADB the resettlement audit of Highway 1 Project because being the first public infrastructure project that applied ADB's Involuntary Resettlement Policy, it promised to provide a wealth of insights and lessons on involuntary resettlement and impoverishment risks. Broadly, the resettlement audit of Highway 1 aimed to look at the adverse social impacts of the project, determine what APs were entitled to receive for their losses, and what the Government provided for their losses for the purpose of identifying any unsettled resettlement issues for appropriate action by the Government to fill the gaps to bring implementation into compliance with the Project's RP.

Another case study is the Kab Srov Dike Project. Only rapid assessment and socioeconomic surveys were conducted. Therefore, information about this project is very limited compared to that of resettlement audit for Highway 1 Project.

D. Contents of the Report

This report used Michael Cernea's Risks and Reconstruction Model as a guide to identify the major impoverishment risks experienced by APs in the implementation of the Highway 1 Project. Chapter 2 presents national laws and policies on land acquisition and compensation. Chapter 3 presents international resettlement policy standards and gaps as compared to national laws and policies. Chapter 4 highlights findings and draws lessons from the two case studies. Chapter 5 draws conclusions and lays out practical recommendations for future action.

II. National Laws and Policies on Land Acquisition and Compensation

A. Introduction

Cambodia has experienced severe social, economic, and political turmoil during the last 20 years. Before the Khmer Rouge came to power in 1975, private land ownership was widespread, governed by the Cambodia Civil Code of 1920. Under the Khmer Rouge from 1975 to 1979, however, private property was abolished and all records destroyed. Following the fall of the Khmer Rouge, the new government introduced usufruct rights to facilitate the orderly occupation, by people returning to the urban areas, of vacant land and structures. In the rural areas, the Government organized families into groups that collectively owned land and assets they used and occupied. Each group of families had a head, and land was distributed to the families according to household size. However, all land in Cambodia remained the property of the State. It was not until 1989 that private ownership was fully restored. The current legislation governing land ownership is the Land Law of October 1992 and of August 2001, which recognizes claims to land made after the downfall of the Khmer Rouge in 1979.

This section reviews Cambodian laws and policies relevant to involuntary resettlement. The Constitution, the Land Law, including derivative decrees and orders, vest in the Government the power of eminent domain; exercised within the general framework of serving the public interest in exchange for just and fair compensation. However, the power of eminent domain is confiscatory by nature, not rehabilitative as is being propounded by the resettlement policies of multilateral development partner agencies. This is not to say that there are no laws that could be invoked to address specific concerns of involuntary resettlement.

Sub-Decree No. 19 ANK/BK, for instance, provides the condition within which landless families displaced by public development projects may acquire land on which to shift (Article 3). However, relocation is just one facet of involuntary resettlement. As a stopgap measure, but only for projects assisted by foreign development partner agencies with resettlement policies, the Government has created the Inter-ministerial Resettlement Committee (IRC) that is tasked to spearhead the preparation and implementation of RPs.

B. Constitution

The September 1993 Constitution of the Kingdom of Cambodia includes provisions that are relevant to involuntary resettlement. For instance, the right of the State to acquire private land for public purposes is to be exercised within the bounds of Article 44, thus

All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by law. The right to confiscate (land) possession from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance (underscoring provided by the author).

While not directly related to involuntary resettlement, Article 73 and Article 74 of the Constitution lend legal support to the special attention being given to vulnerable sectors of society who are displaced by development projects, thus

The State shall give full consideration to children and mothers. The State shall establish nurseries, and help support women and children who have inadequate support (Article 73).

The State shall assist the disabled and the families of combatants who sacrificed their lives for the nation (Article 74).

Although the Cambodia Constitution requires fair and just compensation for land acquisition, there are no further supporting procedures or regulatory frameworks that have been developed.

C. Land Law

A new Land Law was promulgated in August 2001, replacing the 1992 Land Law. Some provisions of the Land Law that are relevant to the issue of involuntary resettlement are the following:

- (i) *No person shall be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and only after the payment of fair and just compensation (Article 5, underscoring provided by the author).*
 - (ii) *All transfers or changes of rights of ownership shall be carried out in accordance with the required general rules for sale, succession, exchange, and gift or by court decision (Article 6).*
 - (iii) *Any regime of ownership of immovable property prior to 1979 shall not be recognized (Article 7).*
 - (iv) *The following property falls within the public property of the State and public legal entities:*
 - *Any property that has a natural origin, such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores;*
 - *Any property that is specially developed for general use, such as quays of harbors, railways, railway stations and airports;*
 - *Any property that is made available, either in its natural state or after development, for public use, such as roads, tracks, oxcart ways, pathways, gardens and public parks, and reserved land;*
 - *Any property that is allocated to render a public service, such as public schools or educational institutions, administrative buildings and all public hospitals;*
 - *Any property that constitutes a natural reserve protected by the law;*
 - *Archeological, cultural and historical patrimonies;*
 - *Immovable properties being royal properties that are not the private properties of the royal family. The reigning King manages royal immovable properties (Article 15).*
- (v) *The following are null and void and cannot be made legal in any form whatsoever: Any entering into possession of public properties of the State and public legal entities and any transformation of possession of private properties of the State into ownership rights that was not made pursuant to the legal formalities and procedures that had been stipulated prior to that time, irrespective of the date of creation of possession or transformation; Any transformation of a land concession ... except for concessions that are in response to social purposes ... Any entering into possession of property in the private property of the State, through any means, that occurs after this law comes into effect (Article 18).*
 - (vi) *Any person whose titles or factual circumstances fall within the scope of Article 18 of this law shall not have the right to claim for any compensation or reimbursement for expenses made for the maintenance or management of immovable property that was illegally acquired. Any illegal and intentional or fraudulent acquisition of public properties of the State or of public legal entities shall be penalized pursuant to Article 259 of this law. The penalties shall be doubled where any acquisition of land from the public properties causes damage or delay to works undertaken in the general interest, in particular any acquisition of roadway reserves. In all cases, if an offender does not vacate his illegal acquisition within the time limit set by the competent authority, the authority shall begin proceedings to evict the offender from the land (Article 19).*

- (vii) *Any person who, for no less than 5 years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership (Article 30).*
- (viii) *If the eviction ordered by a court is likely to give rise to instability or to have serious social repercussions, the competent authorities may request a temporary suspension of the execution of the order (Article 36).*
- (ix) *An infringement against public property shall be fined from Khmer riel (KR) 5 million to KR50 million [between \$1,250 and \$12,500] and/or imprisoned from one (1) to five (5) years. The perpetrator must vacate the public property immediately. He has no entitlement to any indemnity for works or improvements that he made on the public property. In the case of a person who was in possession of State public property before this law comes into force and has document proving and attesting clearly that he bought the property from another person, he can request the competent authority to enforce legal measures against the person who illegally sold public property of the State and in order to recover his damages caused by such act. Regardless of the circumstances, the aggrieved party has no right to continue his possession of the State public property (Article 259).*

The Land Law of 2001 also recognizes the rights of indigenous peoples over their land and their traditional means of productions, thus

- (i) *Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law (Article 23).*
- (ii) *The lands of indigenous communities are those lands where the said communities have established their residences and where they carry out traditional agriculture. The lands of indigenous communities include not only lands actually cultivated but also includes reserved land necessary for the shifting of cultivation which is required by*

the agricultural methods they currently practice and which are recognized by the administrative authorities...The measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbors, and as prescribed by procedures in Title of this law and relevant sub-decrees (Article 25).

- (iii) *No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community (Article 28).*

While an individual's rights to ownership and compensation are protected, there are no clearly defined mechanisms and standards for land acquisition or for determining levels of compensation. IRC⁴ decides on entitlements, land values, and other forms of compensation; APs have no right to appeal and are obliged to sell their assets at values set by IRC. The law that will provide the framework within which expropriation of properties for public projects will be undertaken is being drafted by the government.⁵

D. Sechkdey Prakas No. 6 BRK

Sechkdey Prakas No. 6 (27 September 1999): Measures to Crack Down on Anarchic Land Grabbing and Encroachment orders an end to encroachment into public and private properties as well as state lands, including public gardens, land reserved for roads and railways. The Order directs municipal and provincial authorities, the Royal Cambodian Armed Forces, the National Police, Military Police, and all relevant ministries and institutions to participate in enforcing the *Sechkdey Prakas*.

The *Sechkdey Prakas* has set a right-of-way (ROW) of 50 meters (m) for national roads (NRs) with a one-digit number (i.e., NR Nos. 2, 3, 6, and 7), with the exception of NR Nos. 1, 4, and 5, which have a 60-m ROW. Similarly, NR Nos. 11, 22, 64, and 78 have a 50-m ROW. Urban areas traversed by the aforementioned roads will have narrower ROWs.

⁴ Created on 18 March 1997 by virtue of Government Order No. 13 to carry out the acquisition or affected private properties and the resettlement of APs in Highway 1 Project (under the ADB-assisted Loan 1659-CAM). For more on this, see Section 3.9.

⁵ ADB TA 4490 CAM: Enhancing the Resettlement Legal Framework and Capacity Building is assisting the Government to draft a sub-decree on Land Acquisition and Compensation.

The Government, however, failed to adequately inform the public about the ROW it has set for various types of roads; neither has the Government demarcated and mapped them. Prior to the issuance of the *Prakas*, the width of ROW was not legally defined, although the Government has assumed a 50-m de facto ROW for national roads based on pre-1975 practice.

