

# DERAILED



A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway



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## ACKNOWLEDGEMENTS

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## Preface

Every year, millions of people around the world are forcibly displaced from their lands, homes and livelihoods to make way for large-scale development projects. Most often those who are forced to sacrifice their place on earth for both public and private interests are amongst the poorest and most vulnerable people in society. They are thus the least equipped to cope with the challenges of physical, economic and social displacement and are as a result thrust into even deeper poverty and social exclusion. In the past two decades, development institutions that finance many of these projects, and many developing country governments, have stepped up their efforts to mitigate the risks of harmful impacts of development projects on displaced populations through safeguard policies, legal and regulatory frameworks and institutional capacity building to ensure better resettlement practices. Despite these efforts, however, the worldwide resettlement record remains a shameful one of insufficient financing, poor planning and inadequate implementation, and so these projects generally end up turning into what Oliver-Smith aptly describes as “development disasters.”<sup>i</sup> As Michael Cernea, the author of the World Bank’s first involuntary resettlement policy, summed up: “The outcomes of most development-caused forced displacement and resettlement (DFDR) leave a disgracing stain on development itself, conflicting with its poverty reduction rationale, objective and ethic.”<sup>ii</sup>

Yet, resettlement does not need to lead to development disasters. While the overall record is poor, there are success stories. Some of the most oft-cited examples of successful resettlement have been in China, including the Dalian Water Supply Project, the Yunnan Expressway Project and the Shuikou Hydropower Project. Even in Cambodia, which shares the poor track record of many other countries on forced evictions and development-induced displacement, there have been success stories. Notably, the Akphiwat Meanchey resettlement, conducted between 1997-2000, is widely recognized as a positive example of resettlement that resulted in generally improved living standards and security of tenure among the resettled population. In these success stories, resettlement was based on meaningful consultation with the affected people on genuine resettlement options. Moreover, planners and implementing agencies treated the resettlement as a development opportunity to improve the lives of the affected communities. Indeed, when resettlement for public development projects is unavoidable, it should be seen as an opportunity to directly lift affected people out of poverty and ensure that they are among the prime beneficiaries of the development. This is a goal well aligned with Cambodia’s National Strategic Development Plan.

In the case of the development project that is the subject of this report – the rehabilitation of Cambodia’s railway - this objective is particularly pertinent since the project is being financed by two institutions whose central missions are poverty alleviation: the Asian Development Bank (ADB) and the Australian Agency for International Development (AusAID). The importance of recognizing the risks of involuntary resettlement, and avoiding, minimizing and mitigating these risks so that they do not evolve into development disasters, is at the heart of the ADB’s Involuntary Resettlement Safeguard Policy. It is also reflected in international law obligations to ensure that the human rights of people affected by development-induced displacement are fully respected. These obligations became binding upon the governments of Cambodia, Australia, and many of ADB’s other shareholders, upon their ratification of international human rights law covenants.

This report presents the findings of research conducted by Bridges Across Borders Cambodia (BABC), over a period of approximately 20 months throughout the country, on the resettlement process and impacts of the Rehabilitation of the Cambodian Railways Project. It also assesses compliance with the applicable policy and legal instruments, including relevant provisions of international human rights law covenants, Cambodian law and the ADB Policy on Involuntary

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- i. Oliver-Smith, A. (ed.), *Development Dispossession: The Crisis of Forced Displacement and Resettlement*, Santa Fe, New Mexico, School for Advanced Research, 2009, page 3.
  - ii. Michael M. Cernea, ‘Reforming the Foundations of Involuntary Resettlement: Introduction’ (in Michael Cernea and Hari Mohan Mathur (eds.), *Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit-Sharing*, New Delhi, India, Oxford University Press, 2008, page 1.

Resettlement. The legal and policy obligations are described in Chapter 1 and at the beginning of each subsequent chapter.

In Chapters 2 to 6, the report presents the research findings in relation to various aspects of the resettlement process and assesses compliance with policy and legal obligations in relation to each aspect. Chapter 2 examines the experience of Project-affected people in accessing relevant information and participating in consultations about the Project, the resettlement process and their entitlements. Chapter 3 explores the process of assessing, offering and providing households compensation for demolishing their homes and other losses, and the sufficiency of the amount of compensation received by households as compared to the cost of constructing a basic adequate house in Cambodia. Chapter 4 looks at the selection of resettlement sites, and their appropriateness and adequacy in terms of tenure security, proximity to livelihood opportunities and basic facilities, and the provision of services. It also explores the experiences of affected households in reconstructing their homes at resettlement sites. Chapter 5 examines the impacts of resettlement on livelihoods and income, as well as debt burdens and the quality of Project-sponsored income restoration programs. Lastly, Chapter 6 investigates the Project's local grievance mechanism and the ability of affected households to attain solutions for resettlement-related concerns and to access remedies for harms suffered.

It should be noted that BABC, along with other NGOs that have been monitoring the Railways Project, have brought information and concerns about the resettlement process to the Project implementers and financiers through extensive written correspondence and meetings over the period in which the research for this report was conducted. As a result, efforts have been made by these parties to correct some of the problems that have resulted from the resettlement process. This report does not seek to document the ongoing exchange between NGOs and these parties.

The purpose of this report is to place the research findings in the public arena, in the spirit of rectifying the harms experienced by Railways Project-affected households and improving resettlement processes both for this Project and for future projects that require land acquisition and resettlement. The report includes a number of specific recommendations toward these ends.

Finally, it is hoped that this report will contribute to a better understanding of why resettlement should always be a last resort and, if absolutely necessary, implemented in a way that respects human rights and ensures that harm does not befall the very people who are most in need of development benefits and least equipped to shoulder its costs.

David Pred  
Executive Director  
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## Acronyms and Abbreviations

ADB	Asian Development Bank
AH	Affected Household
AM	Accountability Mechanism
AP	Affected Person
AusAID	Australian Agency for International Development
BABC	Bridges Across Borders Cambodia
CARM	ADB Cambodia Resident Mission
COI	Corridor of Impact
CRP	Compliance Review Panel
DMS	Detailed Measurement Survey
DTS	Detailed Technical Design
EIRP	Expanded Income Restoration Program
GMS	Greater Mekong Sub-region
HW1	Highway One Project
HRTF	Housing Rights Task Force
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOL	Inventory of Losses
IRC	Inter-Ministerial Resettlement Committee
IRP	Income Restoration Program
MEF	Cambodia Ministry of Economy and Finance
MoFAIC	Cambodia Ministry of Foreign Affairs and International Cooperation
MOI	Cambodia Ministry of Interior
MPP	Municipality of Phnom Penh
MPWT	Cambodia Ministry of Public Works and Transportation
NGO	Non-Governmental Organization
OSPF	Office of Special Project Facilitator
PIB	Public Information Booklet
PRSC	Provincial Resettlement Sub-Committee
RGC	Royal Government of Cambodia
ROW	Right-of-Way
RP	Resettlement Plan
STT	Sahmakum Teang Tnaut
TOR	Terms of Reference
TRR	Toll Royal Railways
UN CESCR	United Nations Committee of Economic Social and Cultural Rights
USD	United States Dollar

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*Capital-intensive, high-technology, large-scale projects convert farmlands, fishing grounds, forests, and homes into reservoirs, irrigation systems, mines, plantations, colonization projects, highways, urban renewal zones, industrial complexes, and tourist resorts all in the name of regional and national development. Aimed at generating economic growth and thereby improving general welfare, these projects have all too often left local people permanently displaced, disempowered, and destitute. Resettlement has been so poorly planned, financed, implemented, and administered that these projects end up being 'development disasters.'*

- Oliver-Smith, A. (ed.), *Development Dispossession: The Crisis of Forced Displacement and Resettlement*, Santa Fe, New Mexico, School for Advanced Research, 2009, page 3.

*Well-designed and well-implemented resettlement can, however, turn involuntary resettlement into a development opportunity. The challenge is to not treat resettlement as an imposed externality but to see it as an integral component of the development process and to devote the same level of effort and resources to resettlement preparation and implementation as to the rest of the project. Treating resettlers as project beneficiaries can transform their lives in ways that are hard to conceive of if they are viewed as 'project-affected people' who somehow have to be assisted so that the main project can proceed.*

- Ian Johnson, Vice President, Environmentally and Socially Sustainable Development, World Bank (Forward to Involuntary Resettlement Sourcebook, World Bank, 2004).

*The Royal Government remains committed to developing and implementing a comprehensive and sustainable social safety net system aimed at protecting the livelihoods of the poor and most vulnerable segments of the population.*

- National Strategic Development Plan Update 2009-2013, Royal Government of Cambodia, November 2009, para 505.

*Please do not confuse that in order to reduce poverty the Government needs to give much compensation or money to the poor; it is not this kind of poverty reduction tool. The Government tries to reduce poverty through development projects such as this kind of railway project, so please don't misunderstand on this matter.*

- Representative of the Cambodian Inter-Ministerial Resettlement Committee in a meeting with Railways Project Affected People on December 28, 2011.

## Background to the Rehabilitation of the Railways Project and Resettlement Impacts

The Cambodian railway has remained in a state of significant disrepair since the Khmer Rouge era. The Greater Mekong Sub-region Rehabilitation of the Railway in Cambodia Project (the Project) was launched in 2006 to restore the country's approximately 650 km of railway infrastructure. The Project, funded mainly by development assistance in the form of loans and grants from the Asian Development Bank (ADB)<sup>1</sup> and the Government of Australia<sup>2</sup> (see Table 1), aims to boost economic growth and decrease poverty in Cambodia. It is part of ADB's multi-billion dollar Greater Mekong Sub-region Program (GMS),<sup>3</sup> which brings together six states of the Mekong river basin with a common goal of growth and prosperity through economic cooperation.

The Railway Project aims to enable efficient and cost-effective transport of heavy, bulky and hazardous cargo. According to ADB, this is expected to lower the costs of main commodities and manufacturing inputs. Other anticipated benefits are a more competitive transport sector, better road safety and lower costs for road construction and repair as heavy traffic will be partly diverted from Cambodia's highways. The Project intends to establish Cambodia as a sub-regional transport hub in order to increase the competitiveness of the country's economy and contribute to regional economic integration.<sup>4</sup> In the longer term, passenger trains are expected to become operational, offering an alternative affordable transport option.

The Cambodian railway runs from the border town of Poipet in the North to the coastal province of Sihanouk in the South, through the Cambodia capital, Phnom Penh (see Figure 1). The Project divides the rail network into four sections for the purposes of rehabilitation:

- 1) Northern Line (338 km), which runs from Phnom Penh to Sisophon in Banteay Meanchey province, and the "Missing Link" (48 km) that runs from Sisophon to Poipet (railway tracks along the "Missing Link" disappeared during the civil war in the 1980s);
- 2) Southern Line (264 km), which runs from Phnom Penh to Sihanouk province;
- 3) Poipet Section, which includes rail tracks at the Cambodian-Thai border (6 km) and an abandoned station;
- 4) Phnom Penh Section (78km).

The Project also includes the development of a freight and cargo railway facility (approximately 98 hectares) in Samrong Estate, which is located within Kakab and Samrong Krom communes.

The Project's main displacement and resettlement impacts are determined in terms of the Corridor of Impact (COI). The COI measure for defining the area of impact is much narrower than the commonly used Right of Way (ROW) measure. The COI extends 3.5 to 5 meters from the centerline of the tracks depending on the section of the railway, while the ROW usually extends 20 to 30 meters from the centerline. At this time, only the COI needs to be cleared for the Project, although the remainder of the ROW may be cleared in the future. The COI approach has been used to minimize the scale and cost of resettlement.

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1. Asian Development Bank Loans: Loan-2288 REG:Cam:GMS Rehabilitation of the Railway in Cambodia (US\$ 42.0 million), Loan-2602 REG: Greater Mekong Sub-region: Rehabilitation of the Railway in Cambodia Project (US\$ 42.0 million).  
2. Grants from the Government of Australia: TA-6251 REG: GMS Rehabilitation of the Railway in Cambodia (US\$ 960,000), Grant-0187 REG: Greater Mekong Sub-region: Rehabilitation of the Railway in Cambodia Project (US\$ 21.5 million), TA-7460 REG: Outcome Monitoring and Procurement Review (US\$ 400,000), TA-7460 REG: Outcome Monitoring and Procurement Review Supplementary (US\$ 100,000).  
3. The Greater Mekong Sub-region Program was launched with the assistance of the ADB in 1992.  
4. See ADB website, Fact Facts: CAM: Loan 2288 – (GMS) Rehabilitation of the Railway in Cambodia Project, available at: <http://www.adb.org/Projects/CAM-Railway/fast-facts.asp>.

**Table 1: Project Investment Cost and Development Assistance**

Financier	Investment Cost (US\$)
Asian Development Bank	84 million
Government of Australia	22.96 million
Government of Cambodia	20.3 million
OPEC Fund for International Development	13 million
Government of Malaysia	2.8 million (in kind)
	Total Investment Cost: 143.06 million
	Total Development Assistance: 122.76 million

*Source: ADB website, Fast Facts: CAM: Loan 2288 – (GMS) Rehabilitation of the Railway in Cambodia Project, available at: <http://www.adb.org/Projects/CAM-Railway/fast-facts.asp>*

An “affected household” is a household, whose residence, other structures and/or assets were, at the cut-off date, situated totally or partially within the COI of the Railway Project or on land required for the construction of stations, depots or other Project-related infrastructure. These households are either totally affected, because they will be displaced because of the Project, or partially affected, because they will lose part of their structures and/or assets that were located within the COI. Partially affected households are entitled to remain in the residual ROW in a residence deemed under the Project to be viable for habitation despite its size being reduced.

Around 4,174 households<sup>5</sup> living near the railway line or in stations stand to be fully or partially affected by the Project. These households are entitled to compensation for their losses as well as other support, including a plot of land at a resettlement site for totally affected households. Project entitlements are outlined in the Resettlement Plans (RPs), which have been developed to avoid, minimize and mitigate the impacts of the Project on affected households, as required by the ADB Policy on Involuntary Resettlement and under the terms of the Loan Agreement between the Royal Government of Cambodia (RGC) and the ADB.

The initial RP for the Project was drafted by the RGC and approved by the ADB in October 2006. The 2006 RP outlines the relevant legal framework and policies, resettlement principles and project entitlements. It also provides procedures for: consultation, participation and disclosure of information to affected households; a grievance redress mechanism to address complaints from affected households; income restoration measures for poor and vulnerable households, as well as bamboo railway transport operators; institutional arrangements; and internal and external monitoring. An Addendum to the 2006 RP was prepared in November 2007.

More detailed Updated RPs must be prepared for each section based on detailed technical design (DTD) and a detailed measurement survey (DMS), which is an inventory of losses of affected households. The Updated RPs clarify the policies and their implementation in each section of the railway. The Ministry of Public Works and Transport (MPWT), the Executing Agency of the RGC under the Loan Agreements, has prepared four Updated RPs for each railway section. These were all approved by the ADB.<sup>6</sup> In July 2009 a separate RP was prepared for Samrong Estate, as the development of the Samrong facility fell outside the 2006 RP. At the time of writing, the Samrong RP has not yet been updated and approved.

5. As per the updated Resettlement Plans for the Project.

6. Dates of approval of updated RPs: Updated Resettlement Plan for the Northern Line and the Missing Link, July 2008; Updated Resettlement Plan for the Southern Line, September 2009; Updated Resettlement Plan for the Poipet Section, June 2010; and Updated Resettlement Plan for the Phnom Penh Section, August 2010.

The initial RP includes the results of the preliminary socio-economic survey and inventory of losses for affected households, which were carried out from May to June 2006. One of the main objectives of the updated RPs was to compare and revise these results, following DTD and DMS surveys of affected households for each section of the railway. According to the updated RPs, 1,448 out of the total of 4,174 affected households will be physically displaced. This number includes 248 households in Phnom Penh that have been recently re-classified from partially to totally affected.<sup>7</sup>

**Table 2: Number of Project-Affected Households**

Compensation to AHs	Date of Approval of RP	Date of Approval of Updated RP	Number of Affected Households	Number of Relocating Households
Poipet Section	Oct 2006	Jun-10	1,094	588
Northern line and Missing Link	Oct 2006	Jul-08	1,165	51
Southern line	Oct 2006	Sep-09	206	30
Phnom Penh	Oct 2006	Aug-10	1,289	169
Bamboo rail transport operators*	Oct 2006	-	189	52
<b>SUB-TOTAL</b>		-	<b>3,943</b>	<b>890</b>
Addendum to the Updated RP for Phnom Penh		To be prepared	-	248
Samrong Estate	Jul 2009	To be updated	231	62
<b>GRAND TOTAL</b>			<b>4,174</b>	<b>1,200</b>
*Bamboo rail transport operators in all sections. Part of Updated RPs for Northern and Southern lines.				

Source: ADB website, *Fast Facts: CAM: Loan 2288 – (GMS) Rehabilitation of the Railway in Cambodia Project*, available at: <http://www.adb.org/Projects/CAM-Railway/fast-facts.asp>

According to the Updated RPs, house-to-house DMS surveys were conducted in 2007 to 2009 by the Inter-Ministerial Resettlement Committee (IRC)/MPWT working group together with local resettlement specialists.<sup>8</sup> The results of each survey included: type of affected household, type of main/secondary/other affected structures, measurement of lost assets, as well as the type and number of affected crops and trees. The existing inventory of losses was updated based on this data. Options for relocation, compensation and other assistance were then determined for each affected household based on individual DMS results. According to the RPs, no relocation or demolition could take place until the affected households received full compensation for their losses as per the DMS.

While all affected households are entitled to cash compensation for lost structures and assets, different options are available for resettlement depending on type of tenure and positioning of the main structure relative to the COI. According to the RPs, the three available options for resettlement are: (1) relocation to project-sponsored sites with security of tenure, (2) re-organization onsite in the ROW with a guarantee of being able to remain there for at least the next 5 years, and (3) cash compensation for lost assets and self-arranged relocation. Vulnerable households are entitled to other support.<sup>9</sup>

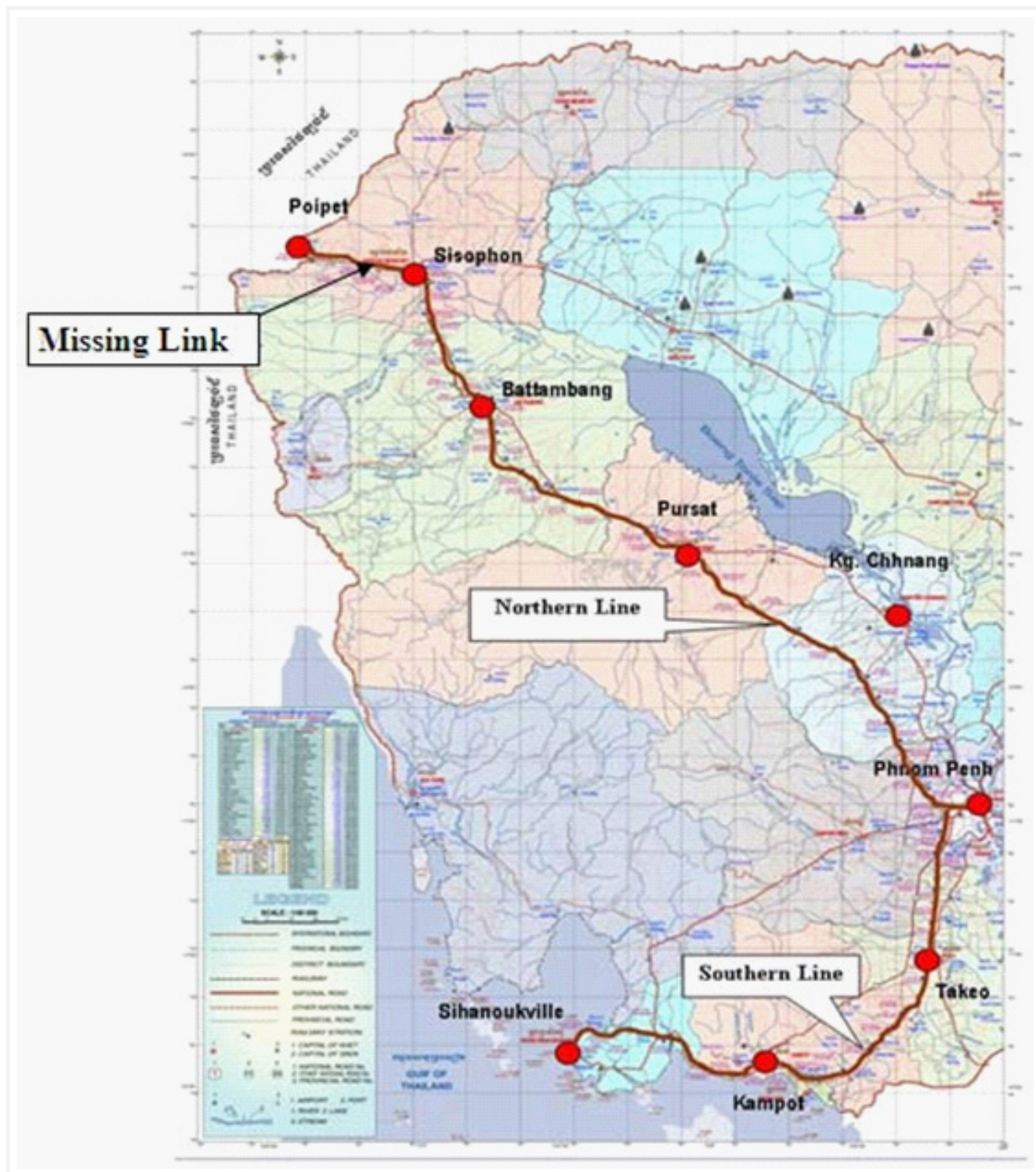
7. According to the Addendum to the Updated RP for Phnom Penh, which is yet to be prepared.

8. DMS was done in Phnom Penh during July-October 2009; in the Northern Section (excluding Poipet station) and “Missing Link” during December 2007 – February 2008 and April – May 2008; in the Southern Line during May-August 2008; and in the Poipet Section during November 2008 – April 2009.

9. Vulnerable households are defined in the 2006 Resettlement Plan as “Distinct groups of people who might suffer disproportionately from resettlement effects, including the poor (monthly income less than US\$15 per person), ie. the country’s national poverty threshold, landless, female-headed, disabled and elderly households without means of support and those from minority groups.” (Cambodia: GMS Rehabilitation of the Railway in Cambodia, Resettlement Plan, October 2006, Definition of Terms.) For further discussion of vulnerable households affected by the Project see Chapter 2.

The total cost of resettlement under the Project as per the updated RPs is estimated at US\$4,314,874.13.<sup>10</sup> According to the RP for Samrong estate, resettlement activities associated with the development of the Samrong railway facility will cost a further US\$4,128,046.12.

**Figure 1: Map of Railway Lines in Cambodia**



Source: ADB website, Fast Facts: CAM: Loan 2288 – (GMS) Rehabilitation of the Railway in Cambodia Project, available at: <http://www.adb.org/Projects/CAM-Railway/fast-facts.asp>

10. The estimated costs for resettlement are: US\$ 1,563,402.86 for the Phnom Penh Station, US\$ 643,165.85 for the Southern Line, US\$ 1,054,152.71 for the Northern Line including the Missing Link, and US\$ 1,054,152.71 for Poipet Station.

## Methodology

The analysis contained in this report is based on the following: (1) desk review of documentation related to the Project, as listed in the References; (2) surveys of a total of 216 individual Project-affected households (consisting of two sample sets, as described below); (3) six focus group discussions with a total of 68 affected women; (4) observations from regular communications with Project-affected households in the course of assisting them to access Project grievance mechanism; (5) monitoring of meetings between IRC and Project-affected households; and (6) meetings and correspondence with the IRC, ADB and AusAID spanning over 20 months.

### Household Surveys

Between September 2010 and October 2011, a Bridges Across Borders Cambodia (BABC) research team conducted 200 individual household surveys in communities affected by the Project across Cambodia. The analysis in this report is based in part on the data and information collected from this sample. SPSS and Excel, including frequency distribution and cross tabulations, were used to analyze the data. The sample constitutes 4.8 percent of the total number of affected households as reported by the IRC and the ADB as of December 2011.<sup>11</sup> (See Table 2.)

Most of the 200 households interviewed were from affected communities in Phnom Penh, Samrong Estate, Poipet and Sihanouk Ville provinces. Smaller samples were taken from Battambang, Banteay Meanchey and Pursat provinces, where fewer households are affected. Households were selected for interview using a combination of random and non-random sampling. Although the original intention was to conduct random sampling, some households requested to be interviewed and community representatives assisted in the selection of some respondents.

Given the fact that the sample was not selected on a purely random basis, the quantitative data presented in this Report is not intended to be representative of the situation for all affected households. However, this Report seeks to assess the Project's compliance with international human rights law and ADB Resettlement Policy requirements, as opposed to the average experience of affected households. From this perspective, any Project-related harms experienced by affected households are significant.

In addition, after the 200 household sample interviews had been collected and analyzed, the research team conducted a separate study in November 2011 of 16 of the 21 totally affected households from Mittapheap, Phnom Penh. The research team attempted but was unable to contact the five other households to arrange an interview. This was an independent sample with no instances of household overlap with the original sample. These 16 households had been compensated in late August 2011 and resettled to the Phnom Penh Project-sponsored site in Trapeang Anhchanh in late September and October 2011. The research team conducted these additional interviews in order to supplement the data on households post-resettlement. The data collected from the Mittapheap sample is presented in Chapter 4 on Conditions at Resettlement Sites, and Section 5 on Livelihoods and Income. All data and information from this separate sample is clearly identified. All other data refers only to the original sample of 200 households.

Over 60 percent of respondents interviewed in the individual household surveys in both sample sets were women. The high rate of women interviewed is mainly due to the time of the day the interviews were conducted. Commonly the women were at home while their husbands or other adult male household members were at work at the time of the interview. Due to the higher proportion of female respondents, in combination with the women's focus group discussions described below, the data and other information presented in this report more heavily reflects the resettlement experience on women. Where gender-specific impacts were apparent, they are highlighted in the report.

All households were interviewed using a 75-question survey, which collected information on socio-economic characteristics; levels and quality of consultation; level and quality of access to Project-related information; proffered and actual compensation rates; perceptions of, and actual conditions at, resettlement sites; impacts on livelihoods and income restoration support; and grievance mechanisms. Individual household interviews were usually conducted

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11. Over the research period, the ADB and IRC reported an increase in the number of Project-affected households. When BABC began this research the sample size represented 5.5 percent of identified affected households.

at respondents' place of residence and lasted between 1 to 2 hours. Interviews were conducted either in Khmer or in English with the aid of a Khmer interpreter.

The socio-economic profiles of respondents for both samples are in Annex 1. The survey questionnaire is in Annex 2.

### **Women Focus Group Discussions**

Between October 2010 and July 2011, the research team conducted six focus group discussions of various sizes with a total of 68 Project-affected women in the following affected communities: Phnom Penh (Toul Sangke A (14), Rottespleung (11), Lek 3 (15)); Battambang (Sok San South and resettlement site (14)); Banteay Meanchey (8); and Sihanouk Ville/Preah Sihanouk and resettlement site (6). Through these discussions, affected women examined the particular impacts of the Project on “female” household roles and responsibilities and gender relations. Community representatives assisted the team to invite women to participate in the focus group discussions. Focus groups were conducted either in Khmer or in English with the aid of Khmer interpreters.

