

Resettlement Framework

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CAM: RURAL ROADS IMPROVEMENT PROJECT

Ministry of Rural Development

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I. PROJECT BACKGROUND

1. The proposed Project aims to provide reliable all-year road access from provincial towns and agricultural rural areas to markets, employment, and social services in seven provinces, serving about 560,000 beneficiaries. These provinces are Kampong Cham, Kampong Thom, Kampong Chhnang, Pursat, Battambang, Kampong Speu, and Siem Reap, all of which with the exception of Kampong Cham are located around the Tonle Sap Baisn where most of Cambodia's rural poor live. These road sections are currently gravel roads of 5–6 meters in width, some of which are vulnerable to flooding in the rainy season. These roads are prone to heavy dust during the dry season and thick mud and slippery during the wet season, and have low to moderate levels of traffic: average daily traffic volumes range from 200 to 2,000 passenger car units, depending on the road section. Nearly 80% of the traffic is motor cycles. The current yearly growth rate of traffic varies between 3.6%–6% based on the type of vehicle. These growth rates are forecast to increase in the future with corresponding growth rates varying between 7.2%–12%, thus needing a more sustainable paved road network to cater for such future traffic.

2. The Project was designed to avoid any form of resettlement impacts but during the ADB Fact Finding Mission in January 2010 it was found that a small section on at least one of the roads had been widened by a private contractor without prior authorization of the MRD. Due diligence was subsequently undertaken by the TA Consultant and a due diligence report was prepared for MRD and ADB outlining what steps would be necessary to address outstanding issues on the small section of the road widened by a private contractor. It was also agreed during the Fact Finding Mission that there would be no land acquisition and resettlement activities in the remainder of this road or any other road section within the Project scope, under any circumstances. It was also decided that since construction works may cause temporary impacts such as disruption or loss of income to vendors, a Resettlement Framework (RF) should be prepared to address temporary impacts or disturbances and any other unforeseen impacts. It is developed from the laws and decrees of the Government of Cambodia and the 2009 ADB Safeguard Policy Statement¹. Provisions and principles adopted in this framework will supplement the provisions of relevant decrees currently in force in Cambodia wherever a gap exists.

II. POLICIES, LEGAL FRAMEWORK, AND PROJECT PRINCIPLES

A. ADB Safeguard Policy and Requirements

3. The new **ADB Safeguard Policy Statement** consolidates three existing safeguard policies: involuntary resettlement (IR), indigenous peoples (IP), and environment. The objectives of the IR policy are to (i) avoid involuntary resettlement, (ii) explore alternatives to avoid, (iii) restore livelihoods and (iv) improve living standards of poor and vulnerable households. The IP policy objectives are to (i) design and implement projects that fosters full respect for IP's identity, dignity, human rights, livelihoods systems, and cultural uniqueness as defined by IP themselves and (ii) ensure that IPs receive culturally appropriate social and economic benefits, do not suffer adverse impacts as a result of projects, and can participate actively in projects that affect them. The policy on environment is discussed in a separate environment report.

¹ The new safeguard policy statement was approved by the ADB Board of Directors on 20 July 2009. The policy became effective on 20 January 2010.

4. The ADB **Policy on Gender and Development** (1998) adopts gender mainstreaming as a key strategy for promoting gender equity, and for ensuring that women participate in and that their needs are explicitly addressed in the decision-making process for development activities. The new safeguard policy and requirements also reiterates the importance of including gender issues in the preparation of safeguards documents at all stages to ensure that gender concerns are incorporated, including gender-specific consultation and information disclosure. This includes special attention to guarantee women's assets, property, and land-use rights and restoration/improvement of their living standards; and to ensure that women will receive project benefits. Other policies of the ADB that have bearing on resettlement planning and implementation are the (i) Public Communications Policy (March 2005), and (ii) Accountability Mechanism (2003).

B. Legal Framework

5. The Land Law of August 2001 is the current legislation governing land and property rights. The law states the ownership for non-movable properties in Cambodia which includes land, trees and structures. It is based on the provisions of the Constitution of 1993. There is no specific legislation regarding involuntary resettlement but the law regarding land or property acquisition for that resettlement by the State or other entities is indicated in Article 5 of the Land Law:

"No person may 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 after the payment of fair and just compensation in advance."