The *Prakas* does not spell out how to acquire land from those who are living within the set ROW before its issuance in September 1999. The Land Law 1992 (Article 74) states that if any temporary possessor peacefully, honestly, publicly without ambiguity occupied a land (this land is referred to private state land, see Article 18 of the Land Law) for 5 consecutive years and the land is free with no record in the enrollment register and does not belong to anybody, the temporary possessor shall become a legitimate owner of that land. This Article is reiterated in Article 30 of Land Law 2001. The Land Law is silent on whether or not this applies to ROW land, but does not specifically state that it does not apply. Nevertheless, the Government is enforcing this Article selectively.

E. MEF *Prakas* No. 961

The Ministry of Economy and Finance (MEF) *Prakas* No. 961 (6 April 2000) is an Order issued to enforce *Sechkdey Prakas* No. 6. The *Prakas* disallows any payment to be drawn from the national budget for structures and other assets located within the ROW. The MEF *Prakas* is consonant with the position of the 2001 Land Law that individuals who have illegally occupied the ROW or public properties are not entitled to any compensation or social support, regardless of their being an AP or a member of vulnerable groups.

F. *Sechkdey Choundamnoeng* (Notification) No. 43 SCFIN KBCH

Notification No. 43 (6 September 2001): “*Cessation of Acquisitive Possession of Immovable Property*” enjoins all levels of government to prevent and prohibit new acquisition of public and State land by private entities following the effectivity of the 2001 Land Law. After the Notification, many state private lands were sold to private entities in the form of exchange with new locations.

G. Sub-Decree No. 19 ANK/BK

The Sub-Decree on *Social Land Concession*, issued on 19 March 2003, defines the criteria, procedures, and mechanism for granting and transferring private State land to the poor for residential and/or family farming purposes. This Sub-Decree is specifically directed to vulnerable groups as enunciated in Article 3 and Article 18, thus

- (i) *Social land concessions may be granted for one or more of the following social purposes: Provide land for residential purposes to poor homeless families; Provide land to poor families for family farming; Provide land to resettle families who have been displaced resulting from public infrastructure development; Provide land to the families suffering from natural disaster; Provide land to repatriated families; Provide land to demobilized soldiers and families of soldiers who were disabled or died in the line of duty* (Article 3, underscoring provided by the author).
- (ii) *After correctly complying with the criteria of the social land concession program for five (5) years, the target land recipient has the right to ownership of the land ... The target land recipient may not sell, rent or donate social concession land during the first five (5) years of the implementation of the social land concession program...* (Article 18).

The Sub-Decree not only provides land; it includes provision of basic infrastructure and services in order to improve the living standards and livelihood of recipient families. Article 9 requires that

“... an assessment (be done) of the availability of infrastructures necessary to implement the (development) plan, including such things as roads, water, electricity, schools, markets, health care center, and tools and equipment to develop the land, other services, information about how and when to prepare these physical infrastructures and to provide those public services...”

While the Sub-Decree requires the preparation of a development plan, it does not spell out the framework and the procedures for preparing and carrying out the plan. Furthermore, concession land provided to people is smaller or of no value and far away from the town

or urban center. Past experience shows that most of the families abandon the land and move to places where there are job opportunities.

H. Sub-Decree No. 62 ANK

Sub-Decree No. 62 (20 July 1999): “*Organization and Function of the Ministry of Land Management, Urban Planning and Construction*” spells out the functions of the various offices that make up the Ministry of Land Management, Urban Planning and Construction (MLMUPC). It also mandates MLMUPC to recommend policies, plans of action, and measures to help address the problem of squatting.

The Sub-Decree describes the role and responsibility of MLMUPC in connection with the processing of applications and the granting of land titles, not to mention the issuance of construction permits and licenses to engage in the business of architectural design and construction. Additionally, MLMUPC is responsible for compiling and updating the market rates of construction materials, equipment, and labor in all the provinces and cities.

At present, MLMUPC is carrying out a huge project called the Land Management and Administration Project. The project is important to provide secure land tenure rights, improve the land administration system, and to develop capacity for land management, so that the entire population of Cambodia could benefit. The project is under the umbrella of the Royal Government’s Land Administration, Management, and Distribution Program (LAMDP), which is expected to be implemented over the next 15 years. The objectives of LAMDP are to (i) strengthen land tenure security and land markets, prevent and resolve land disputes; (ii) manage land and natural resources in an equitable, sustainable, and efficient manner; and (iii) promote land distribution with equity. So far, many landholders have received proper land titles free of charge.

I. Decision No. 13 and Prakas No. 098

Addressing involuntary resettlement is a recent phenomenon in Cambodia. Decision No. 13, issued on 18 March 1997, created the Inter-ministerial Resettlement Committee (IRC) that was tasked to

...conduct inspection in the field to quote the statistics of the impact on construction, houses and land of people along the National Road 1 (Loan 1659-CAM: Phnom Penh to Ho Chi Minh

City Highway Improvement), and then to make an appropriate assessment to be used for submitting to the Royal Government for consideration and approval of a budget amount as a policy for those people (Article 3).

Decision No. 13 was put on hold until 1999, however, because of the political instability that beset the country at that time. It was resurrected on 16 February 1999 through *Prakas* No. 098, entitled “Establishment of Inter-ministerial Resettlement Committee for Monitoring and Evaluation of Affected People along National Road No. 1 from Phnom Penh to Bavet”.

IRC is chaired by MEF with members coming from MPWT; Council of Ministers (COM); Ministry of Agriculture, Forestry and Fisheries (MAFF); Municipality of Phnom Penh; and the Governor or Vice-Governor of affected provinces. Initially, IRC was created to address resettlement issues in the Highway 1 Project. The Government later decided to extend the tenure of IRC to cover all infrastructure projects funded by the Government and foreign development partner agencies that had policies on involuntary resettlement. Now, IRC plays a dominant role in all resettlement activities both planning and implementation, the reason given by IRC being effective use of the government budget for resettlement spending.

In general, the policy and legal framework supporting resettlement is very limited although the Cambodia Constitution (1993) and Land Law (2001) protect the rights of individuals to possess and occupy land. The Laws, both the Cambodia Constitution and the Land Law, require fair and just compensation for land taken for public interest. In practice, for government- and private-funded projects, the law, on the one hand, has never been applied and people suffered from development. On the other hand, for ongoing projects funded by the Government, those APs get compensations according to negotiation approach (Willing-buyer-Willing-seller) with full public consultation. However, it has been accepted that the government projects have never prepared RPs. In past projects funded by multilateral and bilateral development partner agencies, fair and just compensation remained doubtful since the compensation cost was covered by the government national budget and IRC, led by the former management was the sole agency that fixed the compensation rates for all affected assets. The current IRC conducts replacement cost study jointly with representatives from line Ministries, NGO, local consultant, and provincial subcommittee to get acceptable compensation rates for all affected assets.

III. Resettlement Policy Gaps

A. Introduction

This chapter considers the significance of the gaps between domestic laws and policies and the resettlement policies of multilateral and bilateral development partner agencies. A key starting point is that Cambodia has no resettlement policy and, therefore, development projects funded by the Government and the private sector are not required by law to have RPs. In contrast, projects funded by multilateral and bilateral development partner agencies are required to have RPs. There are, in effect, two separate standards for development and resettlement in Cambodia with clear consequences for those affected by such projects.

Assisted involuntary resettlement in infrastructure projects is a new concept in Cambodia and has only been implemented for about 6 years. The first project that required an RP was the Highway 1 Project for National Road (NR 1) funded by ADB in 1999. Policymaking in Cambodia to develop resettlement standards and procedures, and the creation of a legal framework have evolved in partnership between the Government and lending agencies (ADB and World Bank) that have well-developed involuntary resettlement policies. Since the Government has no national policy on involuntary resettlement, the government-financed and private-investment projects do not require RPs regardless of the length of time persons may have lived on the site. More seriously, people have been forced to leave or remove their assets from the lands taken for government projects. One such case is the build–operate–transfer (BOT) contract between the Government and AZ Company for the rehabilitation of NR4. It was common knowledge that in the ongoing road construction, people were being evicted from ROW without compensation in accordance with Prakas No. 961 dated April 2000.

Although some development projects do have RPs, in Cambodia as in other countries, actual implementation varies greatly from project to project. Projects funded by ADB, the World Bank, the Japan International Cooperation Agency (JICA), and the Japan Bank for International Corporation (JBIC) are required to have RPs and must comply with their policy and guidelines. So far, projects that have RPs are national road rehabilitation projects, e.g., NR1, 3, 5, 6, 7, and 51; Kab Srov Dike Subproject; Stung Chinit Irrigation Project; Provincial Town Improvement Project, Grid Extension Project; and Greater Mekong Subregion (GMS) Transmission Project. To date, no rural road project has included an RP; rural road projects apply only the *Sechkdey Prakas* No. 06.

B. Policies on Involuntary Resettlement of International Development Partner Agencies

Development projects carried out by both the public and private sectors may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For this reason, multilateral development partner agencies, such as ADB and the World Bank, have very clear policies on involuntary resettlement. While the bilateral development partner agency, JBIC, has no detailed resettlement policy, JBIC's general position on addressing involuntary resettlement is spelled out in its *Guideline for Environment and Social Considerations* issued in April 2004. An excerpt from the 1995 Policy on Involuntary Resettlement of ADB is shown in Box 1 or in the *Handbook on Resettlement: A Guide to Good Practice* printed in 1998, while the World Bank's can be found in its Operational Manual BP 4.12 and OP 4.12, issued in December 2001. Each bank's policy can also be found on its respective website.

