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## **CHAPTER 1. GENERAL**

### **1.1 Preface**

This report is a final report compiling analysis in Japan and the two field investigations carried out for “the Preparatory Study on Confirmation of the Resettlement Issue in Environmental and Social Consideration of the Project for the Improvement of National Road No.1 (Phnom Penh – Neak Loueng Section)” conducted from June to December 2003.

### **1.2 Background of Study**

Government of Cambodia has placed priority to the improvement of the National Road No.1 (NR-1) connecting between Phnom Penh, the capital city and Ho Chi Ming, the largest commercial city of Vietnam, and requested Japan for cooperation of the project implementation. In reply thereto, the JICA, in compliance with the instruction of the Japanese Government, has conducted Feasibility Study (FS). According to the decree of the Cambodia, ROW of the national road is 60m in width, however great impact is considered to the residents within the said ROW 60m of the national road. Thus, in the FS, ROW, which is considered to be of great impact to the project such as resettlement, was tentatively reduced to 30m only and it was found that 1,805 houses are to be affected in this study.

Government of Japan, in view of the opinions in Japan and the world trend, put high importance on social environmental issues in implementing ODA. Reflecting this, discussions are going on toward revision of the JICA guideline of environmental and social consideration. Total 19 revision meetings of guidelines of environmental social consideration were held during December 2002 to September 2003. The discussions encompass broadly the basic policy, objective, procedure and information disclosure with respect to environmental and social consideration for overall JICA’s projects. The said revision meeting consists of members from NGO, universities, relevant agencies, private sectors etc. The meeting is held in public and the results are aired through JICA home page.

This study has been conducted, in compliance with “Japan International Cooperation Agency Guidelines for Environmental and Social Considerations (Draft)” as a study of

environment social impact assistance study and in a comprehensive manner as independent from the basic design.

### **1.3 This project in the Second Five Year Plan**

The Table 1.1<sup>1)</sup> indicates donors and country-wise amounts of assistance toward Cambodia. The largest donor is Japan, namely it shares over 22% of total assistance rendered from foreign donors since 1992. That of the United Nations was ranked the second and shared 9.3% during 1992 through 2001. The Table 1.2<sup>1)</sup> indicates sector-wise assistance. Particularly, for the transport sector, the Japanese assistance since 2001 shows US\$27,954,000, which is equivalent to the half of the total transport sector assistance.

The Second Five Year Plan of the Cambodian Government<sup>2)</sup> envisages completion of improvement of all the main national roads, and among which, the National Road No.1 is given top priority as “Corridor 1”. Generally speaking, transport network improvement is very important for national development, and in terms of bilateral aids in transport sector, Japan is a major contributor (shown in the above stated table). Cambodia is the poorest nation in this region and for poverty mitigation, road, bridge etc are indispensable for the social infrastructure.

**Table 1.1 Donors and Country-wise Amounts of Assistance toward Cambodia.**

(in thousand of US Dollars)

Major Donor	1999 Actual	2000 Actual	2001 Provisional	Disbursements in 2001		Total Disbursements 1992-2001	
				% distribution	% increase over 2000	US \$	% distribution
<b>Multi-Lateral Agencies</b>							
United Nations Agencies							
• Programs delivered: Total	90,147	86,548	90,785	19.2%	4.9%	.....	
• Own resources disbursed	45,282	49,433	44,918	9.5%	-9.1%	383,545	9.3%
Bretton-Woods Institutions:							
• IBRD/World Bank	26,716	32,697	43,078	9.1%	31.7%	269,998	6.6%
• Int'l Monetary Fund	11,500	11,478	22,957	4.9%	100.0%	118,683	2.9%
Asian Development Bank	26,869	51,133	48,685	10.3%	-4.8%	293,348	7.1%
European Union / EEC	28,279	27,945	22,679	4.8%	-18.8%	311,844	7.6%
<b>Sub-Total for Multi-Lateral Agencies</b>	<b>138,648</b>	<b>172,686</b>	<b>182,317</b>	<b>38.7%</b>	<b>5.6%</b>	<b>1,377,398</b>	<b>33.5%</b>
<b>Major Bi-Lateral Donors</b>							
Australia <sup>1</sup>	18,390	29,417	19,873	4.2%	-32.4%	201,081	4.9%
Belgium	4,768	2,641	1,274	0.3%	-51.8%	23,318	0.6%
Canada	2,579	818	5243	1.1%	541.0%	41,932	1.0%
China	2,994	2,610	16,325	3.5%	525.5%	68,621	1.7%
Denmark	2,684	3,529	2,847	0.6%	-19.3%	60,260	1.5%
France	18,586	27,800	36,047	7.6%	29.7%	311,129	7.6%
Finland	700	3,269	1,199	0.3%	-63.3%	8,480	0.2%
Germany	12,319	12,225	10,020	2.1%	-18.0%	86,456	2.1%
Japan	88,000	108,021	100,023	21.2%	-5.7%	913,189	22.2%
Netherlands	6,053	4,912	3,606	0.8%	-26.6%	76,774	1.9%
New Zealand	804	1,002	718	0.2%	-28.3%	4,276	0.1%
Norway	1,020	1,310	1,151	0.2%	-12.1%	20,782	0.5%
Republic of Korea	1,048	706	1,199	0.3%	69.8%	3,285	0.1%
Thailand	550	435	435	0.1%	0.0%	13,402	0.3%
Russian Federation	340	851	334	0.1%	-60.8%	14,307	0.3%
Sweden	10,830	14,122	13,112	2.8%	-7.2%	148,829	3.6%
United Kingdom	9,416	13,000	8,711	1.8%	-33.0%	77,283	1.9%
United States	23,000	17,608	23,848	5.1%	35.4%	300,300	7.3%
Other Bi-Lateral Donors:	1,983	0	0	0.0%		27,828	0.7%
<b>Sub-Total for Bi-Lateral Donors</b>	<b>206,064</b>	<b>242,278</b>	<b>245,965</b>	<b>52.1%</b>	<b>1.5%</b>	<b>2,401,332</b>	<b>58.3%</b>
<b>Non-Governmental organizations (Core/own Resources Only)</b>	<b>55,000</b>	<b>51,851</b>	<b>43,560</b>	<b>9.2%</b>	<b>-18.0%</b>	<b>337,824</b>	<b>8.2%</b>
<b>TOTAL DISBURSEMENTS<sup>2</sup></b>	<b>399,710</b>	<b>468,813</b>	<b>471,842</b>	<b>100.0%</b>	<b>1.1%</b>	<b>4,116,354</b>	<b>100.0%</b>

<sup>1</sup> In early May 2002, AusAID informed CDC/CRDB that the detailed information it provided earlier has been misleading. AusAID's new estimate for the years 1999, 2000, and 2001 (provisional) is US\$ 19.24 million, US\$ 19.76 million, and US\$ 20.02 million, respectively. AusAID will be providing detailed data later to support the new aggregate numbers. The adjustments will be reflected in the Development Cooperation Report for the year 2002.

<sup>2</sup> Estimates of total disbursements include UN agencies "Own Resources" only. "Own Resources" are funds that flow through Agency's Headquarters to the Agency's country office.

Table 1.2 Disbursement by Donor and Sector:2001

(in thousand of US Dollars)

Major Donor	Term	Eco. Mgl.	Dev. Adm.	Nat Res.	Edu/ HRD	Agri.	Area Dev't	Industry	Energy	Int'l Trade	Domestic Trade	Transport	Communi cations	Social Dev.	Health	Disaster Prevention	Humanitarian, Relief and Food Aid	TOTAL
<b>Multi-Lateral Agencies</b>																		
United Nations Agencies																		
• Programs Delivered : Total	GRANT	131	9,393	943	6,496	1,882	11,390	0	0	0	93	0	0	6,444	18,020	7	31,942	86,741
	LOAN	0	0	0	0	4,044	0	0	0	0	0	0	0	0	0	0	0	4,044
• Own resources disbursed	GRANT	23	2,753	152	2,081	279	2,775	0	0	0	11	0	0	1,527	5,555	1	25,717	40,874
	LOAN	0	0	0	0	4,044	0	0	0	0	0	0	0	0	0	0	0	4,044
Bretton-Wood Institutions																		
• IBRD/World Bank	LOAN	4,589	860	158	1,126	6,880	2,740	0	0	0	0	1,699	0	18,338	6,688	0	0	43,078
• International Monetary Fund	LOAN	22,957	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	22,957
Asian Development Bank	LOAN	1,001	0	0	4,044	0	13,582	0	0	0	0	17,405	0	4,988	7,665	0	0	48,685
European Union/EEC	GRANT	0	1,824	0	6,656	8,000	0	0	0	0	0	0	0	883	1,316	0	4,000	22,679
<b>Sub-Total for Multi-Lateral Agencies</b>																		
	GRANT	23	4,577	152	8,737	8,279	2,775	0	0	0	11	0	0	2410	6871	1	29,717	63553
	LOAN	28,547	860	158	5,170	10,924	16,322	0	0	0	0	19,104	0	23,326	14,353	0	0	118,764
	TOTAL	28,570	5,437	310	13,907	19,203	19,097	0	0	0	0	19,104	0	25,736	21,224	1	29,717	182,317
<b>Major Bi-Lateral Donors</b>																		
Australia	GRANT	0	1,851	0	4,317	3,518	6,548	0	965	0	0	23	0	463	2,188	0	0	19,873
Belgium	GRANT	0	0	0	34	0	207	0	0	0	0	0	0	0	1,033	0	0	1,274
Canada	GRANT	0	317	0	0	0	1,929	0	0	0	0	0	0	227	181	0	2,589	5,243
China	GRANT	0	2,856	0	0	0	0	0	0	0	0	5,422	0	686	0	0	1,237	10,201
	LOAN	0	100	0	0	0	0	0	0	0	0	6024	0	0	0	0	0	6,124
Denmark	GRANT	0	118	575	0	2,154	0	0	0	0	0	0	0	0	0	0	0	2,847
Finland	GRANT	0	317	0	0	0	685	0	0	0	0	0	0	197	0	0	0	1,199
France	GRANT	336	4,779	0	7,437	3,962	1,597	0	843	0	0	1,185	248	6,295	7,630	0	1,735	36,047
Germany	GRANT	0	4,320	0	375	615	975	0	0	0	1,000	0	585	0	2,150	0	0	10,019
Japan	GRANT	16,129	1,426	94	9,515	4,198	9,483	0	3,897	0	500	27,954	406	23,135	3,286	0	0	100,023
Netherlands	GRANT	0	1,746	0	0	167	502	0	0	0	0	0	0	1,108	0	0	83	3,606
Newzealand	GRANT	0	264	0	338	0	84	0	0	0	32	0	0	0	0	0	0	718
Norway	GRANT	0	0	0	0	0	222	0	0	0	0	0	0	478	451	0	0	1,151
Republic of Korea	GRANT	0	1,199	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1,199
Thailand	GRANT	0	0	0	0	0	0	0	0	0	0	0	0	255	180	0	0	435
Russian Federation	GRANT	0	0	0	334	0	0	0	0	0	0	0	0	0	0	0	0	334
Sweden	GRANT	0	736	0	2,775	0	7,301	0	0	0	0	0	0	2,300	0	0	0	13,112
United Kingdom	GRANT	1,107	954	0	641	468	1,797	0	0	0	0	0	0	1,073	2,461	0	210	8,711
United States	GRANT	217	7,959	0	131	0	0	0	0	0	0	0	0	0	11,014	0	4,527	23,848
<b>Sub-Total for Bilateral Donors</b>																		
	GRANT	17,789	28,842	689	25,897	15,062	31,330	0	5,705	0	1,532	34,584	1,239	36,218	30,574	0	10,381	239,842
	LOAN	0	100	0	0	0	0	0	0	0	0	6,024	0	0	0	0	0	6,124
	TOTAL	17,789	28,942	689	25,897	15,062	31,330	0	5,705	0	1,532	40,608	1,239	36,218	30,574	0	10,381	245,965
<b>NGOs (Core/Own Resources Only)</b>																		
	GRANT	0	3,887	0	5,179	1,096	11,453	0	0	0	0	0	0	7,662	14,283	0	0	43,560
	GRANT	17,812	37,306	821	39,813	24,457	45,558	0	5,705	0	1,543	34,584	1,239	46,290	51,728	1	40,098	346,954
	LOAN	28,547	860	158	5,170	10,924	16,322	0	0	0	0	23,128	0	23,325	14,353	0	0	124,868
	TOTAL	46,359	38,266	979	44,983	35,381	61,880	0	5,705	0	1,543	59,712	1,239	69,615	66,081	1	40,098	471,842

**Table 1.3 Per Capital Gross Domestic Product\* US\$**

	1970	1980	1990	1996	1997	1998	1999	2000	2001	2002
Brunei			14,171	17,841	17,028	12,614	13,301	13,288	12,014	12,041
Cambodia				281	305	255	245	244	241	
Indonesia	77	491	637	1,155	1,079	466	674	723	676	
Laos			208	390	354	255	281	332	324	
Malaysia	382	1,787	2,432	4,763	4,624	3,254	3,485	3,869	3,890	
Myanmar										
Philippines	194	671	720	1,152	1,119	867	1,018	980	925	
Singapore	916	4,862	12,142	24,782	24,027	20,976	20,920	22,455	20,737	
Thailand	194	692	1,528	3,032	2,489	1,828	1,989	1,962	1,824	
Vietnam			97	327	357	357	371	401	415	
China		304	331	659	726	761	789	846	927	
Japan	1,952	9,138	24,717	37,338	34,213	31,171	35,478	37,558	32,522	

\*Japan ASEAN Center, 2004

#### **1.4 Purpose of Study**

This preparatory study aims to investigate the on-going projects' approved status related to this improvement project of Cambodia so that resettlement of residents are conducted under transparent and fair procedure in the road improvement plan of national high priority. Also, it aims to support for the structure of the human resettlement plan by the implementation agency and monitoring of the status quo and review the measures with regard to environmental and social consideration in Cambodia.

