

Challenges for implementing ADB's resettlement policy in Cambodia: The case of Highway One

By Rena Sugita



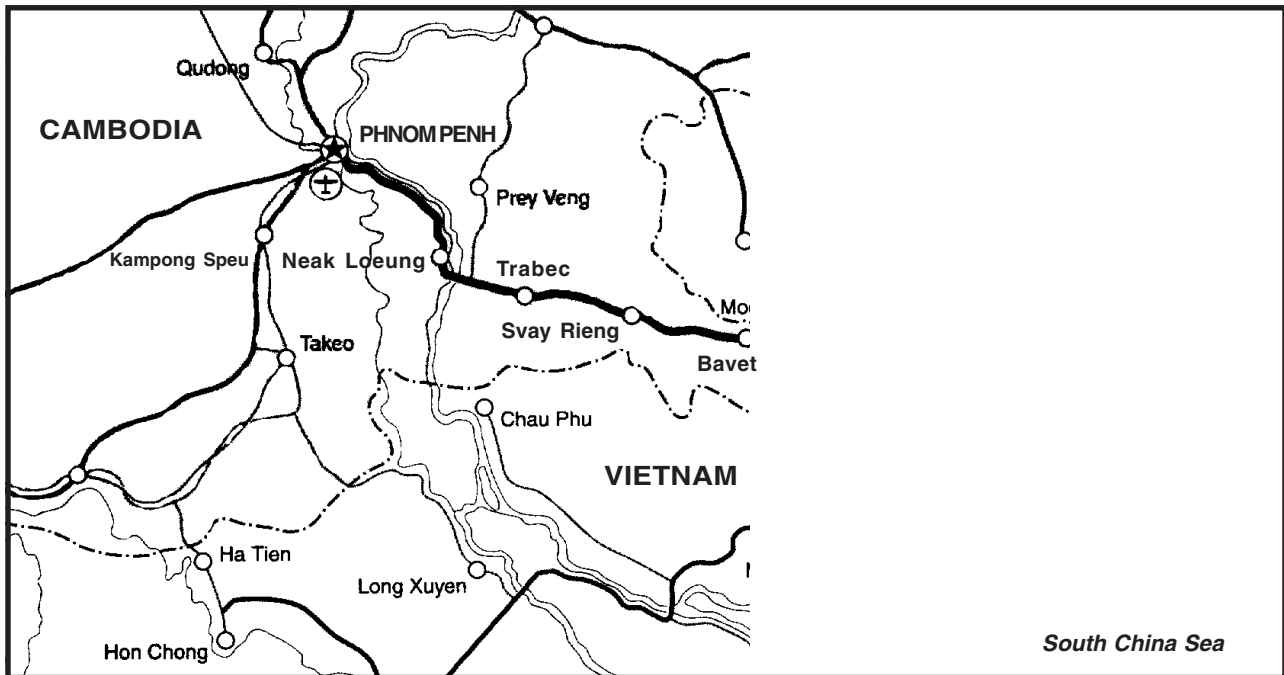
The Cambodian component of the Asian Development Bank-funded Highway One Improvement Project resulted in the relocation and impoverishment of approximately 1,200 households (estimated 6,000 people) living along the road. In 2004, the ADB finally performed an audit of the project – which confirmed many of the issues affected communities and local nongovernmental organisations have been raising since 2000 – and urged the Cambodian government to implement measures in order to bring the resettlement process in compliance with the ADB's Policy on Involuntary Resettlement. Rena Sugita describes the results of the audit and examines the challenges in implementing the ADB's resettlement policy in Cambodia.

The ADB Highway One Improvement Project

The Highway One Improvement Project (hereafter, HW1 Project) was the first project to be implemented as part of the ADB's Greater Mekong Subregion (GMS) initiative, which aims to promote economic integration and development of the Mekong countries. Implemented to encourage traffic and trade flows between Cambodia and Vietnam, the HW1 Project is just one segment of a road network, located within the ADB's plan for a Southern Economic Corridor – a GMS flagship programme – to connect Thailand's capital of Bangkok with Vietnam's capital of Ho Chi Min City, passing through

Cambodia on the way. A number of other road projects which link the Thai border with Phnom Penh, such as National Routes 5 and 6 are also already implemented or under preparation for improvement with funding from the ADB, the World Bank and Japanese government. The Japanese government also plans to provide a grant for the expansion of another section of HW1, which links to the ADB section, from the west bank of the Mekong River to Phnom Penh. The Japan International Cooperation Agency (JICA) has just completed the studies to prepare for the project (see box).