The common goal of international development partner agencies is to promote sustainable development through encouraging economic growth and alleviating poverty in their recipient countries and to ensure that development assistance does not cause adverse impacts to the environment or the population. Their assistance pays special attention to the most vulnerable groups.

The overall objective of ADB and World Bank's policies on involuntary resettlement is to assist APs to improve their former production levels, income and food generation capacity, and living standards or, at least, to restore their income-earning capacity and living standards to their pre-project levels. Customary and formal rights are recognized equally in providing

Box 1: ADB's Involuntary Resettlement Policy

Involuntary resettlement should be an important consideration in project identification. The three important elements of involuntary resettlement are (i) compensation for lost assets and loss of livelihood and income, (ii) assistance for relocation including provision of relocation sites with appropriate facilities and services, and (iii) assistance for rehabilitation to achieve at least the same level of well-being with the project as without it. Some or all of these elements may be present in projects involving involuntary resettlement. For any project that requires relocating people, resettlement should be an integral part of project design and should be dealt with from the earliest stages of the project cycle, taking into account the following basic principles:

- i. Involuntary resettlement should be avoided where feasible.
- ii. Where population displacement is unavoidable, it should be minimized by exploring all viable project options.
- iii. If individuals or a community must lose their land, means of livelihood, social support systems, or way of life in order that a project might proceed, they should be compensated and assisted so that their economic and social future will generally be at least as favorable with the project as without it. Appropriate land, housing, infrastructure, and other compensation, comparable to the without project situation, should be provided to the adversely affected population, including indigenous groups, ethnic minorities, and pastoralists, who may have usufruct or customary rights to the land or other resources taken for the project.
- iv. Any involuntary resettlement should, as far as possible, be conceived and executed as a part of a development project or program and resettlement plans should be prepared with appropriate time-bound actions and budgets. Resettlers should be provided sufficient resources and opportunities to reestablish their homes and livelihoods as soon as possible.
- v. The affected people should be fully informed and closely consulted on resettlement and compensation options. Where adversely affected people are particularly vulnerable, resettlement and compensation decisions should be preceded by a social preparation phase to build up the capacity of the vulnerable people to deal with the issues.
- vi. Appropriate patterns of social organization should be promoted, and existing social and cultural institutions of resettlers and their hosts should be supported and used to the greatest extent possible. Resettlers should be integrated economically and socially into host communities so that adverse impacts on host communities are minimized. One of the effective ways of achieving this integration may be by extending development benefits to host communities.
- vii. The absence of formal legal title to land by some affected groups should not be a bar to compensation. Affected persons entitled to compensation and rehabilitation should be identified and recorded as early as possible, preferably at the project identification stage, in order to prevent an influx of illegal encroachers, squatters, and other nonresidents who wish to take advantage of such benefits. Particular attention should be paid to the needs of the poorest affected persons including those without legal title to assets, female-headed households and other vulnerable groups, such as indigenous peoples, and appropriate assistance provided to help them improve their status.
- viii. The full costs of resettlement and compensation, including the costs of social preparation and livelihood programs, as well as the incremental benefits over the "without project" situation, should be included in the presentation of Project costs and benefits.
- ix. To better assure timely availability of required resources and to ensure compliance with involuntary resettlement procedures during implementation, eligible costs of resettlement and compensation may be considered for inclusion in Bank loan financing for the project, if requested.

assistance and in devising criteria for entitlements and procedures for compensation and other resettlement assistance. Likewise, the absence of formal legal title to land by some affected groups should not be a bar to compensation, and particular attention should be paid to the needs of the poorest APs, including those without legal title to assets, female-headed households, and other vulnerable groups, such as indigenous peoples, and appropriate assistance provided to help them improve their status.

The resettlement principles of these development partner agencies share the position that the adverse social impacts of projects must be avoided; if adverse social impacts could not be avoided, they should be minimized and mitigated, ensuring that the quality of life of APs is restored to at least their pre-project level. Specifically, the policy calls for (i) compensation for lost assets at replacement cost; (ii) compensation for income loss; (iii) relocation assistance for the severely impacted needing to shift, including the provision of relocation sites, as needed, with appropriate facilities and services; (iv) rehabilitation assistance to achieve at least the same level of well-being of APs without the project; and (v) the meaningful participation of APs in planning and implementing resettlement programs.

C. Gaps between Domestic Laws/Policies and International Practices

Cambodia currently does not have a comprehensive involuntary resettlement policy and, to a large extent, this deficiency is an obstacle in the way of ensuring the minimum standards in resettlement and rehabilitation demanded by the international development partner agencies. The current government laws and policies on ROW acquisition are concerned, more than anything else, with acquiring land and other assets needed for development projects in the most expeditious and cheapest way. Under the Land Law (2001), those who have occupied a ROW or public properties are not entitled to any compensation or social support, regardless of their being an AP or from a vulnerable group. Prakas No. 961, as mentioned earlier, reiterates this legal position. In contrast, the position of international development partner agencies is that the absence of a formal legal title to land by APs should not be a bar to compensation, and that all APs should be assisted to at least restore their pre-project social and economic status, and that vulnerable APs should be assisted to improve their status.

Moreover, the current land law provides that persons having assets on road and rail ROWs will be punished more heavily if their failure to relocate results in delays in works of public interest. On the other hand, international development partner agencies believe that where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as a sustainable development program, providing sufficient investment resources to enable APs to share in project benefits. Additionally, APs should be fully informed and meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs.

In claims for compensation where land is taken, Article 5 of the 2001 Land Law states that no person shall be “deprived of their ownership unless this action is for the public interest consistent with formalities and procedures provided by law...and after just and fair compensation”. It does not provide compensation for other types of losses. Also, Article 44 of the 1993 Constitution states that the right to confiscate (land) possession from any person shall be exercised only in the public interest⁶ as provided for under law and shall require fair and just compensation in advance. In contrast, ADB and the World Bank’s policies require that compensation for lost assets must be made in full amount at replacement cost and at current market price.

The Government has no clear policy or procedure to restore the livelihoods of APs while ADB and World Bank policies aim to ensure that the quality of life of APs should be restored to at least pre-project level. Policies of development partner agencies on involuntary resettlement pay special attention to vulnerable groups, including ethnic minorities. In this regard, ADB’s policy requires that vulnerable groups be assisted to improve their status. The 1993 Constitution and the 2001 Land Law do not address involuntary resettlement.

D. Stopgap Measures

In the absence of a national resettlement policy and law on appropriation or acquisition of land, all locally funded development endeavors carried out by the Government is governed by the State’s inherent power of eminent domain as embodied in the 1993 Constitution and the 2001 Land Law. On the other hand, the Government waives the application of any law that is not consistent with the resettlement policy of foreign development

⁶ Public interest is not operationally defined in the Constitution and in derivative laws and is, therefore, open to interpretation.

partner agencies and, in theory at least, commits itself to abide by the said resettlement policy of the development partner agency. This approach by the Government creates confusion within agencies implementing public infrastructure projects and creates a two-tier system with quite different levels of legal protection, individual and

collective rights, and in the provision of assistance. To date, resettlement projects have been conducted on an *ad hoc* basis, with some projects having an RP developed for that specific project, while others have none. Although RPs may exist for development partner-financed projects, their implementation varies greatly from project to project.

Table 1: ADB’s Involuntary Resettlement Policy and Its Application in Cambodia Resettlement Work