### **Observations from Monitoring and Legal Aid Activities**

In addition to the household surveys and focus groups discussions conducted to inform this report, BABC has been in regular contact with Project-affected households since mid-2010 in order to monitor their situation. BABC has monitored the progress of and/or provided assistance to over 330 households and communities that have submitted complaints to local grievance mechanisms and the ADB's Accountability Mechanism and has gleaned important information about the type and extent of household grievances. Observations from monitoring and legal aid activities also inform the content and findings of this report, especially Chapter 6 on Access to Remedies and Accountability.

### **Impediments to Research and Data Collection**

The team encountered several obstacles in the course of its research. First, the research team was unable to obtain several critical Project documents. In particular, despite several informal and formal disclosure requests made by affected communities and NGOs, DMS was not disclosed by the ADB or IRC.<sup>12</sup> This document purportedly contains the inventory of losses and list of affected households for the countrywide Project. Access to this data would have allowed for comprehensive comparative household analysis, such as household compensation entitlements based on, inter alia, type and size of structures, income-loss, and trees and crops affected.

Second, data collection and community engagement was impeded by local and national authorities' threats against NGOs and communities. BABC was informed by a significant number of affected households that they or other community members had been intimidated, threatened or harassed by local authorities. In June 2011, research teams from BABC and Sahmakum Teang Tnaut (STT) were threatened with legal action and/or arrest if staff assisted Samrong Estate residents in measuring their affected structures and land, in preparation for potential complaints to local grievance mechanisms. On August 2, 2011, STT was suspended for a five-month term. On August 18, 2011, BABC was called to a meeting with the Ministry of Foreign Affairs and International Cooperation (MoFAIC), where NGO representatives were reprimanded for their activities relating to the Railways Project. Shortly thereafter, the MoFAIC extended a formal warning to BABC, which resulted in, among other things, a delay of data collection due to security concerns.

### **Final Notes**

In order to protect affected households, we have withheld the names of people interviewed, unless they have chosen to be named. Direct testimonies from affected people are presented as quotations. The majority of these testimonies were given during household interviews or focus group discussions, however some were given by affected people during community/NGO meetings.

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12. NGOs made formal requests to the ADB Public Information Disclosure Unit and Public Disclosure Advisory Committee on February 17, 2010 and on December 15, 2010.



## Chapter 1

### Legal and Policy Obligations Governing the Project

The resettlement process that occurs as a result of the Rehabilitation of the Railways Project must comply with international human rights law, Cambodian law, and ADB Policies on Involuntary Resettlement. The nature of the obligations that flow from the relevant covenants, laws, contracts and policies with respect to key actors - the RGC, the ADB and the Australian Government - are described in this Chapter.

#### 1.1 International Law

##### 1.1.1 Rights and Duties under Human Rights Covenants

The RGC has ratified all the main international human rights covenants and as such is legally bound by their provisions, including with regard to all of its decisions, acts and omissions during the process of development. During the planning and implementation of the Railways Rehabilitation Project and any resettlement of households that ensues, the RGC is thus required to respect, protect and fulfill the human rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As involuntary resettlement can affect the enjoyment of many human rights, including the right to an adequate standard of living and rights to adequate housing, food, water, health, education and work, as well as rights to access effective remedies and to be treated without discrimination, the provisions of these Covenants must be considered and complied with at all stages of the process.

Under international law, a retrogression in the enjoyment of human rights as a result of involuntary resettlement amounts to a violation of treaty obligations. For example, a child who was able to attend school regularly, and thus enjoy her right to education prior to resettlement, but is forced to drop out because her family is relocated to a remote site or her parents' income at the site is no longer sufficient to cover fees, has suffered from a retrogression of her enjoyment of human rights in violation of the ICESCR and the CRC. States that have ratified the international covenants are obliged to ensure that a retrogression in the enjoyment of human rights does not occur either as a result of their own acts or omissions, or the activities of third parties. This means that the RGC has a duty to protect against violations of rights caused by, for example, development projects or measures designed and promoted by multi lateral financial and development agencies, such as the ADB, and bilateral aid agencies such as AusAID.

In addition to the immediate duty to guarantee that retrogressions will not occur, the State is also obliged to take immediate action to ensure that everyone enjoys at least basic minimum levels of human rights. Thus priority is to be given to addressing the situation of people who suffer from the most severe deprivation in their enjoyment of human rights. Beyond these immediate duties, the State must take ongoing action to improve the situation of all people with the goal of the full enjoyment of all human rights. In recognition of a common reality in developing countries in which there are limited resources to address a widespread deprivation of rights, the obligation on States is one of progressive realization. For example, a duty placed on States party to the ICESCR is to take steps, using the maximum available resources, to progressively realize the right to an adequate standard of living for all.

This obligation means that the State should utilize to the fullest possible extent opportunities, in terms of both resourcing and capacities, to fulfill the enjoyment of human rights. In the context of a large-scale development project financed through international cooperation, the omission to fulfill the rights of people being involuntarily resettled, who were previously experiencing deprivations, would almost certainly amount to a transgression of international law duties. For those suffering from severe deprivations in their enjoyment of human rights, the nature of the duty to improve their situation to at least basic minimum levels of enjoyment is immediate and unconditional. For example, an impoverished

family, which did not have access to safe water for consumption prior to resettlement, should be assisted upon relocation, as a part of the development project, so that the family members are able to access at least necessary amounts of safe water at an affordable price and without fear that their access will be blocked in the future. A state of impoverishment signifies a host of human rights deprivations that must be addressed through the development opportunity. Most directly and pertinently, the human right to adequate housing as recognized in Article 11(1) of the ICESCR is affected by involuntary resettlement. Given the interdependence of human rights, the right to adequate housing is defined in international law in a broad sense to include, for example, the quality and size of the shelter, which should be sufficient for privacy, security and protection from the elements; access to necessary services, such as water and sanitation; and an adequate location in terms of livelihood opportunities, schools, health-care facilities and other basic amenities. Given their central significance to the issue of involuntary resettlement, the aspects of the right to adequate housing are discussed in relevant parts of this Report.

In recognition of the fact that displacement puts at risk the enjoyment of a multitude of human rights, under international law involuntary resettlement, or evictions, are only permitted in exceptional circumstances and as a last resort when other possible alternatives are unavailable.<sup>13</sup> Any person affected by an eviction, whether they be owners, renters or informal settlers, must be provided with, and have access to, a number of legal protections and safeguards, including the following:<sup>14</sup>

- They must be provided with information about the proposed eviction and the alternative purpose for which the property is to be used within a reasonable time prior to the eviction taking place;
- They must be provided with an opportunity for genuine consultation, including in relation to the reason for the eviction and options for accessing alternative adequate housing through compensation, resettlement and other means;
- They must be given adequate and reasonable notice prior to the scheduled date of eviction;
- They must be provided with access to legal remedies;
- Legal aid should be provided to persons who require it to seek redress from the courts or other grievance and accountability mechanisms;
- All affected household must have immediate access to alternative adequate housing to ensure they are not made homeless or vulnerable to violations of other human rights after the eviction takes place.<sup>15</sup>

This report does not explore whether the Rehabilitation of the Railways in Cambodia is a genuine public interest project or whether its resettlement impacts constitute evictions that are permissible under international law. It does, however, investigate whether the legal protections and safeguards have been provided and are accessible to people who have been or will be involuntarily resettled under the Project. These international law obligations are described throughout the Report, as relevant to the issues discussed.

### **1.1.2 Extra-Territorial Human Rights Obligations on States and International Institutions**

While the Royal Government of Cambodia bears the primary responsibility under international law to ensure that human rights are respected, protected and fulfilled, the two major financiers of the Project – the ADB and AusAID - also have international law duties in relation to the impacts upon affected people's rights.

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13. Basic Principles and Guidelines on Development-Based Evictions and Displacement, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari to the Human Rights Council, UN GA, Doc, A/HRC/4/18, February 2007 (para 21).

14. UN CESCR, General Comment 7: Forced evictions, and the right to adequate housing, UN Doc. E/1998/22 (1997), para 3.

15. Ibid, paras 15 and 16; and Basic Principles and Guidelines on Development-Based Evictions and Displacement, op. cit.

Beyond the obligations placed on States parties to international law covenants vis-a-vis people within their geographical boundaries, States also have extra-territorial human rights obligations. Of particular relevance to this discussion is whether States are obliged to ensure that their development assistance facilitates the progressive realization of human rights and does not contribute to the violation of human rights in recipient countries. Indeed, by consenting to the Charter of the United Nations, the Universal Declaration of Human Rights and the main International Covenants, States commit to contributing to the realization of human rights for all. The ICESCR affirms that:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means . . .<sup>16</sup>

The duty under this provision should be viewed as extending to both State recipients and benefactors of international assistance.

In September 2011, the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights were adopted by a group of experts in international law and human rights.<sup>17</sup> The Maastricht Principles clarify the scope and nature of States' extraterritorial duties. They affirm that States have an obligation to respect, protect and fulfill economic, social and cultural [ESC] rights in situations over which their acts or omissions bring about foreseeable effects on the enjoyment of these rights outside their territory, and in situations in which they are in a position, through separate or joint acts, to exercise decisive influence or to take measures to realize these rights extraterritorially.<sup>18</sup> The Principles clarify that States are obliged to desist from acts and omissions that create a real and foreseeable risk of nullifying or impairing the enjoyment of ESC rights extraterritorially.<sup>19</sup> The Principles state, furthermore, that development cooperation agreements and standards must be interpreted and applied in a manner consistent with human rights obligations.<sup>20</sup>

As a State party to the ICCPR, the ICESCR and other human rights covenants, the Australian Government bears a measure of responsibility for violations of human rights that occur in Cambodia as a result of the Project, to which it provides financial support constituting over 15 percent of total investment cost. In the context of Cambodia, which has a well-documented track record of conducting forced evictions or inadequate resettlement and no independent judiciary to protect people's rights, funding a project with significant resettlement impacts brings a "real and foreseeable risk" of rights violations. Upon Australia's decision to act extraterritorially by providing financial assistance to the Project, it became obliged to ensure that the Project to which it is contributing does not cause human rights violations. If harms are caused as a result of the Project, it bears a responsibility for ensuring that remedial action is taken.

Australia's extra-territorial human rights obligations extend also to its membership of the ADB, in which it exerts considerable influence over decision-making as the fifth largest shareholder. The 1998 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights affirm that:

The obligations of States to protect [ESC] rights extend also to their participation in international organizations, where they act collectively. It is particularly important for States to use their influence to ensure that violations do not result from the programmes and policies of the organizations of which they are members.<sup>20</sup>

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16. International Covenant on Economic, Social and Cultural Rights (1966), article 2.

17. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 28 September 2011, available at: <http://www.fian.org/resources/documents/others/maastricht-principles-on-extraterritorial-obligations-of-states>. While the Maastricht Principles constitute "soft law," they have persuasive value in interpreting obligations under the ICESCR.

18. *Ibid*, para 9.

19. *Ibid*, para 13.

20. *Ibid*, para 17.

21. The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1998), para 19. The Guidelines, which elaborate on the nature and scope of violations of the ICESCR, were unanimously agreed upon by a group of thirty experts on the ICESCR who convened at the invitation of the International Commission of Jurists. The Guidelines are intended to reflect the evolution of international law with respect to ESC rights. Like the Maastricht Principles referred to above, the Maastricht Guidelines constitute "soft law" and have persuasive value in interpreting obligations under the ICESCR.

In recognition of the widespread impacts on human rights caused by international financial institutions, such as the ADB, the Guidelines also refer directly to such agencies:

It is crucial for the elimination of violations of [ESC] rights for international organizations, including international financial institutions, to correct their policies and practices so that they do not result in deprivation of [ESC] rights.<sup>22</sup>

The United Nations Committee on Economic, Social and Cultural Rights (UN CESCR) also directly addresses international institutions in terms of responsibilities stemming from the ICESCR:

[I]nternational agencies should scrupulously avoid involvement in projects which, for example... involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation . . . [W]herever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights . . .

Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account.<sup>23</sup>

It is therefore incumbent, not just on the Cambodian Government, but also on the Australian Government and the ADB, to ensure that the human rights of those facing involuntary resettlement as a result of the Project are respected and indeed, fulfilled.

## 1.2 Cambodian Law

Under Cambodia's 1993 Constitution and 2001 Land Law, the State is entitled to expropriate privately owned property in the public interest and with the payment of fair and just compensation in advance.<sup>24</sup> The 2010 Expropriation Law adopts a broad definition of "public interest," which includes a catch all category of infrastructure projects "as required by the nation in accordance with the determination made by the government."<sup>25</sup> This provision has the problematic effect of providing a legal basis for the justification of evictions for purposes well beyond those permitted under international law. Nonetheless, the Rehabilitation of the Railways Project clearly fits within the public interest definition of the law.

The Expropriation Law stipulates that private property is to be compensated based on market price or replacement value.<sup>26</sup> The law, however, only extends protections to legal and rightful owners of land.<sup>27</sup> The vast majority of people affected by the Project do not have legal rights to the land required for the rehabilitation of the railways because such land is classified as State Public property under the Land Law and relevant regulations.<sup>28</sup> An exception to this is the residents of Samrong Estate who claim to have legal rights akin to ownership of their land. If this claim is valid, the households should be afforded the full protection of the Expropriation Law, including compensation based on the market value of their land. This case and its legal implications are discussed separately in Chapter 3.

Other households living within the railway's ROW, stations and reserved land remain unprotected by Cambodian law. Under the Land Law, in cases in which these households were not given authorization to occupy or use the land, their occupation is illegal and they are not entitled to any indemnity for any works and improvements carried out on the property.<sup>29</sup> There is currently no comprehensive law or regulation to govern evictions, compensation and resettlement processes for people living on State property, whose tenure status thus falls outside the scope of the Expropriation Law.

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22. Ibid.

23. UN CESCR, General Comment 2: International technical assistance measures, UN Doc. E/1990/23 (1990), paras 6 and 8 (d).

24. The Constitution of the Kingdom of Cambodia (1993), article 44; and the Land Law 2001, article 5.

25. Expropriation Law 2010, Article 5.

26. Expropriation Law 2010, Article 22.

27. Expropriation Law 2010, Article 4 and 19.

28. Land Law 2001, article 15; Prakas No. 42 on State Land Identification, Mapping and Classification, 10 March 2006; and Annex of Prakas No. 42, 25 December 2006.

29. Land Law 2001, article 16 and 43.

In the absence of a domestic legal framework, international human rights law, incorporated into national law through article 31 of the Constitution, together with ADB safeguard policies and contractual obligations, described below, form the legal requirements for the protection of people's rights under the Project.<sup>30</sup>

### 1.3 ADB Involuntary Resettlement Policies

The ADB has its own policies designed to safeguard against harms caused by projects that it funds. The overriding objectives of ADB safeguard policies are to “avoid, or when avoidance is not possible, to minimize and mitigate adverse project impacts on the environment and affected people, and to help borrowers strengthen their safeguard systems and develop the capacity to manage environmental and social risks.”<sup>31</sup>

It is ADB Policy, that its staff, through due diligence, review, and supervision throughout the project-cycle, must ensure that Borrower Governments comply with the requirements set out in the safeguard policies.<sup>32</sup> The Operational Policy states:

ADB will not finance projects that do not comply with its [Safeguard Policy Statement], nor will it finance projects that do not comply with the host country's social and environmental laws and regulations, including those laws implementing host country obligations under international law.<sup>33</sup>

It further states:

If any of the safeguard requirements that are covenanted in the legal agreements are found not to be satisfactorily met, ADB requires the borrower/client to develop and implement an appropriate corrective action plan (CAP) agreed upon with ADB to rectify unsatisfactory safeguard compliance. ADB may also consider exercising its legal remedies, including suspension, cancellation, or acceleration of maturity, specified in the legal agreements.<sup>34</sup>

As a borrower of ADB funds, the RGC is bound by the terms of the project Loan Agreements to comply with ADB's safeguard policies. Under the Agreement, the MPWT is the Project Executing Agency with ensuing responsibilities, while the Ministry of Economics and Finance (MEF) is the designated representative of the RGC. The Schedule 5 of the 2007 Loan Agreement, echoed in the second 2010 Loan Agreement, entered into by the RGC and the ADB stipulates:

The Borrower shall...ensure that all Works contracts under the Project incorporate provisions and include the necessary budget to oblige the contracts to . . . comply with all applicable laws and regulations of the Borrower, including ratified international treaty obligations . . .<sup>35</sup>

With specific reference to resettlement, the Schedule states:

[The Borrower] shall implement the approved, updated Resettlement Plan in accordance with Borrower's relevant laws, regulations and procedures, and ADB's Policy on Involuntary Resettlement (1995). In the case of discrepancies between the Borrower's laws, regulations, and procedures and ADB's policy on Involuntary Resettlement, ADB's policy shall prevail.<sup>36</sup>

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30. Article 31 of the Constitution of the Kingdom of Cambodia states: The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, conventions related to human rights, women's and children's rights.

31. ADB website, Safeguards, Overview available at: <http://beta.adb.org/site/safeguards/main>.

32. ADB, Operations Manual Bank Policies (BP), OM Section F1/BP, issued on 4 March 2010, paras 3 and 5. Although this OM was issued after the Project Loan Agreements were entered into, it does not stipulate that it is effective only for Projects that commence after the date of issuance. It is therefore presumed that the duties and responsibilities of the ADB and its staff that it sets out are applicable as relevant to Projects that commenced before but continue to be implemented after the OM was issued.

33. Ibid, para 6.

34. Ibid, para 28.

35. Loan Agreement, Loan Number 2288-CAM (SF), GMS Rehabilitation of the Railway in Cambodia Project (March 5, 2007), Schedule 5, para 7; and Loan Agreement, Loan Number 2602-CAM (SF), GMS Rehabilitation of the Railway in Cambodia Project – Supplementary (March 2, 2010), Schedule 5, para 11.

36. Ibid.

In sections of railway construction or rehabilitation areas where involuntary resettlement impacts cannot be avoided, Works contractors shall not be issued a notice of possession until (i) compensation payments and relocation to new sites have been satisfactorily completed in that particular section, (ii) agreed rehabilitation assistance is in place . . .”<sup>37</sup>

The Borrower shall ensure . . . that any property development entity established by the Borrower shall use the resettlement standards established for this Project, and shall take no actions inconsistent with ADB’s Policy on Involuntary Resettlement.<sup>38</sup>

The 1995 Policy on Involuntary Resettlement, to which both the ADB and the RGC is bound, aims to avoid involuntary resettlement wherever feasible and minimize resettlement where population displacement is unavoidable, and ensure that displaced people receive assistance so that they would be at least as well-off as they would have been in the absence of the project.<sup>39</sup>

In 2009, the rather vague 1995 Policy was replaced with more detailed Safeguard Requirements on Involuntary Resettlement, within a comprehensive Safeguard Policy Statement.<sup>40</sup> The objective of the 2009 Policy with respect to people who are unavoidably displaced, is to “*enhance or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups*” (emphasis added). The provisions of the 2009 Policy affirm, clarify and in some cases extend the ill-defined requirements under the 1995 Policy. While the Project Loan Agreements bind the RGC to the 1995 Policy and the first, although not the second, Loan Agreement was entered into before the 2009 Policy came into effect, in instances in which the 1995 Policy provisions are unclear, it is logical that the 2009 Policy should be used to ascertain precise requirements. As such, provisions of both the 1995 and 2009 Policy are referred to as relevant throughout this Report.

The ADB Policies contain requirements for, inter alia, undertaking the social impact assessment and resettlement planning process, preparing resettlement planning documents, disclosing information and engaging in consultations, determining compensation for affected persons, selecting and preparing resettlement sites, organizing and providing livelihood and income restoration support, establishing grievance mechanisms, and resettlement monitoring and reporting. Compliance with the main legal and policy requirements is explored throughout this Report and findings are presented in the Conclusion.

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37. Loan Agreement (2007), op. cit., Schedule 5, para 8.

38. Ibid, para 10.

39. ADB, Involuntary Resettlement Policy (1995).

40. ADB, Safeguard Policy Statement (June 2009), Appendix 2: Safeguard Requirements 2: Involuntary Resettlement.

## Who Has Resettlement-Related Responsibilities under the Project?

### **The Cambodian Government (RGC)**

- Responsible for funding, planning and implementing the resettlement process.
- Bound by international human rights covenants; Cambodian laws; loan agreements; ADB involuntary resettlement policy.
- The Ministry of Public Works and Transport (MPWT) is the Executing Agency for the Project and is thus responsible for updating, implementing and internally monitoring resettlement activities in accordance with ADB policies. In carrying out these tasks, the MPWT takes guidance from the Inter-Ministerial Resettlement Committee (IRC) / Ministry of Economy and Finance (MEF).

### **The Asian Development Bank (ADB)**

- Responsible for due diligence, review, approval of resettlement plans, and supervision throughout the project-cycle. Responsible for ensuring compliance with Involuntary Resettlement Policy. Must make key resettlement documentation available on its website.
- Bound by ADB involuntary resettlement policy and through its operating policy committed to ensuring compliance of projects with international law.

### **Australian Government/AusAID**

- Grant transferred through and administered by ADB.
- Bound by extra-territorial human rights law obligations.

### **Toll Royal Railway (TRR), a joint venture between Toll Holdings (Australia) and Royal Group (Cambodia)**

- Signed a 30-year Concession Agreement for the Operation of the Cambodian Railways on 12 June 2009.
- Under the terms of the Loan Agreement, TRR should be contractually bound to respect laws of Cambodia, including ratified international treaty obligations, and cannot be issued a notice of possession over a particular section until the payment of compensation, relocation and the provision of rehabilitation assistance has occurred in compliance with ADB involuntary resettlement policy.

### **TSO (France) and Narawat (Thailand)**

- Contracted to perform the civil works repairing and reconstructing the rail lines between Phnom Penh and Poipet and between Phnom Penh and Sihanoukville.
- Under the terms of the Loan Agreement, should be contractually bound to respect laws of Cambodia, including ratified international treaty obligations.

### **Nippon Koei Co. Ltd. (Japan)**

- Contracted by the Project to draft Updated Resettlement Plans for the Poipet Section, the Phnom Penh Section, the Southern Line, and the Northern Line and the Missing Link.
- Resettlement Plans must comply with ADB Involuntary Resettlement Policy and international law.

### **Cambodian Researchers for Development (Cambodia)**

- Contracted by the Project to conduct the inventory of losses.

### **REDECAM (RDC Group) (Malaysia)**

- Contracted by the Project to act as the External Monitoring Agency to provide an independent periodic review and assessment of the resettlement operations and to identify need for further mitigation measures. Must provide quarterly reports to the Kingdom of Cambodia – IRC, MEF, and MPWT.
- Must evaluate and report on compliance with ADB Policy.

### **Envisioning Co. Ltd (Cambodia) and SBK Research and Development (Cambodia)**

- Contracted by the IRC to plan and implement livelihood and income restoration programs for resettled households on the Southern, Northern and Missing lines.
- Must meet ADB Policy objective of ensuring that displaced people receive assistance so that they would be at least as well-off as they would have been in the absence of the project.

## Chapter 2

# Access to Information and Meaningful Consultation

### 2.1 Legal and Policy Requirements

*The objectives of involuntary resettlement are to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels and to improve the standards of living of the displaced poor and other vulnerable groups. Achieving these objectives requires engaging the displaced persons and host communities in a transparent, public, and deliberative process of participation in planning resettlement.*

- ADB Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook, 2011, para 127.

*The Committee strongly recommends that the State party, as a matter of priority undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development . . . projects.*

- Concluding Observations of the Committee on Economic, Social and Cultural Rights, Cambodia, 2009, para 30.

*Dysfunctional communication between decision makers and groups affected by displacement are one of the roots of resettlement failure.*

- Michael M. Cernea, Risks, Safeguards, and Reconstruction: A Model for Population Displacement and Resettlement, 2000, page 42.

The UN Committee on Economic, Social and Cultural Rights has stipulated that the provision of all relevant information, genuine consultation and adequate and reasonable notice prior to an eviction, including involuntary resettlement, are due process protections that must be afforded to all affected people.<sup>41</sup> Access to information and meaningful consultation are also basic requirements of ADB's Policy on Involuntary Resettlement. The 1995 policy states: "affected people should be fully informed and closely consulted on resettlement and compensation options."<sup>42</sup> It further states that where affected people are particularly vulnerable, "resettlement and compensation decisions should be preceded by a social preparation phase to build up the capacity of... vulnerable people to deal with issues."<sup>43</sup>

The 2009 ADB Safeguard Policy Statement affirms that a government that has received financial support from the ADB for a project with displacement impacts is obliged to conduct meaningful consultations with affected people. It clarifies that "meaningful consultation" is a process that:

- (i) Begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle;
- (ii) Provides timely disclosure of relevant and adequate information that is understandable and readily accessible to affected people;
- (iii) Is undertaken in an atmosphere free of intimidation or coercion;
- (iv) Is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and
- (v) Enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the

sharing of development benefits and opportunities, and implementation issues.<sup>44</sup>

The Policy also places a requirement on governments to "provide relevant resettlement information...in a timely manner, in an accessible place and in a form and language(s) understandable to affected persons and other stakeholders," including through the use of "suitable methods" for illiterate people.<sup>45</sup>

41. UN CESCR, General Comment 7, op. cit., para 15.

42. ADB, Involuntary Resettlement Policy (1995), para 34(v).

43. Ibid.

44. ADB, Safeguard Policy Statement (June 2009), Involuntary Resettlement, op. cit., para 28.

45. Specific documents that must be made available include a draft resettlement plans, the final resettlement plan any new, updated or corrective action resettlement plans, and resettlement monitoring reports. ADB, Safeguard Policy Statement (June 2009), Appendix 2: Safeguard Requirements 2: Involuntary Resettlement, para 26 and 27.



Given the low education levels and the widespread lack of legal awareness in the Cambodian population, actively informing affected people about project plans, how they will be affected and their entitlements, is crucial to creating a fair playing field in the development process. Moreover the democracy deficit that continues to characterize Cambodian society makes it all the more important that free prior consultation, if not consent, is afforded to all people that will be resettled by a development project.

Despite legal and policy requirements, the data indicates that during the design and implementation of the Project and Resettlement Plans, access to information for households surveyed was limited and there was an absence of meaningful consultation as defined in the 2009 Policy.