Rena Sugita is a staff of Mekong Watch, a NGO monitoring the environmental and social impacts of development projects in the Mekong Region.



In December 1998, the ADB approved a loan of \$US40 million for the Cambodian component of the HW1 Project, covering a 105 kilometre section of Highway One from the east bank of the Mekong River at Neak Loeung to the Cambodian-Vietnam border at Bavet (see map). However the loan only became effective as of 9 November 1999, following the ADB's approval of the resettlement implementation plan, which had undergone several revisions. Project construction commenced in January 2000 and resettlement of communities along the road began in February 2000, resulting in the relocation of approximately 1,200 households (estimated 6,000 people). In spite of ADB's policies requiring the consideration of social and environmental impacts and participation in decision-making, the lack of enforcement and monitoring of Cambodian government's compliance, has resulted in the impoverishment of those forcibly relocated.

Why the ADB's Policy on Involuntary Resettlement was not respected

The ADB refers to its Policy on Involuntary Resettlement,

adopted in 1995, "as the cornerstone of ADB's social safeguards." The policy, which is applicable to all ADB-funded projects, aims to avoid involuntary resettlement where feasible; and notes that, "Where population displacement is unavoidable, it should be minimized by exploring all viable project options." Furthermore, the policy states that, "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...assisted so that their economic and social future will generally be at least as favorable with the project as without it". The policy also outlines steps – to be carried out in consultation with affected people – for planning compensation and other forms of assistance to replace assets, resources incomes and livelihoods of all those affected.

Considering the lack of a national resettlement policy and law on expropriation in Cambodia,¹ coupled with ongoing corruption and human rights violations in the country (see table for examples of forced resettlement in Cambodia), the ADB's resettlement policy was one of the few means to protect the affected communities. The provisions outlined in the ADB's resettlement policy were reinforced within the

¹ According to the Land Law, which was amended in 2001, when land that is legally owned is involuntarily acquired in the public interest, "fair and just compensation" must be paid to the owners. The necessary concrete procedures to implement this provision are supposed to be established by a sub-decree, but it has not yet been enacted. In regard to the HW1 case, because the land in the ROW was declared to be public land by a Prime Minister's Edict, this project is treated as if it were not subject to the newly amended land law.

Examples of Forced Resettlement

| Case \ Trend | Existence of Mitigation Measures | Proponent | Resettlement | Use of force |
|--|----------------------------------|---------------------------------------|--|--|
| 46 households within Phnom Penh city limits (January 2004) | None | Private developer | People temporarily relocated 20 kilometres away from their original residence. | 11 people injured, homes burned down. |
| 220 households of Thmey community in Phnom Penh. (August 2004) | None | Local authorities & Private developer | People resettled 20 kilometres away from their original residence. | Eight people arrested, three people injured. |
| 218 households in Kbal Spean village of Poypet, Banteay Meanchey province (March 2005) | Exist | Local Government | Undecided | Six people killed, three injured, all homes destroyed. |
| 246 households in Kratie province (November 2004) | None | Local authorities | None | Three people injured |

In Cambodia, sufficient compensation is not provided, to say nothing of respect for fundamental human rights, and there is no end to land grabbing. According to the "Housing Rights Taskforce" (in which NGOs and international organisations are members), of the roads, canals, lakes, private lands and railways subject to various projects for 2005-6, 53 poor communities (4,771 households) in Phnom Penh alone are to be affected.

Source: Housing Rights Task Force

Loan Agreement – the fundamental agreement signed between the ADB and the Cambodian government regarding the road work, from which all requirements flow, including those pertaining to resettlement. The Loan Agreement states explicitly that the Cambodian government will ensure that resettlement, land acquisition, compensation is implemented in accordance with the ADB's resettlement policy and that "in cases of discrepancies between the Borrower's [Cambodian Government] procedures and the Bank's requirements, the Bank's requirements shall apply."