ADB Policy	ADB Policy Application in Cambodia/Resettlement Work
<p>Involuntary Resettlement Policy is applied to all development projects resulting in (i) loss of productive assets, including land, income, and livelihood; (ii) lost of housing, possibly entire community structure, systems, and service; (iii) loss of other assets; loss of community resources, habitat, cultural sites, and goods.</p>	<p>ADB’s Involuntary Resettlement Policy is being applied to ADB-financed projects in Cambodia.</p>
<p>Involuntary resettlement should be avoided, where feasible.</p>	<p>Involuntary resettlement has been avoided through consideration of alternative project locations and narrowing ROWs to a designated corridor of impact (COI) and realigning COI, and permitting resettlers to relocate within the remaining ROW outside of COI, with acknowledgment by the resettlers that they would not be entitled to future compensation if required to move out of the remaining ROW in the future.</p> <p>However, households accept the fact that they will, in the future, be removed by the Government entirely from ROW in accordance with the Government’s legal framework.</p>
<p>Where population displacement is unavoidable, all viable project options should be explored to minimize displacement.</p>	<p>Various project options (e.g., bypass road design) have been explored to minimize displacement to as few households as possible.</p>
<p>People unavoidably affected should be compensated and assisted so that their economic and social future would be generally as favorable as it would have been in the absence of the project.</p>	<p>Land-for-land is offered in some cases, though not all APs who lost land have been allocated a relocation site. Cash compensation is given for affected house, trees and other structures, and privately owned land. Additional assistance is given to female-headed, disabled, elderly, and very poor households, and cost of removal and transport of salvage materials. Some rehabilitation assistance has been given but not enough to cover to pre-project level. Future job opportunities at relocation sites have not generally been considered, with some exceptions. Compensation paid does not ensure income restoration and living standards, with a few exceptions.</p>
<p>Existing social and cultural institutions of resettlers and their hosts should be supported and used to the greatest extent possible, and resettlers should be integrated economically and socially into host communities.</p>	<p>The existing social and economic situations of APs and their hosts have, in some cases, been supported, but not consistently applied.</p>
<p>The full cost of resettlement and compensation should be included in the presentation of project costs and benefits.</p>	<p>Compensation costs are budgeted in projects funded by ADB and the World Bank. It is not possible to determine if this is consistently applied in nonbank-funded projects.</p>
<p>The absence of a formal legal title to land by some affected groups should not be a bar to compensation; particular attention should be paid to households headed by women and other vulnerable groups, such as ethnic minorities, and appropriate assistance provided to help improve their status.</p>	<p>Absence of legal title to land has not been a determining factor in compensation payments, as long as APs are outside of ROWs. It is against the law to compensate for ROW land, however, such compensation has been paid on some ADB-financed projects. In the case of Loan 1945-CAM, compensation has been paid for loss of land use in ROW. Similarly for the proposed Cambodia Railway Improvement Project, compensation will be paid for loss of land use in ROW; however, recognizing that APs make their livelihood from doing business within ROW, such APs will have the option of moving outside of ROW with full compensation for loss of land use or, if they prefer, will be allowed to stay within the remaining ROW outside of COI, but only with the agreement that they will, in the future, be removed by the Government entirely from ROW in accordance with the Government’s legal framework .</p> <p>The assistance needed by vulnerable groups was limited to a small cash allowance and no efforts were made to improve their status. In recent ADB-financed projects, assistance to vulnerable households has improved: they are now given cash equivalent of rice during the transition period, and access to an income restoration program to assist them to improve their situations. Vulnerable groups are not identified or specially assisted in domestically funded projects.</p>

ADB = Asian Development Bank, AP = affected person, ROW = right of way.

Source: Comparative matrix prepared by the author.

IV. Lessons Learned from Case Studies

This chapter summarizes the findings and draws lessons from the two case studies of the Phnom Penh to Ho Chi Minh Highway Improvement Project (Highway 1) and Kab Srov Flood Protection Dike Sub-Project (Kab Srov). However, the information herein is mainly drawn from the resettlement audit of Highway 1. Information from Kab Srov is limited.

A. Compliance with Resettlement Policy

Resettlement is a new concept in Cambodia and has only been implemented for about 6 years. The first project that required an RP was the Highway 1 Project funded by ADB in 1999. Prior to this, no experience with preparing an RP existed unless one was required by the funding agencies. To date, the World Bank, ADB, and JICA may be the only development partner agencies that impose such a requirement. RPs for Highway 1 and Kab Srov projects were prepared complying with ADB's Involuntary Resettlement Policy. However, the implementation was not in accordance with RPs in many aspects.

B. Compensation and Entitlement

In the two case studies, affected assets were classified into four main categories, namely, land, house, trees, and other structures. APs were entitled to cash assistance⁷ for their eligible affected assets; rights to salvage building materials; and additional allowances (in cash) were to be given to vulnerable households (female- and disabled-headed households, elderly families, and families who had monthly incomes of less than \$10); and disruption allowance for removing the affected structures; and shifting allowance for

transporting salvaged materials. Households not entitled to compensation for residential land in road ROWs were, nevertheless, entitled to a plot of land on a resettlement site.

In the case of the Highway 1 Project, the compensation payment processes were delayed, causing APs losses in compensation benefits. Although the compensation agreements were accepted and signed by affected households, it took a long time to deliver compensation and, thus, delays caused losses in value as a result of inflation and unstable market prices of materials or assets. In some cases, the affected households had moved away from the project site before the compensation had been paid and sometimes there were objections to compensation awards offered by the IRC working group.

Experience from Highway 1 indicates that no cash compensation was paid for land and trees located on so-called public land or ROW regardless of the period of time persons may have lived on the site. The government may have at least violated adverse possession laws accepted by most countries with a developed legal system. Road Rehabilitation of NR 51 funded by the World Bank received cash compensation for trees located on ROW but not for land. Households made landless when cleared out of ROW on Highway 1 were not offered a relocation site during RP implementation. However, the Government finally did agree to provide a resettlement site with basic infrastructure as a result of resettlement audit. For households made landless by removal from road ROW clearance for the Kab Srov Dike, in all cases, a relocation site was offered during RP implementation. For privately owned land needed for the project, the Royal Government of Cambodia (RGC) purchases the land at a rate specified by a designated working group or IRC. Basically, there are two to three categories of land price: village land (for rural areas), residential land (for urban areas), and farmland. The price set for land is rarely subject to negotiation. There is no specified method used to value the land. Affected

⁷ The Royal Government of Cambodia uses the term assistance rather than compensation as stated in the ADB's policy on involuntary resettlement attempting for losses within ROWs where APs do not have rights to land.

houses, other structures, and trees are compensated in cash.

According to the laws/policies, compensation must be “fair and just”. This, however, is subject to a wide range of interpretations. In reality, what is considered “fair and just” has usually simply been what has been negotiated between a government authority and an AP. APs that are better off and better educated tend to have more negotiating power. The problems with this type of approach are obvious and are clearly stated in FGDs with APs.

Although the present laws protect individual rights to ownership and compensation, there are no clearly defined provisions or mechanisms for land acquisition by the State through expropriation. Without such a legal framework, there are many practical issues regarding valuation and expropriation of immovable properties and, therefore, it is based on decisions of government staff. In the two case studies, IRC was charged with determining entitlements, valuation of affected assets, and in fixing compensation rates, although compensation rates are now determined through a replacement cost study. The absence of specific acquisition procedures and compensation policies for assets acquisition will remain difficult issues in resettlement projects in Cambodia.

C. Inventory of Affected Assets

The three surveys—inventory, census, and socioeconomic—were conducted together. Most members of the IRC working group involved in the surveys had no past experience nor had they been trained in this work. The number of affected households and assets were not properly recorded. Survey tools, such as checklists and questionnaires, were not comprehensively designed. Therefore, the quality of work was uncertain. Interviews conducted among a number of IRC members, especially those from line ministries and provincial and local authorities, found that very few of them were aware of the relevant resettlement policy. This resettlement planning was inadequate despite the presence of ADB-financed project preparatory technical assistance (PPTA) to conduct resettlement planning activities and to prepare the RP.

D. Asset Valuation

The asset valuation conducted by the project authorities was just a rough estimation without explanation of any

justification to APs. Thus, APs were not fully informed or consulted. In some cases, the affected properties were not properly valued and compensated. Some APs received compensation that was less than the agreed upon formula specified in RPs.

The land valuation was estimated based on detailed measurement survey (DMS) and market survey. There is difficulty in reaching agreement on what constitutes fair market value for land. Basically, the market value for land should be based on transactions that have taken place for the same type of land in the same geographic area. Unfortunately, in practice, very few land transactions are actually registered. Furthermore, transactions that are registered do not necessarily reveal the true purchase price paid for the land. Prices set for farm/agricultural land are generally acceptable to APs, while the price for urban land is allegedly far below the market price and, to a large extent, not acceptable to APs. The price for village land is somehow accepted by APs.

Residential structures were classified into only four subjective categories for compensation, while ongoing projects are classified into 14 categories. The small number of housing categories has created large gaps between the various categories, leading to some alterations made in the compensation formula in an attempt to restructure this inequity. This became a core subject of negotiation during resettlement implementation. Increasing the number of housing categories or subcategories to narrow the gaps between different types of housing has proven to be more productive and transparent for compensation, as has been tried on the GMS Road Improvement Project (Loan 1945) from Siem Reap to Poipet. Some simple calculating or estimating techniques used by engineers and architects, e.g. unit-based cost estimate, can also be applied for calculating costs of affected houses and other structures.

Experience from the case studies shows that the compensation estimates for affected houses were not based on a replacement cost survey. In the Highway 1 Project, the calculation of compensation for affected houses was based on deduction for the depreciated value of construction materials and for the salvageable materials. In compliance with ADB's audit recommendations, the Government agreed to recompensate the deducted amount for APs' lost assets. Thus, all APs will now receive their full entitlement.

Other structures entitled for cash compensation include fences, graves, tombs, fish and lotus ponds. No

payments were made for land filling (land improvement) by APs or soil excavation during the civil work. Lump-sum payments were made. However, the method used to calculate the compensation value of each affected structure was unknown.

Compensation was not paid for affected trees located on ROW. Trees that were entitled to compensation were those that add value to household income or livelihood, including tamarind, jackfruit, palm tree, coconut, mango, bamboo, cashew, and other locally planted trees. Trees that were considered to have grown naturally were not entitled to compensation. The compensation was paid in a lump sum per tree regardless of age and production. The method used to calculate compensation for each tree species remains unclear. The compensation estimated for each tree species was even less than the yield for 1 year. FGD with APs from the Highway 1 Project found that some households depend on the income from the affected trees, i.e., mango, palm tree, and cashew nut. On more recent projects funded by ADB, World Bank, and JICA, compensation for trees and perennial crops is calculated to account for loss of productivity.

Community properties included school and temple fences and gates, community water ponds, and amenities. The compensation for these properties was in-kind, e.g., gate for gate and pond for pond. In practice, many communities complained about the poor quality of new replaced properties especially the temple gates. In general, the communities were not consulted on the design of the new replacements.