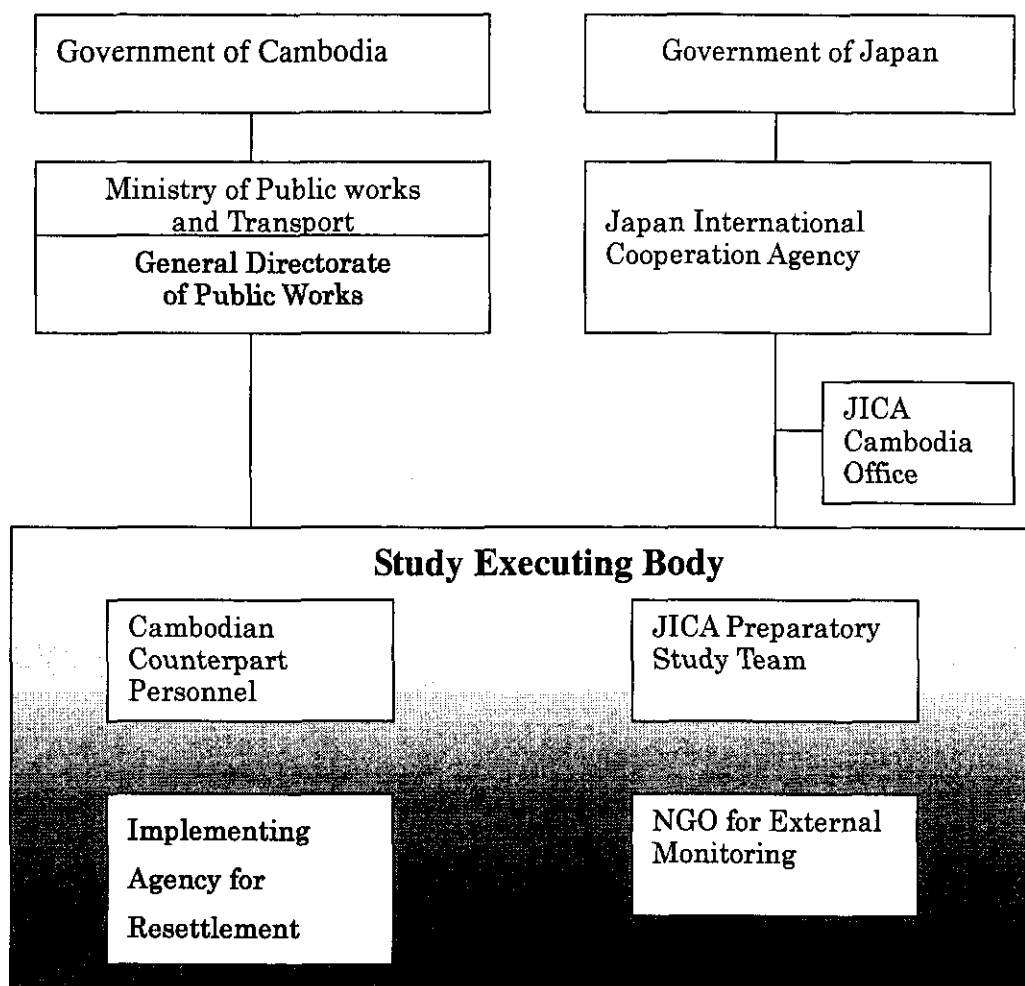
#### **1.5 Study Team**

The Study Team is shown in the Table 1.4. The Second Preparatory Study Team consists of the following members:

**Table 1.4 Members of Study Team**

Name	Assignment	Title
Noriaki NISHIMIYA	Leader	Manager, Third Project Management Division, Grant Aid Management Department, JICA
Kenichi TANAKA	Technical Advisor for Environment and Social Consideration	Senior Advisor, JICA
Tetsuya KAMIJO	Environmental Policy	Deputy Manager, Global Issues Division, Planning and Evaluation Department, JICA
Kotoro NISHIGATA	Project Coordinator	Officer, Third Project Management Division, Grant Aid Management Department, JICA
Yoshitoshi KOBAYASHI	Chief Consultant / The Environment and Social Consideration I (Support for Resettlement)	Japan Overseas Consultants Co.,Ltd.
Md. Nazibor Rahman	The Environment and Social Consideration II (Monitoring for Resettlement Procedure)	Japan Overseas Consultants Co., Ltd.





**Figure 1.1 Organization Chart for the Study**

## 1.6 Conditions for Implementation of Grant Aid

Land acquisition is to be made for and on account of the Cambodian side. It is considered appropriate that Japan should follow Cambodian Government and implement the following procedures for smooth resettlement when it is required. This is to be explained to the people concerned with the resettlement.

Item No	Items for implementation by Cambodian Government	Items to be implemented by Japanese Government
1	To establish Implementing Agency for Resettlement	
2	To prepare implementation plan for resettlement	To support preparation of RAP and its confirmation
3	To explain to the stakeholders such as PAPs including, NGO, local community etc	
4	To conduct hearing of PAPs and to obtain basic agreement thereof	To implement basic design
5	To obtain agreement of all the PAPs including compensation	To implement detailed design
6	To pay compensation and to complete resettlement of all the PAPs	To implement Construction
7	To complete social rehabilitation of resettled people	To evaluate and recommend
8	To monitor by the third parties on above items from 2 to 7	To implement by the third parties such as NGO /universities approved by Japan side

The flow of the above is shown in Figure 1.2 and detail in Figure 1.3. Both figures have been confirmed in the Minutes of Discussion at the time of First Field Study.

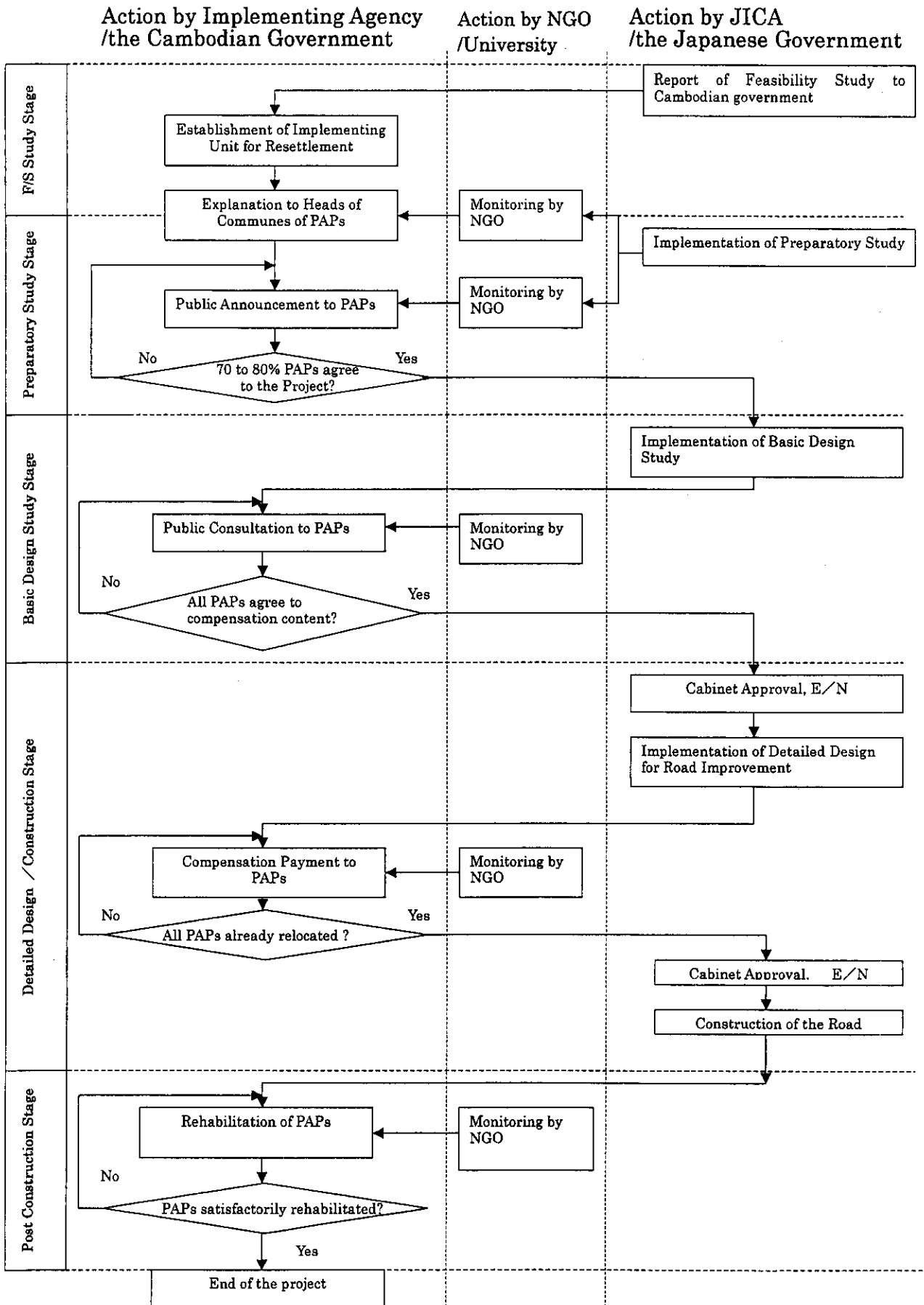


Figure 1.2 Critical Passage to Japan's Grant to the Improvement of National Road No.1 (Phnom Penh – Neak Loeng Section)

Action by the Cambodian Government

Action by NGO

Action by the Japanese Government

(University)

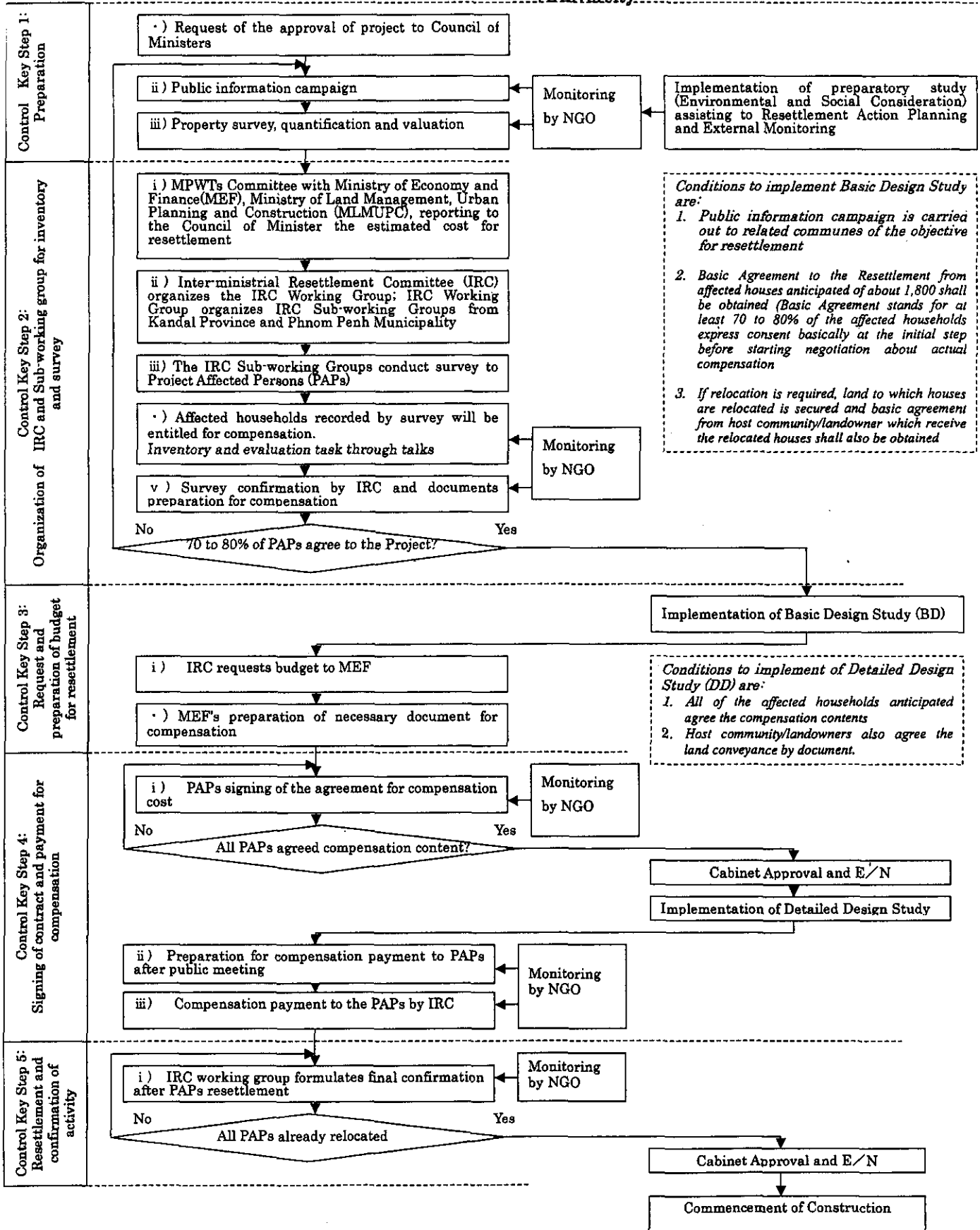


Figure 1.3 Detailed Critical Passage to Grant Aid

## CHAPTER 2 SOCIO-ECONOMIC SURVEY

### 2.1 Result of Previous Study

The number of households located within ROW30m of the National Road No.1 from the centerline between Phnom Penh and Neak Loueng is about 4,000 while the number of houses located within the tentative ROW is 1,805<sup>3)</sup>. According to the ISIA report<sup>6)</sup>, the socio-economic survey by way of interview was made from total 891 households residing within 30m from the centerline to the respective sides at interval of 100m along the National Road No.1, (90% of them are located within the 15m from the center line of the tentative ROW (Table 2.1).

**Table 2.1 Distances from Centerline and Number of houses**

Distance from the centerline (Case Summary)					
Length (m)	Case	Percent	Length (m)	Case	Percent
2.0	1	0.11	12.5	1	0.11
3.0	3	0.34	13.0	14	1.57
4.0	6	0.67	13.5	3	0.34
4.5	1	0.11	14.0	8	0.90
5.0	32	3.59	14.5	2	0.22
5.5	7	0.79	15.0	20	2.24
6.0	128	14.37	15.8	1	0.11
6.5	10	1.12	16.0	5	0.56
6.7	1	0.11	16.5	1	0.11
6.8	1	0.11	16.6	1	0.11
7.0	190	21.32	17.0	9	1.01
7.3	1	0.11	18.0	13	1.46
7.5	15	1.68	19.0	7	0.79
7.8	1	0.11	20.0	11	1.23
8.0	131	14.70	21.0	2	0.22
8.5	18	2.02	22.0	2	0.22
8.8	1	0.11	24.0	2	0.22
9.0	59	6.62	25.0	7	0.79
9.5	7	0.79	25.5	1	0.11
10.0	87	9.76	26.0	2	0.22
10.5	5	0.56	27.0	1	0.11
11.0	22	2.47	28.0	2	0.22
11.5	4	0.45	29.0	1	0.11
12.0	22	2.47	No information	22	2.47
<b>Total</b>			<b>891</b>		
			<b>100</b>		

10.7%

It shows as follows:

- Their professions in the order of number are agriculture (22%), retailers (19%), government officers (7%).

- In terms of age, 1/3 of them are below 14 years' old. Over 65 years are 3%.
- Utilization of land (responses are plural and duplicated) are for residential(68%), for fruits production (52%), for retailing (9%).
- Fruits production is for coconuts (50%), for mango (28%).
- Materials for houses are of wood (75%), of concrete (18%), of bamboo (3%).
- Ownerships of houses are of own (76%), of rental (3%) and of no reply (21%).
- The reason for no-reply may be due to no-realization or self-realization of their illegal occupancy because of inability of due procedures.
- The reaction to the road improvement project was asking for compensation (34%), claiming no problem (21%), with no place for resettlement (8%), claiming their houses be affected (7%), claiming their land be affected (5%) and silence (not happy) (4%).
- According to survey based only on roof type and house area carried out to 1,805 houses within tentative ROW, tin roof (81%), brick roof (8%), leaves (6%) concrete (5%), which were of different result.