The Loan Agreement for the HWI project contains the following three key principles for land acquisition and involuntary resettlement:

Ø "The economic and social future of people would not be unfavorably affected; they would not face a material reduction in income, living standards or unnecessary social and cultural dislocation as a result of the Project".

Ø "The people affected should not be required to have formal legal title to the land used by them to be eligible for compensation."

Ø "The amount of compensation in respect to land acquisition shall be at a level sufficient to cover the full replacement cost of the land and the structures built thereon."

However, the provisions and principles of the ADB's resettlement policy and the Loan Agreement were not complied with, and as a result when land expropriation for the

project commenced in February 2000, people were flung into severe poverty. People were not adequately informed of their rights and entitlements, and the use of intimidation and threats of non-payment of compensation coerced consent from affected communities, forcing many of them to accept whatever was given to them. It was only because of the persistence of local nongovernmental organisations (NGOs), who have provided ongoing support to affected communities and raised concerns to the Cambodian Government and the ADB, that the ADB conducted an audit of the project in November 2004 to re-evaluate whether or not compensation was carried out appropriately and in accordance with the Loan Agreement and ADB policies.

The facts about the events below are based on responses from ADB officials responsible for the audit to the questions we posed. The author analyses why the ADB's resettlement policy was not respected, drawing from the findings of the audit as conveyed by ADB officials.

The Cambodian government's breach of the Loan Agreement

The ADB's technical assistance – Ho Chi Minh City to Phnom Penh Highway Project – approved on 9 November 1995, indicated a resettlement plan framework that would fulfil the requirements of the ADB's Policy on Involuntary

Lessons Learnt?

The National Route One Improvement Project and JICA's Guidelines

The Japanese government plans to provide a grant for the National Route One Improvement Project (hereafter, NR1 Project), covering 56 kilometres from the west of the Mekong River to Phnom Penh. While the Japanese Ministry of Foreign Affairs (MOFA) decides on which projects and programmes to grant aid, the Japan International Cooperation Agency (JICA) is responsible for conducting the preparatory studies upon which MOFA's decisions are based. As the case with the Highway One Improvement (HW1) Project, the main concerns of the NR1 Project relate to the resettlement, loss of livelihoods and assets of local communities along the road. Approximately 2,000 houses and shops would need to be relocated for the NR1 Project.

The 2003 Feasibility Study for the NR1 Project, however, largely dismissed the potential negative impacts arising from resettlement, and concluded that, "there are neither substantial nor irreversible adverse environmental and social impacts arising from the Project. No adverse social impact is expected because the project involves the improvement of existing roads and no additionally [*sic*] land acquisition for road right-of-way [ROW] is required." Furthermore, the study proposed resettlement procedures, including the scope and rate of compensation similar to that implemented under the problem-ridden ADB-funded HW1 Project.

Fearing the same tragedy would be repeated in the NR1, local nongovernmental organisations (NGOs) began conveying their concerns to the Japanese government and JICA, highlighting the problems from the ADB-funded project. Acknowledging the failure of the Feasibility Study to adequately consider the project's social impacts, JICA and MOFA decided to conduct a Preparatory Study⁷ and apply JICA's new Guidelines for Environmental and Social Considerations (hereafter, JICA's Guidelines), even though the project request was submitted before the enactment of the guidelines in April 2004. The NR1 project is the first project to be assessed against JICA's Guidelines, the following provisions of which must be fulfilled prior to commencing the Basic Design Study. JICA must ensure that sufficient compensation and assistance are provided in a timely manner, enabling those affected to improve or at least restore their standards of living and livelihoods to pre-project levels; and that appropriate participation by affected communities are promoted in the planning, implementing and monitoring of resettlement plans.