E. Income Restoration and Economic Rehabilitation

On both case studies, APs experiencing severe impacts were those who would lose their entire land and they would be entitled to resettlement at a new relocation. Fully-serviced relocation sites were provided to landless APs for the Kab Srov Dike Sub-Project, although water supply has not yet been extended to that area.⁸ At the new relocation sites, each AP was provided a plot of land for housing and compensation for value of the affected housing. Apart from this, the sites were provided with some basic infrastructure and services, including road, toilet, and water well. No rehabilitation plans have been developed for the projects. As a result

⁸ Basic infrastructure, such as wells, access road, and latrine, of the Stoeung Slot relocation site will be developed very soon after completing the second compensation, according to the order of the Inter-Ministerial Resettlement Committee (IRC) Chairman.

of the resettlement audit of Highway 1, displaced APs will receive additional cash for livelihood restoration. Highway 1 APs complained about the poor quality⁹ of well water on the resettlement site and no funds for maintaining the wells, no space for running businesses for their livelihood. APs who lost permanent spaces for their business were not provided rehabilitation assistance. For Highway 1, following the APs' complaints put forward through NGOs and ADB's subsequent audit, one resettlement site was built and RGC agreed to build others, and provide lump-sum cash payment to assist APs with livelihood restoration.

F. Gender and Vulnerable Groups

Vulnerable households have not been well-defined, and only a flat rate allowance is provided. Households who have female and disabled heads and elderly households are entitled to receive an additional \$20 allowance. This allowance does not make any change to their quality of life. Moreover, it can lead to unfairness among members of these groups, as some APs are more severely affected than others and may need more assistance, whether in the form of social services or cash compensation. However, very little effort has been made in this regard. The resettlement audit of Highway 1 clearly indicated that vulnerable APs—e.g., female-headed households with many dependents, households with elderly persons, and disabled households—are facing hardships and remain in temporary shelter awaiting government assistance. A study conducted by the Municipality of Phnom Penh in August 2005 found that of 86 households resettled in Kab Srov in 2001, only 37 (43%) remain in the relocation site. The rest moved back to Phnom Penh City. This is due to the lack of job opportunities in and around the relocation site and deficiency or malfunction of infrastructure and services, such as water supply, drainage, and solid waste collection system.

G. Public Participation and Consultation

Full public participation and meaningful consultation is key to success. The policies of the development partner agencies, as well as that of the RGC as stated in the Forestry Law, require having full participation and consultation with the people and communities who

⁹ APs in all cases refer to individuals, households, and communities who are affected by the project.

may have potential adverse impacts from development activities. The policies also require that full information about the project and its impacts should be disseminated to APs¹⁰ in a transparent manner. In practice, this has never been realized. APs and communities were invited to a public meeting once before the compensation payments were made. At the meeting, APs were informed about the project, its impact, and compensation rates. APs voiced their complaints about compensation rates but no action was taken to address them. They were informed that the rate was fixed by RGC and could not be changed. During the meeting, APs were told that there was assistance from RGC but no compensation because RGC was too poor to pay APs the full amount.

In Highway 1, a public meeting was held only prior to the payment of compensation and no Public Information Booklet was distributed to APs. Likewise, only limited information was revealed to APs. Information about full compensation, entitlement, and grievance redress were rarely or had never been given to APs. In short, APs had not been fully informed or closely consulted in a transparent manner.

H. Grievance Redress

In all cases of resettlement implementation in Cambodia, only in the two case studies was grievance redress coursed through the IRC working group. Although the official Grievance Redress Committee is established, its members are from IRC. Therefore, IRC plays a dual role, one is as resettlement implementation agency and another is dealing with complaints. Hence, most of APs' verbal claims were not entertained or solved and they (APs) were asked to write official claims. As a result, many complaints were ignored by APs, as they neither know how to write a complaint nor can they spend time on this. Traditionally, when talking about complaints, Cambodians perceive that it involves lawsuits and they may have to end up spending money and time on the complaint. Most poor or powerless people do not rely on the court system as they believe that they would lose their cases especially complaints or lawsuits against the Government. However, on more recent projects, including Loan 1945-CAM, APs can put forward their complaints through the village chief, commune head, or project NGO, and the process is explained to APs.

¹⁰ APs in all cases refer to individuals, households, and communities who are affected by the project.

I. Monitoring and Evaluation

The internal monitoring and evaluation has proven ineffective and lacking in transparency. Perhaps external monitoring and evaluation is the only opportunity for APs to raise their voice publicly. Furthermore, external monitoring and evaluation agencies, whose contracts are with IRC or RGC, are reluctant to write strong and independent monitoring reports. More recently, some external monitoring and evaluation contracts have been signed by the project implementing agency (e.g., MPWT or MOWRAM) and the external monitor but the decision still rests with IRC or MEF especially with regard to payment to external monitors. There have been differences of opinion between the external monitoring agencies (usually local NGOs or consulting companies) and IRC, who perceived NGOs as misrepresenting the real situations and not being objective. IRC had proposed, therefore, that the process of selecting external monitoring agencies should include participation by IRC, project supervision consultants, ADB's resident mission, and the project executing agency.

J. Impoverishment Risks

Risks affect people differently i.e. rural and urban communities, tribal and nontribal groups, children and the elderly, poor and nonpoor communities. The case study of the Highway 1 Project shows that the risk of adverse effects on the social and economic welfare of people living along Highway 1 is due significantly to an ineffective resettlement implementation strategy. Additionally, risk was not clearly defined in the RP. Hence, risk minimization measures were not provided in the RP. Most poor households, particularly those headed by women, had suffered the impacts of displacement more severely than nonpoor households. For example, poor people who were not compensated sufficiently were not able to replace or restore structures, land, or businesses and, thus, became more impoverished. They were made landless, jobless, and homeless by the project. Host populations are also subject to additional risks resulting from increasing population densities at the relocation sites and a more intense competition for resources and business.

As a result of the resettlement audit, IRC did provide option of a plot on a resettlement site and cash for livelihood rehabilitation, or cash instead. A resettlement site has been developed at Stoeung Slot

for those APs wishing to relocate to a site, and they have been provided with \$300 cash as a livelihood restoration measure. On more recently prepared projects, APs are being properly compensated and provided with rehabilitation assistance, although the capacity to design and implement livelihood programs is still very weak in Cambodia.

Michael Cernea has suggested eight basic risks in resettlement, based on historical experience, and predictable in most resettlement situations: landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property, and social (community)

disarticulation. In this section, Cernea's Risk Matrix is used to reflect the risks found in the Case Study of Highway 1.

Lessons learned from the first experience of resettlement implementation of the Highway 1 project illustrate Cernea's Risks and Reconstruction Model. All of the risks identified by the resettlement audit (discussed below) have been reduced as a result of the Government implementing the recommendations from the case study. The following situations are examples of Cernea's Risks before the second compensation, resettlement, and rehabilitation program was implemented following the audit.

Box 2: Professor Michael Cernea's Risks and Reconstruction Model

Landlessness. Expropriation of land removes the main foundation on which many people build productive systems, commercial activities, and livelihoods. Often land is lost forever; sometimes it is partially replaced, and seldom is it fully replaced or fully compensated. This is the main form of decapitalization and pauperization of the people who are displaced. Both natural and man-made capital is lost.

Joblessness. Loss of wage employment occurs both in rural and urban displacement.

People losing jobs may be landless agricultural laborers, service workers, or artisans. The unemployment or underemployment among resettlers may linger long after physical relocation. Creating new jobs for them is difficult: it requires substantial investment, new creative approaches, and more reliance upon sharing project benefits with the resettlers.

Homelessness. Loss of housing and shelter may be only temporary for many people, but for some it remains a chronic condition and is felt as loss of identity and cultural impoverishment. If neighboring households belonging to the same kinship group get scattered, loss of dwelling may have consequences for family cohesion and mutual help patterns. Group relocation of related people and neighbors is therefore preferable to dispersed relocation.

Marginalization. Marginalization occurs when relocated families lose economic power and slide down toward lower socioeconomic positions: middle-income farm households become small landholders; small shop-

keepers and craftspeople lose their businesses and fall below poverty thresholds, and so on.

Increased morbidity and mortality. Vulnerability of the poorest people to illness is increased by forced relocation, because relocation tends to be associated with increased stress, psychological trauma, and the outbreak of parasitic and vector-borne diseases. Serious decreases in health levels result from unsafe water supply and sewage systems that spread epidemic infections, diarrhea, dysentery, etc.

Food insecurity. Forced uprooting diminishes self-sufficiency, dismantles local arrangements for food supply and, thus, increases the risk that people will fall into chronic food insecurity. This is defined as calorie-protein intake levels below the minimum necessary for normal growth and work.

Loss of access to common property. Poor farmers, particularly those without assets, suffer a loss of access to the common property goods belonging to communities that are relocated: forests, water bodies, grazing lands, etc. This represents a form of income loss and livelihood deterioration that is typically overlooked by planners and, therefore, usually uncompensated.

Social disarticulation. The dismantling of community structures, social organizations, local associations, etc., is a massive loss of social capital. Many informal and formal networks get dispersed. Such disarticulation undermines livelihoods in ways usually not recognized and not measured by planners, and causes impoverishment through disempowerment.