## 2.2 Result of Present Study

A simple interview was carried out to the four houses selected at random from among those liable to be affected by improvement of the National Road No.1 along the road. Its result shows as follows:

- All the residents agree to the improvement of the National Road No.1
- All the residents identify the concept of ROW. On this basis, they build structures (houses, shops) within ROW. Thus they will follow the government guidance (if it is to set back), but claim for compensation for the preemptive right.
- For those who newly built houses and concrete structured buildings, they are advised to build their main building sufficiently apart from the road by the concerned agency. (Specific distance is not known). It is possible that the houses in the ROW can easily be replaced and they can continue business in the set-back location.

Interview No.1: Middle class households. Land area : 16m × 5m

1. The main building structure is 19m distant from the center of the road. (directed by the authority in concern at the time of construction)
2. They will follow the order of relocation if made by the concerned agency in relation to the widening of road in future.

3. They are doing business by encroaching the shops into the ROW connecting from the residential building. If the widening of road is made, they can continue business by withdrawing the shops.

Interview No.2: Middle class households built on wooden houses on the wooden pile (selling drinks, snacks etc), Land area: 20m × 9m

1. The main building is 25m distant from the centerline. Shops are only 10m away. Consisting of 10 family members with daily income of \$20. Employees are 6.
2. Due to very narrow present road, they reclaimed the land by their own money. If road can be widened and business might be affected, they would follow the government policy but with satisfactory compensation.

Interview No.3: Reinforced concrete building on piles, Land area 60m × 12m

1. Built in 1997. The living quarter is 21m distant from the centerline of the road.
2. Used for primary and middle schools. Number of students 600. In Cambodia as well, number of child decreases and hard competition in recruiting students.
3. Land cost seems to be \$42,000 for 5m × 25m. (This is equivalent to Yen 1,000,000 per “tsubo” or 3.3 m<sup>2</sup>. This figure looks too much and must be confirmed.)

Interview No.4: Shanty built on piles: Land area 20m × 16m.

1. The house of 5m × 5m roughly. Living quarter cum working space. Within tentative ROW30m.
2. They appreciate ROW.
3. Their profession is charging of battery and sales amount is \$12 per day. Cost is \$2 for gasoline per day.
4. A couple with three children in the primary school. They are suffering from noise and dusts from the road.
5. At the back of house, there remains some extra land. So, if ordered by the concerned authority, they can set back.

## CHAPTER 3 REVIEW OF ROAD IMPROVEMENT PLAN IN FS REPORT

The following shows the result of review made on the road improvement planned in the FS report from the viewpoint of minimizing the environmental and social impacts and, among all, minimizing the numbers of resettlement in this project.

### 3.1 Affected Houses

With an objective to make the road suitable to all-weather conditions, raising of the road formation level is planned by about one meter throughout the total length. By raising the top of embankment, width of the embankment is also enlarged as well and accordingly,

- 1) in addition to 1,805 houses reported in the FS report, other houses are newly affected,
- 2) some houses are more seriously affected within the said 1,805 houses, and;
- 3) inconvenience is anticipated for some houses to access the road.

The road improvement plan “Table 6 Outline of Study Results” in the FS Report states: “to keep allowance in vertical alignment by 50 cm in height over the high water level in flood of year 2000 (HWL)”. (This is same with outline and summary statement.) The vertical alignment is generally considered as height of road at the centerline, however, in the FS Report it is stated as shoulder height. Accordingly, actual road height will be added by asphalt overlay (0.5~0.6m) namely,  $HWL + 0.5m + 0.5\sim 0.6m = HWL + 1.0m\sim 1.1m$ . Water penetration into the pavement will cause deterioration, and from the viewpoint of pavement protection, this design is considered appropriate. This planned road height is also appropriate as compared to the other design of Japan and Bangladesh and Philippines where flood occurs frequently.

On the other hand, the drawing in FS Report shows planned road height at the centerline to be about 1.2m in average. However, at road shoulder, the gradient is 3% and therefore the height will be decreased to about 1 m. This will satisfy the conditions of all weathers unaffected by flood. In order to implement the above raising, the required width for construction consists of the following:

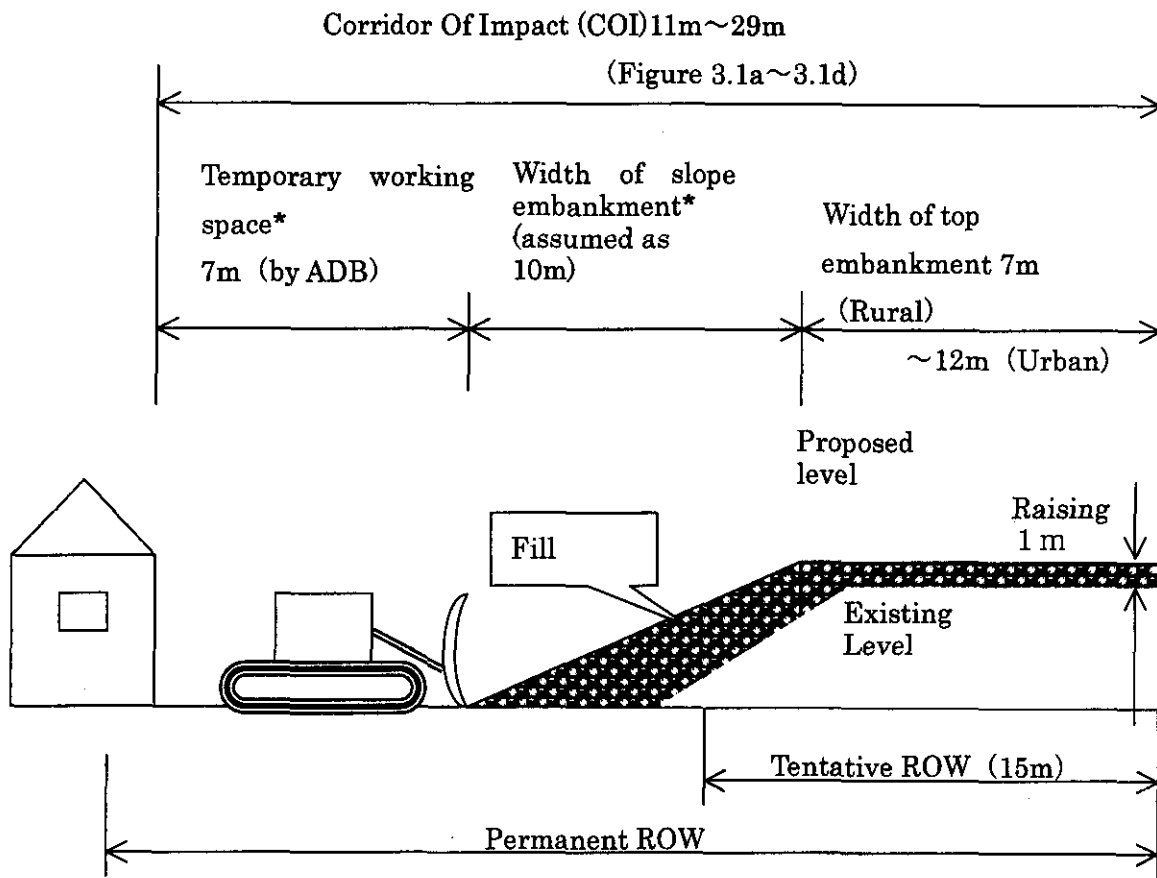
- Top embankment width,
- Slope for embankment and
- Temporary space for construction under the slope for earth filling



These are shown below as typical samples. As shown, depending on the construction method, almost 30m is required on one side which is equal width to permanent ROW as Corridor of Impact. Structures within that area may be required to be relocated.

Figure 3.1 COI for Road Improvement

Centerline



\*Both temporary construction space and width of slope can be reduced depending on the construction methods.

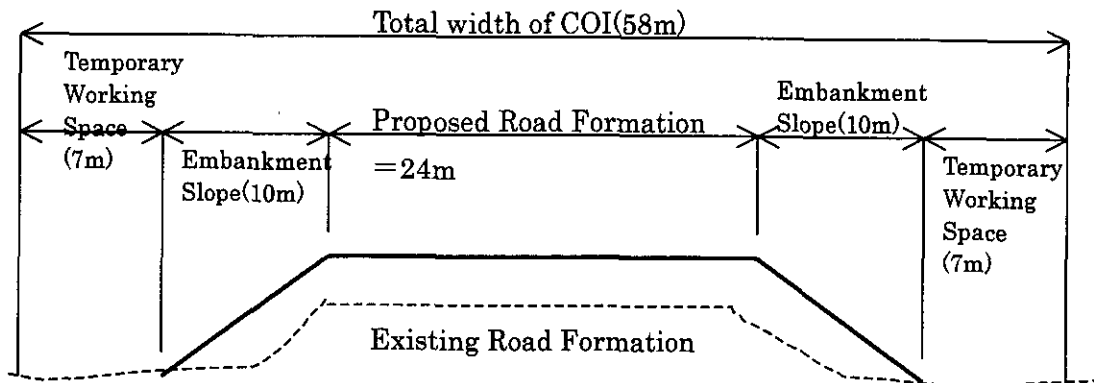


Figure 3.1a COI with Width of 58m

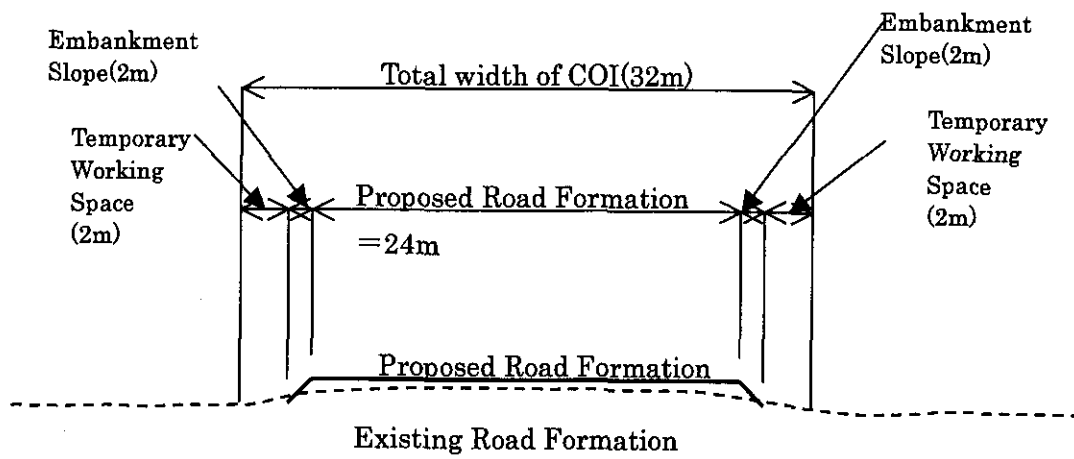


Figure 3.1b COI with total width of 32m

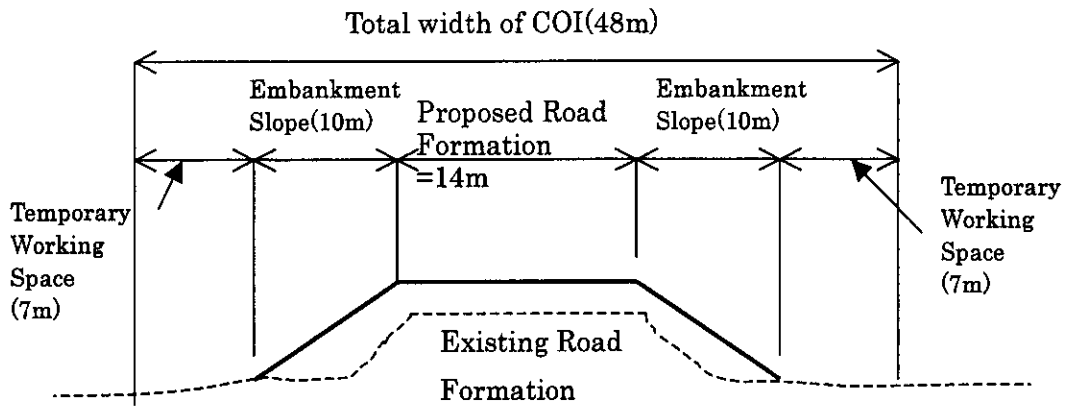


Figure 3.1c COI with Width of 48m

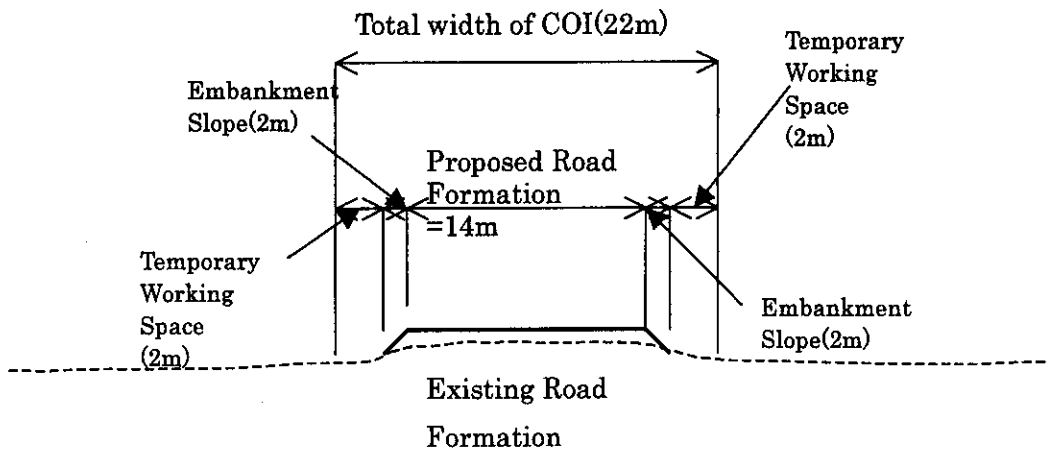
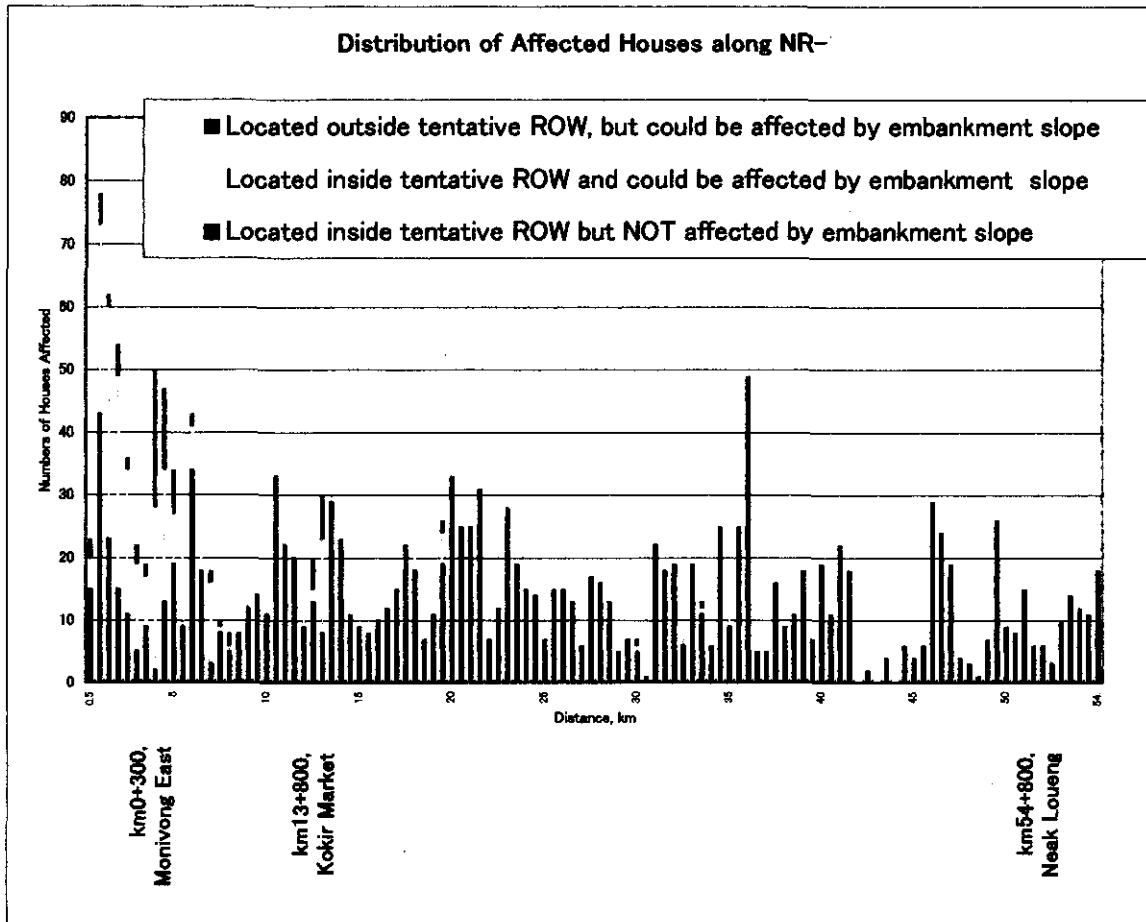


