
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.