1. Landlessness

The resettlement audit for Highway 1 found that many APs lost land and had not been relocated and compensated. At the time of commencement of the audit, the landless APs were resettling temporarily either along Highway 1 ROW or on other privately owned land. At least 75 APs—about 10% of surveyed APs—lost their entire land. During the resettlement audit phase 2, many more APs complained that they were also landless, about 90 of them claimed that they were residing on privately owned land and had been asked to leave by the landowner (see quotations from APs). Landless APs, who were affected by loss of ROW or bypass land and were identified by the resettlement audit as eligible for a plot of land on a serviced resettlement site, have been provided with a resettlement site, as per the agreed RP. All such APs have already moved to a group resettlement site provided.

I am vice-chief of the village. I was asked by the IRC working group to remove my house from the affected land in order to be a show-model to others and I was promised that I would be paid compensation. So far, I received nothing and lost entire land. Now I am temporarily resettling on my neighbor's land.

(Male AP in Neak Loeung)

We had no land to resettle, as we are required to move too far from the road.

(Male AP in Chi Pho)

We lost the entire land, house, and business. We are waiting so long for RGC to offer us land in a new relocation site. Temporarily, we are now squatting along the Highway 1 right of way nearby Stoeung Slot Bridge.

(Female community leader in Stoeung Slot)

Landlessness is causing hardships for income generation, as APs have no land for farming or for business. Some APs lost a part or all of their farmland located in the bypass and were not paid anything. At present, these families are facing hardships and living conditions are worsening. The displaced APs are facing more impoverishment.

Since the project started, I've lost my land. I had no other resources to make a living. I used to have a comfortable life and prospered because of this land. Now I have fallen deep into poverty. I had a rice field of about 0.5 hectares and it was right in the road bypass. I got no compensation for it. It was a very productive land during dry-season cropping. Rice yield from this land was enough to feed my family for a whole year. At that time, my family income heavily relied on this rice field. In fact, the project acquired about 50% of my farmland but the rest cannot be cropped after the road was constructed because irrigation water could not be provided as it is blocked by the road. Later, I sold the remaining portion due to hardship of income generation. Now, I am a Remok¹¹ taxi driver.

(Male landless in Stoeung Slot)

Unfair and unjust compensation causes inequality among the poor and the nonpoor and among educated and uneducated APs. In general, the poor and uneducated APs are the most affected and vulnerable. Although some APs received compensation for their affected land, the amount was not sufficient to purchase new land of equal size, value, and production.

My land of 31 square meters was affected and compensated with \$60 and his land of only 22 square meters was compensated with \$1,100. I relocated the house after they gave me a blue card and they compensated me with \$70 with which I can hardly buy a palm roof, let alone buy wood.

(Male AP in Chi Pho)

I received some compensation for land, but the money was so little that we could not afford to buy any land.

(Female landless AP in Stoeung Slot)

People are reluctant to invest in land due to the uncertainties in land policy.

¹¹ Motorbike with trailer.

It is ironic to say that the IRC did not accept the legal document [land title] issued by the Provincial Department of Cadastral. My land has full title and clearly states ROW of 15 meters but now it is not recognized by IRC and even the Cadastral itself.

(Male AP in Neak Loeung)

If they asked me to retreat 30 meters, I would have no land to settle. Now we are in a difficult situation and do not know what to do. We are waiting [for the officials] to know what would happen to us.

(Female AP in Neak Loeung)

My house and land were affected. First they asked me to retreat 25 meters, later they asked us to relocate within 30 meters from the middle of the road. Now I have no land to settle. If only 10 meters, I would have some land left to settle.

(Female AP in Neak Loeung)

The lesson learned is that lost land must be replaced. Agricultural land must be replaced with land of equal productive value so that income does not decline. Residential land must be replaced by land of equal value so that living standards do not decline.

2. Joblessness and Lost Business Opportunities

The study did not find many APs who lost wage employment as a result of resettlement. However, it found many self-employed APs that had lost their jobs and business opportunities, as land was acquired for road widening. Some APs who lost their jobs traveled to Phnom Penh or other parts of the country seeking jobs. Some remain jobless, while others changed their jobs.

Before (road construction), my daughter ran her grocery shop close to the road. After the land was acquired for road bypass (without paying compensation), she has no land to run her business. Now (after road construction), she is a garment worker in Phnom Penh leaving two kids for me to take care of.

(Female AP in Prey Chhor)

We lost our land that we used to do business on. Now we have no business.

(Male AP in Neak Loeung)

Before, I had a grocery shop, now I am living at the back, I cannot do any business. I am a farmer now. And as there is no water, we cannot grow anything. Our life is getting worse.

(Female AP in Chi Pho)

Before, we used to carry wood for sale, then the road was built and now trucks carry wood for sale, we lost our business/job. It is so miserable now.

(Landless female AP in Stoeung Slot)

Now I moved to live at the back. I lost my business, the coffee shop. Now I cannot do anything living at the back. I don't have any profit anymore. I live as a farmer now.

(Female AP in Chi Pho)

Road construction also has indirect impacts on informal sector businesses located along the road especially those selling food and operating motorbike and vehicle maintenance facilities.

The lesson learned is that sources of income must be restored or replaced so that income levels do not decline.

3. Homelessness

No single case of homelessness leading to the loss of identity and cultural links of APs was found during the study. APs temporarily lost their shelter and now are resettling on new land regardless of status of tenure. However, they complained that they had spent a lot of time for relocation and, as a result, they lost their business, either temporarily or permanently.

We lost both our land and house, we spent lots of money for demolition and we got poorer. We lost our business, too.

(Landless male AP in Stoeung Slot)

We're finished. We lost land and house and we could not find any business to do anymore. We have become even poorer than before.

(Landless male AP in Stoeung Slot)

4. Marginalization

It is obvious that some APs have become poorer after the road was constructed. This is due to the loss of their productive lands and business spaces. Some APs are heavily indebted.

We have tried our very best to recover from the loss of land, house, and property, but this has been too much for us. We have sold everything left to survive the next day. We have no land to settle, no food to eat, no business to make a living. What a life!

(Landless female AP in Stoeung Slot)

Our living deteriorated since the demolition. We lost our business and had no land to do any business. We even got into debt to rebuild a new hut. We could not access the bank, as we don't have any land for security deposit.

(Landless female AP in Stoeung Slot)

My stall was removed, but I haven't received any compensation. My 24 palm trees were cut off without any compensation. I benefited a lot from the palm trees. The palm leaves alone can give me 5,000 riels (\$2) a year per tree. Some of them even produce juice. I haven't received any card from them. I really regretted [the loss of] my trees.

(Female AP in Chi Pho)

Since the project started, I've lost my land. I had no other resources to make a living. I used to have a comfortable life and prospered because of this land. Now I have fallen deep into poverty.

(Landless male AP in Stoeung Slot)

Before (road construction), I ran a small grocery shop in front of my house and my husband collected firewood for sale. Now (after

displacement) I lost my grocery shop and became a firewood collector. We are both collecting firewood, and it is becoming scarce and far away from home. The income from daily firewood collection is insufficient to survive a day.

(Landless female AP in Stoeung Slot)

5. Increased Morbidity and Mortality

Some APs reported that a few children died due to poverty and lack of food as a result of the project. However, the causes are unclear. Some respondents in FGD said that they died in the flood in 2000.

Some of the families here even lost one or two children due to poverty and lack of food [crying]. A child was sent to hospital and died there. That old woman lost two children. Our children got sick and we could not even afford to make porridge for them.

(Landless female AP in Stoeung Slot)

A woman here with sick children sold her belongings, including her bed, from the demolished hut for some money to treat her daughter. Unfortunately, her daughter still died miserably. Now only one daughter out of six children of hers is alive. She [the mother] pointed to the girl, who now has psychological illness.

(Landless female AP in Stoeung Slot)

RGC provided water wells to the displaced Kab Srov community. However, APs complained about the poor quality of water that could not be used for drinking and cooking. Waterborne diseases affecting the health of APs and children were not reported.

6. Food Insecurity

In Stoeung Slot community, some children and APs, especially the females, had physically weak appearance. It cannot be assumed that it is due to lack of food resulting from poverty caused by road development. However, it is obvious that road development caused hardships and impoverishment to APs.

7. Loss of Access to Common Property

No cases were found where the project caused loss of access to common property. The displaced APs were not relocated far away from their former areas. Common property available in the project area includes fishing water bodies and the river, animal grazing and firewood collection area. Some APs complained that firewood is getting scarce.

8. Social Disarticulation

No community structures, social organizations, local associations, etc. were dismantled by the project. Most of the road rehabilitation projects in Cambodia may not face such risks due to land acquisition as

road improvement is a linear strip. Therefore, land acquisition for this purpose hardly causes the loss of entire community. Of course, there may be some disruption to good relationships between APs and their neighbors and between APs and their community once they are relocated far away from the project area. However, this was not found during the study. Few cases were reported where the internal structure of AP families was disrupted as a result of resettlement.

The relocation would affect our lives and businesses, even our children's education. We spent lots of money to rebuild the house and do all the work to return to normal.