Figure 3.1d COI with total width of 22m

For implementation of works, the outline of houses which may be newly affected will be as follows:

1) Houses Newly Affected

1,805 houses are affected according to FS Report. This number includes those houses of which a part of the houses are within the tentative ROW area (each 15m from the centerline of the road, totally 30m). Those houses that are not in the tentative ROW are not counted. However, due to embankment slope by road improvement plan, required land width will exceed tentative ROW boundary and some may come so near as about 28m to the permanent ROW boundary (30m each from the center line to both left and right, totally 60m). Checking from the FS Report Vol.3—Drawing, additional houses is anticipated to suffer from this would be 93 besides 1,805 houses. Therefore, total number is 1,898 houses. The affected houses are allotted in Figure 3.2.



**Numbers of Houses Affected**

Total width of Road, m	Distance, km		Located outside tentative ROW, but could be affected by embankment slope	Located inside tentative ROW and could be affected by embankment slope	Located inside tentative ROW but NOT affected by embankment slope
	From	To			
24	0	0.3	0	0	0
24	0.3	3.5	22	151	121
24	3.5	7	46	88	98
21	7	13.5	16	37	191
24	13.5	14	0	0	23
14	14	36	5	31	679
14	36	55.3	4	2	384
<b>Total</b>			93	309	1496
<b>Ground Total</b>			93	1,805	

Note: All the figures presented are estimated based on the drawings of Feasibility Study Report.

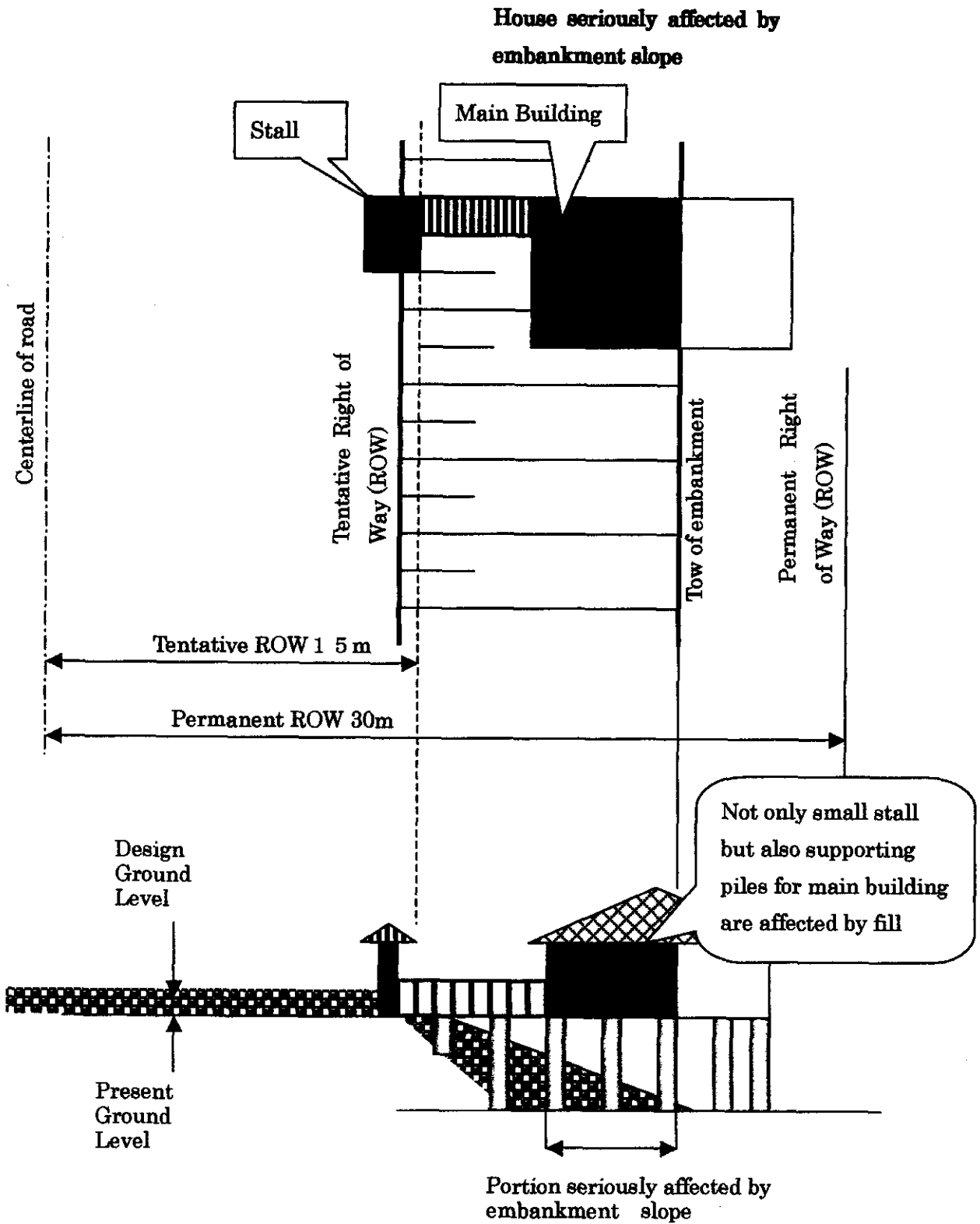
**Figure 3.2 Project Affected Houses**

2) Houses which will be affected more seriously

In addition to the number of affected houses, the level of impact is to be pointed out within the said 1,805 houses. Namely, not only temporary stall within tentative ROW, but also the residential building itself, which were built outside of the tentative ROW can be seriously affected by filling work of embankment slope. Numbers of these houses are estimated as about 300 (see Figure 3.2). As shown on Figure 3.3, these impacts are centered at the portion around Km 0.3 to Km 13.5. For those area which have buildings densely alongside the road and, therefore, with difficulty of slope formation continuously on, it may be said that retaining wall will be an useful method to decrease number of houses to be relocated.

3) Houses which become inconvenient for access to road

The National Road No.1 is no doubt Asian Highway and at the same time it is a road for daily life for the people living alongside the road. In this respect, appropriate attention is required. At present, although there are not much difficulty for entry and exit to the shops alongside the road, however there will be such buildings as will affect entry and exit to the shops if the improvement plan for road raising works is implemented. Particularly, for section with road width between 21 – 24m upto Km 14, the raising of 1m will make the road slope very steep and this may adversely affect the business activities of shops. Due to height difference between shops entrance and road, loading and unloading of heavy articles will cause danger and as the case may be, this would bring forth accident. Accordingly, this would give adverse impact from social environmental aspects and requires cautious attention including the life of residents.



**Figure 3.3 Seriously Affected Houses by Embankment Slope**

## 3.2 Mitigation Measures

### Result of study on by-pass

The subject given as review work of the present plan is to find out measure to reduce number of houses that will be affected. However, there is no effective idea on reducing the number of project affected houses, and there is no other way but to consider by-passing the area of many buildings. Namely, study of the by-pass plan and the possible sections are the following two:

1) Section between near Km 2.0 and near Km 5.0

This section is a part of the Asian Highway, and it will not be a section which causes problem in horizontal alignment. Although there are a relatively large number of houses that will be affected by the project and therefore it could be feasible to by-pass this area in the purpose to avoid resettlement as much as possible, it is noted that construction of new road at swampy, soft ground area usually costs a huge amount of money.

“Urban Transport Plan of Phnom Penh (JICA Feasibility Study)” was executed in November 2001. This study investigates the by-pass in parallel to the present road, however it was not adopted. The reason for no adoption must be reconfirmed.

2) Section between Km 12.3 and Km 15.8

This section includes curved area with Kokir Market at the center, and there are many people and cars. The speed control is required in this section for safety reason. By-pass road is expected to be studied at some appropriate occasion in future. Merit is expected for decreasing the number of buildings that will be affected by by-pass plan.

FS report was based on ADB-FS carried out in 1995, however the study was conducted on the total National Road No.1 and thereafter section C-2 (Neak Loueng—Vietnam border) was proceeded into detailed design and implementation. ADB FS took up the by-pass plan near Kokir market, but it was reported to be not adopted. The reason for this must be reconfirmed as well.



### Summary of Review of Road Improvement Plan under FS Report

The review of the contents of F/S report “The Improvement of National Road No.a (Phnom Penh – Neak Loeung Section) was conducted with a view of decreasing number of structures which will be subject to relocation from 1,805 as much as possible. However, as a result, it is considered at present not feasible to decrease number of project affected houses unless altering the contents of the present plan such as horizontal alignment partially.

Therefore, in order to decrease the number of project affected houses:

- (1) To minimize the height of raising road, further detailed study is required from location to location.
- (2) Depending on locations, required land width should be narrowed by means of retaining wall.

On these issues, all the concerned people including the FS study team members (JICA and Consultants) should study and establish common perception. Then, the basic design work should be commenced.

## CHAPTER 4 LEGISLATION RELATED TO LAND

### 4.1 History of Land-related legislation

Originally, the private ownership of land was admitted in Cambodia, however land registration book and land map were destroyed under social economic policy. Thereafter, with a transition to market economy, again the land ownership has been reintroduced. At this time, the past land ownership was dissolved and the existing land occupants have been admitted as owner. At present, land ownership has been granted by registration of land, however registration is delayed and disputes over land have been increased due to the lack of appeal by the government, technology and capability (delay in land topographic survey, demarcation, boundary piling, issue of registration certificate ) and not understanding on the registration of ownership by people in general. According to Mr. Sik Boreak<sup>4)</sup>, the law related to land in Cambodia is historically as follows:

**Table 4.1 Legislation related to land**

Year	Events	Outline
1884	Land decree issued	Law allowing private ownership. This was not executed until 1912 because of objection under the French domination.
1920's	Issue of Cambodian citizen decree	Ownership allowed after 5 years' occupancy (cropping)
1954-1975's	Khmer Rouge seized power	"Private ownership" was abandoned. Land belonged to "public". Maps and land registration book were abandoned.
1979-1989's	Centrally planned economy	Invasion by Vietnamese. Joint ownership of land continued under the influence.
1989s	Market economy introduced	After failure of centrally planned economy, policy changed to private ownership. By the sub-decree of Minister's Committee No.25 (1989.4.22), the occupant of land after issue of this rule is recognized as owner. Also, by the political decree No.3 (1989.6.3), (1) all the land belong to the State and people have the right to own and use it. (2) land ownership before 1979 became ineffective and the occupants after January 7,

		1979 have been allowed to be the landowner.
1992	Revision of land law	By Article 1, reaffirmed that “the land belongs to the State and the ownership before 1979 is not recognized” And by Article 2, “Cambodians have right to possess the land”
1993	Revision of the Constitution	By Article 44 of the Constitution, “The state has the right to seize the land for the purpose of public ” was announced.
September 27, 1999	Prime Minister’s declaration	Enforcement of removal of illegal occupants of the state land and width of ROW for road and railway was announced
August 2001	New Land Law	By Article 30, ownership is to be recognized of the land whose ownership is not existing by 5 years’ occupancy.

Legal expert of Australia visited in June 2003 to train Cambodian judges and lawyers how to resolve disputes by the support of ADB and Ministry of Justice<sup>5)</sup>, as follows (Cambodia Daily July 2, 2003).

- Without some proper land law to protect the investors, overseas investors would not invest in Cambodia.
- Land ownership has become to be recognized after 5 years’ of occupancy. However, the procedure for land registration is difficult, and many land disputes are arising.
- The 2001 land registration system aims at eliminate land dispute and give legal security to landowners, something that has eluded them for decades.
- This registration system is similar to Australia’s which will give effect after some ten years. In Thailand, it took 18 years to complete this system.
- The Cambodian government is now conducting topography, piling and registration to record 1 million parcels of land in 10 provinces and Phnom Penh over 5 years.
- So far, 84,000 parcels of land have been registered by pilot registration ended in 1997(in 2001, 540,000 parcels: we will explain this figure later). It is hoped that commencement of system will be made after general election of July 27.
- A sub-decree passed in May 2002 mandated the creation of the National Cadastral Commission to settle as many land disputes as possible. But the agency has yet to process many cases because it is still waiting for the Ministry of Land Management to elaborate on the Commission’s jurisdiction. Once it is determined, provincial and municipal courts will no longer process land-dispute

cases.

- The commission was set up with clear rules to ensure fairness, transparency and due process.
- The same sub-decree also outlined the land registration process. Every parcel of land is visited by a registration team, which then demarcates the land boundaries and issues the land title. Information on the land parcels is made publicly available for 30 days (as a provisional period whether the dispute exists or not) for final registry.
- Mr. Thun Saray, Director of the human rights group, insisted as follows:

-Some family in Sihanouk Ville living on the land for more than five years claimed that the government officials registered their land (as land belonging to the others) without informing them that the land needed to be registered (as belonging to our owns).

When the residents noted they no longer owned the land according to the register, the 30 days (provision registration period) period to dispute land claims had expired.

Public information system concerning the registration is an integral part of registration. The meetings must be held to explain the residents to tell registration of land in each village. There have not been complaints from those residents who want registration.