Specific laws, decrees or directives setting out regulations on land or other property acquisition in the context of involuntary resettlement will be based on Article 5 and Article 11 that states:

"The legal regime for ownership of immovable property varies in accordance with the requirements of Cambodian society, such as agricultural land, forests, waterways, lakes, reservoirs or expanses of water, seashores, riverbanks, urban immovable property, and land for construction of industrial development zones."

"Specific laws shall supplement the provisions of this law or shall derogate this law in order to meet socio-economic, land management, and urban planning exigencies."

"Regulations may, in compliance with legislative provisions, stipulate the details of these various property regimes."

6. Article 6 of the Land Law also defines the legal basis on which transfers of ownership are based:

- "Only legal possession can lead to ownership.
- "The State may also provide to natural persons or legal entities of Khmer nationality ownership over immovable property belonging to the State within the strict limits set forth in this law.
- "All transfers or changes of the rights of ownership shall be carried out in accordance with the required general rules for sales, succession, exchange, gift or by court decision.

- In Article 7, it states: "Any regime of ownership of immovable property prior to 1979 shall not be recognized."
- On policies concerning land acquisition, Article 44 of the Cambodian Constitution of 1993 states the government's right to confiscate properties from any person shall be exercised only in the public interest as provided by law and shall require fair and just compensation in advance."
- Article 20 states that "nobody shall be forced to transfer his or her ownership, if forcing is not necessary in the public interest and (if) no proper and just indemnity has been paid to the owner".
- Article 19: "Any person having titles or real situation under the influence of Article 19 of this law cannot claim any compensation or cost for maintenance or development made under immovable property which is illegally possessed. Any illegal and intentional or deceitful acquisition of the public domain of the State or public legal entity shall be punished as provided in Article 259 of this law. For possession of public domain that damages or delays work in favor of the common interest, especially the possession of land necessarily reserved for maintaining roads, the penalty shall be double. In all cases where the offender does not cease possession within the period of time determined by the competent authority, the authority can proceed to evict that offender."
- Article 259: "infringement upon the public domain shall be punished with a fine from Riel 5,000,000 to Riel 50,000,000 (between US\$1,250 and US\$12,500) and/or imprisonment from one to five years. The perpetrator has an obligation to immediately vacate such a public domain. The perpetrator has no right to any indemnity for works or improvement made on such public property. In the event that the current occupant of public property prior to this law taking effect has documents as proof and a certificate that states she/he purchased it from a person, [the occupant] may report to competent authority to enforce legal measures on such a person who sold public property illegally and for his/her own interest [and the occupant is] injured by such an act. In any event, such injured party has no right to possess the public property."

7. Royal Government of Cambodia's (RGC) Proclamation No. 6 (September 27, 1999): an Order by RGC entitled "Measures to Crack Down on Anarchic Land Grabbing and Encroachment" prohibits private ownership on state lands. In particular, it required a cessation to encroachment on public and private properties as well as State lands, including public gardens, reserved lands for roads and rail sites. This order directs the municipal provincial authority, and the Royal Cambodian Armed Forces, National Police and Military Policy, and all relevant ministries and institutions, to participate in solving problem of anarchic land grabbing and encroachments.

8. Recently, the Ministry of Economy and Finance on behalf of the government had drafted a new Law on Expropriation for rehabilitation and construction of physical infrastructure projects serving for public and national interest, and for country development purpose. The law mainly provides (i) mechanism and procedure for expropriation of people properties with fair and just compensation, (ii) expropriation process, (iii) compensation for property expropriation, (iv) grievance redress mechanism, and (v) legal penalty. This law has been adopted by senate on 28 December 2009, but it has not been promulgated for implementation.