(Female AP in Neak Loeng)

V. Conclusions and Recommendations

Involuntary resettlement affects both the poor and the nonpoor, although it is the poor that have the least capacity for restoring their lives and, thus, are at greatest risk of further hardship and impoverishment. The recommendations in this section are being put forward in the context of Cambodian realities and are not limited to how to manage impoverishment risks since risks can arise from different aspects of resettlement activities. Many good recommendations were put forward in RETA 5935:¹² and they are applicable to the present situation and should be followed. The key recommendations for Cambodia from RETA 5935 included the following: (i) promulgation of a national legal instrument for resettlement and implemented by legal regulations and with specified enforcement procedures, and using specified technical guidelines; (ii) permanent designated body to become the regulatory agency for all resettlement activities, with the authority for policy oversight and monitoring, and separated from the financing and implementing agencies; and (iii) in-country training programs and annual refresher courses in resettlement to be offered to relevant stakeholders or representative stakeholders involved in any aspect of resettlement. As a follow up to the recommendations, a draft national policy on resettlement was prepared and widely discussed during a national workshop held on 27 November 2001, and endorsed by key stakeholders. The draft policy also recommended the Ministry of Land Management, Urban Planning and Construction (MLMUPC) to be the regulatory agency overseeing implementation of the policy.

A. Policies and Regulatory Framework

Since there is no legal framework supporting the resettlement effort, RGC should review and approve

the draft National Resettlement Policy developed in 2001 under ADB RETA 5935. It should be enacted into Cambodia Law in order to ensure consistency and just resettlement of APs that will be applicable to all resettlement efforts, regardless of funding source. The draft policy aims to address the inadequacy of the existing legal provisions and to ensure that RGC and private development projects must serve the needs of society and ensure that APs are not made worse off by development projects. Although a draft National Resettlement Policy was prepared, it has never been approved by RGC. Thus, at present, ADB is providing additional TA (TA 4490-CAM)¹³ to enhance the resettlement legal framework and institutional capacity in Cambodia. The TA will assist RGC in reviewing and improving the draft National Resettlement Policy and drafting a Sub-decree on Resettlement and other supporting regulatory instruments, i.e., *Prakas* and technical guidelines. The National Resettlement Policy and relevant legal instruments should take into account the following aspects:

- (i) Development projects should be designed so as to minimize or avoid resettlement;
- (ii) Livelihoods, welfare, and incomes of APs should be protected to the maximum extent possible;
- (iii) Economic and asset losses incurred by APs should be reduced to a minimum and compensation should be paid in full;
- (iv) APs should be assisted to develop economic and social potential; and
- (v) Additional assistance should be provided to vulnerable groups and indigenous and ethnic minorities. Their social and cultural identity should be well protected.

¹² ADB. Regional Technical Assistance 5935, Country Report: Cambodia. Available: www.adb.org/documents/events/2002/RETA5935/default.asp

¹³ ADB TA 4490 CAM: Enhancing the Resettlement Legal Framework and Capacity Building. Approved 2005.

Other aspects that should be taken into account while developing the Sub-decree include

- (i) Resettlement planning should be an integral part of the project design;
- (ii) Resettlement process should be carried out in a participatory manner by including all concerned stakeholders at all stages of the project cycle;
- (iii) Public participation and consultation should be an integral part of all resettlement activities;
- (iv) All civil works should commence only after completion of compensation payments;
- (v) Valuation of assets, including buildings, land, and other fixed assets, should be done in an open and transparent manner based on replacement cost;
- (vi) Asset valuation should be performed by a competent agency in consultation with professional people;
- (vii) Resettlement process should be integrated into the development process by utilizing ongoing development initiatives, such that those initiatives are used to assist APs undergoing resettlement; and
- (viii) The Sub-decree should support the development of other legal instruments, such as guidelines and procedures for entitlement of APs and affected assets, asset valuation, land expropriation, identification of vulnerable groups, resettlement planning and implementation, grievance redress procedure, and monitoring and evaluation.

The resettlement practice in the past has been limited to development partner-funded projects only and implemented on an ad hoc basis. The resettlement planning and implementation of those projects varied from one project to another. This resulted from the absence of concrete and common guidelines for resettlement planning and implementation applicable for all projects. Therefore, guidelines for resettlement planning and implementation should be developed to support the Resettlement Sub-decree. ADB TA4490 is attempting to develop a Resettlement Sub-decree and is planned for 2 years starting in January 2006. Considering the present status of RGC, there is uncertainty that the Resettlement Sub-decree will be enacted in 2 years. On the other hand, considering the

scope of development, especially in infrastructure and urban areas, there is an increasing and pressing need for proper resettlement planning and implementation. Therefore, it is proposed that the draft Handbook developed under this RETA 6091 should be reviewed, improved, and adopted by the Government as soon as possible, and used as a temporary measure until a policy is approved. The draft Handbook is being reviewed under ADB TA 4490.¹⁴

B. Institutional Arrangements

IRC was set up to assist the Government to comply with the resettlement policies of development partner agencies. However, since its establishment in 1999, IRC remains an ad hoc body with a changing composition for each project requiring resettlement. Recently, MEF has established a Resettlement Unit, a more permanent resettlement body. This unit has been responsible (i) to IRC as secretariat and (ii) for facilitating budget releasing from MEF for compensation. The mandate of this unit extends to both foreign- and locally-funded projects.

In the absence of resettlement sub-decree and with fledgling bodies for the project implementation agencies, IRC is still the key organization to carry out all aspects of RP implementation. However, an official institutional arrangement for resettlement should be clearly stated in the Resettlement Sub-decree.

There are three key legal bodies presently involved in resettlement efforts. However, with new resettlement experiences, limited capacity of other key legal bodies, and with the recent decision of the Government (No. 855, dated 30 May 2006) to authorize IRC to take responsibility for all aspects of resettlement implementation, IRC with composition of line Ministries and local authorities, play an important role in all aspects of resettlement. This institution can only carry out RP implementation in the absence of resettlement sub-decree. In addition, IRC also approves RPs. Current arrangements have created an environment of conflict of interest among the legal bodies involved in the resettlement process, since there is still no clear separation of regulatory/approving agency from financing agency from implementing agency. Therefore, RGC should review its current institutional arrangements and designate permanent legal bodies to carry out all resettlement activities.

¹⁴ ADB TA 4490-CAM: Enhancing the Resettlement Legal Framework.

The regulatory mandate should be separated from the planning and implementation function, which should be separated from the financing function. The roles and responsibilities of the legal bodies involved in resettlement should be

- (i) MEF should be responsible for financing compensation costs regardless of funding source.
- (ii) Based on the government decision, IRC should, in the present, be responsible for (a) reviewing and approving RPs, (b) requesting RP budget from the Government after RP approval from development partners, (c) leading RP implementation, and (d) monitoring and enforcing compliance with the approved RPs.
- (iii) Technical Ministries/Agencies, i.e., MPWT, MOWRAM, MIME, etc., as EAs should be responsible for carrying out all aspects of resettlement planning and internal monitoring. However, clear assigned tasks will be defined during the course of Sub-decree development.
- (iv) Provincial Resettlement Subcommittee (PRS) should be responsible for coordinating and cooperating with the EA in resettlement planning and implementation and provide all necessary coordination support. Detailed tasks of PRS can be found in the Resettlement Handbook. However, clear tasks will be defined during the course of the Sub-decree development.

With the implementation of TA 4490, the Government has agreed to separate the roles of financing agency from regulatory from implementing/executing agency. The respective authorities and mandates will be determined and assigned as a result of the TA, and the TA will begin the necessary capacity-building process.

C. Capacity Building and Training

In general, human resource capacity for carrying out resettlement planning and implementation and redressing grievances remains weak among the legal bodies involved. Institutional strengthening is critical to ensure good practices when implementing reforms, enforcing compliance with the regulatory framework, and performing oversight. Although there have been

recent improvements on ADB-financed projects, the Government still needs training, repeated on a regular basis, to act as both initial information and refresher courses and to address common problems that arise from time to time. It is also critical that the training should include attention to the most disadvantaged and vulnerable groups with practical and concrete proposals for assistance. Different stakeholders may require different training. However, most resettlement activities are crosscutting issues that all stakeholders need to be aware of.

There should be in-country training programs with TA from ADB and other development partner agencies, including annual refresher courses, for all stakeholders, i.e., RGC agencies, NGOs, and local consultants. The training programs should cover the following:

- (i) For the regulatory body, training should focus on all aspects of the resettlement process, with particular attention on the policy and legal requirements for resettlement; RP requirements; all aspects of resettlement planning, implementation, and monitoring; and risk assessment and management.
- (ii) For EAs, training should focus on identification of APs; methodology for conducting census, DMS, and socioeconomic survey; concept of tangible and intangible assets; geographic information systems and mapping techniques; and asset valuation at replacement cost and resettlement cost estimation, participatory and community development skills, conflict resolution and mediation, risk assessment and management, RP preparation, implementation strategy. The trainees should be exposed to the practical aspects of resettlement in projects.
- (iii) For NGOs and local consultants, the training should cover all of the above plus training in advocacy; design and implementation of sustainable livelihood programs; integrated development planning; and independent monitoring and evaluation.

D. Legalizing Asset Valuation System

A legal framework for asset valuation does not seem to exist. Asset valuation has been applied in an ad hoc manner, although a standard methodology is slowly being developed on ADB-financed projects. So far,

compensation for land and assets on ADB-financed projects has been assessed without a supporting legal framework during PPTA in coordination with IRC, line agencies, and local government, but without any standard scientific methodology. There are no rules and procedures for compensation or valuation other than what may be developed during a PPTA. On past ADB-financed projects, compensation rates were determined at the discretion of IRC; however, this has now changed on recent projects. What constitutes “just” compensation under the Land Law and the Constitution is a contested and controversial issue. Therefore, a valuation system should be established and legalized as a regulatory tool and asset valuation expertise should be developed within Cambodia, based on international best practice. The development of valuation methodologies and expertise is being initiated under TA 4490.