## 4.2 Understanding of Land for Road

There was a concept of ROW belonging to the government to be 50-60m for road from the colonial period. At present, the residents along the road have recognition of this ROW, though vaguely. Also, the concerned agency advise to build the concrete houses sufficiently apart from the road. On September 27, 1999, Prime Minister Fun Sen ordered the concerned agency to remove the illegal occupants within ROW in future. Also, it was declared that the width of ROW should be amended as follows:

**Table 4.2 ROW ordered by the Prime Minister's Order to Remove Illegal Occupants in 1999**

	Road	ROW width
National road	No. 1,4 and 5	60m
National road	No. 2,3,6,7----- (one digit)	50m at minimum
National road	No. 11,22, 64, 78 ----- (two digits)	50m
Provincial roads		40m
Communication roads		30m

According to FS Report, if the removal is made of all the residents within ROW60m of the National Road No.1, the social impact would be too great. Therefore, it is proposed that the "tentative ROW" is set at 30m which is near to the net road width and the residents, within the tentative ROW, shall be relocated to the place outside the tentative ROW 30m but inside ROW 60m. Thereby, 4,000 households within the ROW can be decreased to about 1,805 houses only within tentative ROW. This concept is similar to ADB's concept of "Relocating the residents only within Corridor of Impact (COI)", which will be stated later. This concept is worth of evaluation.

The following points have been obtained as a result of hearing of the meaning of the Prime Minister's declaration on ROW in urban area which is the subject of dispute on resettlement compensation between NGO and Cambodian Government.

- 1) View of MPWT: ROW should be flexible at urban area.

MPWT expressed that there is no statement that ROW should be minimum 30m in width, however as the case may be, it could be less than 60m in width and the

urban area means not just administrative border but area where there are many houses.

2) View of LAC (NGO): ROW is not applicable at populated area.

LAC considers that there is no ROW at all in the city area. However, it should be considered as common sense that the present road occupancy is taken as ROW at minimum.

3) Some English teacher of Cambodian nationality: The above restriction of the right of way is not applicable to populous place.

According to this teacher, “not applicable” does not mean “there is not” but implies more broadly. . It should not be taken narrow. As for “city area”, he interprets it as populous area, same as LAC.

The FS report states that “In the Prime Minister’s declaration in 1999 regarding ROW, the width of ROW should be 60m in rural area and minimum 30m in city area though considered with flexibility”. What MPWT says “flexible” is correct in one sense. Like this, there are difference in the interpretation among three parties however, it was found that there is no definitive interpretation that “in the city area (or populous area), it should be minimum 30m”. Resettlement plan must be formulated by confirming the official meaning of ROW.

#### **4.3 Land Registration**

In related to land registration, Mr. So Sovannatith<sup>8)</sup> stated as follows. In 1989, land privatization was allowed and more than 4 million applications for land registration were submitted and only about 540,000 were issued. The reason for delay of issuance according to the concerned authority is:

- (1) Residents do not appreciate the importance of registration certificate and
- (2) They do not know the procedure for obtaining registration certificate.

However, it is not reasonable to explain that the receipt of over 4 million applications does not signify the “lack of importance”.

Certainly, in 1980s, land was not generating income particularly in farmland. The land was just for agriculture or for living only and there was no market for sale and transaction of land. Land transaction was conducted not by laws but by the agreement with neighbors or with village chairman unofficially. In this way, the importance of land was not much emphasized, and thus people were not concerned with ownership of land. According to residents, they attributed it to lengthy procedures to obtain the ownership (too much time and as a result, are forced to pay some unofficial fees).

Today, the holders of land registration certificates are considered to be landowners. However, land registration is a matter belonging to the tax authority of the land, but the issuance of certificates is very slow. If the applications for land which has stamp of receipt, then it stands for substantial certificate of land. (According to Land Law 39<sup>14)</sup> dated June 20, 2001, the application for land ownership was deemed to be provisional certificate and land transaction could be made based on this.) Mr. Sik's report of year 2000, states that only 1% of residents hold official land ownership certificate<sup>4)</sup>. According to ADB, only 25% of the rural farmers have land ownership certificate or equivalent applications thereto in 1999<sup>9)</sup>.

## **CHAPTER 5 RESETTLEMENT POLICY**

### **5.1 Resettlement Policy of the International Funding Agencies**

#### **5.1.1 Guideline of World Bank**

The World Bank's guideline related to resettlement made the following open to the public as:

- Operation Policies (OP) 4.12 Involuntary Resettlement, December 2001:  
OP4.12 was established together with BP4.12 to replace the old guideline OD4.30. It outlines the resettlement policy, area affected, mitigation of effect, resident to be compensated for, plan, execution and monitoring of RAP, assistance to entrepreneurs. The basic policy is as follows:

- (1) To avoid involuntary resettlement wherever feasible,
- (2) To minimize the resettlement where population displacement is unavoidable by choosing alternative viable project option and
- (3) Where involuntary resettlement is unavoidable, to ensure that the life level of affected people are equal or better than before relocation

The resettlement policy stated here is what ADB follows.

- Bank Procedure (BP) 4.12 Supplementary explanation on RAP evaluation, implementation supervision etc.
- Good Practice (GP) 14.70 Involving non governmental organizations in Bank-Supported Activities: Reinforce the necessity of tie-up with NGO.

The World Bank's Resettlement Guideline has a long history and is a basis of ADB guideline. The major difference from ADB guideline of year 2002 is, according to paragraph OP4.12<sup>18)</sup>, that:

World Bank (1) does not extend loan for cash compensation to the affected persons and (2) does not extend loan to the land acquisition cost (including compensation for land acquisition), although it may finance the cost of land improvement associated with resettlement activities.



Guidelines among multi-national and bi-lateral donor agencies are compared in Table 5.1. As shown therein, many organizations base their basis on the World Bank's guideline.

**Table5.1 Comparison of guideline on information disclosure among multi-national and bi-lateral donor agencies**

<b>Donor agency</b>	<b>WB</b>	<b>ADB</b>	<b>OECD</b>	<b>JBIC</b>	<b>JICA</b>
Source	OP 4.01 OP 4.12 BP 17.50	Environmental policy of Asian Development Bank, November 2002 OMSection F2/BP, 29 October 2003	OECD home page, Reinforce common approach to Environment in OECD export credit	Japan Bank for International Cooperation Guidelines for Confirmation of Environment and Social Considerations, April 2002	Japan International Cooperation Agency Guidelines for Environmental and Social Considerations (draft) December 2003
Information disclosure	As to all of category A projects and a part of category B projects, the following information to be provided to PAPs and NGO: (1) Purpose of project, project description (2) Preliminary information about environmental and social impacts (3) Draft EA report	As to all of category A projects and a part of category B projects, summary of IEE/EIA reports to be aired on web page. Full text will be made available, for viewing 120 days before loan is approved, to PAPs and NGO.	Public opening of EIA report 30 days before loan approval. Depending on the legislation of the project country, information disclosure of categories A and B projects every year.	Following shall be disclosed: (1) Categorizing and environment reviewing results (2) EIA result to be made public in the project country.	Disclosed are results of categorizing for category A and part of category B projects, various reports such as S/W, Interim Report and final report; recommendation etc
Timing of public consultation	As to all of category A projects and a part of category B projects, following two times with PAPs and NGO in the minimum: (1) Preparation of TOR for EIA (2) Preparation of final EIA report Other times when necessary.	As to all of category A projects and a part of category B projects, opinions from PAPs and NGO should be reflected to appropriate plan and environment measures at early stage. implementation is to be made. The following	Periodically, exchange of opinions with interested stakeholders	As the case may be, when environmental social impact issue arises, confirm that discussion should be made between project implementing agency and stakeholder. This must be made through contractual documents.	Consultation should be made at: (1) Categorizing, for preparatory study (2) All category A projects and a part of category B projects are recategorize (3) After various reports made such as interim report and after draft

Donor agency	WB	ADB	OECD	JBIC	JICA
		two times: <ul style="list-style-type: none"> <li>• Preparation of TOR for EIA</li> <li>• Preparation of final EIA report before loan is approved</li> </ul>			final report is made.
Definition of Category A	Projects with impacts (1) Unable to resotore (2) Miscellaneous (3) Unforeseeable (4) Severely negative	Projects which have potential of affecting environment severely. As to resettlement, projects in which over 200 persons (1) are to be relocated or (2) suffer income reduction by over 10%.	Projects with sectors and regions are located prone to be affected such as projects with great possibility of being affected in great detail.	Same as OECD	Same as OECD
Involuntary resettlement	Resettlement to be avoided or to be minimized where feasible. In case this cannot be avoided, measures are to be made and level of livelihood should be made not lower than before.	Same as WB	Same as WB	Reference to be made to the effort to avoid involuntary resettlement, compensation /assistance and monitoring.	Same as JBIC
Content of EIA report	Outline, policy, project summary, present environment data, effect to the environment, study of alternative plan and environmental mitigation plan.		Same of WB	Same as WB	Same as WB
List of sensitive sectors and areas			As category A projects, Oil refinery of over 500 ton per day and other 25 items	Sector prone to be affected (mine, oil, natural gas development), special characteristics prone to be affected (large scale involuntary resettlement etc) and regions prone to be affected (national park etc)	Reference is made to JBIC
Screening format				Project name, executing agency, contents of	JBIC

Donor agency	WB	ADB	OECD	JBIC	JICA
				project, necessity of EIA, whether there are area prone to be affected in the vicinity, sector, environment social impact etc	
Monitoring form				Approval /permission, contamination measures(air pollution such as SOX, NOX etc and water such as pH, COD etc) natural environment and social one.	

### 5.1.2 Guideline of ADB

ADB, in case of resettlement, make it a condition for category A project that “over 200 persons are (1) resettled or (2) their income decrease by over 10%” (see Fig above). This should be noted. This is a clear and severe condition that are not observed in other guidelines.

The basic policy of ADB for resettlement is shown in the “Operational Manual, Bank Policy (BP)” dated October 29, 2003. However, the actual status of compensation is changing by the resettlement plan of each project (Table 5.2). The outline of the resettlement plans in the past is as follows:

- According to “ Cambodia Resettlement Implementation Plan<sup>12)</sup> dated October 1999, Land within ROW will not be compensated. However, for those residents who have no place for resettlement, replacement land will be provided. (ADB/IRC, October 1999, Cambodia Resettlement Implementation Plan for Ho Chi Minh City to Phnom Penh Highway Improvement Project).
- According to Great Mekong Cambodia Road Improvement Plan<sup>14)</sup>, August 2002 RAP”, APs will therefore be provided with land for land use lost in the ROW or will be provided with the cash compensation for land purchase or for other means of permanent income creation, assisted and monitored ... At present, ADB makes

the policy of August 2002 as common policy regarding road.

- As the case may be, ADB may approve to include cost of compensation for the project affected persons in the loan in the clause 1.2 Involuntary Resettlement under the draft guideline of 2003<sup>17)</sup>. (ADB, 21 April 2003, Draft Guideline on Monitoring & Evaluation of Resettlement)