C. Project Principles

9. The Project will follow the following principles:
- (i) Involuntary resettlement and impacts on land, structures and other fixed assets will be minimized where possible by exploring all alternative options.
 - (ii) Compensation will be based on the principle of replacement cost at the time of compensation.
 - (iii) Meaningful consultation will be carried out with people identified as likely to be affected households (AH) from planning up to implementation. The comments and suggestions of these AHs will be taken into account.
 - (iv) The draft, final and any updates on any RP to be prepared will be disclosed to AHs likely to be affected in a form and language(s) understandable to them prior to submission to ADB.
 - (v) Resettlement identification, planning and management will ensure that gender concerns are incorporated.
 - (vi) Special measures will be incorporated in the resettlement plan to protect socially and economically vulnerable groups such as ethnic minority households, households headed by women, children, disabled, the elderly, landless and people living below the generally accepted poverty line.
 - (vii) Existing cultural and religious practices will be respected and, to the maximum extent practical, preserved.
 - (viii) Culturally appropriate and gender-sensitive social impact assessment and monitoring will be carried out in various stages of the project.

III. PROJECT IMPACTS AND BENEFITS

10. **Definition of Affected Households.** In the context of involuntary resettlement, affected households are those who are physically displaced (relocation, loss of residential land, or loss of shelter) and/or economically displaced (loss of land, assets, access to assets, income sources, or means of livelihood) as a result of (i) involuntary expropriation of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.

11. **Eligibility.** All AHs identified in the project-impacted areas on the cut-off date will be entitled to compensation and/or assistance for their affected assets, and rehabilitation measures sufficient to assist them to improve or at least maintain their pre-project living standards, income-earning capacity and production levels. The cut-off date will be the final day of the detailed measurement survey (DMS) in each project road. Those who encroach into the subproject area after the cut-off date will not be entitled to compensation or any other assistance.

12. **Entitlements.** The entitlement matrix in Table 3 summarizes the main types of losses and the corresponding nature and scope of entitlements. It should be noted that the project will not require widening of the existing road corridor. The entitlements below may not cover all types of impacts and will be enhanced or improved in the resettlement plans based on the findings of the social assessment and subproject impacts.

Table 3: Project Entitlement Matrix

Type of Impacts	Entitled Persons	Entitlements	Implementation Issues
Temporary Impacts on business income during relocation or during dismantling/ repair of affected portion (without relocation)	Shop owners/ mobile vendors	<p>Mobile vendors who own low tables and vegetable and fish mats will be provided assistance amounting to \$10 per vendor*.</p> <p>Informal shops: estimated daily net profit based on type of business multiplied by the number of days of business disruption.</p> <p>For registered businesses, daily net income will be based on tax receipts multiplied by the number of days of business disruption.</p> <p>Transportation assistance*, as required. The amount to be determined during resettlement plan preparation.</p>	<p>* For railway rehabilitation in Cambodia Project, transportation allowance is given to vendor who own low tables and vegetable and fish mats at \$10 per vendor.</p> <p>The rate will be verified through interviews with informal shop owners and taxation authority at local level to get an estimate of daily net profit.</p>
Structures	Owner whether or not land is owned	<p>If <u>partially affected</u>, compensation at replacement cost based on current market prices of affected materials plus provision of current labor cost for repair.</p> <p>If <u>totally affected</u>, compensation at replacement cost based on current market prices of materials and labor without depreciation or deductions for salvageable materials.</p>	
Crops and Timber and Fruit Trees	Owner of timber and fruit trees whether or not land is owned	<p>Crops will be compensated at replacement cost based on current market prices in the area (based on average market value of crops for the previous three years)</p> <p>Fruit trees will be calculated as follows: yield x number of harvesting x current market price x number of years to mature. During implementation, compensation for trees will be adjusted based on their age: (From 1–3 years old: 1/3 of it's full price (as it can be replanted; From 3–5 years old: 2/3 of full price; and more than 5 years old: will get full compensation</p>	

Type of Impacts	Entitled Persons	Entitlements	Implementation Issues
Temporary Use of Land	Legal owner	For agricultural and residential land to be used by the civil works contractor as by-pass routes or for contractor's working space, (i) rent to be agreed between the landowner and the civil works contractor but should not be less than the unrealized income and revenue that could be generated by the property during the period of temporary use of the land	Restoration of the temporarily used land within 1 month after closure of the by-pass route or removal of equipment and materials from contractor's working space subject to the conditions agreed between the landowner and the civil works contractor.