## **2.2 Information Dissemination Methods: Public Information Booklets and Community Meetings**

Two main communication methods were utilized to make resettlement information available to affected households: community meetings and the dissemination of public information booklets (PIBs). A pamphlet about the ADB Accountability Mechanism was also distributed to some households. The Resettlement Plans state that, prior to the DMS, the IRC conducted meetings at the commune level and then provided PIBs, which contained details of entitlements based on losses, as well as small group meetings for consultation and disclosure.<sup>46</sup> According to the RPs, at these meetings the IRC provided a description of the project and its benefits, the ROW and COI, and the entitlement matrix, including types of assistance and benefits for affected households.<sup>47</sup> The Updated RPs provide data on the percentage of affected household that received and read the PIB and were supposedly aware of the Project. For example, according to the Updated RP for the Northern Line and Missing Link, 80 percent of households received the PIB, 78 percent read the PIB, and 87 percent were aware of the Project.<sup>48</sup>

In the 200 household sample, 20 percent of men, and almost 40 percent of women, reported being illiterate. Given this level of illiteracy, the PIB was not an accessible method of communication for a high proportion of affected people surveyed. Moreover, self-identification as “literate” does not necessarily indicate a high standard of literacy. Thirty eight percent of men interviewed and 73 percent of women interviewed, at a maximum completed only primary level education. The PIB is a technically worded document that provides only general information about the Project and entitlements. The section on “Project Impacts and DMS” in the PIB for Phnom Penh states in its entirety, for example:

A preliminary census was conducted in 2006 to determine the project corridor of impact (COI) along the rail track in terms of displacement of affected households (AHs), loss of income/livelihoods and resettlement needs. The Inter-ministerial Resettlement Committee (IRC), based on the project detailed design, has now completed detailed measurement survey (DMS) of AHs for the whole sections including the Southern line, the Northern line, the ‘Missing link,’ and Phnom Penh. The complete list of AHs and IOL (inventory of losses) results for each household are available in your respective commune office for your review.

All AHs found within the Rail ROW are considered non-legal users and therefore cannot be compensated for the land. However, lack of formal legal rights to land does not prevent any AHs from receiving compensation for ‘loss of [productive] land use within the COI’ and for non-land assets (example, houses and trees) and rehabilitation assistance for them to be able to restore or improve their pre-project conditions.<sup>49</sup>

Even for literate households, this passage is likely to shed little light on the impacts of the Project. The PIB thus appears to be an unsuitable form of information for at least a significant proportion of Project-affected people. With the exception of Banteay Meanchey, for most of the affected communities surveyed,<sup>50</sup> there was at least one community meeting held by the IRC and local authorities. For most resettled communities, there was at least one additional meeting in which compensation was paid and the Compensation Contract was thumbprinted.

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46. For example, Updated Resettlement Plan for the Southern Line, 2009, page 6.

47. Ibid.

48. Updated Resettlement Plan for the Northern Line and the Missing Link, 2008, page 9.

49. The PIB can be found in the Updated Resettlement Plan for Phnom Penh, Annex 2.

50. The research team however discovered small communities along the rails, in which meetings about the Project were not held. One example is Monkor Borei community in Banteay Meanchey province.

**Table 3 - Number of Meetings Attended by Respondents (Percentage)**

Location	0	1	2	3	4	5	Total
Phnom Penh	11	13	<b>40</b>	30	6	0	100
Battambang	0	<b>67</b>	17	0	17	0	100
Pursat	<b>36</b>	18	18	18	9	0	100
Poipet	10	12	22	<b>40</b>	10	6	100
Sihanouk Ville	19	19	<b>39</b>	13	6	3	100
Banteay Meanchey	<b>67</b>	11	22	0	0	0	100
Samrong Station	<b>43</b>	0	29	29	0	0	100
Samrong Estate	3	11	<b>53</b>	29	5	0	100

The data, however, suggests that community meetings were neither consultative nor participatory in nature. Less than one third of respondents who joined at least one meeting reported asking a question or raising a concern at a meeting. Of those respondents who did not ask questions or raise concerns in a meeting:

- Thirty seven percent reported they did not have an opportunity to ask, or there was not enough time delegated to ask questions at the meeting;
- Thirty four percent said that other participants asked the same question; and
- Twenty eight percent reported that they had no questions or concerns to discuss at the meeting.

Over 80 percent of respondents reported that the IRC had responded to questions posed. Of these, however, only 26 percent stated they were satisfied with IRC's response.<sup>51</sup>

Despite the distribution of PIBs and community meetings, the majority of people interviewed do not appear to be aware of their entitlements. A vast majority of respondents (82 percent) did not think that they received sufficient information about the Project. Nearly 40 percent of respondents noted that, in general, they were not aware of the Project timeline, including when trains would begin running through their communities. Forty-five percent of respondents reported that they have not heard of the Asian Development Bank, despite the importance of the ADB safeguard policies in conferring rights and entitlements. All fully affected respondents interviewed reported that they were not given any option about resettlement sites, and that the site was designated without any consultation with affected communities.

### 2.3 Information on Compensation Rates and Entitlements

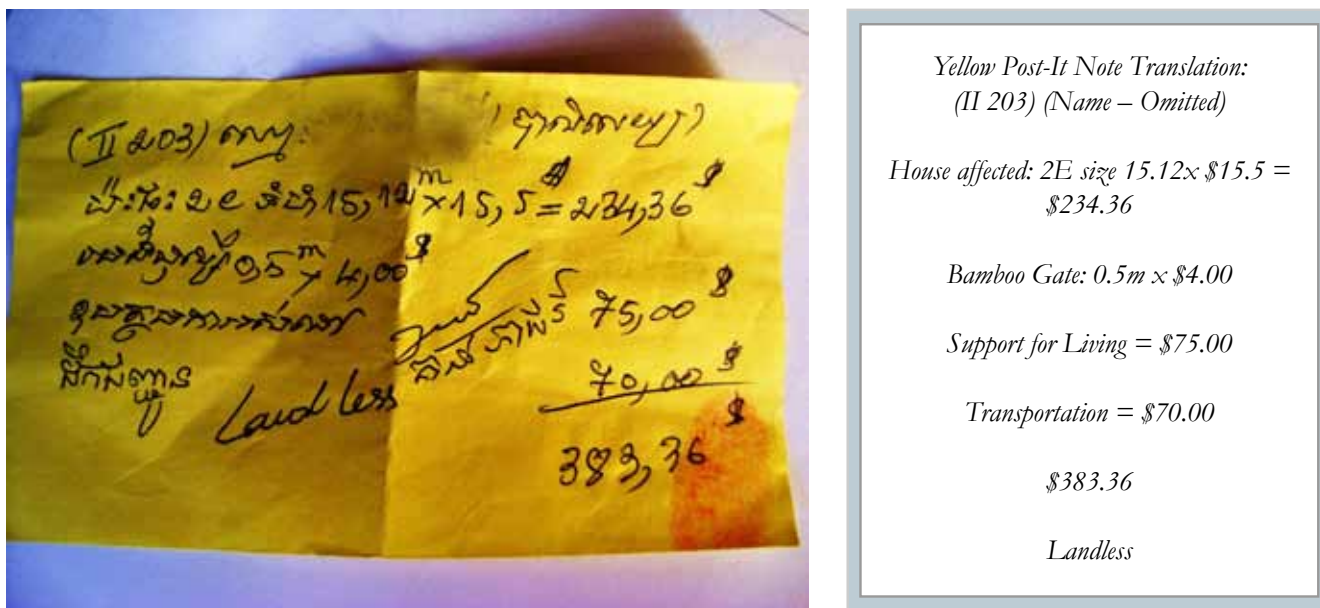
Data suggests that affected households were not given sufficient information or meaningfully consulted about compensation rates and entitlements. Of the 200 affected households interviewed, 68 percent indicated that their resettlement or compensation options were not explained to them. Of those respondents who had thumb-printed a note indicating their agreement with the proposed compensation terms, but had not yet received payment at the time of interview, 84 percent reported that they were not informed of when compensation would be paid and when they would be required to relocate.

For most of the households interviewed, the first piece of documentation containing information about their specific entitlement was a yellow "Post-It note," a small piece of paper containing handwritten categories and corresponding amounts. Affected households are required to thumbprint these post-it notes, usually during a community-wide meeting.

51. A summary of public meetings is included in the Annexes of the Updated Resettlement Plans.

The post-it note was the main form of pre-contract disclosure about household entitlements in all but one community visited for this study.<sup>52</sup>

**Figure 2: The Yellow Post-it Note**



If an affected household does not agree with the terms and does not thumbprint the post-it note, it does not receive a copy. Therefore, affected households that object to the compensation offered usually do not have written proof of the offer made. In the many cases encountered by the research team, affected households expressed dissatisfaction with the compensation, but did not have documentation to prove what they were offered.

At the time of contract-making and compensation payments, affected households are presented with a Compensation Contract, which contains more detailed information about entitlements and relocation terms. Once the Compensation Contract is thumb-printed and given to the household, the family must demolish its house and other structures in the COI and resettle within 30 days. The Contract thus also acts as the notice of eviction and as explained below, at this stage many people are under the impression that it is too late to contest its terms.

## 2.4 Consultation and Gender Strategy

The Project Loan Agreement between the RGC and the ADB explicitly requires the Cambodian Government to “ensure that women, in particular those who belong to women-headed households... participate, at a rate satisfactory to ADB, in [inter alia] (i) public consultation meetings on resettlement planning, (ii) preparation of detailed measurement of losses, and (iii) capacity building programs on resettlement.”<sup>53</sup> The 2006 RP includes a section on “ethnicity, gender and vulnerability issues,” which claims that “women households participated during the consultation process and IOL activities and will continue to participate during implementation and monitoring.”<sup>54</sup> The RP also sets out a number of points that were to be a part of the gender strategy for the project. For instance, according to the plan, separate consultations were to be held with women to determine the level of impacts, issues related to relocation and special assistance to address their specific needs and restore or improve their livelihoods.<sup>55</sup> Women were also to be involved in the selection and design of the resettlement site, including “such sensitive issues as toilets, sanitation, water and house plan and their needs during relocation and transition” – a measure, the RP notes, that is “particularly important.”<sup>56</sup> According

52. The research team did not come across any yellow post-it notes for households currently living at the Pursat Resettlement Site, in Chhoeung Tom. Respondents in that community, when showed a copy of a post-it note, stated that they had not received one. The Pursat community’s pre-contract disclosure document did not contain any household-specific data.

53. Loan Agreement, 2007, op cit., Schedule 5, para 16.

54. Resettlement Plan 2006, op. cit., para 11.

55. Ibid.

56. Ibid.

the RP, at the inception phase of the Project a capacity building program on resettlement activities, including entitlements, livelihood strategies and grievance processes, was to be designed for affected people with emphasis given to trainees from women-headed households.<sup>57</sup>

Despite the contractual requirement and RP commitments, the IRC appears to have done little to ensure that information and consultations about the Project and resettlement have been made accessible to women, and particularly vulnerable women such as widows. The comprehensive gender strategy promises made in the 2006 RP were not crystalized in the Updated RPs. Rather than establishing detailed plans for meaningful gender strategies for affected communities along each section of the railway line, the Updated RPs include a single paragraph on the topic. These paragraphs promise that special attention will be paid to women's needs, by for example, giving female-headed households priority in project construction work and railway company jobs, and offering vocational training and access to credit.<sup>58</sup>

On the ground, this planning omission has translated into essential gaps in participation and consultation for women, which has affected all other aspects of the resettlement process. None of the commitments made in the 2006 RP in relation to gender strategy, and indeed none of the few commitments made in the Updated RPs, have been translated into meaningful action during the process of resettlement. For example, measures to ensure that women are represented in meetings or have a particular opportunity, in or outside of community meetings, to raise questions and concerns do not appear to have occurred.

These omissions have meant that existing discrimination and marginalization of women in household and community decision-making has not been addressed in the resettlement planning and wider process. Partly because of the failure to implement an effective gender consultation strategy, some women-headed households, and in particular widows, may have suffered from increased marginalization and discriminatory treatment in compensation payments and resettlement entitlements. This is described in Chapter 3.



*The BABC research team conducts a women's focus group discussion in Battambang in October 2010*

57. Ibid.

58. See for example Updated Resettlement Plan for Phnom Penh, 2010, para 46.

## Box 1: Intimidation and Coercion

*“Meaningful consultation is a process that...is undertaken in an atmosphere free of intimidation or coercion.”*

Under the definition of “meaningful consultation” in ADB’s Policy, an atmosphere of intimidation and coercion precludes the possibility of a genuinely free engagement in decision-making by affected people.

Research indicates that an air of intimidation, threats and coercion has pervaded the Railway Project resettlement process. Over one third of respondents reported that they felt they had been intimidated or pressured by local authorities, including those tasked with Project implementation, during the resettlement process. The highest proportion of threats and intimidation was reported by respondents in Poipet, Phnom Penh and Battambang. In Poipet, nearly half of all respondents reported some form of coercion by local authorities. Coercion techniques have varied from overt threats to more subtle pressure to accept compensation and not complain.

The following testimonies are from affected people in Poipet:

- A 47 year-old wife and mother: *“IRC said that if people protested and refused to accept compensation, bulldozers would be used to destroy our homes.”*
- A 31 year-old male motor driver and his wife: *“We are the people and we have no power. I do not want to complain. I am afraid to make a complaint. Local authorities told me not to make a complaint.”*
- A 63 year-old male: *“If I refused to accept compensation, I will not get any compensation and will be evicted from my house.”*
- A 51 year-old widow and mother: *“IRC told people that they would get nothing at all if they do not agree to get the offered compensation.”* When asked whether she was satisfied with the compensation amount, she replied, *“I am forcibly happy.”*
- A 41 year-old female laborer: *“I was told not to tell anything about this problem to other people or to NGOs. I was told all people must move out.”*
- A 58 year-old male: *“IRC told me to thumbprint or I would get nothing when they finished their work inside the community and already dismantled the house. I thumb-printed because of fear.”*
- A 43 year-old male: *“If we don’t accept or agree, they will demolish our houses.”*
- A 41 year-old male: *“I was told if I did not thumbprint, I would not get compensation.”*
- A 50 year-old female: When asked directly whether she has been intimidated or pressured in any way in relation to the project, she answered, *“No.”* Later, however, in the context of compensation, she stated, *“I am satisfied with the compensation because IRC told me that I live on State land and if the IRC does not give me compensation, I cannot do anything about it.”*
- A 46 year-old wife and mother: *“The [IRC] team came to ask my husband to thumb-print. After he thumb-printed, then the terms were explained to him. My husband did not know what he was thumb-printing. IRC told me that if we do not accept compensation during this time, I will get nothing. I was afraid of getting nothing. The village chief also told me that if I say I want to make a complaint about the Government, then he cannot support my complaint.”*
- A 55 year-old female farmer: She stated that she is scared to complain because she *“has no power and IRC has the power.”* She went on to note that, *“The complaint cannot provide a solution. If the railway team [IRC] says this is so, the people cannot say anymore.”*

## Key Findings on Information and Consultation

The research indicates that the Project has not complied with the 1995 ADB Involuntary Resettlement Policy requirement that “affected people should be fully informed and closely consulted on resettlement and compensation options,” and that for vulnerable affected people, “resettlement and compensation decisions should be preceded by a social preparation phase to build up the capacity of ... vulnerable people to deal with issues.” The failure to fully inform and meaningfully consult affected people on the resettlement process and options also represents a breach of the international law requirements for evictions.

In particular:

- The distribution of PIBs is not an appropriate information dissemination strategy for a largely illiterate population. The vast majority of respondents (82 percent) did not think that they received sufficient information about the Project.
- Community meetings held by the IRC were not conducive to a genuinely consultative process about resettlement and compensation entitlements and options, with limited opportunities afforded to affected people to ask questions and express concerns. When affected people did pose questions or concerns, these were rarely responded to in a manner satisfactory to them.
- Individual households were not provided with sufficient information about their entitlements or given the opportunity to participate in the assessment and calculation of compensation offered. The provision of a post-it note with handwritten entitlements for each household and the requirement to thumbprint the note to indicate acceptance of the offer was a grossly unsatisfactory method of informing and consulting affected people about their individual compensation packages.
- All fully affected respondents interviewed reported that they were not given any option about resettlement sites, and that the site was designated without any consultation with affected communities.
- Little appears to have been done to ensure that information and consultations about the Project and resettlement were made accessible to women, and particularly vulnerable women such as widows. Commitments made in the 2006 RP in relation to gender strategy have not been translated into meaningful action during the process of resettlement. These omissions may have resulted in increased marginalization of Project-affected women.
- An air of intimidation, threats and coercion has pervaded the Railway Project resettlement process, precluding the possibility of meaningful consultation, as defined by the 2009 ADB Safeguard Policy Statement requirements on Involuntary Resettlement.

## Chapter 3

# Compensation

*ADB's policy is to neutralize the power imbalance that exists in the government's favor in land expropriation by empowering the stakeholders to defend effectively their entitlement to fair and just compensation under the rule of law.*

- ADB, Expropriation, Compensation, and Valuation: ADB Policy and International Experience, 2007, page 4.

*[I]t is repeatedly confirmed that impoverishment through worsened housing can be effectively prevented through fair recognition of housing reconstruction costs in the displacing project's budget.*

- Michael M. Cernea, "Risks, Safeguards and Reconstruction: A Model for Population Displacement and Resettlement," 2000, page 29.

### 3.1 Legal and Policy Requirements

Under the International Covenant on Economic, Social and Cultural Rights, the Cambodian Government has an obligation to ensure that all individuals affected by eviction or involuntary resettlement receive "adequate compensation for any property, both personal and real, which is affected."<sup>59</sup> The Government must ensure that affected people have access to alternative adequate housing through the provision of compensation or other measures.<sup>60</sup>

The 1995 ADB Involuntary Resettlement Policy states:

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 . . .<sup>61</sup>

The 2009 Policy clarifies that households with formal or recognized rights to lost land must be provided with full replacement costs for their land and structures. For those without formal or recognized legal claims, the government is required to compensate them at full replacement cost for loss

of assets other than land, such as dwellings, and for any improvements made to the land.<sup>62</sup> Full replacement cost is to be calculated based on fair market value; transaction cost; interest accrued; transitional and restorative costs; and any other applicable payments.<sup>63</sup>

While the 1995 Policy is ambiguous on this point, the 2009 Policy affirms that in order to ensure that people are not made worse off, loss of income and loss of livelihood sources are also to be compensated for, at full replacement cost. In addition to compensation for commercial structures and assets, business owners are entitled to full compensation for "net income lost during the transition period."<sup>64</sup>

With the exception of households in Samrong Estate (discussed in Box 4 below), affected households do not have formal or recognized legal rights to the land that they occupy because they live within the COI, ROW or in stations, defined as State public property under the Cambodian Land Law and implementing regulations. They are thus entitled to compensation only for their structures and other assets, as well as loss of income.

59. UN CESCR, General Comment 7, op. cit., para 13.

60. Ibid, para 16. While the general obligation to ensure access to adequate housing is subject to the availability of resources, as explained in Chapter 1, in the context of this development project resources are or could be made available for adequate housing and thus the duty is non-conditional.

61. ADB, Involuntary Resettlement Policy (1995), para 34(iii).

62. ADB, Safeguard Policy Statement (June 2009), Involuntary Resettlement, op. cit., paras 7 and 8.

63. Where such costs cannot be determined through market assessments, affected people are to be consulted to ascertain values and costs. The Policy further requires implementing agencies to employ "[q]ualified and experienced experts" to undertake the valuation of assets to be acquired. Depreciation of structures and assets is not to be taken into account in valuations. (Ibid, para 10).

64. Ibid, para 12.

This section discusses entitlements to and provision of monetary compensation. The situation with respect to the provision of land and access to services at resettlement sites is discussed in the following section.

### 3.2 Compensation Entitlements under the Resettlement Plan

Under the Resettlement Plans, “all compensation and assistance is based on the principle of Replacement Cost.”<sup>65</sup> General compensation and support entitlements for each category of affected households, including for loss of income, are set out in the Entitlement Matrix.<sup>66</sup> The Updated Resettlement Plans contain more detailed information on categories of structures and assets affected in each section.<sup>67</sup> A corresponding unit cost is provided for each category of structure and other asset affected.<sup>68</sup>

Data indicates that affected households have not received compensation amounts according to their entitlements under the ADB Policy or the RPs. There is evidence of inaccuracies in the categorization of structure types and other measurements and a systematic downgrading of compensation entitlements for structures (see Box 2 below). Moreover, compensation rates are indexed at 2006 prices despite a significant rise in costs of materials by the time payments are made several years later. Some households required to relocate have been offered or received only a few hundred dollars in total, an amount insufficient to ensure access to adequate housing and that “their economic and social future will generally be at least as favorable with the Project as without it.”<sup>69</sup> Special assistance for vulnerable households, as required according to the Entitlement Matrix, has not been provided in all cases.



65. Resettlement Plan, 2006, para 6.

66. The Entitlement Matrix is available from pages 41 – 46 of the 2006 Resettlement Plan.

67. See, for example, Updated Resettlement Plan for Phnom Penh, 2010, Tables 2.2, 2.3 and 2.4.

68. See, for example, Updated Resettlement Plan for the Northern Line and the Missing Link, Annex 1.

69. ADB, Involuntary Resettlement Policy (1995), para 34(iii).



## Box 2: Starting off on the Wrong Foot - Faulty DMS

Under the terms of the Loan Agreement, the IRC must prepare updated resettlement plans for each railway section based on a DTD and DMS of losses. Compensation amounts offered to each household are based on the DMS. Accordingly, the accuracy of the DMS is crucial to ensuring that affected households receive the amount of compensation to which they are entitled.

While the full DMS has not been made public, the information about household compensation recorded on the post-it notes and Compensation Contracts should correlate with the information in the DMS. As such the accuracy of the DMS can be deduced through information recorded on those household documents. Data indicates that the DMS contains significant flaws.

In a July 2011 report, *Rehabilitation of Cambodia's Railways: Comparison of field data*, local NGO Sahmakum Teang Tnaut (STT) compared the information recorded on the household compensation documentation provided to households by the IRC with its own household survey of four Phnom Penh railway communities. According to the report in "the clear majority of cases, data collected by STT showed households were eligible to receive (sometimes significantly) higher rates of compensation" than that afforded to them by the IRC. The report identified a number of patterns that indicate systematic inaccuracies in compensation amounts offered, and therefore, presumably, flaws in the DMS:

- **Discrepancies in the number of affected households.** STT data found at least 36 percent more totally affected households than that identified by the IRC in two target communes. For example, in the Toul Sangke A commune, IRC identified 28 fully affected households while STT identified 60.
- **Systematic downgrading of housing structures.** In 90 percent of cases, household structures were classified by the IRC as being in a lower category of structure quality than that determined by STT.
- **Compensation for only one floor of multi-floor structures.** Compensation should be calculated based on the number of square meters of a structure, including all floor areas. In all applicable cases, STT found that the IRC had calculated compensation for only one floor of multi-floor structures.
- **Some multiple family households received only single-family entitlements.** According to ADB, each family that must relocate should be given a plot at the resettlement site. However, it appears that IRC has not systematically accounted for multiple family households. Twelve percent of affected households surveyed received only one DMS number despite one or more families living in the same dwelling. These multi-family households therefore only receive one plot of land at the resettlement site and are required to share compensation.
- **Inaccuracies in identifying totally affected households that require relocation.** The rule that households with less than 30 square meters remaining outside of the COI should relocate and be given a plot at the resettlement site is not consistently followed by the IRC. Without a plot to move to, families must live in severely cramped housing conditions.

*Source: Sahmakum Teang Tnaut (STT), Rehabilitation of Cambodia's Railways: Comparison of field data, July 2011*

### 3.3 Compensation Rates for Totally and Partially Affected Households

The following analysis is based on the review of 138 respondents' yellow post-it notes and/or Compensation Contracts. All dollar amounts refer to USD.

#### 3.3.1 Totally Affected Households

Compensation for totally affected households ranged from \$75 to \$2,985.61. The average amount of compensation for respondents who are totally affected is \$757.50. Eighty-five percent of all totally affected households interviewed received or will receive less than \$1,000 in total compensation. Twenty-five percent of all totally affected households interviewed received or will receive less than \$400 in total compensation.

**Table 4 - Compensation for Totally Affected Households**

Amount in \$USD	Frequency	Percentage
Less than or equal to 200	4	8
201 - 300	1	2
301 - 400	8	15
401 - 500	3	6
501 - 600	7	13
601 - 700	3	6
701 - 800	7	13
801 - 900	5	10
901 - 1000	6	12
Over 1000	8	15
<b>Total</b>	<b>52</b>	<b>100</b>

#### 3.3.2 Partially Affected Households

Compensation for partially affected households ranged from \$17.67 to \$4,200.00 (for four partially affected structures). The average compensation for respondents who occupied land along the railway lines and were required to move houses and other structures back into the residual ROW is \$206.60. More than 90 percent of all partially affected households interviewed will receive \$500 or less in compensation.

**Table 5 - Compensation for Partially Affected Households**

Amount in \$USD	Frequency	Percentage
Less than or equal to 100	22	26
101 - 200	20	23
201 - 300	23	27
301 - 400	10	12
401 - 500	4	5
501 - 600	1	1
601 - 700	1	1
701 - 800	2	2
801 - 900	0	0
901 - 1000	0	0
Over 1000	3	3
<b>Total</b>	<b>86</b>	<b>100</b>

### 3.4 Overall Satisfaction with Compensation Rates

Three quarters of respondents interviewed said that they felt unsatisfied with the compensation package that they have been offered or received.

**Table 6 - Household Satisfaction with Compensation**

Location/Section	Percentage satisfied with the compensation		Total (Percentage)
	Yes	No	
Phnom Penh	5.5	23.5	29
Battambang	0	3	3
Pursat	6	1	7
Poipet	8	18	27
Sihanouk Ville	4	12	17
Banteay Meanchey	1	1	2
Samrong Station	0.5	3.5	4
Samrong Estate	0.5	10.5	11
<b>Total</b>	<b>26.5</b>	<b>73.5</b>	<b>100</b>

During household interviews, women’s focus group discussions and at community meetings, affected people regularly expressed concerns that the compensation amounts are insufficient to build houses at the resettlement site. The type of reasons given for dissatisfaction with compensation rates included:

- The amount is not enough to rebuild decent shelter at the resettlement site.
- The amount is not enough to connect to essential services at the resettlement site and a household loan was required to do so.
- The amount is not enough to cover income lost during the transitional period.
- The amount does not sufficiently cover income permanently lost as a result of the move to a more remote and less busy location.
- The amount does not cover all transportation and reconstruction costs associated with involuntary resettlement, including the costs of hiring laborers. This was especially a problem for female-headed households. For instance, Phnom Penh affected households receive a flat \$70 in transportation allowance. The Phnom Penh resettlement site is, in some cases, 25 km away from the pre-resettlement location and therefore the amount is sometimes insufficient to transport household belongings and salvaged housing materials.
- The amount does not accurately reflect multiple family households’ situation, requiring multiple families to share one compensation package.
- The amount does not accurately reflect the resettlement needs of vulnerable households, such as widows. Some elderly widows also expressed a general sense of abandonment by the government.

It should be noted in relation to subjective assessments of compensation received that approximately 40 percent of households reported that they had partially or fully built houses of better quality than their pre-resettlement houses. This situation is typical of displaced populations<sup>70</sup> and unsurprising given the fact that pre-resettlement housing was in many cases very poor and dilapidated and well below any definition of a basic adequate house. (See Box 3 below.)

70. Michael M. Cernea, “Risks, Safeguards, and Reconstruction: A Model for Population Displacement and Resettlement,” page 29 (in Cernea, et al, Risks and Reconstruction: Experiences of Resettlers and Refugees, The World Bank, Washington DC, 2000).

### 3.5 2006-Indexed Compensation Rates and Rising Inflation

All project compensation rates for losses and costs of resettlement were calculated in 2006, when the original Resettlement Plan was prepared. Compensation payments, however, began in 2009 and will continue well into 2012 and possibly beyond. In more than five years, the compensation rates have not been adjusted to reflect annual inflation. Despite the requirement that compensation rates be based on current replacement cost, Project affected households have been compensated in 2010 and 2011 at 2006 prices.