Table 5.2 Comparison of RAP depending on Different Donors

Project	World Bank									Asian Development Bank									JICA																																																														
	Road Rehabilitation Project <sup>10)</sup>			Ho Chi Minh to Phnom Penh Highway Improvement <sup>11)</sup>			Ho Chi Minh to Phnom Penh Highway Improvement <sup>12)</sup>			Primary Road Restoration Project <sup>13)</sup>			GMS Cambodia Road Improvement Project <sup>14)</sup>			Stung Chinit Irrigation and Infrastructure Project <sup>15)</sup>			Prek thnot Flood channel, Emergency Rehabilitation Project <sup>16)</sup>			The Improvement of National Road No.1 <sup>3)</sup>																																																											
Location of Project	N R - 3, 6 Sihanoukville, Phnom Penh and Siem Reap									NR- 1(Phnom Penh- Bavet Section)									NR- 5, 6, 7									NR- 5, 6									Kampong Thom									NR- 2									Phnom Penh- Neak Loueng section																										
Content	Road improvement 115.2km									Road improvement 161km									Road improvement 105.5km																		6,500~10,000ha irrigation facilities									Waterway construction 6.5kmx100m									Road improvement 55.8kmx80m																										
Prepared by	1998/6 by JOC/Oricon									April 1997 by Scott Wilson Kirkpatrick									October 1999 by IRC									June 2000									August 2002									January 2003									April 2002									March 2003																	
Contract	April 1999																																																																																
Area of total land acquired	?									67,877 m <sup>2</sup> inside COI ( assuming same as residential land area )									59,229 m <sup>2</sup> inside COI ( Private land for Bypass 203,417 m <sup>2</sup> excluded)									28,727 m <sup>2</sup>									ROW 60,000 m <sup>2</sup>									Farm land 12,070,000 m <sup>2</sup> and industrial area 350,000 m <sup>2</sup>									Farm land 663,983 m <sup>2</sup>																										
Area of residential land acquired	689 m <sup>2</sup>									67,877 m <sup>2</sup> inside COI									29,528 m <sup>2</sup>									28,727 m <sup>2</sup>									3,400 m <sup>2</sup>									0 m <sup>2</sup>									44,742 m <sup>2</sup>																										
Affected houses and land	Setback of 1,818 household and Structures with 700m <sup>2</sup> out of COI (still inside ROW)									1,184 PAHs with 5,920 PAPs									1,086 PAHs . Residential houses of 807 HH acquired, in which 305 HH become landless									1,879 household affected , 347house moved									2,000 households affected and 210 houses moved									1,443 households affected and 780 households moved									By rearrange of alignment, no house has to move									1,805 houses setback out of tentative ROW																	
Compensation for land	No compensation to land in ROW									Land in ROW compensated									No compensation to land in ROW									No compensation to land in ROW									Land in ROW compensated									Land in ROW compensated									Land in ROW compensated									Land in ROW compensated									No compensation for land in ROW								
Evaluation										This RAP was not implemented and replaced with the one of October 1999									( 1 ) Mandate and capacity of IRC not clear ( 2 ) DMS not enough ( 3 ) Relocation site not ready									(1) DMS and compensation estimation by IRC unclear (2) Study bypass and road width again to reduce PAHs number																																																					
Items	Pay to	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount	Q'ty	Rate \$	Amount																																																		
Allowance	Disruption	PAPs	HH	40	0	HH	40	0	HH	40	32,280	HH	40	75,160	HH	40	80,000	HH	40	57,680	HH	40	9,200	HH	40	2,000	HH	40	2,000	HH	40	2,000																																																	
	Landless	PAPs	HH	20	1,420	HH	20	0	HH	20	1,680	HH	20	3,800	HH	20	16,000	HH	20	16,000	HH	20	500	HH	20	400	HH	20	8,000	HH	20	8,000																																																	
	Widow	PAPs	HH	20	9,760	HH	20	0	HH	20	740	HH	20	8,640	HH	20	16,000	HH	20	16,000	HH	20	1,420	HH	20	100	HH	20	2,000	HH	20	2,000																																																	
	Cambodian Poor	PAPs	HH	20	5,980	HH	20	0	HH	20	560	HH	20	460	HH	20	31,200	HH	20	31,200	HH	20	520	HH	20	340	HH	20	2,000	HH	20	2,000																																																	
	Disable	PAPs	HH	20	0	HH	20	0	HH	20	305	HH	40	12,200	HH	40	13,880	HH	40	13,880	HH	40	780	HH	40	31,200	HH	40	31,200	HH	40	31,200																																																	
	Aged	PAPs	HH	40	0	HH	40	0	HH	40	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15																																																
	Transport	PAPs	HH	40	0	HH	40	0	HH	40	40	12,200	HH	40	13,880	HH	40	13,880	HH	40	13,880	HH	40	780	HH	40	31,200	HH	40	31,200	HH	40	31,200																																																
Tenant	PAPs	HH	40	0	HH	40	0	HH	40	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15	0	15																																																	
Livelihood	Employment	PAPs																																																																															
	Stall/shop	PAPs																																																																															
Structure	Structure 1	PAPs	338 m	3	1,014	338 m	25.77	8,700	338 m	9	84,423	338 m	4.5	1,521	338 m	500	165,000	338 m	4.5	1,521	338 m	40	13,920	338 m	4.5	1,521	338 m	1,910 m	25	8,596																																																			
	Structure 2	PAPs	348 m	8	2,784	348 m	68.90	23,955	348 m	19.5	6,780	348 m	12	42,960	348 m	1,000	348,000	348 m	12	42,960	348 m	12	42,960	348 m	12	42,960	348 m	35,819 m	12	429,830																																																			
	Structure 3	PAPs	6 m	53	318	6 m	124.97	749.92	6 m	59	349.53	6 m	85	507.12	6 m	300	1,800	6 m	85	507.12	6 m	120	720	6 m	120	720	6 m	3,746 m	85	318,427																																																			
	Structure 4	PAPs																																																																															
	Stall	PAPs																																																																															
	Well	PAPs	6 no	100	600																																																																												
	Pumping well	PAPs																																																																															
	Pond	PAPs																																																																															
	Fence etc	PAPs	6,880 m	0.75	5,160																																																																												
	Wooden fence	PAPs																																																																															
	Wire fence	PAPs																																																																															
	Concrete/metal fences	PAPs																																																																															
	Wooden piled corridor	PAPs																																																																															
	Concrete piled corridor	PAPs																																																																															
	Entrance with culvert	PAPs																																																																															
Entrance of Pagoda	PAPs																																																																																
Stupa	PAPs																																																																																
Cemetery	PAPs																																																																																
Gas station	PAPs																																																																																
Land	Land for Structure 1	PAPs																																																																															
	Land for Structure 2	PAPs																																																																															
	Land for Structure 3	PAPs																																																																															
	Land for Structure 4	PAPs																																																																															
	Agriculture (1)	PAPs																																																																															
	Agriculture (2)	PAPs																																																																															
	Agriculture (3)	PAPs																																																																															
Residential land	PAPs																																																																																
Farm land	PAPs																																																																																
Crops	Rice	PAPs	3,891 kg	1.0	3,891	Market price for annual crops			3,891 m	0.10	389.1	3,891 m	0.10	389.1	3,891 m	0.10	389.1	3,891 m	0.10	389.1	3,891 m	0.10	389.1	3,891 m	0.10	389.1	3,891 m	0.10	389.1	3,891 m	0.10	389.1																																																	
	Vegetable	PAPs	7,245 kg	4.0	28,980	Market price plus development cost for perennial crops			7,245 m	0.20	1,449	7,245 m	0.20	1,449	7,245 m	0.20	1,449	7,245 m	0.20	1,449	7,245 m	0.20	1,449	7,245 m	0.20	1,449	7,245 m	0.20	1,449	7,245 m	0.20	1,449																																																	
	Cash crop	PAPs	7,016 kg	2.0	14,032				7,016 m	0.10	701.6	7,016 m	0.10	701.6	7,016 m	0.10	701.6	7,016 m	0.10	701.6	7,016 m	0.10	701.6	7,016 m	0.10	701.6	7,016 m	0.10	701.6	7,016 m	0.10	701.6																																																	
	Re-planting	PAPs																																																																															
	Mango	PAPs	684 no	23.03	15,751				684 no	30	20,520	684 no	30	20,520	684 no	30	20,520	684 no	30	20,520	684 no	30	20,520	684 no	30	20,520	684 no	30	20,520	684 no	30	20,520																																																	
	Tamarindo	PAPs	32 no	15.79	505				32 no	5	160	32 no	10	320	32 no	10	320	32 no	10	320	32 no	10	320	32 no	10	320	32 no	10	320	32 no	10	320																																																	
	Coconut	PAPs	736 no	9.08	6,679				736 no	15	11,040	736 no	15	11,040	736 no	15	11,040	736 no	15	11,040	736 no	15	11,040	736 no	15	11,040	736 no	15	11,040	736 no	15	11,040																																																	
	Sugar palm	PAPs	1,693 no	10.00	16,930				1,693 no	15	25,395	1,693 no	15	25,395	1,693 no	15	25,395	1,693 no	15	25,395	1,693 no	15																																																											

### **5.1.3 Guideline of JBIC**

On 1 April 2002, Japan Bank for International Cooperation (JBIC) enacted and officially announced “Japan Bank for International Cooperation Guidelines for Confirmation of Environmental and Social Considerations” which integrated two “Guidelines for Environmental Consideration” for its international financial operation and overseas economic cooperation. The purpose of the guideline is that the projects for developing countries and new emerging market which will generate negative impact will be suspended of loan by Japanese government agency or will be assisted with due attention .

JBIC’s guideline for environmental social impact was scheduled for completion of implementation on 1 October 2003. The outline of the Guidelines is as follows:

- 1) Borrower shall be responsible for environmental and social considerations but JBIC will carry out (1) screening (classification of category), (2) check (environmental review) if the borrower has suitably planned its social environmental consideration before financing and if the borrower has an organization to carry it out, and (3) follow-up study (monitoring) after the finance.
  
- 2) In order for securing accountability and transparency of project implementation, JBIC will (1) open to public the outline of project after completion of monitoring and the outcome and basis of the screening, (2) announce in its Website important information during the environmental review period, environmental assessment report, and certificate of authorization on environment, and others, (3) provide information for social environmental consideration to third parties when so requested and where possible to do so.

In addition to above Guidelines, JBIC officially announced on 1 May 2003 “Enactment of Requirements for Lodging a Protest based upon JBIC Guidelines for Confirmation of Social Environmental Consideration”. A complete implementation is scheduled for October 1, 2003 same as the Guidelines. This system for lodging a protest is not seen in any bilateral lending institutions and, in some cases, JBIC will impose restrictions on releasing information for protection of abuse so that the competitive power of Japanese companies may not be diminished at the time of public offering of information as requested by such protest.

The basis for this guideline is “Environmental Common Approach” by OECD’s environmental and social impacts guideline. According to OECD’s home page, “there is no legal binding in OCDD’s guideline, however the recommendation indicates political intention of the member countries and will give great deal of moral impact in fact. Member countries are expected to implement the recommendation as much as possible”.

Also, for formulating the guideline, JBIC’s explanation made in public consultation that “compared the project country’s environment guideline against the international standard (World Bank’s standard), more severe one should be taken. However, if the one used in the project country is considered practical, then it would not be eliminated for selection. (For instance, it is useless to apply severe environment restriction to the dessert where there are no residents.)”. This sort of flexible guideline is to be noted when applying the guideline.

#### **5.1.4 Guideline of JICA**

Japan International Cooperation Agency Guidelines for Environmental and Social Considerations” was submitted on 22 September 2003 as a draft after 19 times conferences for revision starting on 3 December 2003. The conferences were composed of specialists from universities, NGO, private entities, and governmental ministries. This recommendation is based upon “JBIC Guidelines for Confirmation of Social Environmental Considerations” and in reply to recommendation, “JICA Guidelines for Environmental and Social Considerations (draft)” was issued in December 2003. The guideline (draft) list the following items as basic policy of environmental and social impact basic policy.

- 1) The type of impacts addressed by JICA covers a wide range of environmental and social influences
- 2) Environmental and social consideration s are addressed from the early stage of the project.
- 3) A follow-up activity is done during a certain necessary period after a cooperation project terminated.
- 4) JICA keeps accountability and transparency when conducting a cooperation activity
- 5) JICA incorporates stakeholders’ opinions in decision-making process
- 6) JICA itself disclosures information on environmental and social considerations.

- 7) JICA works hard for strengthening an organization and an implementing ability.

The complete implementation of the guideline is scheduled for April 2004. The special features of this guideline is putting emphasis on information disclosure and public consultation and their implementation timing are specified in detail. In the Fig 5.2(a) – 5.2(d), flows of information disclosure and public consultation (discussion with stakeholders) from the stage of confirmation of request to the study report of the master plan. The sum-up is shown in Table 5.3.