IV. RESETTLEMENT, ETHNICITY AND GENDER STRATEGIES

A. Impacts on Mobile Vendors and Shop Owners

13. Schedule of construction activities will be planned in advance and will inform mobile vendors and shop owners about the temporary disturbance during construction. Vendors will be assisted to relocate (i.e., move across the road, move back or any place nearby) before start of civil works. If impacts on business cannot be avoided and there will be income disruption, these vendors and shop owners will be provided cash assistance such as transportation allowance and loss of income allowance which is equivalent to the daily wage rate multiplied by the number of days of business disruption.

B. Impacts on Ethnic Minority Households and Strategy

14. One of the Project objectives is to ensure that ethnic minority households, especially the vulnerable, share in the project benefits and experience limited adverse impacts from the Project. Screening and social assessment will be carried out in all Project roads, even though the Social Impact Assessment found that there are only specific roads where ethnic minority households were identified. However, prior to Project implementation in each of the roads it will be determined during the DMS whether any of the households are vulnerable ethnic minority households to ensure they are entitled to the same level of compensation as the majority Khmer population.

E. Gender Strategy

15. A number of strategies will be adopted to ensure gender-sensitive income restoration measures and to engage women, including ethnic minority women and poorer and more vulnerable women, in the planning and implementation of the Project in terms of access to improved infrastructure and services, participation in livelihood programs made possible by this Project, and other Project benefits. The gender strategy is in Table 2.

Table 4: Gender Strategy

Project activity and output	Gender Strategy
Project Planning and Implementation	The project staff and resettlement committees will make concerted efforts to consult with households headed by women and female members. This will be

Project activity and output	Gender Strategy
	<p>done through individual and women focus group discussions.</p> <p>In addition to village forums, specific women's focus group meetings will be held to raise awareness and understanding about the project design, project schedule, benefits, adverse impacts and mitigation measures to ensure that they understand clearly the policies, entitlements and other procedures, and are able to make informed decisions.</p>
Compensation and Assistance	<p>Women mobile vendors will be consulted specifically to establish criteria for compensation of lost earnings.</p> <p>Compensation payments will be signed off by both husband and wife and paid directly to both. Households headed by women will sign off and receive payments directly.</p> <p>Training to build capacity in resettlement administration and to enhance gender and ethnicity sensitivity in resettlement management.</p>
During Construction	<p>The civil works contracts will include employment targets for the poor, and women from the Project affected villages and local area. They will also include commitments to gender equity including: i) ensuring that no child labor or trafficked labor will be used; ii) no discrimination against the employment of qualified women; and iii) no differential wages paid to men and women for work of equal value.</p>
Monitoring	<p>All monitoring indicators will be disaggregated by gender and ethnicity.</p>

V. PREPARATION OF SAFEGUARDS PLANNING DOCUMENTS

16. Resettlement screening has already been carried out but this RF has been prepared to target mobile vendors and other unanticipated impacts. Resettlement plans to be prepared will be commensurate with the extent and degree of the impacts. The degree of impacts will be determined by the scope of physical and economic displacement and vulnerability of the temporarily affected persons.

17. If resettlement impacts are unavoidable and preparation of a resettlement plan is therefore required, an RP will be prepared using the following procedures:

- (i) Undertake a census of all AHs.
- (ii) Undertake DMS² of all losses of all AHs. At the same time, inform potential AHs (without discrimination) of the Project, its likely impacts, and principles and entitlements as per the RF.
- (iii) Undertake a socioeconomic survey (SES)³ of at least 10% of all AHs, 20% of severely affected AHs and ethnic minority households.
- (iv) Undertake a replacement cost survey for various types of affected assets as a basis for determining compensation rates at replacement cost. Determine the losses in accordance with the entitlement matrix.⁴
- (v) Provide project and resettlement information to all persons affected in a form and language that are understandable to them, and closely consult them on

² Data will be gender and indigenous peoples disaggregated.

³ It will include gender analysis and data will be gender and ethnic minority disaggregated.

⁴ If there are new categories of AHs and/or losses identified during the DMS (other than those described in the entitlement matrix), the entitlements will be derived in accordance with ADB's policy and guidelines.