Although, JICA has delayed the project significantly to conduct more studies and the Basic Design Study is an improvement from the 2003 Feasibility Study with regards to resettlement procedures, concerns still remain especially over the content and scope of compensation. Moreover, there are already signs that resettlement process, under the aegis of the Inter-ministerial Resettlement Committee (IRC), is not being carried out in accordance with JICA's Guidelines. Problems regarding the offer of insufficient compensation, the use of intimidation to coerce agreement to compensation packages, the lack of participation and inappropriate grievance mechanisms were all highlighted by a survey conducted by the Resettlement Action Network in 2004. The IRC is currently conducting a detailed measurement survey (DMS) which defines and records affected people's eligibilities for compensation. And again, there is evidence of the ad hoc manner in which the IRC is depreciating the value of assets, excluding compensation items and not providing sufficient information about people's entitlements. Responding to criticisms from NGOs, JICA is now urging the Cambodian government to raise the level of compensation and address these problems. Unless remedial measures that incorporate the concerns of those being resettled are implemented, the project may result in further impoverishment, as was the case with the HW1 Project.

* Normally, studies to prepare for grant aid cooperation are carried out in the order of Preparatory Study, then Basic Design Study. As of the writing of this article, JICA had already finished the Basic Design for the NR1 Project, and the Japanese Cabinet is to make a decision whether or not to go forward with the grant aid cooperation based on the report of the Basic Design Study. Project implementation requires another cabinet approval.



The road was not just expanded but also raised to protect it from flooding during the rainy season, creating problems of access for people living along the road.

Resettlement. It also contained descriptions of items to be compensated and a survey of market prices (conducted in 1996) upon which to base compensation rates. The ADB approved financing for this project on the condition that this framework would be implemented, and the Cambodian government agreed. One of the conditions for the loan effectiveness was the ADB's approval of a resettlement implementation plan to be prepared by the Cambodian government, with concrete procedures and details for compensation in accordance with the agreed framework and the ADB's resettlement policy. However, the Cambodian government completely ignored this agreement with the ADB.

In September 1999 – after the ADB approved financing – the Cambodian Prime Minister issued an edict establishing the right-of-way (ROW) for HW1 to be a distance of 30 metres from the road's centreline, declaring all such lands to be public land. As a result, all people living within the ROW were effectively labelled as illegal occupants and thus not eligible for compensation. Prior to the 1999 Edict, the ROW had only been vaguely determined and local authorities have generally not enforced the ROW, if not given *de facto* approval for communities to reside there. Although formal legal land title is uncommon – as is the case throughout most

of Cambodia – most of the families have been living in the ROW prior to the 1999 Edict; they had purchased the land, and many even had paid informal fees to local government authorities for the land they were occupying.

Following the Edict, the Cambodian Government drew up the Cambodia Resettlement Implementation Plan (CRIP), which excluded compensation for land expropriated within the ROW. This was done in spite of the Loan Agreement, which states that “people shall not be required to have formal legal title to the land used by them in order to be eligible for compensation.” Thus irregardless of whether people had formal legal title to the land, they should have been entitled to compensation. The CRIP deviated significantly from the earlier resettlement framework as outlined in the Loan Agreement, removing some compensation items, and reducing the compensation rate that had been indicated in the 1996 study.

What seemed to really matter to the Cambodian government in deciding the width of the ROW and the CRIP was the cost of resettlement and the financial ramifications of its decision, not the legal consequences. As per the Loan Agreement, the Cambodian government is responsible for the financing of land acquisition, resettlement and compensation.

The Inter-ministerial Committee on Resettlement (IRC), the agency responsible for drafting and implementing the resettlement plans, did not even carry out land acquisition, resettlement and compensation in accordance with the CRIP. Whereas the CRIP notes that only those living within 10-15 metres from the road centreline would be relocated (to lessen the extent of resettlement), those living within 25 metres from the centreline were forcibly relocated. The list of IRC's compensation payments reveals the ad hoc manner in which local authorities decided to depreciate the value of building structures, based on the age of the buildings, and subtracted the value of salvageable material from the total value of the building, effectively reducing the amount of compensation given to affected people. Also other assets, to which people were entitled to receive compensation for, such as fruit trees within the ROW, were excluded from the list of payments; and some allowances were not paid in full or paid at all. It is clear that compensation given to affected people was not "at a level sufficient to cover the full replacement cost of the land and the structures built thereon", as required by the Loan Agreement. Moreover, not a single person was provided with land to which to resettle, and as a result many people were further indebted and impoverished following their relocation.