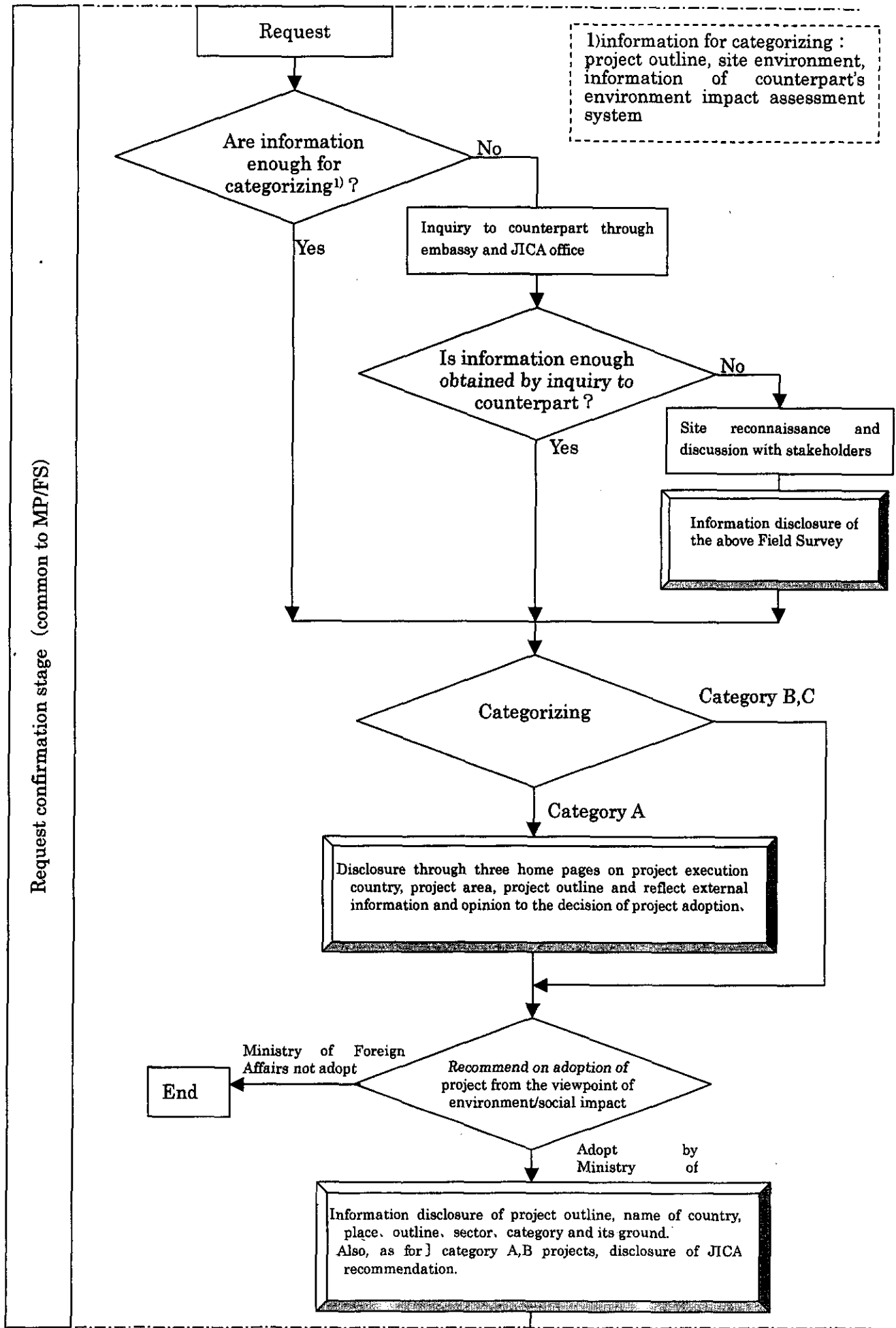


Figure 5.1(a) Flows of MP/FS Studies

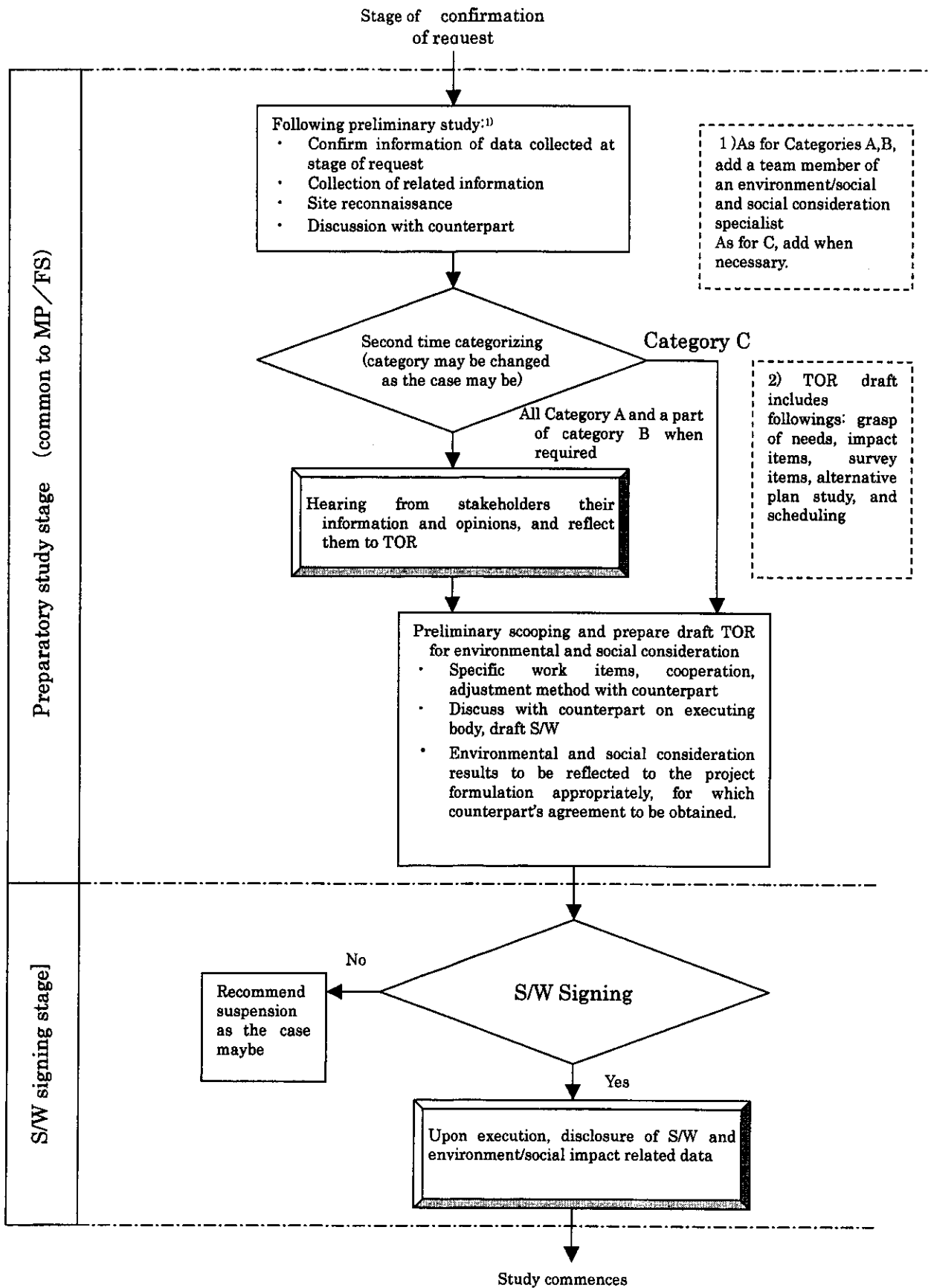


Figure 5.1(b) Flows of MP/FS Studies

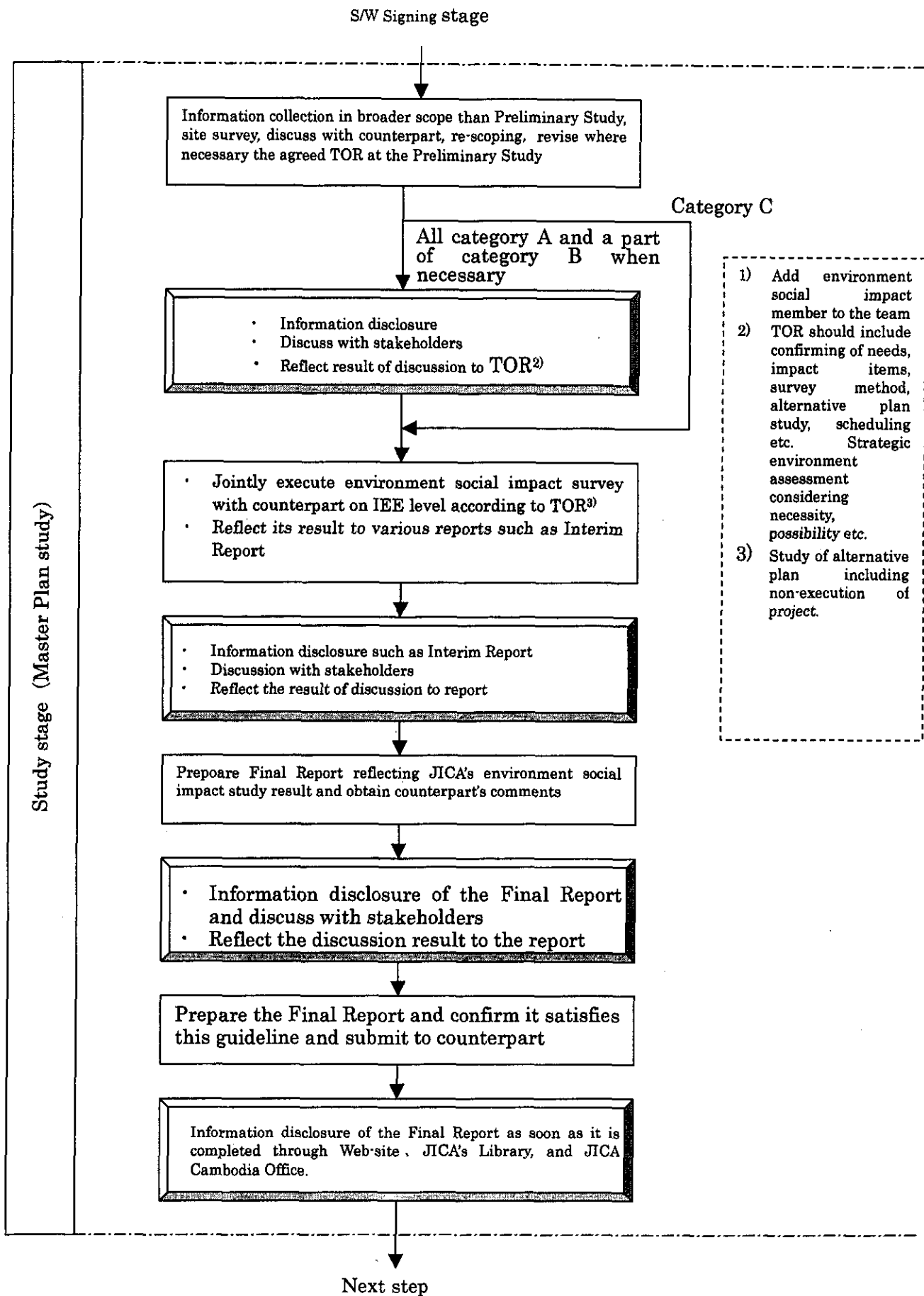


Figure 5.1(c) Flows of MP/FS Studies

**Table 5.3 Information Disclosure requested by Japan International Cooperation Agency Guidelines for Environmental and Social Considerations**

Stage		When	Information Disclosed/Consultation	
Request Review		Site reconnaissance and consultation with concerned persons for categorization	Results of the site reconnaissance and consultation including, country, area, project description and EIA system of recipient government	
		If the project is categorized as A	Country, area and project description for a certain period on website before making recommendation in the purpose to incorporate the external information and opinion collected	
		Conclusion of international agreement by MOFA	Name, country, location, outline, sector and categorization, with reasons, of the project	
Preparatory Study		After a provisional scoping	Field survey and hearing from stakeholders	
S/W Signature		After signature	S/W and information regarding environmental and social consideration	
Full Scale Study	Master Plan Study	After secondary scoping when projects were categorized as either A study or sometimes B study if necessary	For Category A, disclose of a draft scoping with stakeholders consultation (for category B project only when if necessary) to incorporate to TOR for IEE	
		Considering outline of environmental and social consideration for Category A study	For a Category A study, a series of stakeholder consultations be hold to incorporate their opinion and for category B study only when if necessary	
		Preparing the draft final report	For Category A, disclose of a draft final report with stakeholders consultation (for category B project only when if necessary) to incorporate to the final report	
		Preparing the final report	Disclosure of the final report promptly after its completion, on JICA's website and at the JICA library and concerned overseas office	
	Feasibility Study	Category A Study	(Reviewing of ) scoping of EIA	Disclosure of scoping plan and stakeholder consultation to incorporate their opinion To EIA
			Considering outline of environmental and social consideration	A series of stakeholder consultations be hold to incorporate their opinion
			Preparing the draft final report	Disclose of a draft final report with stakeholders consultation to incorporate to the final report
			Preparing the final report	Disclosure of the final report promptly after its completion, on JICA's website and at the JICA library and concerned overseas office
		Category B Study	After reconfirming <sup>1)</sup> as Category B study according to IEE	Disclosure of the final report promptly after its completion, on JICA's website and at the JICA library and concerned overseas office

1) If categorized as C, environmental and social consideration be terminated and, if categorized as A, have to follow the procedure of Category A Study of Master Plan Study

### **5.1.5 Case study of resettlement of Jamuna Bridge Project of Bangladesh made by the guidance of the World Bank**

#### **(1) Outline of the project**

As a result of completion of Jamuna Multipurpose Bridge under the ODA development assistance in 1999, Bangladesh divided by east and west by Jamuna river has been connected through land-way. This is a meaningful event. This bridge is a road cum railway bridge and at the same time, it is used for gas pipeline, power cable, tele-communication. By completion of this bridge, food grains and products in north-west region could be directly transported to capital city Dhaka by truck and natural gas pipeline could also be extended from east to west.

The size of the project is 4.8 km of bridge and 30km of road and its construction cost was Yen about 100 billion, out of which Yen 35 billion was for bridge, 35 billion for river training and embankment. Also for environmental cost such as land acquisition and resettlement etc, about Yen 10 billion was used. This huge amount of construction cost was shared by the World Bank, ADB and JBIC (then OECF) at equal ratio of 22% by loan and the remaining 34% was borne by Bangladesh.

#### **(2) Environmental social impact**

For bridge, road and river embankment, total 7,319 ha of land was acquired, 6,156 households were directly affected for their land and houses and 3,600 households were resettled. About 2/3 of them were relocated to nearby villages, and the executing agency relocate about 1/3 of them to the land prepared for resettlement. Within the resettled area, school, mosque, temple, water, sewage etc in addition to houses were to be provided.

Also, broad area of agricultural land was lost due to large scale embankment and rehabilitation and it is expected that effect to the natural environment due to river training is quite large.

Further serious social impact was that 5,906 households were affected indirectly and they were not compensated according to traditional compensation law. They were farmers who lost jobs, workers, small scale farmers who rent land, squatters. The concept of PAPs (Projected Affected Persons) amounting to about 65,000 persons was introduced.

**(3) Compensation and Rehabilitation Policy of Jamuna system**

From the above result, 14 items in Fig 5.4 was formulated as a target of compensation and scale of amount as one of means to mitigate negative impact of land acquisition and resettlement.

They are,

1) agricultural land, 2) residential area, 3) house and building, 4) valuable trees etc  
5) illegal occupancy 6) small scale farming 7) jobless 8) trade right 9)shops/factory  
building 10) relocation cost from rented house 11)crops before harvesting  
12)persons already moved before compensation 13) subsistence to community of  
which population increase/decrease 14) somewhat affected up-river or down-river  
of the bridge. This system cannot be directly applied to other projects, however it  
is evaluated as meaningful one for future bases.

**Table 5.4 Policy for Compensation and Restoration of Livelihood**  
(in the case of Jamuna Multipurpose Bridge Project in Bangladesh)

SI No.	Type of loss or disturbance	Nature of Entitlement(s)	Rate/amount	Remarks
1.	Loss of Agri. land	<ul style="list-style-type: none"> <li>● Cash Compensation as per Law (CCL)</li> <li>● Stamp Duty</li> <li>● Maximum Allowable Replacement value (MARV)</li> </ul>	<ul style="list-style-type: none"> <li>● CCL-rate of Agri. land</li> <li>● Actual amount incurred during land transaction</li> <li>● Difference between MARV and compensation received from DC.</li> </ul>	<ul style="list-style-type: none"> <li>● CCL-DC</li> <li>● Affected person is to buy land</li> <li>● MARV is Tk. 191,092/- per acre.</li> <li>● MARV is Conditional. Affected person should buy land to get MARV.</li> </ul>
2.	Loss of Homestead land	<ul style="list-style-type: none"> <li>● CCL</li> <li>● Stamp Duty</li> <li>● Maximum Allowable Replacement value (MARV)</li> <li>● Plot at project sponsored</li> <li>● Resettlement Site (RS)</li> </ul>	<ul style="list-style-type: none"> <li>● CCL - rate of Homestead land</li> <li>● Actual amount incurred during land transaction</li> <li>● Difference between MARV and compensation received from DC</li> </ul>	<ul style="list-style-type: none"> <li>● CCL-DC</li> <li>● Affected person is to buy land</li> <li>● MARV is Tk. 191,092/- per acre.</li> <li>● MARV is Conditional. Affected person should buy land to get MARV</li> </ul>
3.	Loss of living structures & other physical structures	a) CCL b) Transfer Grant (TG) c) House Construction Grant (HCG)	a) CCL : Tin/C.I. sheet roof - Tk. 106 per sq. ft. Kutchha/thatched - Tk. 42 per sq. ft. Pucca - Tk. 515 per sq. ft. b) @Tk. 300/- per HH member (mini. Tk. 1000/- Maxi. Tk. 3000/-) c) @Tk. 10/- per sq. ft. of Plinth area (Tk. 2500/- - Tk. 7500/-)	<ul style="list-style-type: none"> <li>● CCL-DC</li> <li>● Uthuli &amp; squatter will get TG and HCG @ Tk. 2000/- +2000/-=4000/-</li> <li>● EP is allowed to take the salgeables free of cost</li> </ul>
4.	Loss of economically valuable perennial	<ul style="list-style-type: none"> <li>● CCL of tree</li> <li>● EP is allowed to cut and take the tree</li> <li>● Free samplings</li> </ul>	<ul style="list-style-type: none"> <li>● Large tree - Tk. 1750/-</li> <li>● Medium - Tk. 300/-</li> <li>● Small tree - Tk. 22/-</li> </ul>	<ul style="list-style-type: none"> <li>● CCL-DC</li> <li>● Free sapling @ 10-20 nos/EP</li> </ul>
5.	Loss of occupied homestead (Uthuli & Squatter)	a) Plot at RS site b) Transfer Grant c) HCG	a) 2.5 decimal plot b) Tk. 2000/- per family c) Tk. 2000/- per family	Affected persons will also get training & credit facilities
6.	Loss of tenant contract for farming	One Time Cash Grant (OTCG)	Tk. 3600/- per family	Training+credit facilities
7.	Loss of wage income	OTCG	Tk. 3600/- per family	Training+credit facilities
8.	Loss of commercial plots	a) CCL b) Stamp duty c) MARV benefit	a) Rate depends on the type of loss b) actual amount spent c) differential amount	<ul style="list-style-type: none"> <li>● CCL-DC</li> <li>● SD-RU</li> <li>● MARV-Tk. 191,092/-</li> </ul>
9.	Loss of structures used for commercial or industrial activity	a) CCL b) Dismantling & removal costs (DRG) c) reconstruction grant (RG)	a) 15% of compensation received from DC b) Tk. 25/- per sq. ft.	<ul style="list-style-type: none"> <li>● CCL-DC</li> <li>● DRG-RU</li> <li>● RG-RU</li> </ul>
10.	Displacement from rented/occupied commercial premises	● One Time Moving Assistance (OTMA)	Tk. 2000/-	Training+credit facilities
11.	Loss of standing crop.	CCL-If applicable	<ul style="list-style-type: none"> <li>● Affected Persons will be given 4 months notice</li> </ul>	
12.	Persons who have already parted with the properties and have relocated elsewhere	● Remaining entitlement	<ul style="list-style-type: none"> <li>● Applicable to persons evicted before payment of RU grants</li> </ul>	● All remaining entitlement-RU
13.	Adverse Impact on host population	Assistance for host-quest interaction	Construction/extension/renovation of new and existing facilities such as educational institutions, religions facilities, common facilities, graveyard, community centre etc.	No Individual entitlement. Community as a whole will get benefit.
14.	People adversely affected by bridge i.e. change in water levels upstream, or downstream, or in unforeseeable ways	<ul style="list-style-type: none"> <li>● Relocation grant</li> <li>● Land grant-if eroded</li> </ul>	<ul style="list-style-type: none"> <li>● Tk. 700/- per HH member. Mini. Tk. 3000/- maxi. Tk. 4500/-</li> <li>● Tk. 563/- per decimal</li> </ul>	<ul style="list-style-type: none"> <li>● Applicable if the land is eroded in the defined geographical area in the upstream or downstream of the bridge</li> </ul>

## **5.2 Cambodia's Policy for Involuntary Resettlement**

### **5.2.1 Basic Policy**

On July 1, 2003, the planning department of MPWT replied to the Preparatory Study Team that "the present Cambodia has no written policy on involuntary resettlement as state's policy but follow the Land Law of year 2001. For important projects, each donor's policy (resettlement policy) should be reflected with due diligence". Up to today, RAP normally was prepared by the consultant employed by the donor and just was delivered to the Cambodian side. It has never been prepared by the Cambodian side before. Nevertheless, the Planning Department, handed over the RAP prepared in accordance with ADB's policy on 16 July 2003 to the Preparatory Study Team. According to the experience so far, it was always depending upon the foreign assistance, so the self-initiative attitude of preparing by himself is worth of applause.