In November 2010, the ADB stated in correspondence to BABC and other NGOs that “IRC is required to carry out replacement cost survey during the updating of the [resettlement plan] . . . [and] findings showed that there were no changes of prices at the time of updating.”<sup>71</sup>

According to the International Monetary Fund (IMF), average consumer prices rose every year between 2006 and 2010, except in 2009 in which there was a slight deflation of consumer prices, after a nearly 25 percent inflation rate in 2008. The ADB itself has released data that shows a 4.7 percent rise in the consumer price index in 2006, 5.9 percent in 2007, 19.7 percent in 2008, -0.7 percent in 2009 and 4 percent in 2010.

**Table 7 - Annual Inflation Rate in Cambodia (ADB)**

Year	Inflation Rate (annual change in consumer price index)
2006	4.7%
2007	5.9%
2008	19.7%
2009	-0.7%
2010	4%

*Source: ADB, Cambodia website, Economic Data, available at: <http://beta.adb.org/countries/cambodia/main>*

In correspondence to BABC, et al, in December 2010, the ADB stated:

According to ADB’s Resettlement Policy, the rates are to be adjusted to current prices when resettlement is actually implemented. IRC has previously reported that there were no significant changes in the relevant prices in Battambang, Pursat and Sihanoukville and therefore there is no need for adjustment. We have reviewed IRC’s assertion and find that it cannot be substantiated based on available information. We have therefore requested IRC to document its assertion, which IRC has agreed to do. If a need for adjustment is identified, ADB has requested IRC to provide retroactive compensation to affected people who have already received compensation.<sup>72</sup>

On June 30, 2011, ADB stated publicly that “[a]n external monitoring group has examined compensation concerns and ADB will consider the findings and decide on further action by the end of July 2011.”<sup>73</sup>

In September 2011, the ADB Cambodia Resident Mission acknowledged in local media that ADB reviews “have found that the living allowance set forth under the original Resettlement Plan is now insufficient due to rising food prices in recent years.”<sup>74</sup>

71. Letter from ADB to BABC, et al. dated November 4, 2010 (on file with BABC).

72. Letter from ADB to BABC, et al, dated December 13, 2010 (on file with BABC).

73. ADB, “Fast Facts on an Agreement between the Resettlement Department – Ministry of Economy and Finance (RD – MEF) and Asian Development Bank (ADB) on Resettlement Matters Related to the ADB L2288-CAM: GMS Rehabilitation of the Railway in Cambodia Project,” 30 June 2011, available at: <http://beta.adb.org/sites/default/files/news/Fast%20Facts%20on%20Cambodia%20Railway%20Agreement.pdf>

74. Mary Kozlovski, “Railway Project in ADB’s Sights,” The Phnom Penh Post, September 6, 2011 (quoting Putu Kamayan, ADB Country Director for the Cambodia Resident Mission).

At the time of publication, however, there has been no public release of readjusted compensation rates and payments continue to reflect 2006 prices.

### 3.6 Baseline Housing Costs

Habitat for Humanity is an international organization that has built or assisted in building approximately 1,000 houses for some of Cambodia’s most impoverished communities, including in Trapeang AnhChan, the location of the Phnom Penh Project-sponsored resettlement site. According to Habitat for Humanity Cambodia, based on 2010-2011 figures, a 4 x 4 meter stilt wooden house costs a total of \$1,925.75: constituting \$1,660.75 in materials and \$265.00 in labor.<sup>75</sup> The tables below show the minimum costs of materials and labor for basic brick housing of the type constructed by Habitat for Humanity in Cambodia. They also show the rise in these prices from 2005 to 2011. These prices are slightly below market prices; therefore, they function as a conservative estimate of costs.<sup>76</sup> They do, however include a small amount for a basic toilet, which are provided by the Project at the resettlement sites.

**Table 8 - Habitat for Humanity Cambodia 2005-2006 Prices for Structure Materials and Labor (in USD)**

KIND OF HOUSE	Size of House	Materials	Labor cost	Total	Cost/m2
Brick house	4x6m	\$800.00	\$240.00	\$1,040.00	\$43.33
Brick house	4x7m	\$900.00	\$270.00	\$1,170.00	\$41.79
Brick house	4x8m	\$950.00	\$285.00	\$1,235.00	\$38.59
Brick house	4x9m	\$1,000.00	\$300.00	\$1,300.00	\$36.11

In comparison to prices in 2005-2006, 2010-2011 prices demonstrate a significant increase in both materials and labor costs. For instance, the cost of materials for a 4x6m brick house increased by 127 percent in this period of time. Similarly, labor costs for that same structure have increased from \$240 in 2005/2006 to \$544.46 in 2010/2011, also a 127 percent increase.

**Table 9 - Habitat for Humanity Cambodia 2010-2011 Prices for Structure Materials and Labor (in USD)**

KIND OF HOUSE	Size of House	Materials	Labor cost	Total	Cost/m2
Brick house	4x6m	\$1,814.85	\$544.46	\$2,359.31	\$98.30
Brick house	4x7m	\$1,830.00	\$549.00	\$2,379.00	\$99.13
Brick house	4x8m	\$1,865.75	\$559.73	\$2,425.48	\$75.80
Brick house	4x9m	\$1,910.00	\$573.00	\$2,483.00	\$68.97

The average compensation rates provided to both totally affected households (\$757.50) and partially affected households (\$206.60) fall well short of these conservative costs to build even the smallest adequate house. The vast majority of totally affected households interviewed received or will receive less than \$1,000 in total compensation - much less than the current cost of the materials alone of a 4 x 4 meter stilt wooden house (\$1,660.75) or a 4 x 6 meter brick house (\$1,814.85). Moreover, these compensation amounts are supposed to cover other costs, including transportation of belongings, loss of other structures and assets, and livelihood and income losses. Although households can take materials salvaged from their old structures to the new site, usually households need to purchase all or significant amounts of materials for the construction of a new house. For example, one man from Phnom Penh said: “When we pulled down our house, some parts were damaged, so there is nothing left, only wood that can be used to make a fire.” A woman from another Phnom Pen community said: “How could I build a new house if I didn’t have any wood left from my old house? It was completely ruined.”

75. Costs provided by Habitat for Humanity Cambodia. Figures for 2005-2006 were not available for this type of structure.

76. As reported by Habitat for Humanity Cambodia to the research team in a meeting on December 8, 2011.

### Box 3: Replacement Cost and Minimum Adequate Housing Conditions



Many families that are affected by the Railway Project are very poor, and some live on or below the poverty line. Housing conditions of some of these families before resettlement, were severely inadequate. Their basic shelters did not provide privacy, security, protection from the elements, or enough space for the family to live in a safe and healthy manner.

Under the terms of the Resettlement Plans, these households may only receive a few hundred dollars in compensation. The amount is only enough to construct another inadequate shelter at the resettlement site. While the 2009 ADB Policy requires compensation to be calculated based on replacement cost, an overriding objective of the Policy is to “improve the standards of living of the displaced poor.”<sup>77</sup> Under international human rights law, the right to adequate housing includes a house of minimum basic quality that provides privacy, security and protection from the elements and adequate space for household members.<sup>78</sup>

In order to fulfill ADB Policy objectives and give effect to international human rights law, compensation based on replacement cost is not sufficient for households previously residing in inadequate conditions. A better method would include a minimum floor compensation rate adjusted for household size, with replacement cost for primary housing provided only where it is higher than the established minimum rate. This would reflect good practice as described in the ADB’s sourcebook on planning and implementation of involuntary resettlement, which states: “The houses of the poor and vulnerable groups are often below minimum housing standards and should be replaced by habitations that at least meet these standards.”<sup>79</sup>

77. ADB, Safeguard Policy Statement (June 2009), Involuntary Resettlement, *op. cit.*, para 3.

78. UN CESCR, General Comment 4: The Right to Adequate Housing, UN Doc. E/1992/23 (1991), para 8(d).

79. ADB, Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook – Draft Working Document, March 2011, page 22.

## Case Study: The Experience of a Retired Railway Worker



*Chea Sarouen and his family outside his home at the resettlement site*

Chea Sarouen, age 66, sat on the veranda of the home he and his family had recently built on their plot at the Sihanouk ville resettlement site. That August day, the site was a muddy field, dotted with concrete latrines and a few wooden homes. There was no electricity, sewage system or piped water, although there was a well and a latrine on Sarouen's plot of land. One narrow, unpaved road connected the site with the main road leading to the city.

Sarouen tells us that he worked at a railway station in Sihanouk ville for over 25 years. "I used to be the supervisor . . . I started in 1979," he explains. Sarouen settled on a piece of land near the station in 1987 and over the years built three dwellings for his extended family to live in and cultivated over 100 fruit trees. He retired from his job at the station in 2005 when he turned 60.

In early May 2010, Sarouen was given one-month notice by the IRC to dismantle his home and move to the resettlement site to make way for the Railway Rehabilitation Project.

Despite the fact that all three dwellings had to be removed, Sarouen and his extended family - a total of 12 people, including 5 children - were provided with one compensation package: a little over \$2,000 in total, and only one plot of land at the resettlement site. The amount included compensation for only two of his many fruit trees.

As Sarouen showed us around his two-story, concrete-and-wooden home in which his extended family now live at the new site, he told us, "I spent all my savings to rebuild my house. I don't want a lot of compensation, but this is not enough to rebuild my life." He mentioned that his children had to forgo work to assist with the construction of the house and he had to borrow money in order to finish building.

Sarouen expressed his fear of complaining to the Government. He recounted a story about being awoken from his sleep by local officials to "thumbprint a document," without explanation, an act that, he concluded, signed away any of his rights, including the right to complain about his compensation package.

In July 2011, nearly a year after the initial visit, the research team returned to the resettlement site and visited Chea Sarouen. He asserted that he and his family are worse-off as a result of the project. "This Project" he said, "did not reduce poverty, but increased it."

### 3.7 Vulnerable Households

Under the Resettlement Plans, affected households belonging to a “vulnerable group” must receive special assistance under the Project.<sup>80</sup> According to the Entitlement Matrix, vulnerable households are to receive an additional allowance of 20 kilograms of rice per person per month for 6 months. A “vulnerable household,” under the Project, is defined as one headed by a widow, a female, a disable person, an indigenous person or an elderly person. “Poor households” are also classified as vulnerable, however, there are several discrepancies in the definition of “poor” in the various resettlement documents. For instance, the Updated Phnom Penh Resettlement Plan defines poor households as having a monthly income of less than \$15 per person.<sup>81</sup> In that same document, poor households are defined as having incomes of less than \$20 per month per person.<sup>82</sup> In yet another variation, the Compensation Contracts given by IRC to affected households, defines “poor” as households that make less than \$14 per month - presumably per person, although this is not stated. This last definition is presumably the one adopted by the IRC, although not one household interviewed by the BABC research team appeared to have been classified as poor, so it is unclear which, if any, measurement has been used in practice.

It should be noted, in relation to this definition of poor, that the average national poverty line for Cambodia in 2007 was \$0.62 per day or approximately \$19 per month. The ADB describes this as a “very low” poverty line.<sup>83</sup> Therefore, under the Project, only households living well below a very conservative 2007 poverty line are classified as vulnerable and thus entitled to the additional support.

Nearly 15 percent of interview respondents identified as widow-heads of household. The research team learned of 3 of cases among these in which the widows reported that not only did they not receive special assistance as vulnerable households, but for the purposes of the DMS and compensation entitlements they were treated as belonging to the same household as their fathers or sons, despite living in separate houses prior to resettlement. These widows and their dependents therefore did not receive a plot of land at the resettlement site, despite losing their homes. BABC was later informed that, in two of these cases following a complaint to local authorities/IRC, the widows have since received or have been promised a separate plot of land.



80. For example, Updated Resettlement Plan for Phnom Penh, 2010, at page 10.

81. Ibid.

82. Ibid, Annex 1: Entitlement Matrix, Section C(6) (noting that “vulnerable AHs” include “female-headed households, the elderly, the disabled, income less than US\$20/month per person, and indigenous AHs”). Similar discrepancies are found in the Updated Resettlement Plans for the Southern Line and Northern Line and the Missing Link.

83. ADB, Country Partnership Strategy: Cambodia, 2010-2013: Poverty Analysis (Summary), para 3, available at: <http://beta.adb.org/documents/cambodia-country-partnership-strategy-2011-2013>.



## Case study: A Widow's Story

Nyien Ny, age 59, a widow from Battambang tells us that she used to live in her own house near her son, Don Peey, age 36, and his family along the tracks in Sok San South. In May 2010, Ny and her son's family were resettled. Ny, however, was not provided with her own plot of land. She now lives in a wooden, makeshift shelter, adjoined to her son's house on the same 15m x 7m plot at the resettlement site. Peey received \$543.00 for the resettlement of his family and the loss of his home and structures, an amount he stated was not enough to cover resettlement costs. Ny did not receive any compensation, including special assistance for vulnerable households.

In her home in Sok San South, Ny sold chopped wood, earning \$1.25 - \$1.50 per day. Post-resettlement, Ny attempted to make a living by cutting and selling recycled plastic, an occupation that cut her income in half to approximately 50 to 75 cents per day.

Peey says that resettlement has exposed his family to severe financial and food insecurity, as jobs are more difficult to find at the resettlement site and the family has had to spend all their money on rebuilding a very basic house. Further increasing their financial hardship, Peey borrowed just under \$100 from a private moneylender in order to connect his home to electricity. He has agreed to pay \$1.50 per day, until the principal debt and interest is paid off. Peey is afraid that if he fails to meet these payment obligations, the private moneylender will take his plot at the site. Ny has not connected her shack to electricity, stating that she simply can't afford it.



*Don Peey, standing in front of his home in the Battambang resettlement site, next to which his mother Nyien Ny has built a small, wooden makeshift shelter; exterior and interior of Ny's home*

## Box 4: The Samrong Estate Land Dispute

While the vast majority of Project-affected households do not have claims to the land being used for the rehabilitation of the railways, 231 affected households in an 98-hectare area known as Samrong Estate, claim to have private rights to the land that they reside upon and/or farm. In the Draft Resettlement Plan for Samrong Estate, however, the MPWT claims that the area is property of the Royal Railway of Cambodia (RRC), which, if valid, would bar any private possession claims to the land. The MPWT has granted a concession over the area to the Australian-Cambodian joint venture, Toll Royal Railway, for the development of a freight and cargo facility as a part of the Project. Notwithstanding the land dispute, the Australian Government has provided a grant to the Cambodian Government for the construction of the facility.

According to Cambodian Land Law, persons who possess certain types of land and meet a number of criteria are recognized as legal possessors, conferring on them a bundle of rights akin to ownership. These households are eligible to apply for formal land title. The process of formally registering all land plots throughout Cambodia and issuing ownership title is currently ongoing and is several years away from completion. To date, the majority of Cambodian households that have recognizable claims under the Land Law as legal possessors of their land have not yet had the opportunity to have their possession rights converted into full ownership through the issuance of title deeds. Under Cambodian Law, in the event that their land is needed for a public interest project, these households are entitled to have their rights to the land adjudicated, and if confirmed, to receive the same treatment as full owners, including fair market value for their land.

In the Resettlement Plan for Samrong Estate, the MPWT states that the area was acquired by the government for use of the RRC in the 1950s. However, this acquisition has no bearing on present day claims to the land because, under Cambodian law, the slate was wiped clean from 1979 with respect to all claims to land, include State claims. After the fall of the Khmer Rouge regime in 1979, families began settling on the Samrong Estate with the consent of local authorities. From 1989, when a private property system was re-introduced after two decades of collective and State ownership, families occupying the area were issued with possessory receipts and the plots in Samrong Estate began to be sold or otherwise transferred with attestation by commune officials. This practice continued unabated until 2005, with subsequent possessors considering themselves akin to owners of their plots - an understanding confirmed by the acts of local officials.

The MPWT claims that in 2000 the RRC gave notice to various levels of government that the area was State-owned; however, the evidence suggests that the general public and the families residing on or farming the area were not put on notice at this time. In 2005, the Municipality of Phnom Penh and the RRC issued an instruction banning the transfer, sale and the use as collateral of plots within Samrong Estate. At least some residents of Samrong Estate were made aware of this instruction. Nonetheless, households by and large ignored this ban, possibly both out of necessity and because they were uncertain of its validity since they regarded themselves as legal possessors, and continued to deal with the land as before.

In 2008, the systematic land registration process commenced in Samrong Estate. Households received receipts after their land plots were surveyed in exchange for documentation that they provided as evidence of their lawful possession. However, the land registration process was aborted without explanation to the households. The following year the households were informed that the land was State property that would soon be used for the Rehabilitation of the Railways Project, requiring them to vacate.

As a result of Cambodia's complex post-conflict land tenure and legal history, the status of land claims such as those of Samrong residents is often legally murky. Notwithstanding the complexities involved, the households occupying the land have a strong claim to legal possession rights under Cambodian law and have the right to challenge MPWT's claim that the land of Samrong Estate is State public property. These households are entitled, at a minimum, to have their claims adjudicated through an impartial process in accordance with the law. The penal provisions of the Land Law make any act or conduct that hinders the peaceful possessor of land whose ownership rights have not yet been fully strengthened under the law an offense. Approval by the ADB of the current Draft Samrong Resettlement Plan, and the subsequent implementation of the plan, could constitute such an offense.

## Key Findings on Compensation

The research indicates that in many cases the compensation packages provided to households have not complied with the requirement of the 1995 ADB Involuntary Resettlement Policy, which states that affected people “be compensated and assisted so that their economic and social future will generally be at least as favorable with the project as without it.” The requirement to provide full current replacement cost for affected structures and compensation for net income loss during the transition period, as clarified in the 2009 ADB Safeguard Policy Statement, has not been met in practice for many households. Compensation packages have often not been sufficient to ensure that affected people have access to basic adequate housing post-resettlement, as required by international law.

In particular:

- There is evidence of a flawed DMS, including inaccuracies in the categorization of structure types and other measurements and a systematic downgrading of compensation entitlements for structures.
- Compensation rates are indexed at 2006 prices despite a significant rise in costs of materials by the time payments were made several years later.
- In the vast majority of cases, totally affected households required to relocate and rebuild their houses received or will receive much less than the current cost of the materials of a small adequate shelter by Cambodian standards.
- The policy and practice of compensating affected households based on replacement cost of housing structures is not always sufficient to meet the ADB Policy objective of improving the standards of living of the displaced poor and the international law obligation to ensure access to adequate housing. In order to meet these standards, a minimum compensation floor, adjusted for household size, should be established, with replacement cost for primary housing provided only where it is higher than the established minimum rate.
- Special assistance for vulnerable households, as required in the Entitlement Matrix, has not been provided in all eligible cases. Definitions of “poor” are inconsistent in the RPs and the definition ostensibly used in practice is lower than a very conservative 2007 poverty line.
- In some cases, widows reported that they were treated as belonging to the same household as their fathers or sons, despite possessing separate family books or living in separate houses prior to resettlement, and thus did not receive their own compensation packages or plots of land. In cases in which this situation remains unrectified, it may amount to discriminatory treatment in violation of international law, including the Convention on the Elimination of Discrimination Against Women.
- The determination by Cambodian authorities that Samrong Estate residents have no legal claims to their land, without providing them due process to have their land rights fully adjudicated, is contrary to Cambodian law. The approval by the ADB of the Draft Samrong RP, in the absence of a just resolution to the land dispute, would potentially make the ADB complicit in an illegal act.

## Chapter 4

### Conditions at Resettlement Sites

#### 4.1 Legal and Policy Requirements

*For resettlement implementation that involves physical relocation to project-sponsored resettlement sites, it is important to take the following measures at the start of implementation: (i) verify that each affected household is willing to occupy the specific resettlement sites . . . (ii) prepare resettlement sites, including community infrastructure, before the date of relocation . . .*

- ADB, Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook – Draft Working Document, March 2011, para 149.

*The Committee strongly recommends that the State party, as a matter of priority . . . guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health care centres and transportation at the time the resettlement takes place.*

- Concluding Observations of the Committee on Economic, Social and Cultural Rights, Cambodia, 2009, para 30.

The RGC is required under international law to ensure that involuntary resettlement does “not result in individuals being rendered homeless or vulnerable to the violation of other human rights.”<sup>84</sup> As such, the RGC “must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”<sup>85</sup> As described in this section, while housing “adequacy” is to some extent determined by contextual factors, a number of universally applicable characteristics have been identified. These characteristics must be present upon the resettlement of people displaced by a development project.

ADB’s 1995 Involuntary Resettlement Policy requires the “provision of relocation sites with appropriate facilities and services.”<sup>86</sup> It states that “[a]ppropriate land, housing, infrastructure, and other compensation, comparable to the without-project situation, should be provided to the adversely affected population.”<sup>87</sup> These vague requirements are clarified and extended in the 2009 Policy, which compel the borrower to provide “relocation assistance, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, and civic infrastructure and community services as required.”<sup>88</sup>

#### 4.2 The Resettlement Strategy

In order to give effect to the ADB Policy, the 2006 Resettlement Plan sets out a relocation strategy, which provides three options for affected households. According to the Plan:

APs that have to relocate will participate in identifying and selecting options with government assistance: either (i) to reorganize themselves within the remaining right-of-way (ROW) for them to be able to continue their businesses or employment for at least the next 5 years; (ii) to move outside the ROW to either group or individual relocation sites in proximity (3km to 5km) to current locations so that incomes will not be affected; or (iii) to receive cash assistance for loss of land use and make their own arrangements for relocation.<sup>89</sup>

The Plan also states that resettlement sites will be equipped with all basic services and facilities and households will be guaranteed secure tenure to their plots.<sup>90</sup>

84. UN CESCR, General Comment 7, op. cit., para 16.

85. Ibid.

86. ADB, Involuntary Resettlement Policy (1995), para 34.

87. Ibid., para 34(iii).

88. ADB, Safeguard Policy Statement (June 2009), Involuntary Resettlement, op. cit., para 11.

89. Cambodia: GMS Rehabilitation of the Railway in Cambodia Project, Resettlement Plan, October 2006, Executive Summary.

90. Resettlement Plan, 2006, op. cit., page 54.

The implementation of such a strategy, including the provision of genuine options to affected households, in conjunction with sufficient compensation, would fulfill obligations under both international law and ADB policy. The location of resettlement sites, proximate to existing livelihood sources, and the guarantee of secure tenure are central to ensuring that the living standards of affected households are maintained. The guarantee of secure tenure for households that were previously on State property would contribute, in combination with other factors, to an improved post-resettlement situation.

Based on the information and data gathered, the resettlement process has not adhered to this strategy. Genuine options do not appear to have been made available in many cases, with partially affected households having to move back into the ROW and most totally affected households having little choice but to accept the offer of a plot at the government-selected relocation site. Some of the promised provisions have been absent at each of the five Project-sponsored sites at the time of resettlement. Many of the services have since been installed but some remain absent or inadequate as of December 2011. The distance of the Phnom Penh resettlement site from former homes and businesses of affected families is causing hardships that will be difficult to remedy unless new inner-city sites are identified for resettlement.

### 4.3 Resettlement Conditions and Adequate Housing under International Law

The United Nations Committee on Economic Social and Cultural Rights has identified a number of essential aspects of the right to adequate housing. Five of these aspects are set out below, followed by a corresponding account of the situation at the resettlement sites.<sup>91</sup> In general, the international law duty on States Parties to the ICESCR is to take all steps within the maximum available resources to realize the right to adequate housing for all. Resettlement under this development project, which is financed in large part by international assistance, presents an excellent opportunity to fulfill the right for affected households who previously did not enjoy it. Retrogressive measures, such as relocating an inner-city family to a place without sufficient access to water or livelihood opportunities, will in most cases amount to a violation of international law obligations.

#### 4.3.1 Legal Security of Tenure

Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.

- UN CESCR, General Comment 4, para 8(a)

Households living along the railway tracks within the COI, ROW, in stations or on other land legally reserved for the railways, reside on State public property and their occupation of this land is considered illegal under Cambodia's Land Law. These households had no tenure security at their previous locations. Under the Project, totally affected households are offered "relocat[ion] to project-sponsored sites with security of tenure."<sup>92</sup> As described by the ADB, the contract entered into between the IRC and resettled households provides that:

- The plot of land is allocated to the household;
- The sale, mortgage, transfer of rights or donation of this plot to others is prohibited within a period of five years from the signature of the contract;
- In case of violation, authorities will take back the land without any conditions;
- When five years have passed, the State will issue a full land title to the landowner.<sup>93</sup>

91. UN CESCR has identified seven aspects of the right to adequate housing. The research team has gathered information and data in relation to five of these. The remaining two aspects are accessibility of housing to disadvantaged groups and cultural adequacy of housing. (UN CESCR, General Comment 4, op. cit., para 8 (e) and (g)).

92. See, for example, Updated Resettlement Plan for the Northern Line and Missing Link, op. cit., page iv and Annex 1: Entitlement Matrix, page 18; Updated Resettlement Plan for Poipet, op. cit., pages 1, 13.

93. ADB website, Frequently Asked Questions on Resettlement: CAM: Loan 2288 – (GMS) Rehabilitation of the Railway in Cambodia Project, available at: <http://www.adb.org/Projects/CAM-Railway/faqs.asp>. In the 2006 Resettlement Plan, it states that for totally affected households in Poipet to receive land title, families must commit to not selling, pawning or renting their plot of land or allowing other families to live on their plots; they must live "in the area for 5 years"; and they must "contribute \$1.25/month for 3 years to create a community fund for the maintenance of the resettlement site, payment of volunteer teachers, administrative costs of the VDC. (Resettlement Plan, 2006, op. cit., page 56).

The majority of households interviewed noted that they view the promise of tenure security as the primary benefit of resettlement under the Project. The ADB states on its website: “Access to land title is not something families living along the railway line currently enjoy and people at the new sites therefore consider this as an excellent opportunity for their families’ future.”<sup>94</sup>

Two factors may pose a threat to the long-term tenure security of resettled households. First, with the exception of Pursat,<sup>95</sup> households have not been informed of the process by which they will receive title five years after resettlement and no documentation to this effect has been made available. Given that the resettlement sites have apparently not been registered as Social Land Concessions, it is unclear by which legal process the State will issue full land titles to the resettled households. Is the burden on the households to apply for a land title through the sporadic land registration process, or will the State issue titles through the systematic land registration process? Either eventuality poses a set of risks and questions. ADB has not responded to inquiries by BABC about how the process of issuing land titles after five years will be triggered.

Second, resettled families have reported that they have borrowed money as a result of insufficient compensation payments and/or loss of income and gave their land documents to private moneylenders as collateral. Many of these families have expressed fears that they will lose their land to moneylenders because they are unable to make monthly loan repayments.<sup>96</sup> (See Chapter 5).

The tenure status of partially affected households that continue to live in the ROW, as well as all other households who reside within the ROW, remains precarious. Under the Resettlement Plans these households are guaranteed security of tenure for five years, and are to be provided with a certificate from the Government to that effect. However, according to the Resettlement Plans, households are not authorized to construct any permanent structures in the ROW and at some time after the five-year period they will be resettled “in accordance with the Government’s legal framework and the standards of” the Resettlement Plans.<sup>97</sup>

The rationale for a future eviction of households within the residual ROW is unclear, given the fact that only the COI is required for the operation of the railways. Under international law and the ADB Policy, involuntary resettlement is to be avoided wherever possible; thus unless the Government has a legitimate use for the ROW land, or there is, for example, genuine safety concerns for households within the residual ROW, families should be allowed to remain with some form of legal tenure security.