- compensation options.
- (vi) Prepare the draft RP with time-bound implementation schedule, procedures for grievance mechanism and monitoring and evaluation, and a budget.
 - (vii) Finalize the RP and translate where necessary into language of ethnic minority group.
 - (viii) Disclose key information of the draft and final RP by placing copies in the commune offices and distributing copies of information leaflets to the AHs.

Table 4: Surveys for RP Preparation

Detailed Measurement Survey (DMS)	<p>The census and detailed measurement survey (DMS) of lost assets will collect data on the affected assets from 100% of affected households (AHs) following detailed engineering design. The data collected during the DMS will constitute the formal basis for determining AH entitlements and levels of compensation. For each AH, the scope of the data will include:</p> <ul style="list-style-type: none"> • Quantity of losses, e.g., business or other income, jobs or other productive assets; estimated daily net income from informal shops; • Summary data on AHs, by ethnicity, gender of head of household, household size, primary and secondary source of household income viz-a-viz poverty line, income level, whether household is headed by women, elderly, disabled, poor or ethnic minority households; • Identify whether source of income is primary source of income; and • AH knowledge of the project and preferences for compensation.
Socioeconomic Survey	<p>At a minimum, the socioeconomic survey (SES) will collect information from a sample of 10% of affected people and 20% of severely affected AHs, disaggregated by gender and ethnicity. The purpose of the socioeconomic survey is to provide baseline data of AHs to assess resettlement impacts, and to be sure proposed entitlements are appropriate, and to be used for resettlement monitoring. The scope of data to be collected includes:</p> <ul style="list-style-type: none"> A. Household head: name, sex, age, livelihood or occupation, income, education and ethnicity; B. Household members: number, livelihood or occupation, school age children and school attendance, and literacy, disaggregated by gender; C. Living conditions: access to water, sanitation and energy for cooking and lighting; ownership of durable goods; and D. Access to basic services and facilities.
Replacement Cost Survey	<p>The replacement cost survey (RCS) will be done in parallel with DMS and SES activities by collecting information from both secondary sources and primary sources (direct interviews with people in the affected area, material suppliers, house contractors), and from both those affected and those not affected. The government rates will be adjusted, as necessary, based on the findings of a RCS. Compensation rates will be continuously updated to ensure that AHs receive compensation at replacement cost at the time of compensation payment.</p>

18. The preparation of resettlement plans will cover all the activities mentioned above and follow the strategies mentioned in Section IV.

VI. IMPLEMENTATION ARRANGEMENTS

19. The executing agency will be the Ministry of Rural Development (MRD) at the national level and at the Provincial Department of Rural Department (PDRD) in each of the seven Project provinces will be the implementing agency. If there is a resettlement impact caused by the project, the MRD will request the Inter-ministerial resettlement committee working group

(IRC-WG), chaired by the Ministry of Economy and Finance, to convene in order to deal with resettlement impacts. With the request from the MRD, IRC will work closely with relevant provincial governors to establish a Provincial Resettlement Subcommittee (PRS) for coordinating with IRC-WG in dealing with resettlement activities.

20. Based on an assessment of the social impact of anticipated resettlement impacts, the Project Management Units (PMU) will coordinate closely with the Provincial Department of Women's Affairs as it is largely female mobile vendors who will be temporarily affected by the Project. The PMU will also work with female members of Commune Councils that are impacted upon by this Project. Activities to mitigate any negative impacts will include an identification of all mobile vendors, a participatory assessment of anticipated income losses, and modalities for payment of compensation. The Project will be assisted as required on an intermittent basis by a project management consultant experienced in social safeguards issues.

VII. CONSULTATION, GRIEVANCE REDRESS, AND DISCLOSURE

A. Consultation and Participation

21. Meaningful consultation with the affected households will be carried out prior to the commencement of civil works. They will also participate in the various RP processes: DMS, RCS, identification of sites, hand-over of entitlements, monitoring of impacts and benefits, and discussion and settlement of grievances. The scope of information to be provided to AHs includes: (i) description of Project and overall schedule; (b) DMS and RCS results, (c) policy principles and entitlements and special provisions, (d) grievance procedures, (e) timing for payments and displacement schedule, and (f) institutional responsibilities. For Project roads where there are ethnic minority households, consultations and participation will be undertaken in a culturally appropriate manner.