E. Strengthening Public Participation and Consultation

In the past, RGC practiced centralized planning and decision making. Therefore, public participation and consultation were not required. Since the changing of the political arena after 1993, development partner agencies have required a bottom-up planning and decision-making approach. However, this approach has not been well understood or widely used by the RGC institutions. ADB and the World Bank have introduced public participation and consultation mechanisms in resettlement planning and implementation, but the implementation is far behind the envisioned mechanism. Therefore, proper approaches for public participation and consultation should be clearly stated in the resettlement technical guidelines supporting the Resettlement Sub-decree, and awareness and expertise should be developed within Cambodia.

F. Mitigating Risks of Vulnerable Affected Persons

The two case studies have shown that the social and economic welfare of people living along the roads has been adversely affected due to early experiences of resettlement planning and implementation, and RPs did not incorporate resettlement risk mitigation or management especially to identify vulnerable groups. Although resettlement affects both the poor and the nonpoor, the severity is different. Therefore, risk assessment should be done after adequate information

is collected. The extent and intensity of the risks in a proposed project area must be assessed at the start of project preparation; however, this may be a preliminary assessment. The risk identification and assessment can be conducted at the same time as the stakeholder analysis especially during stakeholder meetings and consultations. If the risks are significant, especially to women, the elderly, the landless, ethnic minorities, and other vulnerable groups, there is a need to develop risk mitigation and reconstruction plans and incorporate them as an integral part of RPs.

G. Monitoring and Evaluation

Monitoring and evaluation had been implemented formally only in multilateral and bilateral-funded projects. However, it has not functioned as envisioned for several reasons.

IRC, chaired by MEF, has had responsibility for all aspects of resettlement planning and implementation. Since IRC is chaired by MEF who has taken the lead in all aspects of resettlement, and since the National Treasury provides funds for resettlement directly to MEF, the impression is that it is MEF who controls all aspects of resettlement, despite the fact that there is a nominal “committee”. Through its Working Group, IRC played the role of implementer and financier, and monitor of resettlement, consigning the Executing Agency to the role of overseeing civil works. Therefore, the role of MEF should be replaced with MEF being responsible only for financing resettlement regardless of funding source, while a separate regulatory body (one or more agencies) should be responsible for RP approval and oversight and enforcement, and EAs should be responsible for the resettlement planning and implementation of all projects, including in-house monitoring of RP implementation.

According to loan agreements, RGC is required to hire an external monitoring agency (EMA) to monitor RP implementation. The external monitoring cost is part of the resettlement cost and, until now has been paid by RGC, although the cost of monitoring (and in fact all resettlement-related costs) can be financed out of ADB’s loans. Resettlement monitoring experience shows that most EMAs that were contracted by IRC had difficulty collecting their fees when monitoring reports cited weaknesses in the way resettlement implementation was being carried out. Therefore, some EMAs are likely to lose their neutral and independent position, as they are afraid that their fees may not be

paid. According to IRC, on the other hand, EMAs are not always objective and accurate about their facts, and are often unnecessarily critical of RGC. According to IRC, it has never cut EMAs' fees and delayed payment. EMA is the only agency that can be a witness to compliance of RP implementation. If an EMA fails to report the facts, there will be problems leading to a costly resettlement repayment, such as in the case of Highway 1. Therefore, the external monitoring cost should be included in the project cost and EMA should be paid directly from the project budget. If possible, the contractual arrangement should be with the development partner agency.

The responsibility for failure of resettlement planning and implementation did not rest fully on IRC. Had ADB provided assistance in capacity building and guided IRC on ADB's involuntary resettlement policy and on preparation and implementation of resettlement, the outcomes could have been better. Hired consultants prepare most resettlement action plans. Resettlement in Highway 1 was the first resettlement practice in Cambodia, and it was clear that IRC had no capacity to prepare and implement RP. In the past, resettlement technical backstopping from ADB has been on an ad hoc basis. ADB Missions mostly focus on monitoring the progress rather than advising or guiding on what should be done to ensure good resettlement. Communication between IRC and ADB's resettlement specialist was rare. This also created another layer of difficulty when things did not happen according to plan. Therefore, there is a clear need for ADB to have an in-country resettlement specialist who is able to provide regular technical backstopping and guidance on all resettlement aspects to the appropriate agency. The responsibilities of the in-country resettlement specialist should include

- (i) Providing advice and guidance on ADB's Involuntary Resettlement Policy;
- (ii) Providing advice and guidance for all aspects of resettlement planning and implementation;
- (iii) Facilitating resolution of resettlement issues;
- (iv) Regular monitoring of resettlement planning and implementation and reporting to ADB;
- (v) Developing and arranging resettlement training programs; and
- (vi) Organizing overseas study tours to visit resettlement best practice.

H. Grievance Redress Mechanism

Grievance redress has no formal mechanism in place and has not been put into place by RGC and privately financed resettlement projects. Grievances are normally solved in an informal manner. However, the formal mechanisms for grievance redress have been put into place by ADB and World Bank-funded projects but the implementation has been poor. In many cases, the designated mechanism has not worked as envisioned and more informal methods have been used instead. In many cases, complaints and grievances were ineffectively redressed although the redress procedure was clearly addressed in RP. What happened in the past was that IRC at the central level decided to deal directly with APs. In case of Highway 1, dissatisfied local people sought assistance from NGOs to have their grievances listened to and addressed despite the fact that NGOs did not have an official role in the resolution of complaints. Therefore, the primary responsibility to address all complaints and grievances in a project should lie with project proponents. As project authorities are also responsible for carrying out census, inventory preparation, and socioeconomic surveys, as well as to determine entitlements to compensation, allowances, and other assistance, only they can address complaints and grievances arising out of these issues effectively and at the local level. The Grievance Committee should be established at the lowest level of the government hierarchy by inclusion of representatives of local NGOs and EMA.

With the ongoing projects, Grievance Redress Committee for each project has been set up and is composed of representatives from lines Ministries, NGOs, IRC, APs, village, and external monitor. APs can complain easily through the village leader, external monitor, or NGOs if they are not satisfied with the compensation rates. However, as observed, the complaints of APs against the ongoing projects were not so many. If there were complaints, most were solved at the village level or otherwise solved immediately by the IRC working group with cooperation of provincial authority.

Most of the complaints and grievances in resettlement arise mainly due to the lack of transparency and inadequacy, or absence of information dissemination and consultation by project authorities.

Even if compensation entitlements and rates are in accordance with the resettlement policy, lack of awareness of these aspects among APs may lead to suspicion and complaints. Additionally, most complaints and grievances relate to inventory, entitlements, and compensation rates for affected assets.

A good degree of transparency and diligent action by project authorities during resettlement preparation can eliminate or minimize many issues and problems that lead to complaints. Therefore, inventory of APs should be conducted in the presence of household heads and be certified by them. APs should be well informed about project objectives, impacts, policy provisions, and entitlements and be provided with a copy of RP or comprehensive summary.

The primary responsibility to address all complaints and grievances in a project should lie with project proponents. The local authorities are responsible for carrying out census, inventory preparation, and socioeconomic surveys, as well as for determining entitlements to compensation, allowances, and other assistance. Only they can address any complaints and grievances arising out of these issues effectively and at the local level.

I. Impoverishment Risks and Reconstruction

The two case studies indicate that social and economic welfare of people living along the roads was adversely affected due to the lack of experience of the Government to apply the resettlement planning and implementation, and implementation of RPs that did not incorporate resettlement risk mitigation or management. Therefore, risk assessment should be carried out after adequate information is collected. The extent and intensity of the risks in a project area must be assessed at the start of project preparation. Risk identification and assessment can be conducted at the same time as stakeholder

analysis especially during meetings and consultation. If there are significant risks, there is a need to develop risk mitigation and reconstruction plans and incorporate them as an integral part of RP.

The results of the resettlement audit of Highway 1 are that (i) the Government has agreed to implement the audit recommendations and has committed the budget to do so; (ii) the Government has begun to disburse the agreed funds to APs; and (iii) IRC has learned from its first experience in planning and implementing RP and ADB has acknowledged this. The Government and ADB have been applying the lessons learned on old projects to more recent projects. With ADB's TA, the Government has begun to develop a legal framework for resettlement, namely a sub-decree on resettlement. The Government has also agreed to change the institutional arrangements for resettlement, including separation of the regulatory mandate from the planning and implementation responsibilities of EAs, with MEF responsible only for the financial aspects of resettlement. In this regard, three EAs (MOWRAM, MPWT, and EDC) have established Resettlement Units/Divisions and are building their capacity for resettlement planning and implementation with ADB's TA. External monitoring agencies continue to be contracted by IRC. Furthermore, ADB has provided staff consultants to supervise resettlement implementation. More work needs to be done to develop a good asset valuation methodology (under ADB TA 4490) and expertise and to apply it professionally and consistently to all projects. For the first time, IRC has contracted a local NGO to design and implement a livelihood restoration program for one project; however, the capacity is very weak and needs considerable strengthening.

The RETA has been effective in reinforcing the awareness within IRC and line agencies about the importance of institutionalizing a sound legal and institutional framework and the importance of good resettlement standards and the risks of not doing it well.

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