Should these households be resettled in the future as anticipated in the Resettlement Plans, it is a foreseeable risk, given existing practices, that the standards and entitlements established in the RPs will not be fully adhered to as required by Project Loan Agreements.<sup>98</sup> The risk is heightened by the fact that the Project itself is likely to be closed by the time resettlement of these households takes place reducing further the capacity of the ADB to supervise the process.

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94. ADB website, The Cambodian Railway Tracker: GMS Rehabilitation of the Railway in Cambodia Project, available at: <http://www.adb.org/projects/cam-railway/default.asp>.

95. The contract used in Pursat, states: “the people must live there at least 5 years to get land title and must fill out a land application in year 4 [and] the representative of the provincial sub-committee will provide land title confirmation within 3 months after the 5 years. (unofficial translation).

96. Note that in the 2006 Resettlement Plan, it states that for totally affected households in Poipet to receive land title, families must commit to, inter alia, not selling or pawning their plot of land. (Resettlement Plan, 2006, op. cit., page 56).

97. Updated Resettlement Plan for the Northern Line and Missing Link, 2008, op. cit., page 17.

98. Loan Agreement (2010), op. cit., Schedule 5, para 7.

### 4.3.2 Location

Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households.

- UN CESCR, General Comment 4, para 8(f)

The 2006 Resettlement Plan states “[o]ff-site relocation will be to sites within close proximity (3 to 5 km) of current locations, wherever possible, to minimize distance from current livelihood activities and to enable [their] continuation.”<sup>99</sup> Selection of sites beyond that distance will only occur “under exceptional circumstances,” where closer sites cannot be found.<sup>100</sup>

The resettlement sites are in some cases beyond 3 to 5 kilometers of previous residential location. While a study of whether there was an exceptional circumstance in these cases because no closer site could be found is beyond the scope of this research, it is apparent that since the sites were purchased from private owners, closer plots could have been purchased, albeit at a higher cost to the Project. In the case of Phnom Penh, this is confirmed by the Updated RP, which states that despite proximity to former location being a criteria of affected households:

[I]t was found tha[t] no large land . . . was available around the affected area and that price of land in Phnom Penh, urban area was too high . . . around the affected areas and not affordable. Therefore, the RS has to be located in the outskirts of the City.<sup>101</sup>

As such, in Phnom Penh, one peri-urban resettlement site has been established for all Phnom Penh affected communities, regardless of their pre-resettlement location. While the Phnom Penh resettlement site in Trapeang AnhChanh, is only a few kilometers away from the Samrong Station communities, it is between 20 to 25 kilometers from other pre-resettlement communities, such as Mittapheap and Toul Sangke A. Trapeang AnhChanh is located well outside the busy urban center, in which residents from inner-city communities derive their incomes. Project-affected women who have moved to the site have especially reported facing difficulties in finding jobs and in some cases have stopped work altogether (see Chapter 5). They also report increased difficulties in accessing facilities, such as schools and health centers, as compared with their previous location. One reported impact of this is as an increase in the cost of travel for children attending school. A 33-year old woman resettled to Trapeang AnhChanh stated:

All of my children are girls. When we lived in Phnom Penh, I sent my children to study up to grade 8 or 9, but living in the resettlement site, I can't afford to send my kids to school. Why? The school is far away from home, and along the way is full of bushes. It is quiet. It worries me, a parent, when the kids go to school. The school is 7 kilometers from my house. . . . And now all of my children are not in school anymore. I really regret this.

It is well recognized that the selection of resettlement sites that provide affected persons “with reliable access to productive resources . . . employment and business opportunities is key to the restoration of livelihoods.”<sup>102</sup> The well-documented difficult experiences of families that have been relocated from inner-city land to Trapeang AnhChanh in the past begs the question as to why the location was selected by the Project, given the requirement to maintain or improve affected peoples' standard of living.<sup>103</sup> For example, families that were evicted from Sambok Chap community

99. Resettlement Plan, 2006, op. cit., page 59.

100. Ibid.

101. Updated Resettlement Plan for Phnom Penh, 2010, op. cit., page 14.

102. International Finance Corporation, Handbook for Preparing a Resettlement Action Plan, page 36.

103. See, for example, Licadho, “132 families have their houses destroyed in another Phnom Penh eviction,” November 7, 2007, available at: <http://www.licadho-cambodia.org/articles/20071107/67/index.html>; Amnesty International, “Cambodia: Urban Development or Relocating Slums?”, May 2009, available at: <http://www.amnesty.org/en/library/asset/ASA23/002/2009/en/fa4234a4-cc36-4f9e-bc8d-0e3610fc054a/asa230022009eng.pdf>.

in Tonle Bassac, central Phnom Penh in 2006 have reportedly suffered severe hardships, including impoverishment at Trapeang AnhChanh, primarily due to the location of the site. An unpublished UNOHCHR report, relevant excerpts of which were provided to the ADB prior to approval of the site for the Project, found that resettled families in sites including Trapeang AnhChanh have complained that the distance of the sites from their former homes has dramatically hampered their income-earning opportunities. As a result, in many cases resettled people went back to the city center to find work.<sup>104</sup>

Despite being forewarned about the likely risks of a drop in living standards at Trapeang AnhChanh, the ADB nonetheless approved the Updated Phnom Penh Resettlement Plan, including the selection of Trapeang AnhChanh as the Project-sponsored resettlement site. Moreover, as discussed in Chapter 5, income restoration programs have still not commenced in Phnom Penh several months after resettlement, essentially leaving resettled families to fend for themselves under what were predictably difficult conditions.

In Battambang, the resettlement site is approximately 5 to 7 kilometers from most previous places of residence. In Sihanouk Ville, the site is 10 kilometers from many former homes. Resettled households in both these areas expressed dissatisfaction with the location of the site because of reduced income-earning opportunities as well as access to schools and health centers. Mothers expressed concern about the distance that their children had to travel to attend school and felt that this posed a risk to their safety. The distances are considerable for families that do not own a car or motorbike, and in many cases, even a bicycle. The relevant Resettlement Plans state that the sites are 4 kilometers (Battambang) and 2 kilometers (Sihanouk Ville) from former locations, but this measurement is not an accurate description for many resettled households.

As a consequence, over 50 percent of resettled families in both Sihanouk Ville and Battambang<sup>105</sup> do not live at the resettlement site and some are instead renting near their sources of livelihood at their own expense. Some families in Sihanouk Ville have reportedly sold their plots. The same pattern has repeated at the Phnom Penh resettlement site.

At the other end of the spectrum is the Pursat province resettlement site, which as ADB documents represent, is 400 meters from former sites and “so close, the resettlers indeed are already part of the established socio-economic systems with apparently no gaps between host and settlers.”<sup>106</sup> In Poipet, many households report satisfaction with the location of the resettlement site, approximately 4 to 5 kilometers away from their former homes, and have apparently been eager to relocate as they perceive the site as an improvement on their previous location, which was flood-prone.

According to the 2009 ADB Policy, a resettlement plan should include a description of “alternative relocation sites considered; community consultations conducted; and justification for selected sites, including details about location . . .”<sup>107</sup> In the case of the Railways Project, affected persons were not involved in a consultative process to identify potential sites and thus, were not provided with an opportunity to assess the relative merits and disadvantages of various sites for their livelihoods, health, education and other needs. One 54-year old woman from Phnom Penh who is totally affected, but has not yet resettled, remarked:

They said that the [resettlement] land is in Trapeang Anhchanh. I’ve never been there. They said that Trapeang Anhchanh is somewhere, [but they] don’t know where. Everyone says Trapeang Anhchanh is somewhere by just pointing.

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104. “Eviction and Resettlement in Cambodia: Human Costs, Impacts, and Solutions - A Study on Selected Urban Resettlement Cases,” (Draft), UNOHCHR Cambodia. (Referred to in Jean Du Plessis, “Losing Your Home: Assessing the Impact of Eviction,” UN-Habitat and UNOHCHR, 2011, pages 52-54).

105. Battambang community representative at May 31, 2011 meeting with ADB, NGOs and community stated “only a few households still live at the relocation site – around 20 . . . there are no roads, no hospitals.”

106. Updated Resettlement Plan for the Northern Line and the Missing Link, 2008, op. cit., page 11.

107. ADB, Safeguard Policy Statement (June 2009), Involuntary Resettlement, op. cit., page 51.



### 4.3.3 Availability of Services, Materials, Facilities and Infrastructure

An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

- UN CESCR, General Comment 4, para 8(b)

The 2006 Resettlement Plan states that, before any households relocate, resettlement sites “will be developed with all basic infrastructures: access roads, water supply, electricity, drainage and toilet facilities (pit latrines).”<sup>108</sup> These requirements were confirmed in December 2010, when the IRC and the ADB adopted a “Resettlement Checklist” to be completed before any further relocation of affected households could take place. According to the ADB, the IRC had agreed to complete the checklist and report on the conditions at the site at least two weeks before resettlement of communities began.<sup>109</sup> The introduction of the checklist system was presented as a new safeguard to prevent a repeat of problems that had already occurred in Sihanouk Ville and Battambang, where affected households had been resettled before the site was prepared. A year later, in a meeting with BABC, et al. in December 2011, however, the ADB reported that the checklist system had been abandoned - without explanation.

At the time resettlement commenced, none of the five sites throughout the country met all minimum requirements of the ADB Policy, the Resettlement Plan or international law.

During a visit to the Sihanouk Ville resettlement site in August 2010, one month after the first families had moved there, the BABC research team observed that, while there were wells and toilets on the site, there was no electricity. Several residents informed the team that their toilets were not working properly.

The research team visited the Battambang resettlement site in October 2010, some five months after families had relocated.<sup>110</sup> Water had not been provided at the site and residents informed the team that during dry season they accessed water from the adjacent rice fields and an eight-meter deep pond 300 meters away, which they believed was polluted with chemicals used for rice cultivation. Tragically, two children drowned in the pond four days after moving to the site in May 2010 (see Box 5). Electricity had recently been connected to the site, but some of the households had not connected because of the high connection fees, while others had borrowed money in order to connect.<sup>111</sup>

In November 2011, the team visited Trapeang AnhChanh, the Phnom Penh resettlement site. Residents formerly from the Mittapheap community reported that when they relocated, in late September 2011, electricity and water were not available. The services, however, were provided about a month after resettlement. Residents reported being charged 308,000 riels (\$77) to connect to water and electricity.

108. Resettlement Plan, 2006, op. cit., page 54.

109. Letter from ADB to BABC, et al, dated December 13, 2010 (on file with BABC).

110. BABC video about Battambang relocation site filmed in October 2010, available at: <http://babcbodia.org/railways/>; see also, Australia Broadcasting Corporation, Lateline, Cambodia rail line to displace country's poor, May 5, 2011, transcript available at: <http://www.abc.net.au/lateline/content/2011/s3216781.htm>.

111. Under the Resettlement Plan, connection fees were not to be charged and the IRC eventually partly reimbursed the households.

In June 2011 the ADB stated publicly that the “ADB, AusAID and the Government of Cambodia had agreed to a timetable for the completion of electricity, water supply and other basic facilities at relocation sites.”<sup>112</sup> The timetable itself was not disclosed.

A chart of services available at resettlement sites at the time of relocation and as of December 2011 is provided in Annex 3.



*Latrines mark empty plots at the Battambang resettlement site*

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112. ADB, “Fast Facts on an Agreement between the Resettlement Department – Ministry of Economy and Finance (RD – MEF) and Asian Development Bank (ADB) on Resettlement Matters,” op. cit.

## Box 5: Drowning in Battambang



*Hut Heap (age 13) and her younger brother, Hut Hoeb (age 9), drowned in a nearby pond several days after relocating to the resettlement site*

On May 29, 2010, four days after their family had relocated to the Battambang resettlement site, two children, a brother and sister, drowned in an eight-meter deep pond in the adjoining rice fields. The older brother of the deceased children told the research team in October 2010: “My younger siblings, they came here for water to wash the dishes. If there was water . . . before we moved here then my siblings would not have died.”<sup>113</sup>

When BABC and partner NGOs found out about the incident in October 2010, they raised concerns about the dangerous situation that children and others living at the site were exposed to when they collected water from the deep and unenclosed pond. They also raised the issue of accountability for the deaths, given the absence of a safe water source at the site, and urged the ADB and AusAID to conduct an investigation into the circumstances of the deaths, being mindful of the particular state of vulnerability of the family members and others in the community who may feel scared to speak openly about their situation. The organizations also called for an assessment of the appropriate reparations to be provided for the pain and suffering caused to the family.<sup>114</sup>

In November 2010, a team comprised of ADB and AusAID staff and consultants conducted an investigation into the matter. The investigation report concluded that the children went to the pond to collect snails and thus “there is no direct link between the death of the two children and the absence of running water at the resettlement site.”

The evidence described in the report is based on interviews with family members and neighbors, all but one of whom were apparently unequivocal about the fact that the children went to the pond to collect snails and not to use the water, although the investigation team was informed that the pond is commonly used as a water source.

113. The brother’s video testimony is available on the BABC website: BABC, Dying for Development; Resettlement Impacts of the Rehabilitation of the Railways of Cambodia Project, available at <http://babccambodia.org/railways/>

114. Letter from BABC and other NGOs to the President of the ADB, October 21, 2010 (on file with BABC).

The other key piece of evidence described in the report was a paragraph added at the end of a photocopy of a May 2010 report of incidences by the village chief to the commune office. The investigation report notes that “[t]he description of the accident is . . . very detailed in comparison with other events . . . in the report. It is possible that the paragraph has been added recently . . .” The added paragraph states: “The two kids and their sister-in-law went to the pond for finding snails . . . The village chief contributed 20,000 Riels (\$5) to the victim family [sic].”

The investigation report also relies on evidence provided by the IRC in the form of a “handwritten statement prepared by a village representative who, together with a representative of the IRC . . . met with the family.” The document, thumb-printed by the father and dated 27 October 2010, states that “the children were not fetching water but collecting snails for food.” The statement was prepared some 5 months after the incident occurred and just a few days after the NGO letter was sent to the ADB and AusAID.

Regardless of the reason the children went to the pond that day, their death underscores the importance of undertaking due diligence measures to ensure a reasonable level of safety at the resettlement sites. In addition all residents should be able to access basic services and facilities without putting themselves at risk.

Tragically, another child, whose family had recently moved to the Poipet resettlement site, was reported dead on 19 November 2011. Mab Seiha, an 11-year old boy was crossing a main road, walking from the school that is close to the family’s former residence to his new home at the resettlement site, when he was hit by a truck. The boy died from his injuries.



*A photo of Mab Seiha (age 11)*

#### 4.3.4 Affordability and Habitability

Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised.

Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well.

UN CESCR, General Comment 4, paras 8(c) and 8(d)

As noted in detail in Chapter 3, the compensation package provided to affected households is indexed to 2006 market rates, despite inflation over the years that has seen material and labor costs rise considerably. For some households, this has resulted in an inability to complete the construction of their homes and/or the rebuilding of partially affected structures. Affordability of basic services has also been raised as a problem by some households. As noted above, families at resettlement sites were charged high electricity connection fees, although at least some of these fees were eventually partly reimbursed by the IRC. A combination of inadequate compensation rates, the cost of construction and accessing services, as well as reduced incomes, has resulted in indebtedness for many households. (See Chapter 5).

As discussed in Box 3, families with inadequate housing prior to resettlement should be provided with a minimum base amount so that they are able to construct at least basic adequate housing in terms of space, privacy, security and protection from the elements at the resettlement location.<sup>115</sup> Families from Phnom Penh's Mittapheap community, who have resettled to Trapeang AnhChanh, reported that they had or planned to build bigger or better-constructed houses than their previous ones along the tracks. They provided two reasons for doing so or planning to do:

- This is their permanent house, on land for which they hope to get land title after 5 years.
- They want a stronger and safer structure for their families.<sup>116</sup>

All of these Mittapheap families, however, said that the compensation they received was not enough to construct their houses, and as a result some have borrowed money despite concerns about their ability to repay the loan, while others have not yet begun building. The provision of a minimum amount of compensation under the Project that is enough to build an adequate house would mitigate the hardship experienced by these families by going into debt or having to wait before constructing their new homes.

Some partially affected households who have remained or will remain in the ROW have reported inadequate living space under the "minimum viable" rule established in the Resettlement Plans. This rule provides that households with a structure that will be at least 30 square meters once the part of the structure within the COI is removed are considered partially affected. These households do not receive a plot of land at the resettlement site and only receive compensation for the part of structures and assets removed from the COI. Many households are left with very small structures in which to live under this rule, which is not adjusted based on the number of household members.

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115. Ibid.

116. This desire to improve living conditions is common for resettled populations, especially where their previous situation was sub-standard. (See, for example, Michael M. Cernea, "Risks, Safeguards, and Reconstruction," *op. cit.*).



*Many families must live in makeshift homes or rent rooms as they dismantle or rebuild their homes. For widows and female head-of-households, resettlement often requires hiring labor to assist in the move. For some families, compensation is inadequate to complete construction of a new home, prolonging their transition period*

## Key Findings on Resettlement Sites

The research indicates that the Project-sponsored resettlement sites did not meet basic infrastructure requirements of the 1995 ADB Involuntary Resettlement Policy at the time of resettlement. For several sites, the location of the land was not appropriate, particularly in terms of access to employment and production opportunities, and thus the selection of site did not comply with the Policy. The international law obligation to ensure access to adequate housing, in terms of location, access to services and facilities, and habitable housing, was not fulfilled in many cases. The immediate duty to guarantee a degree of security of tenure may have been met, although there are a number of threats to the long-term security of households, both at the resettlement sites and within the ROW.

In particular:

- As compared to their previous illegal status, tenure security for affected households is improved; however for relocated households, threats to their security are posed by: (i) the lack of clarity on the legal process for registering land plots five years after relocation, and (ii) the use of land documentation by households as collateral for unmanageable debts. The rationale for future eviction of households (after five years) within the residual the ROW is unclear, since it is not required for the rehabilitation of the railways. It is a foreseeable risk that, despite contractual obligations, Project standards and entitlements will not be afforded to these households unless existing non-compliance issues are addressed and there is ongoing monitoring and supervision by the ADB, including after the close of the Project.
- Affected households were not given options about the location of the resettlement sites. The Phnom Penh site is 20 to 25 kilometers from many former residences and its distance from the urban center is hampering access to income-earning opportunities and facilities, such as schools and health centers. This risk was foreseeable in relation to the specific site selected, Trapeang AnhChanh. Due to the location of the site in both Battambang and Sihanouk Ville, over fifty percent of resettled families do not live at the site and are instead renting near their sources of livelihood at their own expense. Resettled families are generally more satisfied with the location of the sites in Pursat and Poipet.
- At the time resettlement commenced, none of the five sites throughout the country met all minimum requirements of the ADB Policy, the Resettlement Plan or international law. In some cases, there was no safe access to minimum necessary amounts of water for relocated families. Due diligence on safe access to services and facilities does not appear to have been done, contributing to the deaths of three children.
- Some families have been unable to complete the construction of their homes at the resettlement site for a considerable period after relocating because of inadequate compensation. The cost of rebuilding and connecting to services, such as electricity, has in many cases resulted in indebtedness.
- Some partially affected households have reported inadequate living space under the “minimum viable” rule established in the RP, which requires a household to demolish part of the house but remain living in the ROW.

## Chapter 5

### Livelihoods and Income

#### 5.1 Legal and Policy Requirements

*Expropriation of land removes the main foundation upon which people's productive systems, commercial activities, and livelihoods are constructed. This is the principal form of de-capitalization and pauperization of displaced people, as they lose both natural and man-made capital.*

- Michael M. Cernea, *Impoverishment Risks and Reconstruction: A Model for Population Displacement and Resettlement*, 2000, page 13.

*[C]ompensation alone does not guarantee the restoration or improvement of [affected persons'] living standards . . .*

- International Finance Corporation, *Handbook for Preparing a Resettlement Action Plan*, page 38.

*[T]he intention is that all relocation will have been done, all compensation paid, and livelihood restoration programs commenced, before any work is undertaken in areas occupied by affected households.*

- AusAID, *GMS: Rehabilitation of the Railway in Cambodia*, Concept Paper, 2009, para 33.

The right to an adequate standard of living and the right to work are enshrined in the International Covenant on Economic Social and Cultural Rights. In cases in which involuntary resettlement reduces access to livelihood and income-generating opportunities, the enjoyment of these rights are jeopardized. When reduced incomes result in sub-standard living conditions, including impoverishment, many human rights are contravened. It is therefore well established that comprehensive mitigation strategies are necessary to prevent impoverishment when people are displaced by development projects.

The 1995 ADB Policy on Involuntary Resettlement requires borrowers to compensate and assist affected people who lose their means of livelihood so that their economic future will “generally be at least as favorable with the project as without it.”<sup>117</sup> Sufficient resources and opportunities are to be provided to those affected so that they are able to reestablish their livelihoods as soon as possible.<sup>118</sup>

The 2009 Policy requires “comparable access to employment and production opportunities” post-resettlement as well as “transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and . . . opportunities to derive appropriate development benefits from the project.”<sup>119</sup> The Policy stipulates that no displacement should occur until, inter alia, a

comprehensive rehabilitation program, supported by an adequate budget, is in place to help displaced persons improve, or at least restore, their incomes and livelihoods.<sup>120</sup>

While research for this Report was conducted only a few months after resettlement began at each site, short-term impacts on livelihoods and incomes have been observed and prolonged impacts on income earning potential, without timely and adequate mitigation measures, can be predicted. The data shows a drop in earning potential, especially for affected households relocated further away from urban centers. Increased or new household indebtedness was also reported. In some cases, the drop in income levels, insufficient compensation and indebtedness has or is likely to lead to impoverishment. Meanwhile, income restoration programs have been delayed, piecemeal and ineffective. In recognition of these shortcomings, AusAID has committed additional resources to improve livelihood support programs.

117. ADB, *Involuntary Resettlement Policy* (1995), para 34(iii).

118. *Ibid*, para 34(iv).

119. ADB, *Safeguard Policy Statement* (June 2009), *Involuntary Resettlement*, op. cit., paras 11 and 12.

120. *Ibid*, para 14.



## 5.2 Resettlement Impacts on Livelihoods and Income

Of the 200 households originally interviewed, 8 percent had relocated to the resettlement site at the time of interview. Of the sample, 84 percent of all totally affected households reported they believed moving has or will adversely affect their income levels. Sixty-five percent expressed concerns that there are limited or no job opportunities at the resettlement sites. Almost all of the households interviewed after they had relocated reported a drop in earnings post-resettlement.

Many families operated a small home-based business pre-resettlement. One reason that households have experienced or fear a drop in their income levels is that the customer base has been, or is likely to be, reduced at the less opportune location of the resettlement site. For example, in individual household interviews and a focus group discussion at the Battambang resettlement site, women who operate, or used to operate, a home-based business indicated that they earn what they regard to be considerably less in comparison to pre-resettlement incomes. For other households the extra distance to jobs or income earning opportunities means that the cost of transport may either outweigh or substantially cut into daily income. As noted above, approximately half of all households, which had received a plot at the Battambang and Sihanoukville resettlement sites, had returned to live at locations near to their previous residences so as to maintain their livelihoods.

In order to supplement the information originally gathered about the impacts of resettlement, in November 2011 the research team interviewed an additional 16 of a total of 21 totally affected households from the Mittapheap community in Phnom Penh. The research team attempted but was unable to contact the five other households to arrange an interview. At the time of interviews, half of the respondents had built houses and resided primarily at the Phnom Penh resettlement site in Trapeang Anh Chanh. Of the remaining 8 households, 2 had built homes on the site, but continued to live in the urban centers, noting that their businesses and primary source of income was linked to the old site. The other 6 households had not yet built houses at the site and instead rented houses near their former residences. When asked why they have not relocated, these respondents gave the following reasons:

- They do not have enough money to build a house at the resettlement site.
- The relocation site is much farther from their place of work or business.

While resettlement of the Mittapheap community only commenced two months before the interviews were carried out, and it is therefore not possible to draw conclusions about permanent impacts on income, all of the 8 families living at the resettlement site reported a drop in income compared to their pre-resettlement situation. The impact of resettlement appears to have been greater on women household members. Out of the 8 households that had moved to Trapeang Anh Chanh, 2 women had changed jobs and 3 women had stopped working altogether. Of the totally affected families who were still living near their old homes, 2 women once operated home-based businesses and could no longer do so. One of these women managed to find a job in a factory and the other was unemployed at the time of interview.

## 5.3 Debt

The combined factors of reduced income, increased expenses and insufficient compensation have led to household indebtedness. Thirteen of the 16 totally affected families from Mittapheap community interviewed have borrowed money as a result of resettlement. The loan amounts range from \$420 to \$2,500.

All 13 households reported that, prior to resettlement, they were not in debt. As a result of resettlement, they have borrowed money for various expenses including: transportation, materials and construction/labor costs to rebuild their



houses; fees for water and/or electricity deposit; and daily household needs.

In order to borrow larger sums of money, some households reported having used their land receipts as collateral for loans from private moneylenders. These households have entered into written contracts, which were witnessed by the village chief, for a \$40 fee. Interest rates range from 6 percent to 15 percent per month, though one household was able to borrow money from a relative at no interest. Under the contracts, households stand to lose their plot of land at the resettlement site if they cannot repay the principal and interest according to contract terms. One of the contracts requires penalties of double the principal where repayment is not made in 3 months.

**Table 10: Mittapheap Household Debt Amounts and Interest Rates**

Amount borrowed	Interest Rate				
	0%	6%	7%	8%	15%
\$0-499	0	0	1	0	0
\$500-999	1	0	2	0	1
\$1000-1499	0	2	1	0	0
\$1500-1900	0	0	1	1	0
\$2000 up	0	2	1	0	0
Total	1	4	6	1	1

The threat of increased indebtedness seems to be an emerging pattern with affected households throughout the country. From the larger sample of 200 households, over half of those who had relocated and already built houses reported they were in debt as a result of the resettlement. This is troubling in light of the reports of decreased post-resettlement incomes, as well as ineffective or absent income restoration programs (see below). Many households say they had no choice but to borrow money from a private moneylender, even at usurious rates.

The following testimonies of Project-affected people illustrate how the severe stress placed on families from loss of income and rising daily expenses, coupled with inadequate compensation, can lead to indebtedness:

- A 58-year old woman resettled to Trapeang AnhChanh, Phnom Penh reported:

Before they evicted me from the railway in Kraol Koo [Russey Keo], I sold stuff like corn in front of the factory, just enough to get by. After moving to the resettlement site, I don't have anything... Living in the resettlement area, [I have] no job. Sometimes I don't even have money to send my grandchildren to school... Everything is difficult: food is a problem; no hospital to go to when sick; before I could make some money, now I lost all of my income. There is nothing left. Living in the resettlement area, the land is a bit bigger, more hygienic than the railway road. That's all. I don't want it. I lost my job... I am in debt because of building my house... When I moved to the resettlement site I borrowed \$1,600, including food and building fee, but...for the last two months, I didn't have money to pay the debt because I was so sick... The reason I dared to borrow is that they told me they would provide me six-months support and my house was completely damaged...I didn't have any wood left... I pay \$90 interest every month.