B. Grievance Redress

22. Any grievances or conflicts will be resolved at the village level, as much as possible. However, if the AHs are not satisfied with the decision at the village level, their issue/case can be elevated at the district level up to the provincial level and ultimately to the central level. The project grievance redress procedure for this Project will operate as follows:

- (i) First stage: affected persons (APs) will present their complaints and grievances verbally or in writing to the village and commune chief or IRC and PRS working group. The village and commune chief, and IRC and PRS working group will provide immediate written confirmation of receiving the complaint. If after 15 days the aggrieved AP does not hear from them, or if the AH is not satisfied with the decision taken in the first stage, the complaint may be brought to the District Office.
- (ii) Second stage: The District Office has 15 days within which to resolve the complaint to the satisfaction of all concerned. If the complaint cannot be solved at this stage, the District Office will bring the case to the Provincial Grievance Redress Committee.
- (iii) Third stage: The Provincial Grievance Redress Committee meets with the aggrieved party and tries to resolve the situation. The Committee may ask for a review of the DMS by the external monitor agency (EMA). Within 30 days of the submission of the grievance, the Committee must make a written decision and submit copies to the MRD, PDRD, EMA, PRS/IRC and the AH.

- (iv) Final stage: If the aggrieved AH does not hear from the Provincial Grievance Redress Committee or is not satisfied, he/she will bring the case to Provincial Court. This is the final stage for adjudicating complaints. If any party is still unsatisfied with the Provincial Court judgment, he/she can bring the case to a higher-level court.

23. In relation to affected ethnic minority households the same procedures as above apply except where needed, translators will be hired. This request must come from the ethnic minority households.

C. Disclosure

24. The resettlement plan to be prepared will be submitted to ADB for review and concurrence. Key information in the RP will be provided to the APs through the distribution of booklets or pamphlets in local language. It will be simple and easy to read and will consider the literacy level of the audience concerned. Copies of the resettlement plan or its summary translated into local language will be placed in the commune offices. All resettlement plans and monitoring reports will be uploaded on the ADB website.

VIII. MONITORING AND EVALUATION

A. Internal Monitoring

25. The role of internal monitoring and evaluation is to ensure that resettlement institutions are well functioning during the course of project implementation, and that resettlement activities are undertaken in accordance with the implementation schedule described in the RP. In this way, the protection of AHs' interests and the schedule for civil works can be assured.

26. Primary responsibility for internal monitoring lies with MRD as the project implementing agency, and will be coordinated by its PMU. PMU will be responsible for overseeing the formation, function, and activities of each of the implementing agencies, and through quarterly monitoring reports, summarize this progress. All monitoring data will be collected to ensure gender and ethnicity disaggregation.

B. External Monitoring

27. The IRC will recruit an EMA to carry out its own monitoring of resettlement activities and will provide advice on safeguards compliance issues and propose corrective actions. The EMA will be a qualified Consulting Firm/NGO or independent consultant with recognized experience in Cambodia; the terms of reference for the EMA must be acceptable to both IRC and the ADB.

IX. BUDGET AND SCHEDULE

28. The budget will cover compensation costs, allowances and rehabilitation measures, administration costs, and contingency. RP Costs will be part of the Government's counterpart fund. The Government will ensure timely provision of counterpart funds for resettlement to meet any unforeseen obligations in excess of the resettlement budget estimates in order to satisfy resettlement requirements and objectives. The Resettlement Plans will identify key activities for which funds will be used, any disbursement milestones and auditing requirements that will facilitate appropriate and timely delivery.

29. The project is expected to be implemented in four years, starting early 2011. Compensation of AHs cannot commence until the RP is acceptable to ADB. Commencement of civil works may commence in sections where there are no resettlement impacts. All resettlement activities will be coordinated with the civil works schedule. MRD will not issue a notice of possession to contractors in specific sites until all resettlement activities have been satisfactorily completed, agreed rehabilitation measures are in place, and the site is free of all encumbrances.