

TECHNICAL ASSISTANCE COMPLETION REPORT¹

Division: SETU

TA No., Country and Name			Amount Approved: \$400,000	
TA 4490-CAM: Enhancing the Resettlement Legal Framework and Institutional Capacity			Revised Amount: \$530,000	
Executing Agency Ministry of Economy and Finance (MEF)		Source of Funding TASF	Amount Undisbursed: \$18,904.73	Amount Utilized: \$511,095.27
TA Approval Date: 18 Dec 2004	TA Signing Date: 17 Mar 2005	Fielding of First Consultant: 23 June 2005	TA Completion Date Original: 28 February 2007 Account Closing Date Original: 28 February 2007	Actual: 28 February 2009 Actual: 31 March 2009
<p>Description</p> <p>In 2000, as part of its ongoing efforts to improve policy regimes and build resettlement capacity, the Asian Development Bank (ADB) provided regional technical assistance (TA)² to six developing member countries, including Cambodia. The TA prepared draft national resettlement policy recommendations for Cambodia which included: (i) promulgation of a national legal instrument for resettlement, implemented by legal regulations, enforcement procedures, and technical guidelines; (ii) permanent designated body to become the regulatory agency for resettlement, with the authority for policy oversight and monitoring, separate from the financing and implementing agencies; and (iii) in-country training programs and annual refresher courses on resettlement to be offered to relevant stakeholders or representative stakeholders involved in any aspect of resettlement.</p> <p>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 that the Ministry of Land Management, Urban Planning and Construction (MLMUPC) be the regulatory agency to oversee policy implementation. While endorsement of this recommendation was not fully obtained during the workshop, which was chaired by the Interministerial Resettlement Committee/Ministry of Economy and Finance (IRC-MEF) chairman, agreement was reached during TA processing that MLMUPC is the logical regulatory agency, and that oversight of the resettlement legal framework is within MLMUPC's mandate.</p> <p>In Cambodia, the objectives of the TA were to help the Government (i) prepare a sub-decree on compensation, resettlement, and rehabilitation for use when the state takes land owned or occupied by Cambodian nationals or residents; (ii) formulate complementary implementing regulations and technical guidelines; and (iii) develop resettlement planning, implementation, financing, monitoring, and compliance enforcement capacity. The sub-decree and technical guidelines to be prepared and issued during the TA implementation, were intended for both internationally and domestically financed investments, and would be consistent with ADB's and World Bank's policies on involuntary resettlement, Government legislation, and lessons learned from past projects.</p> <p>Expected Impact, Outcome and Outputs</p> <p>The goal of the TA was to enhance national resettlement policy and institutional capacities in order to restore economic and social conditions for people affected by involuntary resettlement, and to improve economic and social conditions for the poorest and most vulnerable people affected by involuntary resettlement. The expected outcomes of the TA were (i) the issuance of a sub-decree, implementing regulations and technical guidelines that are consistent with international standards and (ii) improved resettlement planning, implementation, monitoring and compliance enforcement consistent with the new policy and regulatory framework. The outputs were divided into 3 phases: Phase 1. Draft sub-decree, implementing regulations, and technical guidelines that meet international standards and prepared through a consultative and participatory process; Phase 2 (a) National policy and regulatory framework on involuntary resettlement strengthened consistent with international standards and (b) Measures</p>				

¹ In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

² ADB. 2000. *Technical Assistance for National Resettlement Policy Enhancement and Capacity Building*. Manila. The TA included follow-up work in the People's Republic of China, Indonesia, Nepal, Pakistan, and Philippines; national resettlement policy development work was initiated in one developing member country – Cambodia.

prepared and adopted for strengthening capacity for resettlement planning, implementation, monitoring, and compliance; and Phase 3 (a) New legislation and technical guidelines disseminated to Government agencies; (b) Capacity for resettlement planning, implementation, monitoring, and compliance strengthened; and (c) the identification of needs for ongoing capacity strengthening coordinated with development partners.

Delivery of Inputs and Conduct of Activities

The TA consultants were mobilized in June 2005. Progress during the first 6 months was slow because MLUMPC refused to be the TA's implementing agency. Problems concerning the TA implementation arrangements were resolved only in January 2006, following MEF's assumption as the TA's executing and implementing agency.

The first draft of the *Sub-decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects* (or "sub-decree") was presented to representatives of the Government, NGOs, and affected people (of past and on-going development projects) at a national workshop in May 2007. A second draft of the sub-decree was distributed to stakeholders for a 2-month public consultation period commencing on 14 November 2007. During that period, NGOs consulted communities throughout Cambodia and submitted to MEF on 14 January 2008 their comments per results of their nationwide consultation and information drive. In July 2008, the TA consultants submitted to MEF the final draft sub-decree. The original plan was for MEF to transmit the final draft to the Council of Ministers (COM) for review and appropriate action. This did not push through, however, because the Deputy Prime Minister and the MEF had decided to postpone the submission of the draft sub-decree to the COM to let the Council prioritize the review, and subsequent passage, of the draft Expropriation Law which had then been submitted to the COM.