- A 42-year old man living at the Battambang Resettlement site reported:

Moving from the old house to the resettlement site there are a lot of problems. I have many children and I can't afford [to look after] everyone, so I need to borrow some money to buy and to build the house. I am in debt. When I was at the old house, it was not so great but I wasn't in debt, just enough to get by. It was close. But now from the morning [till night], we need a lot of money. My kids need to go to school, and the money for transport from the resettlement to the old place to take the air machine [used for work as a motorbike mechanic] back and forth. I bought a motorbike for pulling the cart I use to keep the repair tools. [I] borrow[ed] money to buy the motor and gasoline. Secondly, the money I got for moving was not enough. I also borrowed money to finish the house because [it] was not built properly and [I have] many children. I owe around \$2000 now. The interest is 4 percent...I pay \$80 per month in interest.

- A 33-year old women resettled to Trapeang AnhChan, Phnom Penh reported:

When living in the old place I had a small business in front of my house. And my husband worked. But when we moved to the new location he lost his job... So I am affected a lot. In the old place, [we had] a small house and small land, but I didn't owe anyone. But living in the new location, the land is a bit bigger for us, but... If we use the land document given by the government to borrow money from the bank, they would not accept it, so the business people agree to give us money but with very high interest. For \$100, the interest is \$7 per month. And we borrowed - in short, every villager, not only my family, everyone - \$2,000. For what? One, for living. Two, for building the house. Three, for starting the business... Everything is expensive. And we are not familiar with the location. It is a new way of life. We don't know what kind of business we can do, so we need to use some of that money for daily family expenses. Everyone would not sleep well with starvation, but we can pay off the debt later. That is what people think. After a while, it seems like we've gone too deep... [I pay] \$140 per month in interest.<sup>121</sup>

In August 2011, 13 households from a Sihanouk Ville community submitted written requests to ADB for low-interest loans, for amounts ranging from \$1,000 to \$1,500, because the compensation they received was inadequate to repair their homes in the residual ROW or rebuild at the resettlement site. The ADB responded to the letter in English, explaining that it does not loan money to individuals and that it is working with the RGC to finalize the proposed Expanded Income Restoration Program.

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121. Letter from ADB responding to 13 affected households in Sihanoukville, August 24, 2011 (on file with BABC).

## Box 6: Debt Again

### A Repeat of ADB-financed National Highway 1

The pattern of increasing indebtedness as a result of the Railways Project is a repeat of the situation that emerged from resettlement under the National Highway 1 Project, also financed by the ADB. To deal with what the ADB described as “crippling household debt” of 63 affected households that had filed a complaint to the ADB’s Accountability Mechanism, the ADB implemented a half a million dollar program in 2010-2011 to improve “social research and analysis skills” of relevant government staff and improve affected households’ livelihoods, including by restructuring household debt. Addressing household indebtedness was described by the ADB as “very challenging” and “not typical for normal IRPs [Income Restoration Programs] in that it was a remedial action undertaken long after displacement originally took place.” The ADB concluded from this experience that:

1. Income restoration planning (including detailed household data collection) needs to take place as early as possible in the resettlement process, and in any event well before people have to move.
2. To maximize benefits and sustainability, IRPs should (i) be based on community resource assessments, (ii) be linked to other poverty reduction and livelihood interventions in the area, and (iii) involve local authorities in the planning stages.
3. IRPs need to offer individually tailored solutions for different categories of affected households such as rural land- or agriculture-based solutions, rural off-farm options, solutions for landless urban poor, and so on.
4. NGOs have a vital role to play in the design and implementation of IRPs, particularly in community engagement, participatory planning, community organization, facilitation, problem solving, and longer term follow-up support.
5. The cost of preventive measures is far lower than the cost of remedial action.

*Source: ADB, Capacity Development for Income Restoration Programs: Cambodia, available at:  
<http://pid.adb.org/pid/TaView.htm?projNo=43174&seqNo=01&typeCd=2>*

## 5.4 Income Restoration Programs

According to the ADB:

Income restoration is an essential component of involuntary resettlement activities where affected families lose their productive base, business, jobs, or other income sources. The households most affected by involuntary resettlement tend to be among the poorest to begin with, and displacement risks even further impoverishment, marginalization, food insecurity, and social disarticulation.<sup>122</sup>

Given the foreseeable risk of reduced incomes and increased expenditures of resettled households, it is imperative that a comprehensive and adequately resourced income restoration program (IRP) is implemented in a timely manner. The 2006 Resettlement Plan states that the livelihoods of affected people “must be restored to their pre-project conditions or better.”<sup>123</sup> The first part of the income restoration strategy is to minimize the number of households who have to relocate by delaying for at least five years “eventual relocation out of the ROW.”<sup>124</sup> For households to be relocated, sites were to be within 3 to 5 kilometers of their pre-resettlement locations, wherever possible, “to enable continuation of current livelihood activities.”<sup>125</sup> As previously noted, this was not always the case, with many Phnom Penh families being resettled up to 25 kilometers away.

The income restoration strategy was to be based on affected peoples’ preferences, their level of preparedness to participate in programs and their economic viability.<sup>126</sup> Assistance should have included vocational training, project-related employment, a subsistence allowance during the transition period (six months) equivalent to 20kg of rice per person for six months, and double for vulnerable households.<sup>127</sup>

Under the Resettlement Plan budget, \$300 per eligible household is allocated for the IRP, in the form of skills training.<sup>128</sup> By all accounts, this amount is low if the objective is to restore incomes of affected households, especially those who have been resettled far away from previous livelihood sources.

BABC’s own seven year experience in supporting livelihood and income generation/restoration initiatives with poor communities (both displaced and non-displaced people) shows that a combination of community based initiatives and individual household interventions, applying a social work approach, is the most effective strategy for successful and sustainable livelihood improvement. The experience shows that a sustained multi-year commitment is required to generate or identify new livelihood opportunities, train people to take advantage of those opportunities, and support family initiatives to put new skills into practice. For example, BABC has worked with 600 non-displaced poor families in the Phnom Voar region of Kep province, spending an average of \$300 per family per year over the course of five years, with tailored interventions based on participatory planning, in order to begin to achieve a sustainable increase in household incomes.

In light of this experience, it is evident that the Project-income restoration plans, centered around one-off skills training and budgeted at \$300 per family over a 3 to 6 month period, is highly unlikely to be sufficient to achieve the objective of income restoration.

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122. ADB, Capacity Development for Income Restoration Programs: Cambodia, available at: <http://pid.adb.org/pid/TaView.htm?projNo=43174&seqNo=01&typeCd=2>.

123. Resettlement Plan, 2006, op. cit., page 59.

124. Ibid.

125. Ibid.

126. Ibid.

127. Resettlement Plan 2006, op. cit., pages 60-61; and Updated Resettlement Plan for the Northern Line and Missing Link, 2008, op. cit., page 13.

128. Resettlement Plan 2006, op. cit., Annex 1a; and Updated Resettlement Plan for the Northern Line and Missing Link, 2008, op. cit., page 13.

Under the Resettlement Plans, a baseline socio-economic assessment of affected households and an IRP plan was to be completed prior to resettlement. The Updated Resettlement Plans state:

ADB reviewed the TOR for IRP...and find it acceptable. IRC is going to hire two experienced firms to undertake (i) analysis of existing sources of income of severely affected and poor and vulnerable AHs, (ii) establish a baseline data to gauge the success of the income restoration program, (iii) develop programs based on available individual and/or group skills and preferences, and (v) identify existing or planned programs of the government or other agencies within the project area to design appropriate strategies to link up or expand such programs.<sup>129</sup>

Affected households interviewed are not aware of the measures being implemented. Baseline surveys were apparently never conducted prior to resettlement, although this information is crucial for comprehensive planning of an effective IRP, as well as for assessing its success in restoring or improving the economic situation of affected households.

The commencement of the IRP immediately upon resettlement is a requirement of the Loan Agreement between the ADB and RGC and this is reflected in the Resettlement Plans.<sup>130</sup> On the ADB website, it states that the IRP commenced in June 2010.<sup>131</sup> However, in December 2010, the ADB acknowledged in a letter to BABC, et al., that “[t]he income restoration programs for the Northern and the Southern Lines are both unacceptably late.”<sup>132h</sup> (Resettlement in Phnom Penh had not yet commenced at that time.) As one measure to remedy this problem, the Resettlement Checklist system required the IRC to report to the ADB for approval on: (1) the selection of an agency to implement the IRP, and (2) the date of commencement of the IRP, at least 2 weeks prior to the date of contract signing or the date of compensation. As noted previously, the Resettlement Checklist system was later abandoned.

In 2011, skills training workshops were held in Poipet, Pursat and Battambang. The quality of these workshops and the applicability of the skillset covered at these workshops, including chicken raising and mushroom growing, are reported to be low. One man from Battambang explained:

There are some people who provide training on raising chickens, growing mushrooms ... Those who attended the training received a fee, per day, 20,000 [riel/ \$5]... I don't see anyone raise [chickens]. [People] just learn and go to get the money provided.

Another man from Battambang clarified:

Related to a team who provides training on raising chickens and growing mushrooms... it is only learning. The result is nothing because they don't have enough money and do not have land to raise the chickens and grow the mushrooms. The land is 7 m x 15 m, [so] there is nowhere to raise the chicken and nowhere to grow the mushroom rooms. [We] build the house and put two big jars [for water or rice] and that's all [the space].

In Phnom Penh, despite commitments by the IRC to affected households, no IRP had commenced several months after resettlement. One woman resettled to Trapeang AnhChanh stated:

They said there will be training on raising animals, growing mushrooms, raising chickens, working as a mechanic. They said they will train us, for women, they can train to sew, design or using a sewing machine... And after finishing the training they will send us to work at a garment factory and won't require us to [find the jobs ourselves]... But there's nothing now. They don't even say they are going to provide training. [They don't] even come to ask how everything is, 'What are you doing nowadays?' I don't see them.

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129. Updated Resettlement for Southern Line, 2009, op. cit., page 9 (referencing TOR in Annex 4); Updated Phnom Penh Resettlement Plan for Phnom Penh, 2010, op. cit., page 17; and Updated Resettlement Plan for the Northern Line and Missing Link, 2008, op. cit., page 13.

130. Loan Agreement, 2007, op. cit., Schedule 5, para 8.

131. ADB website, Frequently Asked Questions on Resettlement, op. cit.

132. Letter from ADB to BABC, et al, dated December 13, 2010 (on file with BABC).

According to the ADB, the contractor retained to implement the IRP in Sihanouk Ville “started implementation . . . before ADB had commented on or even seen the inception report and the proposed program.”<sup>133</sup> In December 2010, after it reviewed the inception report, ADB reported: “ADB found the proposed income restoration program is inadequate and requested that it be suspended until a revised satisfactory program is prepared for ADB’s review and approval.”<sup>134</sup>

It is unclear what progress has been made on establishing a satisfactory program, although residents of the Sihanouk Ville site report that as far as they know no such program has commenced.

The ADB reports on its website that, in September 2011, the IRC provided five affected households at the Sihanouk Ville relocation site with 105 square meters each to use for pig raising at no charge. According to the ADB:

Three of the five AH had already started in May this year raising pigs and managed to improve their incomes considerably, making a profit of US\$ 125 on each pig sold. However, the size of the plot each AH has been given at the relocation site is too small for the pig raising to continue to be successful on a longer term, and once too many pigs are living on the small plots there will also be health and sanitation concerns. The AHs therefore had requested the government to provide them with more land, which now has been arranged by the IRC.<sup>135</sup>

The Pursat site was budgeted for 30 affected households and is, in general, the closest of all five resettlement sites to pre-resettlement locations.<sup>136</sup> Some adverse impacts upon incomes have nonetheless been reported. A number of relocated households say that their home-based businesses suffer from decreased income. The previous pre-resettlement location, inside the Banok station ground, is reported to be more favorable for doing business, as many people live nearby and there are active transportation activities. One person reported that all the family savings were used to rebuild a house, so they do not have capital to restore the business.

Pursat respondents reported that IRP assistance was provided in 2011, also primarily in the form of training on mushroom growing and chicken-raising. The majority of Pursat respondents living at the resettlement site reported that they do not have much confidence that their participation in the IRP will restore their incomes to pre-Project levels. Some relocated households had problems growing mushrooms due to the lack of space on their plots. This also posed an obstacle to raising chickens or animals. The plots of land for each household at the Pursat resettlement site are 12 x 5.6 meter, while those relocated to the other four Project-sponsored resettlement sites received 15 x 7 meter plots. Some of these households reported that despite the training they lack the capital to begin businesses. Finally, some households reported that they think the IRP is “useless” for them because it is not what they are interested in doing.

## 5.5 An Expanded Income Restoration Program

In November 2011, it was announced that AusAID would provide 1 million USD to create an expanded income restoration program, which would augment the existing IRP implemented by the IRC. The ADB website states:

The expanded income restoration program (EIRP) is intended to improve the abilities of the relocated households earn a living by making use of livelihood opportunities available near their relocations sites through the provision of relevant skills trainings, in addition to start-up capital for the relocated households wishing to engage in livelihood activities. The program also includes social safety net fund which the relocated households can avail of in times of crisis and emergencies. The EIRP in each relocation site will be developed as a collaborative effort of the relocated households. Planning activities for the EIRP have started in November 2011 to ensure common understanding of the objectives, components and operationalization of the program.<sup>137</sup>

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133. Ibid.

134. Ibid.

135. ADB website, The Cambodian Railway Tracker, op cit. (IRC reports significant progress on grievance redresses, 15 September 2011).

136. Updated Resettlement Plan for the Northern Line and the Missing Link, 2008, op. cit., pages 11-12.

137. ADB website, Frequently Asked Questions on Resettlement: CA: Loan 2288 (GMS) Rehabilitation of the Railway in Cambodia Project, <http://www.adb.org/Projects/CAM-Railway/faqs.asp#q13>.

It is unclear when the EIRP will commence implementation and whether or not a more competent agency will be contracted to implement it than those contracted for the existing IRPs.





## Key Findings on Livelihoods and Income

The data, while limited, indicates that people who have been resettled are experiencing reduced income-earning potential and increased indebtedness. In the absence of mitigation measures, their economic future is likely to be less favorable as compared to the pre-Project situation, contrary to the 1995 ADB Involuntary Resettlement Policy. The location of resettlement sites is a major cause of income loss. Income restoration support programs were not established prior to resettlement and continue to be piecemeal and ineffective, despite Policy requirements, although the Expanded Income Restoration Program supported by AusAID - an important mitigation and rectification measure - is yet to commence. The loss of income, coupled with increased expenses and indebtedness of households as a result of resettlement, has heightened the risk of impoverishment and led to a retrogression in the enjoyment of a multitude of human rights, including the right to an adequate standard of living and the right to work.

In particular:

- Almost all households interviewed at resettlement sites reported a drop in income compared to their pre-resettlement situation.
- The impact of resettlement appears to have been greater on the livelihoods of women household members, who reported a high rate of job loss or change.
- There appears to be a high rate of new and unmanageable indebtedness amongst resettled families as a result of reduced income, increased expenses and insufficient compensation. This pattern is a repeat of the situation that emerged from resettlement under the National Highway 1 Project, also financed by the ADB.
- The current Project IRPs, centered around one off-skills training and budgeted at \$300 per family over a 3 to 6 month period, is highly unlikely to be sufficient to achieve objectives.
- Project IRPs had not commenced at the time of resettlement or for significant periods after resettlement at most sites.
- Project IRPs that have commenced at three out of five sites after a considerable delay are reported to be piecemeal and ineffective. The programs have consisted of skills training work shops, including on raising chickens and mushroom growing, and are reported to be of poor quality and limited usefulness due to, inter alia, low market opportunities and the small size of land plots at resettlement sites.
- In November 2011, it was announced that AusAID would provide 1 million USD to create an expanded income restoration program, which would augment the existing IRP implemented by the IRC.

## Chapter 6

# Access to Remedies and Accountability

*[Grievance Redress Mechanisms] have become increasingly important when it is anticipated that a project will have ongoing adverse impacts or risks. Affected people need a trusted way to voice and resolve concerns about a development project and the project needs an effective way to address affected people's concerns. A project GRM provides a reliable structure that can help affected people and the project find effective solutions together.*

- ADB, Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook, 2011, para 138.

### 6.1 Legal and Policy Requirements

Access to legal remedies for rights violations is a fundamental aspect of rule of law, human rights and democracy. As a State party to the International Covenant on Civil and Political Rights (ICCPR), Cambodia has committed to ensuring that any person who claims that his or her rights enshrined in the Covenant have been transgressed, has access to a judicial or administrative authority with the competence to determine the veracity of the claim and an appropriate remedy.<sup>138</sup> Thus, when people's ICCPR rights are violated as a result of involuntary resettlement without adherence to safeguards and legal protections, they must have access to an effective remedy. The State must also ensure that remedies granted are enforced.<sup>139</sup>

The International Covenant on Economic Social and Cultural Rights also places an obligation upon the Cambodian Government to ensure that all individuals affected by eviction or involuntary resettlement have access to legal remedies and where necessary to legal aid in seeking redress from the courts.<sup>140</sup>

While the 1995 ADB Policy on Involuntary Resettlement is silent on the issue of accessing remedies for harms resulting from an ADB-financed project, the 2009 policy places a requirement on governments to establish a mechanism to receive and facilitate the resolution of affected persons' concerns and grievances."<sup>141</sup> The Policy states that the mechanism:

[S]hould address affected persons' concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to the affected persons at no costs and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies.<sup>142</sup>

Endemic weaknesses in the Cambodian court system, including corruption and political interference, mean that it does not fulfill its function as an impartial arbiter of claims to legal remedies. Administrative review processes are equally fraught with obstacles to justice for ordinary Cambodians wronged by powerful or wealthy actors. Therefore, to ensure access to remedies for rights violations under the Project, an alternative accountability mechanism that is impartial, fair and effective, as well as accessible to Project-affected people, is required.

A local grievance procedure, described below, has been established under the Project Resettlement Plan. Over ten percent of affected households have reportedly accessed the mechanism. However, due to deficiencies in both capacity and impartiality, limited progress has been made in substantively resolving these complaints to the satisfaction of affected households.

138. International Covenant in Civil and Political Rights, article 2(3).

139. Ibid.

140. UN CESCR, General Comment 7, op. cit., para 15.

141. ADB, Safeguard Policy Statement (June 2009), Involuntary Resettlement, op. cit., para 29.

142. Ibid.

## 6.2 The Local Grievance Mechanism

The local grievance mechanism is a four-stage process, designed to resolve any disputes related to the resettlement process, including any “questions or disagreement[s] on compensation and relocation options.” In summary, questions or complaints are first to be lodged with the relevant local commune office. If the matter is not resolved at this level, it then proceeds to the district and then the province levels. If the complainant remains unsatisfied, he or she can bring the case to the Cambodian Courts for final review. Time limits are set for each stage of the process. For example, if after 15 days there is no response from the commune or the complainant is not satisfied, the complaint can be brought to the district level.

Despite what appears to be a sensible grievance review process with an ample right of appeal, the evidence suggests that the grievance mechanism has generally not worked well and that recourse for problems caused by the Project has remained out of reach for most affected people. Barriers to accessing remedies have continued even as NGOs stepped in to assist some affected people in submitting grievances and increased efforts were made by ADB and IRC to improve the grievance process in late 2011.

## 6.3 The Number and Status of Complaints

According to the ADB website, the IRC has reported that the grievance mechanism has been accessed by at least 499 households through 102 letters of concerns and complaints about Project impacts. The number of households who have submitted a complaint represent 12 percent of the total number of affected households. According to the ADB website, the IRC has reported that the cases of 331 of these households were closed as of 30 November 2011, while the remainder were still being reviewed. The website states:

Cases closed refer to letters, where all issues addressed in the letter (by all the AHs) have been responded to by IRC, and AHs have accepted IRC's decision, or not responded to the contrary within 30 days after receiving the IRC response.

Some of these cases have been resolved to the satisfaction complainants. BABC is aware of 12 families in Poipet who recently received a plot of land at the resettlement site after submitting a complaint about not receiving one during the initial compensation and resettlement process.

The ADB website further states that the majority of complaints are from Phnom Penh households “and all letters from Phnom Penh have now been responded to.” It explains that the “main issues that IRC has responded to are those outside the scope of the Resettlement Plan.” Presumably this means that most of the complaints submitted by Phnom Penh households were addressed by denying the requests. Indeed, while the list of closed cases has not been disclosed, making verification difficult, it appears from a review of Phnom Penh cases that many have been closed after the IRC has responded with a dismissal rather than a resolution of grievances.

Following the updated information about the progress of grievance cases posted on the ADB website in November 2011 (referred to above), BABC followed up on joint and individual complaints submitted by 117 households from five Phnom Penh communities. In one of these cases, the individual complaint was never responded to and the household did not submit a further complaint. All the other complaints, sent to either the IRC-MEF or the relevant commune office, were responded to in July 2011, in most cases four months after the complaint was submitted. In all cases the households did not receive a result that satisfied them. Forty-nine of these households decided to submit a second complaint - either joint or individual - to the commune office. One of these complaints was jointly submitted by 44 households in Toul Sangke A community. The community received a response some six weeks later with no positive resolution. (See Box 7). Eight households from other communities submitted individual complaints. Seven of these received no response. One received a response more than four months later that did not resolve their grievance.

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143. For example, Updated Resettlement Plan for the Northern Line and the Missing Link, 2008, op. cit., page 24.

144. The process varies slightly in the different Updated Resettlement Plans.

145. One letter often represents many affected households with multiple grievances and requests. ADB website, The Cambodian Railway Tracker, IRC reports significant progress on grievance redresses, 30 November 2011, <http://www.adb.org/Projects/CAM-Railway/default.asp#time06>.

146. Ibid.

## Box 7: The Grievance Process and the Toul Sangke A Community

On April 08, 2011, 44 households in Toul Sangke A village in Russey Keo district, Phnom Penh, filed a joint complaint to the IRC office stating that the families are aggrieved because the compensation that they had been offered is inadequate and the resettlement site that they are required to move to is too far away. The households requested \$8500 in compensation reasoning that that amount had been offered to nearby residents who had been evicted because of another development project. The households considered that they would be able to get by with the compensation amount that they were requesting. A further 11 households submitted individual complaints at the same time.

On July 29, 2011, the Sangkat Chief, on behalf of the IRC Committee, responded to both the joint and the individual complaints with one letter. The letter informs the residents that the Sangkat has reviewed their complaints and found a solution. The “result” set out in the letter is as follows:

In cases in which the affected households are not satisfied with the compensation or need more detail about the policy of compensation, please send a complaint by individual or by each household to Sangkat Toul Sangke A and we will respond to each case...

The relocation site is selected as agreed with representative of the affected households. Nowadays, relocation has been developed 80% and still requires connection to water and electricity systems. The affected households can get services from relocation site such as: (1) The ownership of plot of land size 7m x 15m after living on that land for 5 years; (2) One hygiene lavatory for each household; (3) Free of charge water and electricity connection; and (4) Livelihood support training. The relocation site...has job opportunity potential in the area, especially in industrial factories. The relocation site also has some basic facilities such as a school, health center and pagoda.

Hence, the request to get compensation following the policy of compensation of the Boeung Kak investment project is impossible to offer since the railways reconstruction project has its own policy of compensation agreed between Royal Government of Cambodia and the ADB...<sup>147</sup>

Reasoning that they all had the same grievance and request, on September 05, 2011, the community sent another joint complaint rejecting the IRC's response to their original letter. They also complained that multi-story houses had only received compensation for one floor. On October 19, 2011, the IRC sent another letter rejecting the compensation amount requested but stating that the IRC will investigate claims for compensation for multi-story houses.

On December 28, 2011, the IRC held a meeting, which was attended by around 60 households from Sangkat Toul Sangkae, the majority from Toul Sangkae A community. BABC monitors observed the meeting and recorded these minutes:

The Russey Keo Deputy District Governor began the meeting by telling the residents that they are lucky that the government has offered them compensation because according to the law, they are not entitled to anything. He urged the residents to “rethink the matter” and contribute to the development of the country. A representative from the MEF then informed the residents that they need to decide whether they want to move to the resettlement site or remain in the residual ROW because the IRC will return in a few days to get household thumbprints. He informed the residents that there would be no further meetings on the matter because the company would start construction soon and that “only a small number of households in Phnom Penh remain the problem.” The residents then asked the following questions:

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147. Excerpt of unofficial translation of letter from IRC Committee to Toul Sangkae community, July, 29, 2011.

1. How much compensation will IRC offer us? It's hard for us to move to relocation site if we don't get \$8000 and a plot of land.
2. Can we exchange the plot of land and instead get compensation in cash?
3. Will the compensation include transportation costs? If it's very low we will not be able to move and rebuild a house.
4. Can we suggest having an organization help us to rebuild our houses and we will pay in installments?
5. What is the ADB policy to reduce poverty or make people's livelihoods better? All the people who moved to the resettlement site now have already pawned their land receipt for loan money to rebuild their houses.
6. What if we just build a small house at the resettlement site but we rent a house near to our old house in order to do our job? Will the IRC take that land back?

The representative from the MEF responded as follows:

1. People should stop requesting \$8000 in compensation since the IRC already gave a clear explanation many times and please don't try to compare with the Boeung Kak case because these projects are completely different. Please consider that the plot of land that IRC offered is not worth less than \$8000, if you include the electricity and water connection fee and school.
2. It is impossible to exchange the plot of land to get compensation in cash since there has never been such kind of compensation policy in all of the countries that have development projects.
3. The compensation that will be offered will be determined for each household according to the compensation policy that has already been strictly investigated by a freelance expert.
4. IRC has tried to find an NGO to build a house for people at resettlement site with the payment of installments, but that NGO rejected the proposal because the Phnom Penh site is not their target area and they are concerned that people will not be able to pay the money back to them.
5. Please do not confuse that in order to reduce poverty the government needs to give much compensation or money to the poor; it is not this kind of poverty reduction tool. The Government tries to reduce poverty through development project such as this kind of railway project, so please don't misunderstand on this matter.
6. If some households do not regularly live at the resettlement site they should write a letter with clear reasons and submit it to get approval from the Sangkat [commune] so that you can still can get a land title after 5 years.

The meeting was then closed.

It is evident that the grievances of the community have not been addressed in any substance, although they may be considered "closed" by the IRC. The families continue to be unsatisfied with the compensation package offered and are concerned that they will not be able to maintain their livelihoods or quality of life at the resettlement site.



*Life teems along the rails in Toul Sangke A community, in Phnom Penh*

## 6.4 Barriers to Accessing Remedies

There are significant demand-side and supply-side barriers to accessing remedies through the local grievance mechanism. On the demand-side, for example, awareness amongst affected communities about the procedure is low; and there is evidence that affected families who may wish to complain have not done so as a result of implicit or explicit threats and intimidation by authorities. On the supply-side, capacity deficiencies and an apparent unwillingness to substantively resolve legitimate grievances in accordance with the principles of the ADB Policy on Involuntary Resettlement pose barriers to accessing remedies for affected households.