While a grievance committee was set up to receive complaints people might have after resettlement, among the members of this committee was the culprit of these prob-



A meeting among people affected by the NR1 project, Miloon Kothari, special rapporteur on Housing Rights of the UN Commission on Human Rights, and NGOs. Affectees reported that compensation would be barely enough to dismantle their houses, and that when an affectee hesitated to agree to the compensation, the local authority handed a mobile phone over to her and said "if you want to complain, call the Prime Minister". Fearful of the authority, she gave her thumb print in agreement to the compensation. (Source: UNOHCHR in Cambodia, October 2004)

lems, the IRC. Therefore, affected people did not think that it would be effective to raise their concerns with the grievance committee. Also, due to fear of reprisal, very few filed complaints. Even when complaints were raised, they were not addressed in any meaningful manner and the committee did not provide any relief for a single case raised. The ADB also acknowledges the failure of the grievance redress mechanism, and that complaints were brushed aside and legitimate grievances were not addressed. Moreover, consultations held with affected people during audit revealed a number of cases where the insufficient provision of information regarding people's entitlements under the Bank's resettlement policy, coupled with use of threats in silencing complaints, forced people to accept whatever was offered to them and drove a number of them to abject poverty.

Failure of ADB to monitor the HW1 Project

The ADB's biggest mistake was that it approved the flawed CRIP, and thus made the loan effective. The fact that the ADB became aware of the serious extent of this mistake in mid-2002 – two and a half years after the implementation of the project – demonstrates clearly how lax the ADB's supervision and monitoring of the HW1 Project was. The ADB's failure to closely monitor the implementation of resettlement is in part due to the lack of an effective mechanism reporting to and updating the ADB about the realities of the resettlement situation; while the ADB staff in charge of the project sat in its head office in Manila hoping to remote-control the project.

The executing agency for the HW1 was Cambodia's Ministry of Public Works and Transport (MPWT), and it was supposed to manage the overall project implementation, including resettlement, and provide progress reports on resettlement to the ADB. In reality, however, the IRC, which in effect is controlled by its chair, the Ministry of Economics and Finance, was responsible for all resettlement-related work and acted largely independently of the MPWT. The ADB also proposed that an NGO monitor the situation of resettlement. However, it was not the ADB that signed the contract with the NGO, but the IRC. This created a conflict of interest, and the local NGO, the Neutral and Impartial Committee for Free and fair Election in Cambodia (NICFEC), which was contracted to monitor resettlement, reported that they were not given access to necessary information, and were restricted from disclosing their survey

results. Rather than resolving the numerous problems highlighted in NICFEC's report, the IRC instead decided not to renew NICFEC's contract as an external monitor.

Even when the ADB recognised problems, it showed little political will to address the sufferings of affected people. Since 2000, the NGO Forum on Cambodia and other local NGOs have begun their own independent monitoring, and have raised their concerns with the ADB directly. Still, only one village (16 households) has been given any kind of relief, and this was only after NGOs concentrated their efforts to pressure the ADB to do so. In spite of this, the ADB has proceeded with work on the improvement of National Routes 5-7 – Primary Road Restoration project, approved in September 1999 – only to repeat the same problems. Only after being heavily criticised by local people and local NGOs, did the ADB begin audits of the HW1 Project in November 2004, and Primary Road Restoration project in May 2005.

Recommendations of the Audit

Following the ADB audit's confirmation of the many problems associated with the HW1, the ADB made a number of recommendations to the Cambodian government in order to resolve these problems. At the end of May 2005, the Cambodian Government agreed to the recommendations, and implementation is now proceeding.

The first recommendation was for the Cambodian government to reimburse the people on the IRC's compensation list the difference between the compensation amount that was actually paid and what should have been paid. Now that the list of affected people and payments has been obtained, it has become clear that the unpaid compensation amounts to more than one million dollars.

The second set of measures relate to implementing a functional and more participatory grievance redress mechanism. A working group comprising representatives from the Cambodian government, affected people and NGOs, has been established to hold public consultations in each commune, receive complaints and demands from affected people, and to discuss best ways to resolve grievances. The ADB is prioritising the provision of land or cash and pay-



A house of affectees who refused to relocate for the HW1 project. They are being intimidated with a bulldozer. (Source: The NGO Forum on Cambodia, 2000)

ment of support to re-establish livelihood for landless people. In cases where agreements are not reached by the working group, or when affected people still are dissatisfied by the grievance redress measures, there is a plan to conduct investigations to confirm the facts for complaints and negotiations.