ADB requested government to disclose the draft sub-decree to the public; however, MEF decided that the draft final sub-decree could only be disclosed after the Law on Expropriation has been enacted. ADB has also requested government to de-link the draft sub-decree with the Expropriation Law since the TA had nothing to do with the latter. ADB also raised concern about the content of the Expropriation Law and how it might affect the sub-decree in light of the fact that the draft law was never made public.

Evaluation of Outputs and Achievement of Outcome

The draft sub-decree needs to be streamlined. In the initial (2007) and subsequent drafts (2008) of the sub-decree, statements on the principles and policy pertaining to involuntary resettlement are interspersed with specific implementation rules and guidelines. The draft sub-decree should have focused on the rationale, objectives, and general principles of government's policy for addressing involuntary resettlement. Matters related to enforcing or carrying out the intents and purposes of the sub-decree should be laid down along with the other implementing rules and guidelines in a subsequent document. There seems to have been confusion on what the sub-decree should contain.

Similarly, the drafting of the sub-decree took longer than expected. The TA consultants proceeded with the drafting of the sub-decree apparently with the assumption that there was consensus between Government and other stakeholders on how to address involuntary resettlement. While the TA consultants prepared a "Policy Paper on Resettlement (compensation and assistance) for Land and Property Acquisition for Development Projects", this was intended primarily for members of the Working Group (that had been tasked to prepare the sub-decree) to help ensure unity among them relative to the subject of involuntary resettlement. This same policy paper should have been the content of the sub-decree, laying down the framework within which involuntary resettlement could be addressed. The fleshing out of the implementing rules and technical guidelines should have been the next output of the TA.

Consequently, the drafting of the sub-decree took much longer than originally planned. This ultimately led to the inability of the TA to produce other deliverables, namely, (i) the sub-decree's implementing regulations and technical guidelines, and (ii) dissemination of the sub-decree among relevant government agencies, including the NGOs, through a capacity building program.

There was also weakness in the TA Framework (Appendix 1 of the December 2004 TA paper) that called for the preparation of the sub-decree as the TA's output during Phase 1, and the "strengthening of the national policy and regulatory framework on involuntary resettlement" as the output during Phase 2. Apparently the TA Framework was written on the assumption that there was already wide acceptance among the various stakeholders in government and civil society of a national policy on involuntary resettlement. There is no national policy on involuntary resettlement to date.

At the conclusion of a TA, the only activities that the TA consultants were able to carry out in connection with capacity building were the holding of (i) a training needs assessment of relevant staff of Resettlement Department of MEF, Ministry of Public Works and Transport, and Ministry of Interior; and (ii) a land valuation seminar. The latter is appropriately more of an appreciation course given that no follow-up seminar was held and that the subject of land valuation is only one concern in involuntary resettlement. Nonetheless, it is worth mentioning that the TA consultants were able to produce the following reports: (i) a list of implementing regulations of the sub-decree, (ii) training and capacity building plan, and (iii) dissemination plan.

With the decision of Government to prioritize the enactment of the expropriation law, however, all plans and activities related to the sub-decree have been put on hold.

Overall Assessment and Rating

The TA could only be rated as partly successful. The TA had supported the drafting of the sub-decree, the Government has taken ownership of the draft sub-decree, and the TA has provided a venue for public discussion from various sectors on how to handle involuntary resettlement. However, one could only determine if the TA has been worth the resources and time invested in it only after the expropriation law has been made public. The expropriation law remains a key hurdle in getting a national policy on resettlement, along with the sub-decree and the implementing rules as guidelines to enforce it, promulgated by the Cambodian government.

Major Lessons

While ADB should continue to advocate that DMCs adapt resettlement policies that safeguard the interests of project affected people, each step towards this end should always be assessed and carefully measured by the ADB staff/consultants, ensuring that it is at pace with the readiness of the DMCs to move forward. In retrospect, the readiness of the Cambodian government to move forward in this direction when the TA was designed and implemented could be questioned. For instance, there was no readily available agency willing to take on the responsibility to be implementing agency for the TA, and while MEF accepted the role of implementing agency after an interregnum of 6 months, its staff could not devote as much attention to the TA because they had other pressing concerns. The TA should also have focused first in ensuring that there was agreement with government and other stakeholders on a national policy on involuntary resettlement before venturing into getting the policy promulgated in a sub-decree. On technical aspects, the TA should have allocated more person-months to experienced resettlement specialists and included qualified indigenous peoples specialists to help in the drafting of the sub-decree. After all, the sub-decree is the legal instrument for enforcing the draft national policy on resettlement.

Recommendations and Follow-Up Actions

It is important for the Government to continue with the promulgation of a sub-decree on addressing involuntary resettlement. However, the sequencing of events should be clear. There should first be agreement among major stakeholders in Cambodia of a framework for addressing involuntary resettlement. This framework, which contains the rationale, objectives, and general principles of a national policy on involuntary resettlement, will be embodied in a sub-decree. The implementing rules and guidelines for enforcing sub-decree (i.e., national policy on involuntary resettlement) will be prepared later with the regulatory agency taking the lead role. As indicated in the TA, in the absence of a national resettlement policy, non-formalized procedures are used in the resettlement process, and each resettlement varies even when resettlement is caused by projects funded by the same agency. It is also important for ADB to continue providing support for the ratification of a sub-decree, consistent with ADB's policies and international standards. A TA for this purpose is recommended.

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