### 6.4.1 Demand-side Barriers to Accessing Remedies

- **Limited awareness about the local grievance process.** Almost half of the 200 respondents interviewed in the household survey said that they were not informed they could complain or request assistance if they had problems or concerns regarding the Project. 87 percent did not know the procedure for the four-stage local grievance mechanism established under the Project. In the provinces of Battambang, Banteay Meanchey, and Samrong Station, none of the interviewed respondents understood the steps for filing a complaint.

This ad-hoc and lax approach to informing affected people about grievance mechanisms has frustrated affected communities' ability to seek recourse for concerns or alleged harms. In one Poipet community, for example, affected households reported submitting written complaints to the authorities at the commune level - both the

traditional first port of call for grievances and disputes that require government intervention in Cambodia, and the first level of the Project-local grievance mechanism. Many of these complaints were rejected by the commune - some on the grounds that the commune did not have authority to decide the complaints, and others on the grounds that the commune would not endorse a “complaint” against local authorities.<sup>148</sup> Without knowledge of the second and subsequent tiers of the grievance process, affected households did not know what to do. Accordingly, those households’ path to recourse ended with the commune’s rejection of their complaints, until they were resubmitted with assistance from NGOs months later.

- **Low literacy levels.** Many affected persons reported relatively little formal education and low literacy levels. As noted earlier, 20 percent of males and almost 40 percent of females interviewed for the household survey reported being illiterate. The vast majority of women interviewed completed only a primary level education.
- **Insufficient information about Project terms and entitlements.** With few exceptions, households interviewed had no more than a basic understanding of their entitlements under the Project. As noted earlier, 82 percent of respondents of the household survey did not think they received sufficient information about the Project and 68 percent indicated that their resettlement or compensation options were not explained to them.
- **Environment of coercion and intimidation and a general fear of “complaining.”** As recorded in many written complaints, affected households have been subject to pressure and intimidation during Project implementation. Other affected households shared similar stories, but were afraid to record this information in writing. As noted earlier, 35 percent of household interview respondents reported that they felt that they had experienced some form of intimidation or coercion during the resettlement process. (See Box 1.)

- **Lack of legal aid.** There are no provisions for legal aid under the Resettlement Plans despite the widespread lack of legal awareness and capacities amongst affected communities. As a result, it is likely that some of the most marginalized affected households, which NGOs are unable to access due to resource limitations, may wish to complain but are unaware of their rights and/or how to submit a complaint.



- **Affected households’ perceptions of the grievance mechanism.** In addition to the barriers to access identified above, anecdotal testimony suggests that affected households’ perceptions of the grievance mechanism have dissuaded them from filing complaints. One woman noted that it is “too difficult to complain” because she does not have “relatives who work for the sangkat or the IRC.” In several instances, affected persons reasoned that complaining would result in a loss of entitlements under the Project, including a plot of land at the resettlement site. Many households noted their lack of confidence in the capacity or willingness of local authorities and IRC to resolve grievances. One woman in Poipet simply noted: “Complaining will not solve anything.”

148. In those cases, the Sangkat asked that the “complaint” be rewritten and resubmitted as a “request.”

#### **6.4.2 Supply-side Barriers to Accessing Remedies**

The mounting bottleneck of complaints at the first stage of the local grievance mechanism, the commune authorities, became evident in the first half of 2011, after dozens of complaints were submitted in late 2010. By May, the ADB concluded that capacity deficiencies were a major factor in the lack of progress made on resolving grievances. In June 2011, the IRC agreed to participate in a series of capacity building workshops sponsored by the ADB.

It is noteworthy, that despite ADB Policy, and the highly foreseeable risk that affected households would have grievances given Cambodia's poor record on resettlement, these workshops and other capacity building efforts were not made by ADB before the resettlement process began.

Moreover, testimonies of affected people portray an apparent unwillingness by the competent authorities to address people's concerns and resolve grievances. For example, a 47 year-old woman from Poipet reported to BABC that she was told by authorities that "if people protested and refused to accept compensation, bulldozers would be used to destroy our homes."

A 22-year old woman from Phnom Penh whose household was partially affected said: "My family was threatened when my mother went to thumbprint to get the compensation. She said she wouldn't accept that money, it was too little, and she would submit a complaint to the Khan [district] or something like that. They responded that even if we submit a complaint, we would not win because we are just citizens."

#### **6.5 Complaint to the ADB Accountability Mechanism**

On November 21, 2011, over 150 households signed on to a complaint to ADB's Office of the Special Project Facilitator (OSPF), the first phase of the institution's Accountability Mechanism, in an effort to find a resolution to the grievances. The complainants seek a number of remedies, including reimbursement for the actual cost of replacing lost assets that have not yet been compensated; repayment of debt principle and interest incurred as a result of resettlement; a properly planned and resourced income restoration program, implemented by a competent agency; cash payments for loss of income; and access to affordable basic services and facilities at relocation sites. On January 11, 2012, the complaint was found eligible by the OSPF.



## Case Study:

### A Poipet Affected Household's Experience Accessing the Grievance Mechanisms

Poipet sits on the borderlands of Cambodia and Thailand, in Ou Chrov district, Banteay Meanchey Province. Poipet town is the last stop in the Northern Line, providing a crucial link to the Thai railways. Many of the town's residents are migrant laborers, who cross the Cambodian-Thailand border on a daily basis to work in factories.

According to the Updated Resettlement Plan for the Poipet section, there are a total of 1,094 affected households (approximately 4578 persons). Of these, 588 households are located in the COI and are thus totally affected by the Project.

Mr. Nob Sareth, age 47, his wife and three children are one affected family from Kilomet 4 village, where the so-called Missing Line runs. Sareth and his wife purchased their land in 1997. They have been living in the village ever since and have built a life there. Sareth says that when he purchased his land, there was no railway track in site and so he was not aware that it was State property and that he would eventually lose it. He built a 4m x 9m two-story house. The upper floor was wooden and the ground floor made of concrete. When he built his house in 1998, it cost around \$8,000. Sareth spent his entire savings from years of work on this home. With his income as a graphic designer and his wife's supplemental income from a home-based photocopy shop, they were able to support their children and live happily.



In 2009, IRC visited Kilomet 4 village to prepare the DMS for the railway-affected families. At the time, Sareth, like many other villagers, was not informed about the Project or aware of how his family would be affected.

One year later, in around July 2010, IRC came to gather more information for the DMS in his village. According to Sareth, people were told that if they complain or try to cause problems, they will get nothing.

After the IRC completed the DMS measurements, they issued Sareth with a yellow post-it note, which indicated the amount of compensation he would receive, and provided information about resettlement. At the time, he says he was not aware of

how the calculation was made because the IRC did not explain the compensation breakdown, structure category, nor his entitlement based on the Resettlement Plan. Nonetheless, he thumbprinted the yellow post-it note. He was told that if he refused to thumbprint, he could not keep the note and they would not guarantee that he would receive any compensation. Sareth recalls the authorities using the words: "forced eviction." He was uncertain about what would happen to him and his family.

#### *Compensation and Resettlement*

On April 25, 2011, Sareth was given \$2,180.00 for the loss of his home, significantly less than the amount he invested over ten years before. According to the Compensation Contract provided to him by the IRC at the time of payment, his house was categorized as 2I, at a unit cost of \$55/sq. meter. According to the Resettlement Plan, a "2I" house is a house on stilts, which is more than 1.5 meters above ground level. His house was, however, a two level structure, with a concrete ground floor and a wooden first floor.

In fact, if the DMS was done correctly, his house should have been categorized as "2J" at a unit cost of \$93.50/sq. meter.



Despite his dissatisfaction, he accepted the compensation because, he says, he was told that if he refused to thumbprint, authorities would demolish his house, he would get nothing and would be required to pay a penalty fee double the amount offered by the IRC.

Under the terms of the Compensation Contract, Sareth was required to dismantle his home within 30 days of payment. He and his family moved to the resettlement site and began to rebuild their home. It was a slow process, frustrated by insufficient funds. During this time, Sareth and his family lived under a tarpaulin for nearly one week, before renting a temporary home. It was rainy season, and the resettlement site was inhabitable: the area was muddy and pitch black at night, as there was no electricity.

Since moving to the resettlement site, Sareth and his family's living situation has deteriorated. Their ability to generate income has been severely reduced. They have had to borrow \$500 from a private moneylender, and must pay \$35 per month in interest.

#### *Complaints to the Local Grievance Mechanism and ADB Office in Phnom Penh*

Since his family resettled, Sareth has advocated for the payment of compensation he believes is duly owed to his family. He claims that he has submitted many complaints and he has still not received an adequate solution.

- On May 7, 2011, with the assistance of NGOs, Sareth submitted a written complaint to the local grievance mechanism. He also sent a copy to the ADB Office in Phnom Penh. In this complaint, he asked the IRC to verify the DMS of his house, which he believed to be incorrect. He also requested that the IRC provide his family with more compensation so that they could rebuild a similar type of house as their old one. Fifteen days later, he had not received any written or verbal response from the IRC.
- On May 28, 2011, Sareth submitted another written complaint to IRC, with similar requests.
- On June 9, 2011, he and other community representatives in Poipet attended a meeting with Mr. Kunio Senga, ADB Director General of Southeast Asia, where Sareth once again informed the ADB that the DMS of his house was not correct and that the compensation was inadequate to rebuild a similar house.
- On June 11, 2011, Poipet community representatives, including Sareth, submitted a letter to ADB and AusAid, requesting them to temporarily suspend the resettlement process until affected persons' problems were properly addressed.
- On July 14, 2011, IRC and local authorities accused the community representatives of hindering national development and inciting people to complain against the Government. Sareth states that he was threatened by local authorities, and concerned for his personal security, and he went into hiding for a period of time.
- On July 25, 2011, the Sangkat provided a response to Sareth's complaints, asking him to submit a letter within 30 days stating that he is a landless person with at least two witnesses.
- On October 18, 2011, Sareth sent another letter to ADB asking it to help facilitate a solution for his family in compliance with the ADB Involuntary Resettlement Policy.

As of December 2011, Sareth's problem remains unresolved. He feels he has been made substantially worse off as a result of the Project but wonders if he will ever be properly compensated.

## Key Findings on Access to Remedies and Accountability

The research indicates that the international law obligation to ensure that individuals, who claim that their rights have been violated as a result of the Project, have access to an effective remedy and where necessary to legal aid in seeking redress has not been fulfilled for many affected people. In this regard, the Project Grievance Mechanism does not meet the standard of the 2009 ADB Policy on Involuntary Resettlement to “address affected persons’ concerns and complaints promptly, using an understandable and transparent process that is gender responsive, culturally appropriate, and readily accessible to the affected persons at no costs and without retribution.”

In particular:

- While some grievances have been appropriately dealt with, for many households that have submitted a complaint, their cases appear to be considered “closed” by the IRC despite their concerns and requests not being addressed in a manner that they are satisfied with and/or is in line with ADB Policy.
- There are significant demand-side barriers to accessing remedies through the grievance process, including households’ limited awareness about their rights, entitlements and the grievance process itself, low literacy levels, and a lack of legal aid. In addition, affected households are discouraged from using the grievance mechanism due to implicit or explicit threats and intimidation and a general fear of “complaining,” as well as a lack of confidence that the grievance mechanism would effectively resolve their problems and concerns.
- On the supply-side, capacity deficiencies and an apparent unwillingness by the competent authorities to fairly address many people’s concerns and grievances pose additional barriers to accessing remedies for affected households.

## Conclusion

*Above all, I want to see an aid program that is world-leading in its effectiveness, a program that delivers real and measurable results in reducing poverty on the ground, and therefore a program of which all Australians can and should be proud.*

- Kevin Rudd, Minister for Foreign Affairs, Australia (Ministerial Foreword to An Effective Aid Program for Australia, 2011).

*The [Railway Rehabilitation] project strives to ensure that all people affected are able to maintain and preferably, improve their pre-project living standards and income-earning capacity.*

- ADB, Fast Facts: GMS Rehabilitation of the Railway in Cambodia Project.

*Despite the enormous diversity of project-specific situations, the empirical findings of many resettlement researchers reveal the presence of several basic regularities... The convergent and cumulative effect of these processes is the rapid onset of impoverishment. Before displacement actually begins, these processes are only impending social and economic risks. But if appropriate counteraction is not initiated, these potential hazards convert into actual impoverishment disasters.*

- Michael M. Cernea, Impoverishment Risks and Reconstruction: A Model for Population Displacement and Resettlement, 2000, pages 12 and 13.

A key objective of the 1995 ADB Policy on Involuntary Resettlement is to ensure that displaced people receive assistance “so that they would be at least as well-off as they would have been in the absence of the project.”<sup>149</sup> Likewise, an overriding objective of the 2009 Policy is “to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels.”<sup>150</sup> The latter Policy also aims to “improve the standards of living of the displaced poor and other vulnerable groups.”<sup>151</sup> These themes are repeated throughout the policies and are reflected in the Project Resettlement Plans.

This policy objective recognizes that poor and vulnerable members of society should not have to shoulder the costs of development, and instead, should be assisted so that they are able to take advantage of the opportunities that development brings. This fundamental notion underpins all aid and development agency safeguard policies, and indeed, the well-accepted “do no harm” principle of development. In relation to the rehabilitation of Cambodia’s railway, this objective also reflects the mission of both major financiers of project: to reduce poverty.

In light of this overriding policy objective, the research team asked interview respondents whether they felt that their lives have been or would be improved, maintained or made worse as a result of the Project. Of the 200 households originally surveyed, over 60 percent thought that their living conditions had been or would be made worse as a result of the Project. Almost 20 percent of all respondents felt that their lives would improve. The remaining respondents thought that the Project and resettlement would not make any material difference to their living standards. Of the 16 Mittapheap resettled households interviewed in November 2011, fourteen reported that their living conditions, especially their ability to

generate income, have been made worse as a result of the Project. The two remaining households reported that their living conditions have improved because their new homes will be safer and more comfortable, even though their incomes are currently reduced.

Given the findings in this report in relation to access to information and meaningful consultation, compensation, conditions at resettlement sites and impacts on livelihoods and income, the widespread perception amongst affected households interviewed that their lives had been or would be made worse-off is unsurprising.

149. ADB, Involuntary Resettlement Policy (1995), para 33.

150. ADB, Safeguard Policy Statement (June 2009), Involuntary Resettlement, op. cit., para 3.

151. Ibid.

With respect to all of these key provisions of both the 1995 and 2009 ADB Policy on Involuntary Resettlement, the data and testimonies show that the resettlement experience for many households has fallen well short of requirements. The dissemination of information through the PIB and other written materials has been largely ineffective, especially for illiterate persons, widows and women more generally. The only information most affected people received about their individual entitlements prior to payment of compensation was a post-it note containing scant details, which they were not entitled to keep if they did not agree to the compensation on offer. Consultation meetings appear not to have afforded a thorough opportunity for affected people to ask questions, express concerns and have their ideas and opinions taken into account from the early stages of the project cycle. Meaningful consultation has been precluded by an atmosphere of intimidation and coercion, set within the wider context of disempowerment of the poor and vastly asymmetrical power relations. The lack of meaningful consultation, including the provision of genuine choices from the beginning, has meant that the entire resettlement process has been fraught with problems for many households.

The ostensible systematic downgrading of compensation entitlements coupled with the indexing of compensation rates at 2006 prices has meant that households have not received replacement costs for their property and other losses. Other households appear to not have received entitlements as totally affected households despite falling into this category under the definition set out in the Resettlement Plan. Both partially and totally affected households, especially those previously living in very poor housing, have received compensation amounts that are very low. In this regard the requirement under the 2009 ADB Policy and the Project-Resettlement Plans to compensate households for lost structures based on replacement cost has resulted in a situation in which some families are unable to construct housing that meets minimum basic standards of adequacy, as defined by the UN Committee of Economic Social and Cultural Rights and the Special Rapporteur on the Right to Adequate Housing.

Affected households that were given a plot of land at the resettlement sites have improved tenure security as compared to their previous illegal status, however titles are not issued immediately and the process to register land five years down the track has not been made clear. The use of land documentation as collateral for loans to private moneylenders poses another threat to long-term tenure security.

In some cases, the resettlement site is located too far from previous residences and urban centers, resulting in lost income-generating opportunities and reducing access to schools, health centers and other facilities. The increased distances have also resulted in greater travel expense burdens on families. This problem is most pertinent in Phnom Penh with the resettlement site up to 25 kilometers away from former residences.

None of the five Project-sponsored resettlement sites were fully prepared with services when resettlement commenced, causing considerable hardship and posing serious safety risks in some cases. Lack of access to safe, sufficient and affordable water has been a particular concern. Households have been required to pay prohibitive electricity connection fees and deposits at several of the sites.

Despite the known risk of income reduction or joblessness upon resettlement, comprehensive income restoration programs have not been implemented many months after resettlement. The original budget and terms of reference for the IRP was clearly inadequate, as recognized by AusAID, which has recently committed funds to an Enhanced IRP. The cumulative effect of inadequate compensation, increased expenses and reduced incomes on households has led to unmanageable household debt, a common trigger for a downward spiral into destitution.

Affected households have sought to access remedies for their concerns and problems through the local grievance mechanism. Despite some recent efforts to build capacity and address the bottleneck of complaints, and positive resolutions for some households, many other households continue to face both supply-side and demand-side barriers to accessing justice. Many grievance cases that have been deemed “closed” appear to have simply been addressed by sending the complainant a letter effectively dismissing their complaint.

A considerable number of affected households have suffered harms and a deterioration of their living conditions due to non-compliance with the ADB Policy on Involuntary Resettlement. The harms caused may also amount to violations of international human rights law, including retrogressions in the enjoyment of economic and social rights. In these

cases, rather than presenting an opportunity to direct resources at fulfilling the rights of affected people, resettlement has resulted in greater deprivations of human rights. In some cases, people have experienced a deterioration in their enjoyment of their right to an adequate standard of living, including adequate housing and food, as well as their rights to education, health and to work.

For households that were not afforded legal protections and safeguards, including access to information, genuine opportunities for consultation, and access to legal remedies, involuntary resettlement under the Project constituted a forced eviction, as defined by the UN Committee on Economic, Social and Cultural Rights. Cases in which households were coerced into accepting the compensation package and dismantling their home or part thereof, and then did not have access to a house that met even basic minimum standards of adequacy, amount to a gross violation of human rights.

In cases in which households enjoyed greater tenure security and improved housing conditions including access to services at a resettlement site, the Project complied with key Policy provisions and contributed to the progressive realization of human rights. While some patterns appear to have emerged from the research across the railway tracks, the experience of affected households was certainly not uniform, with a significant proportion of households interviewed (almost 40 percent) reporting that their living standards have either improved or at least not been made any worse by the Project and resettlement.

In cases of ongoing non-compliance with ADB Policy, the Cambodian Government is in breach of the terms of Loan Agreements with the ADB. As previously noted, the ADB's Operational Policy stipulates:

If any of the safeguard requirements that are covenanted in the legal agreements are found not to be satisfactorily met, ADB requires the borrower/client to develop and implement an appropriate corrective action plan (CAP) agreed upon with ADB to rectify unsatisfactory safeguard compliance. ADB may also consider exercising its legal remedies, including suspension, cancellation, or acceleration of maturity, specified in the legal agreements.<sup>152</sup>

In order to act in an accountable manner with respect to project-affected people and in accordance with its own policies, the ADB must take appropriate and sufficient actions to remedy harms suffered and prevent further foreseeable harms.

In addition, Australia is bound by its extra-territorial human rights obligations to ensure that remedial action is taken in cases of human rights violations, and that comprehensive and well-resourced safeguards and mitigation measures are in place for the remainder of the resettlement process.

Efforts have been made over the past year by ADB, AusAID and the Cambodian Government to improve the resettlement process, including an agreement between the MEF and the ADB on resettlement matters following a Resettlement Review Mission conducted in June 2011.<sup>153</sup> While these efforts are welcome, they have fallen far short of what is required to bring the resettlement process back into compliance with the Policy, remedy harms suffered and prevent further harms to affected people. Indeed, following this agreement, some affected people in Phnom Penh and Poipet were subjected to a resettlement process that has put them at considerable risk of impoverishment.

The following measures are recommended in order to bring the Project into compliance with the ADB Policy on Involuntary Resettlement and international human rights law. Implementing these recommendations would also demonstrate that it is possible for Cambodia's national development to occur in a manner that respects people's rights and provides direct opportunities to improve the lives of some of Cambodia's poorest and most marginalized people.

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152. ADB, Operations Manual Bank Policies (BP), OM Section F1/BP, issued on 4 March 2010, para 28.

153. ADB, Fast Facts on an Agreement between the Resettlement Department – Ministry of Economy and Finance (RD – MEF) and Asian Development Bank (ADB) on Resettlement Matters, op. cit.

## Recommendations

### To the Cambodian Government (RGC)

1. Halt any further resettlement of households until comprehensive measures are taken to ensure that the IRC and the MPWT have complied in full with international human rights law obligations and the ADB Policy requirements as per the Loan Agreements. These measures should include both remedial actions and processes to ensure that any further resettlement is in full compliance.
2. Undertake a Corrective Action Plan (CAP), including a review of all Resettlement Plans to ensure that they are accurate, consistent and compliant with ADB Policy on Involuntary Resettlement and international law with respect to, inter alia, access to information and meaningful consultation, compensation, conditions at resettlement sites, livelihood support and income restoration, and grievance redress mechanisms. In this regard, the 2009 Safeguard Policy Statement and the requirements for involuntary resettlement should be used to clarify provisions of the 1995 Policy. In the case of any inconsistencies between international human rights law and ADB Policy, vis-à-vis the resettlement process, the former should prevail.
3. Revise compensation entitlements to reflect current (2012) costs of structures, assets and all other resettlement losses and expenses.
4. Review the DMS and corresponding household entitlements to ensure that they are accurate, consistent and reflect the revised Resettlement Plans and Entitlement Matrix, including through disclosure of individual DMS information to each affected household. Ensure that all affected families are included in the DMS so that they receive their due entitlements as either partially or totally affected households. Ensure, in particular, that widows, who previously lived in a separate dwelling receive their own DMS and separate entitlements; and that all other multi-family households are recorded as such and receive their due entitlements.
5. Inform, using appropriate accessible communication methods, all affected households of the corrective action being taken and their revised entitlements. Ensure that affected persons have a genuine opportunity to contribute ideas and opinions with respect to the CAP, and to express their concerns and queries free of any form of intimidation and coercion.
6. A gender consultation strategy following best practices should be put in place, aimed at ensuring women household members, and in particular widows, are active participants in the process and have an opportunity to express their views and concerns. The particular needs expressed by women and the strategies that women devise and support for improving the resettlement process and income restoration programs should be integrated into the CAP.
7. Provide to all households the supplementary compensation amounts to which they are entitled under the revised plans.
8. Install, expand or repair, as quickly as practicable, all basic services at each resettlement site that remains absent, insufficient or of poor quality. Safe access to water of sufficient quantity and quality should be secured as a priority. The CAP should include the full reimbursement of all connection fees and deposits for electricity and other applicable services.
9. Ensure that all children living at resettlement sites have safe and affordable access to schools. Ensure that the elderly, disabled and sick have affordable access to health services and social security support.
10. Clarify the process by which land plots at resettlement sites will be registered into the national cadaster five years after resettlement and inform affected households in a clear and accessible manner.
11. Conduct an assessment of the debt repayment obligations of affected households that were incurred due to resettlement-related expenses and assist households to restructure loans that remain outstanding after supplementary compensation has been paid. Remaining debt burdens should either be paid off for the household or restructured so that the terms are manageable in relation to household income. Ensure that moneylenders are not charging interest rates that are illegal, and if this has been the case, intervene so that interest is adjusted.

12. Implement an Expanded Income Restoration Program (EIRP) that is comprehensive, adequately resourced and tailored to the capacities, experience and opportunities of resettled households. The EIRP should be designed in full consultation with affected households and a competent organization should be selected through a transparent competitive tendering process to implement it. The EIRP should aim to increase the incomes of vulnerable poor households.
13. Compensate resettled households for loss of income during the transitional period so that, at a minimum, households are able to satisfy daily subsistence needs until incomes are restored at least to their pre-resettlement levels.
14. Ensure that the supply-side barriers to accessing effective remedies through local grievance process are immediately addressed. Ensure that all levels of the grievance mechanism are fully aware of their duties and have the power, capacity and resources to address grievances in a fair manner and in accordance with revised entitlements and resettlement plans.
15. Ensure that all affected households are aware of their right to submit a grievance and the process that will be followed, including their right to appeal. Legal aid should be made available to all households wishing to submit a complaint and not equipped to do so without assistance.
16. To the extent that the Cambodian Government does not have sufficient capacity and/or resources to implement the CAP and all other measures outlined above, a request should be made to the ADB and/or Australian Government for the provision of technical and financial assistance.

### **To the Asian Development Bank (ADB) and the Australian Government (AusAID)**

1. As per the Project Loan Agreements and ADB Operational Policies, ensure that the RGC develops and implements a CAP that includes all the elements outlined above;
2. Provide financial and technical assistance as required to the RGC in designing and implementing the CAP and all other necessary measures to ensure that the livelihoods and living conditions of Project-affected persons are enhanced or at least restored and that their human rights are respected.
3. Conduct due diligence, review and supervision of the resettlement process including the CAP design and implementation process to ensure compliance with safeguard policies and international human rights law.
4. Establish mechanisms to ensure that obligations are met after the close of the Project, including the issuance of land titles to resettled families after five years, and that any future resettlement of households and businesses remaining in the residual ROW occurs in accordance with the ADB safeguard policy.
5. Suspend further loan and grant disbursements until a comprehensive CAP is agreed to by all parties and condition further disbursements on its effective implementation.
6. If agreement on a comprehensive CAP cannot be reached or its implementation is not effective, provide direct reparations and support to people who have already suffered harm as a result of the resettlement process.
7. The ADB should review its Involuntary Resettlement Policy and make necessary amendments and/or clarifications so that it meets the international human rights law obligations that bind its member and borrower States. In particular, the Policy should be clarified so that it requires a compensation “floor” (minimum amount) for lost housing to cover the costs of constructing an adequate house post-resettlement. Replacement cost should only be used as the basis of compensation calculations when the amount exceeds the established compensation floor.
8. AusAID should adopt a human rights-compliant policy on resettlement and require all recipients of Australian aid to comply with the policy. The Policy should aim to ensure that poor people in developing countries are not harmed by projects financed by Australian aid and are instead given the direct opportunity to benefit. AusAID should be prepared to monitor and support compliance with such a policy, including through well-resourced capacity building measures directed at both relevant government agencies and Project-affected people.



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## Annex 1

### Socio-Economic Profile of Samples

This section presents the socio-economic profile of two separate samples: (1) 200 affected households country-wide interviewed from September 2010 to October 2011; and (2) 16 households from Mittapheap, Phnom Penh resettled to the Phnom Penh Project-sponsored site in September-October 2011, interviewed in November 2011.