Although these grievance redress measures are in fact innovative for Cambodia, the measures still fall short bringing the project into compliance with the ADB's resettlement policy. The measures do not include the issuance of land certificates to those resettled outside of the ROW, as required by the Report and Recommendations of the President (November 1998).² While this provision is not incorporated in the Loan Agreement for some reason, it is critical to putting the HW1 project back into compliance with the resettlement policy. The issue of land security is one of the most urgent problems in Cambodia with land grabbing practices by powerful people ever increasing. As the new road increases the value of nearby land, local communities stand to lose their land especially without legal ownership of the land. Furthermore, NGOs have pointed out that the reimbursement of compensation is still inadequate to fully and fairly compensate the losses of the affected people, as the compensation rate for buildings is the same or less than the rate determined by the ADB market survey in 1996. The Resettlement Action Network's Secretariat, the NGO Forum on Cambodia has recommended to the ADB that in addition to the issuing of land certificates, the unit rate for compen-

² The Report and Recommendations of the President (RRP) is the loan proposal submitted to the ADB's Board of Directors for approval. According to the RRP for the HW1 Project, presented to the Board of Directors in November 1998, "No distinction will be made between legal and illegal PAPs [project-affected people]. Illegal PAPs will be provided with land certificates by district authorities at no extra cost."



Stoeung Slot resettlement site: 16 households were provided with some land after a campaign by local people and NGOs seeking compensation for their losses. The resettlement site, however, still lacks a proper drainage system and is subject to flooding.

sation be revised so that it is equivalent to the market rate when resettlement took place in 2000, and an amount of interest be added considering that payment has been delayed for five years.

There are already problems arising regarding the implementation of the grievance redress measures, such as the Cambodian government intimidating affected people during the public consultation, or not sufficiently informing the affected communities in advance about public consultations. As a result, the numbers participating in public consultations are not as much as would otherwise be expected. Moreover, the working group meeting to discuss the complaints from the affected people has been delayed for months.

Conclusion

In Cambodia, which is still deeply scarred by war, administrative capacity is low, legal frameworks are still being developed, and the judiciary system barely functions. Corruption and human rights violations are also clearly evident. The ADB is aware of this serious governance problem and in its *Country Strategy and Program 2005-2009: Kingdom of Cambodia* it says, "...the country continues to operate far below its economic and social potential because of weak governance. Key areas of governance requiring attention include reducing corruption and reforming the legal and judicial system, public financial management (PFM),

public administration, and local governance."

While aid agencies are well aware of the weak governance in Cambodia, they continue to promote infrastructure projects involving resettlement of affected communities, which require good administrative capacity and understanding of human rights. Governance problems affect not only the effectiveness of aid, but also bring great risks of harm to people impacted by development projects. In addition to the direct impacts such as resettlement, while not addressed in this article, there are indirect impacts of projects – increased human trafficking and log-

ging as a result of better road networks, land conflicts, concentration of profit and power in a handful of elite people and companies – that can be expected to have tremendous impacts on Cambodia's future but are not usually considered when planning and implementing individual projects.

Due to such risks, aid agencies, at the very least, must comply with their own environmental and social safeguard policies in order to prevent and mitigate the negative impacts that projects bring. In order to do so, it is absolutely essential to have a sound analysis of the situation in Cambodia, in particular problems of governance, and based on this analysis work out measures to prevent and address the problems, or lay the project aside.

The ADB itself has acknowledged that six projects in addition to the HW1 have failed to comply with its resettlement policy and that "resettlement problems for ADB's projects in Cambodia are an accountability problem waiting to happen." It is clear that even if mitigation plans may look good on paper, the ADB has not only been overly optimistic in expecting them to be implemented appropriately, but its failure to monitor projects that it funds and promotes has adversely affected the very people they are purportedly trying to assist. Unless national governments have adequate institutional and legal frameworks capable of implementing policies aimed at remedying the impacts of development projects, effectiveness of aid in promoting good governance, and addressing the needs of local people will continue to fail.