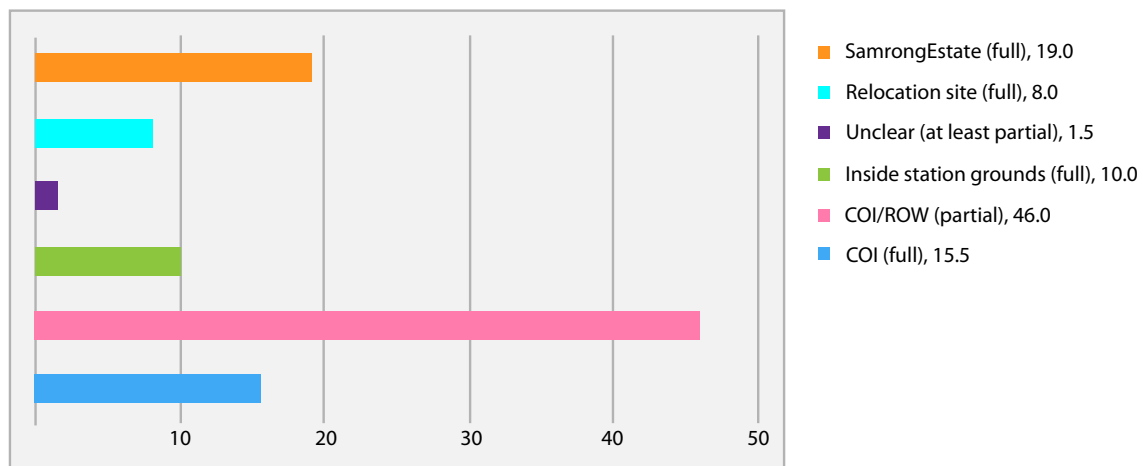
#### SAMPLE 1: 200 HOUSEHOLDS COUNTRYWIDE

##### Type of Project Affected Household and Location of Respondents at Time of Interview

For a majority of the respondents interviewed, the research team, in collaboration with STT, which provided technical assistance and mapping, determined or verified the level of Project impact (i.e., total or partial) by measuring the placement of affected structures vis-a-vis the rail lines. In some cases, such as in Poipet where the rail lines were not always visible, the team determined whether a household was totally or partially affected by reviewing the household documents.

At the time of interview, 92 percent of respondents were either totally or partially affected households who had not yet been resettled, while 8 percent of the respondents were totally affected households who had already relocated to one of the five Project-sponsored relocation sites. Of the 92 percent, 46 percent of the respondents identified as partially affected, defined as households whose main structure is partially within the COI and must be partly demolished, but who will have more than a “minimum viable” living space remaining in the ROW. Fifteen and a half percent were identified as totally affected households living within the COI. Ten percent of respondents lived inside existing railway station grounds. Samrong Estate respondents, who do not yet fall within the purview of a finalized Updated Resettlement Plan, constitute 19 percent of the sample. For 1.5 percent of respondents, it was unclear whether they are partially or totally affected by the Project.

##### Location of Respondents at Time of Interview



##### Number of Family Members in a Household

The average household consists of 5 members, including 2 children.

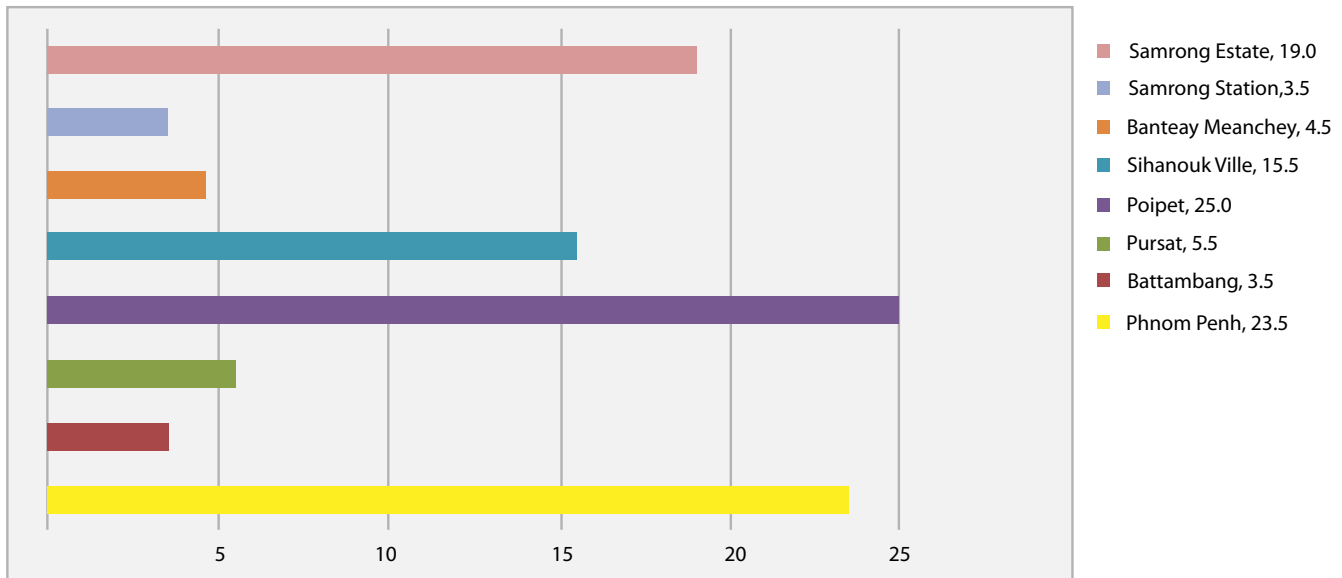
##### Gender of Affected Person/Representative Interviewed

Sixty-four percent of respondents interviewed in the individual household surveys were women. The high rate of women interviewed is mainly due to the time of the day the interviews were conducted. Commonly the women were at home while their husbands or other adult male household members were at work at the time of the interview.

## Proportion of Respondents by Area

The largest proportion of respondents came from Poipet (Kbal Spean, Kilo Met Boeurn) (25%), Phnom Penh (Toul Sangke A, Rottespleung, Lek 3, Mittapheap) (23.5%); Samrong Estate (an area designated for the construction of a new railway freight station) (19%); and Sihanoukville (Romduol Cherng Phnom, Samakai Plov Dek, Sihanoukville Resettlement Site) (15.5%). The remainder of the sample households are from: Pursat (Chhoeung Tom; Pursat Resettlement Site) (5.5%); Banteay Meanchey (Se Sen, Poun Buon, Mongkor Borei) (4.5%); Battambang (Sok San South, Sok San North, Resettlement Site) (3.5%); and Samrong Station(3.5%).

Proportion of Respondents by Affected Area



## Education and Literacy Levels

In each household interviewed, information about education levels of both husbands and wives were ascertained. As a whole, affected women reported lower formal education levels than affected men. Forty-two percent of men stopped studying within or completed only secondary level education (grades 7-9), while 42 percent of women stopped studying within or completed only a primary level education (grades 1-6). Approximately one third of women have no formal education at all, whereas only 6 percent of men have no formal education.

Educational Levels

Level of formal education (Stopped within this level)	Percentage	
	Male	Female
None	6%	31%
Primary (1-6)	32%	42%
Secondary (7-9)	42%	20%
High school (10-12)	17%	5%
Undergraduate	2%	2%
Master or Other Graduate	1%	0%
Total	100%	100%

Approximately 86 percent of all respondents reported that at least one person in their household can read. Eighty percent of affected men, and 61 percent of affected women, said that they were literate.

### Vulnerable Households

Thirteen percent of interview respondents identified as widows and an additional three percent identified as a female-headed household. Four percent of households were headed by a person who identified as disabled. Over 12 percent of households were headed by a person over the age of 60.

### Multiple-Family Households

Approximately 25 percent of respondents said that they were part of a multiple-family household. Forty-nine percent of those multiple-family households reported having only one family book, while 42 percent reported having two family books. Family books are issued by the local authorities to identify each family unit and contain, among other things, a list of family members, their dates of birth, occupations and address.

### House and Structure Ownership

Nearly all respondents—95 percent—identified as owners of the affected houses and/or other structures. Of the remaining 5 percent, 3 percent are renters of affected houses and 2 percent live, without payment of rent, in a relative’s and neighbor’s affected house.

### Year of Settlement in Existing Community

Most respondents have resided in their pre-resettlement communities for at least 10 years. Specifically, most of the respondents in Poipet, Phnom Penh, Sihanoukville, Banteay Meanchey, Samrong Station, and Pursat moved to their pre-resettlement communities from 1996 to 2001. Nearly half of the respondents from Samrong Estate reported that they settled in the area in the period immediately following the fall of the Khmer Rouge, from 1979 to 1984. Over 40 percent of respondents from Battambang moved to their pre-resettlement communities from 1991 to 1995. The longevity of these communities underscores the impacts involuntary resettlement may have on existing and established kinship and community networks.

Location	Year that Household Moved to Pre-resettlement Community (Existing Community)						Total
	1979-1984	1985-1990	1991-1995	1996-2001	2002-2007	2008-2011	
Poipet	0	7	22	<b>56</b>	13	2	100%
Phnom Penh	2	21	23	<b>30</b>	13	11	100%
Sihanouk Ville	0	17	21	<b>48</b>	4	10	100%
Battambang	14	29	<b>43</b>	14	0	0	100%
Banteay Meanchey	11	11	0	<b>56</b>	11	11	100%
Samrong Station	0	29	14	<b>57</b>	0	0	100%
Samrong Estate	<b>46</b>	5	11	14	24	0	100%
Pursat	27	18	0	<b>37</b>	18	0	100%

## **SAMPLE 2: 16 HOUSEHOLDS FROM MITTAPHEAP, PHNOM PENH**

### **Type of Project Affected Household**

The Mittapheap community, in Phnom Penh, consists of 32 affected households, 22 of which live along the railway lines and are categorized as totally affected households. Of these 22 households, all but one household, has entered into a Compensation Contract, received compensation in or around August 30, 2011 and dismantled their homes shortly thereafter.

The sample was limited to 16 of the 21 Mittapheap households who had dismantled their homes. The 5 remaining households could not be contacted.

### **Number of Family Members in a Household**

The average household consists of 5 members.

### **Gender of Affected Person/Representative Interviewed**

Ten of the 16 respondents interviewed were women, who were at home at the time of the interview.

### **Education Levels**

In each household interviewed, information about education levels of both husbands and wives were ascertained (note, two households were headed by a widow). Females had lower education levels than males. Four women and 1 man had no formal education. Seven women and 6 men stopped studying within or completed only a primary level education. Five women and four men stopped studying within or completed a secondary level education. None of the women reported having completed a high school education, as compared to 3 men.

### **Vulnerable Households**

Six of the 16 Mittapheap respondents identified as vulnerable affected households. Four households identified as “elderly” headed households and two households identified as widow-headed households.

### **Multiple-Family Households**

All the households interviewed reported that they have only one family in their household with one family book.

### **Place of Residence at Time of Interview**

At the time of interviews, 8 of the 16 respondents had built houses and resided primarily at the Phnom Penh resettlement site in Trapeang Anhchanh. Of the remaining 8 households: 2 households built homes on the site, but continued to live in the urban centers, noting that their businesses and primary source of income was linked to the old site. The other 6 households had not yet built houses at the site and instead rented houses near the pre-resettlement community.

## Annex 2

### Research Survey Questionnaire

#### Research Field Visit Questionnaire

Note: Before beginning, explain who you are and why you are asking these questions. Explain to people that this is only a monitoring tool, and we are not the IRC/government or ADB.

#### A. Socio-Economic Profile

Circle one. Living by railway lines/pre-resettlement Relocated to Project RS Self-Relocated

#### Personal Information

1. Name/Age \_\_\_\_\_ Circle one. Male Female  
Name/Age \_\_\_\_\_ Circle one. Male Female

2. Address: \_\_\_\_\_

3. Phone: \_\_\_\_\_

4. Vulnerable head of household (i.e., female/widow, elderly, income of less than \$15/month per person, disabled, or indigenous): Y/N

If "Yes," circle all that apply. Female Widowed Elderly <\$15 mo./person<sup>1</sup>  
Disabled Indigenous

5. Number of families in household: \_\_\_\_\_ One family book? Y/N If No, how many? \_\_\_\_\_  
Number in household: \_\_\_\_\_  
■ Men: \_\_\_\_\_ Women: \_\_\_\_\_ Children: \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

6. Primary job(s) for household: Husband \_\_\_\_\_ Wife \_\_\_\_\_ Other \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Highest level of education completed: Husband: \_\_\_\_\_ Wife: \_\_\_\_\_ Highest: \_\_\_\_\_

8. Can someone in your household read? Y/N Who? \_\_\_\_\_  
Can someone in your household write? Y/N Who? \_\_\_\_\_

9. Pre-resettlement daily household income: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

1. The exact amount differs in the resettlement documents, but note if a person has received this type of assistance

- Income from home-based business/shop: \_\_\_\_\_  
\_\_\_\_\_
- Alternative sources of income: \_\_\_\_\_  
\_\_\_\_\_
- *If multiple family household, does each family contribute to the total household income? Y/N*

10. *Post-resettlement.* Current daily household income: \_\_\_\_\_  
\_\_\_\_\_

- Income from home-based business/shop: \_\_\_\_\_

11. *Circle one.* Owner Renter

12. Year moved to (*pre-resettlement*) community/from where: \_\_\_\_\_  
\_\_\_\_\_

*DMS and Structure Information*

13. DMS Code: \_\_\_\_\_ Date of DMS: \_\_\_\_\_

14. Did you receive a receipt/breakdown for the DMS? Y/N  
If Yes, specify which documents were received: \_\_\_\_\_  
\_\_\_\_\_

15. Survey of home/other structures: *Fill out Worksheet 1, or attach independent mapping information.*

16. Your house is in the:  
*Circle one.*      COI (full)      COI/ROW (partial)      ROW  
  
   Inside Station Grounds      Unclear  
Comments: \_\_\_\_\_  
\_\_\_\_\_

17. Your land is both in COI and ROW: Y/N

- If so, you will:      Relocate      Remain in/move back to ROW
- Plan to self-relocate? Y/N      If so, to where? \_\_\_\_\_

18. Number and type of crops and trees, and whether they are in the COI or ROW: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. For homes/structures partially affected. Is access to your home affected by the project? Y/N

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**B. Access to Information and Meaningful Consultation**

- 1. Have you heard of the Asian Development Bank (ADB)? Y/N
- 2. Have you received any written documents about the railway project? Y/N

*Circle all that apply.*

Public information booklet                      Copy of resettlement plan  
Pamphlets in Khmer                              Information posted in public spaces, such as in commune/sangkat office

Other \_\_\_\_\_  
\_\_\_\_\_

*Note: Take pictures of the documents that were received.*

- 3. Did you read the Project documents you received? Y/N
- 4. Did you understand the Project documents you received? Y/N
- 5. When and how did you first learn about railway project from government or ADB?

\_\_\_\_\_  
\_\_\_\_\_

- How many ADB and/or IRC community meetings or consultations did you attend?

\_\_\_\_\_  
\_\_\_\_\_

- The dates of the meetings/consultations:

\_\_\_\_\_  
\_\_\_\_\_

- Were *women* specifically invited to attend the meetings or consultations? Y/N

- 6. If there were meeting or consultations with the community, what were you told about the impacts of the project?

\_\_\_\_\_  
\_\_\_\_\_

- 7. At the meetings/consultations, did you ask any questions and/or raise any concerns with the IRC and/or ADB? Y/N

- Why/why not? (e.g. did you have opportunity to ask questions; did other people raise the same concerns etc.)

\_\_\_\_\_  
\_\_\_\_\_

- If Yes, did the IRC/government respond to your concerns/questions? Y/N
- Are you happy with the IRC and/or ADB response? Y/N

\_\_\_\_\_

- 8. Have you ever seen or been told about the resettlement plan? Y/N  
Have you ever made any comments/suggestions regarding the resettlement plan? Y/N

\_\_\_\_\_  
\_\_\_\_\_

If No, why not? \_\_\_\_\_  
\_\_\_\_\_

If Yes, how did the IRC/government and/or ADB respond? \_\_\_\_\_  
\_\_\_\_\_

9. As a woman/vulnerable person, can you participate in the meeting/consultation, if you want to? Y/N  
Why/why not? \_\_\_\_\_
10. Did the government talk/ask about the effects of this project on the livelihood of women in your community? Y/N
11. Were your resettlement or compensation options explained to you? Y/N
- What options were you given for resettlement and/or compensation?  
\_\_\_\_\_  
\_\_\_\_\_
  - If you were given resettlement as an option, what were you told about security of tenure?  
\_\_\_\_\_  
\_\_\_\_\_
  - Informed of when resettlement will occur and when compensation will be paid (the timeline for project)? Y/N  
When: \_\_\_\_\_
  - Informed of when trains will start running through your community? Y/N
    - i. Informed about what precautions you need to take when that happens? Y/N
  - If you were given the option to resettle, you were:
    - Circle one.* Taken by government/authorities to see more than one site
    - Given the option to move to more than one site
    - Offered only one site to move to
  - Were affected women shown the relocation site? Y/N
12. Have you been intimidated or pressured in any way in relation to the project (e.g., moving from your home, pressured to thumbprint documents despite your concerns)? Y/N  
\_\_\_\_\_  
\_\_\_\_\_
13. Were you given enough information about the railway project? Y/N
14. If the person has not yet stated, what information would you have wanted to know about the project?  
\_\_\_\_\_  
\_\_\_\_\_

**C. Grievance Redress Mechanisms**

1. Did the IRC/government tell you that you can complain about the project? Y/N
- Informed of the process? Y/N  
*If "No," jump to Question 2 in this section. If "Yes," go through questions below.*
  - What is the process?  
\_\_\_\_\_
  - *Circle all levels they know they can complain to.*  
Commune/sangkat    IRC    ADB (Cambodia)    ADB (Headquarters)

2. Have you complained to government authorities, such as your commune/sangkat, resettlement sub-committee, or directly to ADB? Y/N

*If "Yes," circle all that apply.*

Commune/sangkat      IRC      ADB (Cambodia)      ADB (Headquarters)

Verbal Complaint

Written Complaint      *Get photocopies or take photographs of all written complaints.*

- When did you complain? \_\_\_\_\_
- If you complained, did they respond to your complaint? Y/N
- Did you receive a written receipt for your complaint? Y/N

3. If you have not complained, would you complain to the government/ADB if you had a problem or concern? Y/N

\_\_\_\_\_

\_\_\_\_\_

4. For *women*. As a *woman*, do you feel comfortable complaining to the government/ADB if you had a problem? Y/N  
Why/why not? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**D. Compensation Rates**

1. Have you been told how much you are getting? Y/N

2. Have you received compensation yet? Y/N      When? \_\_\_\_\_

3. Do you know the breakdown of this total? Y/N  
Expected total: \_\_\_\_\_      Actual total: \_\_\_\_\_

4. Did you get written confirmation? Y/N  
Specify what documents have been received: \_\_\_\_\_

*Note: Ask to see all written confirmation or documents about the breakdown and take a picture or take notes. If person does not know the breakdown and has not received any written confirmation/breakdown of compensation, go to Question 10.*

5. Did the IRC/government explain how this compensation was calculated? Y/N

- Land loss (agricultural, residential, and commercial):  
Expected: \_\_\_\_\_      Actual: \_\_\_\_\_
- Non-land assets loss, such as structures (e.g., houses, shops, businesses):  
Expected: \_\_\_\_\_      Actual: \_\_\_\_\_
- Non-land assets loss, such as crops, trees, open wells, and fences:  
Expected: \_\_\_\_\_      Actual: \_\_\_\_\_

- Income loss:  
Expected: \_\_\_\_\_ Actual: \_\_\_\_\_
- For vulnerable households:  
Expected: \_\_\_\_\_ Actual: \_\_\_\_\_

6. Are you happy with the compensation offered? Y/N  
*Note: Make sure to explain that according to ADB policy, the compensation is given at **replacement cost**.*

Why? \_\_\_\_\_  
 \_\_\_\_\_

**E. Dismantlement/Resettlement Costs**

1. Was the compensation you were offered or given enough to cover your dismantlement/resettlement costs? Y/N

- Dismantlement/resettlement costs:  
 Total costs: \_\_\_\_\_ USD/R      Rebuild the house: \_\_\_\_\_ USD/R  
 Hire workers: \_\_\_\_\_ USD/ R  
 Materials/other costs: \_\_\_\_\_ USD/ R  
 Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- Did you lose income because you had to spend time rebuilding your house? Y/N  
 How much? \_\_\_\_\_ USD/R

- What kind of house was rebuilt? Note: Take a photo with person in front of house, if possible.  
*Circle all that apply.* Concrete Wooden      Mixed      Other: \_\_\_\_\_  
 One-Story      Two-Story      Three-Story      Other: \_\_\_\_\_  
 Comments: \_\_\_\_\_

- Comparison between the new house and old house, if applicable:  
 When was the old house built and how much did it cost? \_\_\_\_\_  
 \_\_\_\_\_  
 Have you or are you planning to build a better quality house than the old one? Y/N  
 If Yes, why? \_\_\_\_\_  
 \_\_\_\_\_

2. Amount of time needed to dismantle and/or rebuild the house? \_\_\_\_\_  
 \_\_\_\_\_

- Where did you live or plan to live, while your house is being dismantled and/or rebuilt?  
 \_\_\_\_\_  
 \_\_\_\_\_

3. If multiple family household, how were the dismantlement/resettlement costs shared among the family members?  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. Did you or will you have to borrow money, as a result of the project? Y/N
- If so, how much? \_\_\_\_\_ USD/R From? \_\_\_\_\_ Interest rate? \_\_\_\_%
  - Who is responsible for paying back the debt? \_\_\_\_\_
  - What happens if you don't pay back the money? \_\_\_\_\_  
\_\_\_\_\_

**F. Conditions at Resettlement Site and Resettlement Costs**

*Conditions at Resettlement Site*

1. Do you know anything about the resettlement site? Y/N  
*If "Yes," go through questions below. If "No," go to Questions 5 or 6 below.*
2. Do you like the resettlement site? Y/N
- How far is the site from your former home? \_\_\_\_\_ km
  - Do you consider the plot of land big enough (e.g., is there enough space to grow vegetables, raise chickens or other animals)? Y/N
  - Will moving to the relocation site affect your work (e.g., is it more expensive to travel to work)? Y/N  
If so, how? \_\_\_\_\_  
\_\_\_\_\_
  - Are there job opportunities near the resettlement site? Y/N
  - Will your children have to travel further to school and/or change school? Y/N  
How much further? \_\_\_\_\_ km How do they get there? \_\_\_\_\_  
More expensive now? Y/N If so, why? \_\_\_\_\_  
Will any of your children have to stop school completely, as a result of the Project? Y/N
  - For women. As a woman, will this resettlement affect you and your family/children? Y/N  
If so, how? \_\_\_\_\_  
\_\_\_\_\_
3. Do you feel there is adequate access to services, such as:  
Water Y/N Sanitation Y/N Waste Disposal Y/N Electricity Y/N  
Other \_\_\_\_\_ Y/N Other \_\_\_\_\_ Y/N
4. Do you feel there is adequate access to facilities, such as:  
Schools Y/N Hospitals/Health Facilities Y/N Roads \_\_\_\_\_ Y/N  
Other \_\_\_\_\_ Y/N Other \_\_\_\_\_ Y/N

5. What services and facilities would you like at the resettlement site? Note: For women residents especially, ask about facilities that may support the raising of their children (e.g., playground/children centers or health facilities for women, etc.).

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**G. Livelihood and Income Restoration Support**

*Note: Before asking these questions, explain what the Income Restoration Programme is.*

1. Does your household earn more, less or the same as before you moved?

*Circle one answer.*                      More                      Less                      Same

If less than before, why? \_\_\_\_\_

---

2. Have you been told anything about livelihood support? Y/N

What have you been told? \_\_\_\_\_

3. Have you received any of this support? Y/N

If so, what? \_\_\_\_\_

4. Do you think this support is/will be helpful? Y/N

Why/Why not? \_\_\_\_\_

5. Do you think this support is/will be enough to maintain or increase the income you earned before you moved? Y/N

6. For BRTOs. Have you been told you will receive additional support (e.g., business transport loss)? Y/N

If so, what type of support/total? \_\_\_\_\_

Do you know the breakdown for this total? Y/N

Comments: \_\_\_\_\_

7. For vulnerable households. Have you been told you will get additional support? Y/N

If so, what type of support? \_\_\_\_\_

8. What support would you like to receive? \_\_\_\_\_

---

9. Are you participating in the Income Restoration Programme (IRP)? Y/N

*Circle the IRP activities you have taken part in.*

Self-help group                      Training Job placement                      Other \_\_\_\_\_

10. Are you confident participating in the IRP will restore your income to pre-project levels or above? Y/N

If no, why not? \_\_\_\_\_

**H. Miscellaneous**

1. Do you/did you want to relocate? Y/N Why? \_\_\_\_\_  
\_\_\_\_\_
  
2. As a result of this project, you and your family's living conditions will:  
*Circle one.*      Improve                      Worsen                      Stay the same
  
3. Other comments? Note: For women residents especially, ask about the effects of this project on them and their children.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
4. For people who are not happy with what they will receive and think their lives will be made worse off, do they plan to complain or organize with their community? Y/N

**WORKSHEET ONE:**

Question 15 – Survey of Home/Structures.

*Note: Explain to people that this is only a monitoring tool, and we are not the IRC or ADB.*

Type and size of house: .....m x.....m

Roof	Wall	Pillar	Floor	# of Floors:
plastic/leaf/thatch	brick/concrete	concrete	Bamboo	single/less than 1.5m
metal sheet/fibre cement	plastic/leaf/used wood	pole/wood	Concrete	single over 1.5 stilts
Tile	metal/fibre cement	bamboo	Tile	brick ground/wood 1st floor
Concrete	Wood	Iron	Wood	all brick floors (state amount):
			Soil	

Note: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Annex 3

### Services at Resettlement Sites as of Initial Relocation Date and December 2011

	Sihanouk Ville		Battambang		Poipet		Pursat		Phnom Penh	
	Relocation Date July 2010	Dec 2011	Relocation Date May 2010	Dec 2011	Relocation Date August 2011	Dec 2011	Relocation Date June 2010	Dec 2011	Relocation Date Sept 2011	Dec 2011
<b>Water supply</b>	Pump wells, but complaints of poor quality	2 functioning wells, but do not supply enough water for all	None	New pond with poor water quality and insufficient quantity for all families	Pump wells, but complaints that most were not working	Pump wells not functioning properly. HHs use private water connected to their house	3 Pump wells, but complaints of poor quality	IRC installed a water tank and water machine in early 2011	None	Yes, but HHs have to pay \$39.52 to connect
<b>Toilet facilities</b>	Each plot has toilet but complaints that they did not work	Each plot has toilet but complaints of poor quality	Each plot has toilet but complaints of poor quality	Each plot has toilet. Quality improved by IRC	Each plot has toilet but complaints of poor quality	Each plot has toilet but complaints of poor quality	Each plot has toilet	Each plot has toilet	Each plot has toilet	Each plot has toilet
<b>Electricity</b>	None	None	None	Some HHs connected, Charged \$30 fee. HHs later reimbursed \$15	None	HHs connected after paying a deposit of \$30	None	Yes - IRC started to connect HHs in July 2011 without fees	None	Yes, but HHs charged connection fee of \$37.50.
<b>Drainage</b>	Yes	Yes	Yes but pipes too small	Yes but pipes too small	Yes but poor quality, causing flooding	Yes but poor quality, causing flooding	Yes	Yes	Yes	Yes
<b>Access road to city</b>	Dirt road	Concrete road being prepared	Dirt road	Dirt road	None	Concrete road being prepared	Dirt road	Dirt road better than before because IRC has repaired it	Dirt road	Dirt road







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