### **5.2.2 General Procedure of Implementation for RAP**

In accordance with the discussion and understanding of government, funding agencies and NGO/university, procedure for planning, implementation, monitoring and evaluation of RAP will be decided.

1. Selection of the external monitoring organization: Funding agencies will list names of organization which have enough experience recruited by newspapers. Work order sheet will be prepared and technical proposal and estimate will be submitted by the organizations.
2. Public consultation: Explanation to and question and answer with affected local persons with respect to the project and its effect is important for preparation of RAP. At least, the residents do not feel neglected. The external monitors will record the public consultation, reaction, question and answer and prepare minutes of public consultation together with participants' list.
3. Establishment of Grievance Redress Committee: By the stage of assets evaluation, the Grievance Redress Committee should be established at the latest.
4. Grouping of houses: IRC will implement grouping and evaluation of affected assets. MPWT will prepare list of grouping of houses based on appearance.
5. Detailed Measurement Survey: By assets survey, amount of assets, grouping and quality will be recorded. This record will be signed by assets holders, leaders of cities and villages, surveyors and copies of which will be handed to the holders and



IRC.

6. **Issue of certificate of entitlement:** Certificate having house owner's name, address etc will be issued.
7. **Declaration of Cut Off :** Cut off Date will be announced immediately upon issuance of certificate.
8. **Estimate of compensation:** Compensation amount will be decided by negotiation with holders although basically the rates for each group which IRC decided will be based.
9. **Socio-economical survey:** Social economical status of the affected persons will be surveyed.
10. **Prepare compensation budget and list comparing grouping of affected persons and compensation right.**
11. **Prepare draft of RAP**
12. **Consultation among three parties on draft of RAP (Cambodian Government, Funding agencies, NGO/university)**
13. **Government approval of draft of RAP**
14. **Public Information Campaign to PAPs**
15. **Establish the resettlement site**
16. **Prepare procedural guide for compensation payment**
17. **Implementation of payment**
18. **Relocation of houses to the outside of tentative ROW**
19. **Relocation of houses to the place of resettlement**
20. **Preparation of monitoring report by the external body**
21. **Preparation of socio-economic survey report**
22. **Evaluation by funding agencies**

### **5.2.3 Compensation**

According to F/S report, MPWT (IRC) plans to respond to the following cases:

1. Houses which are required for resettlement since the main building are located in tentative ROW (30m width),
2. Houses, which are not required for resettlement, although partly their house, shop/fence will be in tentative ROW.
3. Houses having fruit trees in tentative ROW
4. Newly affected houses for embankment slope although outside of tentative ROW.

For item 1, allowances such as resettlement disruption, widow, disabled, low-income households will be paid. Compensation unit rate is indicated in Table 5.5.

**Table 5.5 Compensation Rate proposed by MEF**

Ministry of Economy and Finance  
No. 339 MEF

Kingdom of Cambodia  
Nation Religion King  
Phnom Penh, 03 February 2000

Compensation price list of affected property

No.	Affected Property name	Unit	Unit price in USD	Miscellaneous
<i>I. Fixed Assets</i>				
<b>First Category</b>				
1	Thatch/leaf wall (screen), bamboo floor, and thatch/leaf roof	m <sup>2</sup>	4.50	
<b>Second category</b>				
2	Wood wall, wood floor and zinc roof	m <sup>2</sup>	12.00	
<b>Third Category</b>				
3	Concrete wall, and concrete roof (platform)	m <sup>2</sup>	85.00	
4	Two-story concrete house (ground and first floor)	m <sup>2</sup>	140.00	
5	Miscellaneous			
<i>II. Well</i>				
6	Dig well	1	50.00	
7	Pump Well	1	75.00	
8	Ditch / water body			Dig at other place
<i>III. Fences</i>				
9	Wood stand, barbed wire	1m	0.75	
10	Rock (concrete)	1m	4.86	
<i>IV. Fruit Tree</i>				
11	Mango tree	each	25-30	
12	Tamarind tree	each	5-10	
13	Palm Tree	each	8.00	
14	Coconut Tree (Milk-fruit tree)	each	15.00	
15	Bamboo	shrub	10-15	
16	Jackfruit tree	each	10-15	
17	Soursop tree	each	5.00	
18	Custard tree	each	3.00	
19	Papaya	each	2-2.50	
20	Wood tree	each	20-25	
21	Banana	each	0.080	
22	Lemon/lime tree	each	3-5	
23	Guava tree	each	2 -2.50	
24	Vegetable garden			Refund according to market price
25	Miscellaneous			

Note: For fruit tree with the age of 1 to under 3 years shift to other site: 3 years - refund at the minimum price,

4 years - average price, from 5 year up - refund at the maximum price.

For the fixed assets: if the affected part is the balcony, the refund would be 40% off/m<sup>2</sup>.

In reply to this, ADB proposes the following compensation including those which MPWT do not respond.

Compensation for loss of residential land / commercial land

Cambodian Government says that it will not compensate because land in ROW is public premise and occupancy of which is illegal. However, due to the following reasons pointed out by ADB, compensation for land in ROW (money, equivalent replacement land or livelihood measures) is proposed.

- (1) Legal reason: The Prime Minister's declaration "residents in ROW are illegal occupants and are to be relocated without compensation" was in 1999. The land of residents in ROW before 1989 are considered to be bound by "The land will be re-distributed to the occupants as of the issue of this rule" in accordance with Cabinet Committee Rule No.25 dated 22 April 1989<sup>4)</sup>. Accordingly it may be considered that the residents had established land ownership primarily, and thus the subsequent ROW declaration is ineffective. Also, according to the survey of 1997 alongside the National Road No.1, 34.9% of affected persons interviewed in ROW have official land ownership certificate, 14.9% have receipt of application of the land ownership, and therefore nearly 50% of residents in ROW have documents certifying their ownership<sup>11)</sup>. Furthermore, by the Land Law dated 20 June 2001, most of the residents are allowed to be the owner of the land by the fact that they occupied the land for 5 years<sup>14)</sup>.
- (2) Human Moral reason: Resettled persons are poor households living on only the land before resettlement. So, no matter whether legal or illegal, resettled persons must be compensated and assisted so that their living level will not become worse.

In such a way as described above, the dispute arises between the present government who insist "there is no individual's right to the ownership for those in ROW(at least land is concerned) and can be relocated without compensation" and ADB who insists compensation not only from legal ground but also human moral ground.

Compensation for loss of Farm Land

There are lands in tentative ROW where used for agriculture and lot of care and energy were spent to make them fertile. If living is lost due to loss of such farm land as above, such farm land itself should be considered for compensation. The agricultural crops

which cannot be harvested just before delivery of the farm land should also be compensated.

#### Compensation for loss of residential houses/commercial houses

1,805 buildings in tentative ROW are planned for relocation. The majority of which is 1,463 houses of tin roof and then leave roofed 116, concrete 76, brick 150. FS Report groups the buildings in 4 types for convenience of study, and for each category, rate is fixed for compensation. However, for a same category, the quality differs from one to the other. Assets evaluation is to be based on exchange price of equivalent item, either it is to be evaluated considering the facts and difference as MPWT stated or further sub-grouping may be required. At the time of assets survey, walls, floor, roof materials, transport difficulty of the building and their purpose and importance (only shops or important residential quarter etc) will be known. Persons alongside the National Road No.1 have handicaps of being relocated to the swampy area for rebuilding, and re-use of building materials without discount has to be allowed.

#### Compensation for loss of other structures

Ponds, fences and other structures besides 1,805 houses will be affected. At the time of assets survey, they will be clarified and entitled for compensation.

#### Compensation for loss of houses (illegal) occupation

It is considered that without ownership people live in vacant houses without permission. These people will lose their living space after removal and therefore this should be studied for compensation of houses.

#### Compensation for temporary loss of the living

Due to road improvement, sales are to be suspended temporarily. This is the case when a part of permanent buildings are relocated or destruction and transfer of movable small shops are carried out. It is desirable to make compensation for them.

#### Compensation for loss of regional social assets

Improvement works will be limited to within ROW which are belonging to the Government since before 1975. However, not necessarily all the people recognize this ROW completely. Assets in some regional communities may be affected. The effects of which are:

(1) privately built market, where people assemble usually, shelters alongside the road,

and water pumping area

- (2) public utility such as electricity switchboards, bus stops, water wells
- (3) clinics, schools, rest/recreation places and
- (4) cultural, religious, or archaeological monuments such as shrines and temples etc

#### **5.2.4 Assistance to Relocation and Restoration of Livelihood and Life Level**

The main objective of attention to be paid to relocated people is “ life level after relocation is at least equal or better than that before relocation”, which is the minimum requirement common to donors. The resettlement forms due to road improvement are:

- (1) set-back about several meters to over ten meters from tentative ROW to out of tentative ROW but still inside ROW, or
- (2) complete resettlement to new places distant from the existing places

The present form of resettlement due to road improvement is mostly the above case (1) because there are space available behind or adjacent to where the residences are located alongside the road. However, in section between km0 to km7 where residences are congested in the city, Kokir market and near Neak Loeung terminal, there are possibility of the above case (2) which requires complete resettlement.

It is indispensable that the Cambodian Government assist not only the retreat of houses/living during relocation for maintaining the living level but also assist them until they recover the new livelihood measures and restore the living level as before and monitoring by the third party is required.

#### **5.2.5 Proposal for Compensation under this Project**

ADB proposes to compensate land within ROW at market price, however most of the persons appreciate the ROW and build their houses apart from the center line. In spite of such appreciation and practices prevailing, approving compensation at market high price for land acquisition would permit “benefit due to delaying tactics”, which in one sense not fair. It is thought that compensation to some extent as pre-emptive right of their residing/occupancy, however it should be studied whether approving land ownership and paying compensation are appropriate or not in the light of law and practice of Cambodia.

Nevertheless, detailed attention and assistance plan are necessary. Based on the discussion in 5.2.3 and 5.2.4 above, including re-settlement and assistance to living right, proposal for compensation has been tabled in Table 5.6.

**Table 5.6 Proposal of Compensation under this Project**

No	Kind of loss	Those entitled	Contents of the rights
1	loss of land for residence and commerce	Persons living on the right of way land having a customary right to the land as per current land legislation.	Some compensation for loss of land within ROW (Not necessarily compensation at market price) *
2	Loss of access to cultivated land including annual and perennial crops	Persons farming on the right of way land having a customary right to it as per current land legislation.	Crop compensation at market value for 5 consecutive years determined by the MPWT.
3	Loss of residential or commercial/business structure	Owner(s) of the structure	<ul style="list-style-type: none"> <li>(1) Compensation for structure at replacement market value determined by the MPWT</li> <li>(2) Transfer allowance @10% of the assessed value of structure at replacement cost by the MPWT</li> <li>(3) Reconstruction allowance @10% of the assessed value of structure at replacement cost by the MPWT.</li> <li>(4) Reimbursement of homestead /business site development cost @US\$200 per person/family;</li> <li>(5) Salvaged materials free of cost within the specified time to be announced by the PMU, MPWT;</li> </ul>
4	Loss of associated structure like wells, ponds, fences, graves, etc.	Owner(s) of associated structure /assets	Replacement market value to be determined by the IRC as well as recognized by the MPWT.
5	Right of rent of structure for living /commerce	Tenants of residential and/or commercial structure on the right of way land	Financial assistance equivalent to 3 months rent as assessed by the socio-economic survey.
6	Temporary loss of livelihood /income	Heads of households to be relocated from the right of way land, the proprietors of businesses of any type and size, renters of structures, employees of business enterprises.	<ul style="list-style-type: none"> <li>(1) One time cash assistance of US\$ 30/- to the head of households relocating from the TROW</li> <li>(2) One time cash grant of US\$30/- per business entity for diminished business income from the TROW premises.</li> </ul>
7	Socially vulnerable people	Socially vulnerable households (poverty, disabled, widow, aged households).	<ul style="list-style-type: none"> <li>(1) Additional cash assistance of US\$ 30 per household.</li> <li>(2) Project assistance for finding out new site for accommodation or trading.</li> </ul>
8	Loss of community structure /assets	Concerned community organization losing any community resource property to the project.	<ul style="list-style-type: none"> <li>(1) Reconstruction/replacement of community assets by the project.</li> <li>(2) Assistance to the community in finding out suitable place for installation of the relocated community assets.</li> </ul>
9	Assistance to livelihood after resettlement	Persons who became unable to re-establish livelihood due to any reason or who are unable to communicate with people	Vocational training



\*As compensation for land, cash compensation or provision of equivalent land or assistance to livelihood are to be made.

### **5.2.6 Tax and Government Expenses**

The Government should exempt expenses and taxes which the projected affected persons may incur in monetary transactions for resettlement compensation/assistance. In the past, there were different treatment, i.e., in a project, recycling of building materials was allowed, however in other project (grant aid project of Kizuna Bridge construction by Japanese Government) the salvageable material was deducted from the compensation.

There was other case where substantial donation was asked for as developing cost of the resettlement area.

### **5.2.7 Future Encroachment and Measure for Illegal Occupancy**

In the National Road 5B improvement, there was such trouble that the compensated residents returned. The Cambodian Government basically copes with this as follows;

- (1) Illegal occupants must immediately be removed.
- (2) They should not be compensated at all nor any assistance.
- (3) The Prime Minister's declaration in 1999 specified the ROW width. According to the government decision 961, it also specifies that no compensation should be made to the assets in ROW.
- (4) On the contrary, the illegal building within ROW which disturb construction works (compared to occupying the private owned land), will be subject to heavy penalty. (Land Law No.19, Paragraph 3 dated June 20, 2001).

However, investigation and confirmation will be made whether there were no inconvenience such as unequal treatment in the resettled area, and as the case may be, the Cambodian Government consider that the new assistance may become necessary.

There is a report that the Cambodian Government has not carried out any consultation to the residents on ROW nor installation of piling for demarcation on the National Road No.1. Central and provincial authorities should thoroughly inform about the concept of ROW.

By the law, it is allowed to build concrete buildings only outside of the non-restricted area or in the area permitted. Namely, all the other buildings in ROW are illegal and will be dismantled without compensation.

### **5.2.8 Public Consultation**

Public consultation is one of the measures that is important to confirm the opinions of residents in relation to resettlement. By asking participation of residents at the time of project planning/execution, it becomes feasible to mitigate the social environmental effect. In the public consultation, explanation on project itself and also benefit/ losses created by the project in such a manner that the residents could understand. By doing so, residents will understand it and cooperate with it, and mutual reliability could be established. It is important to show the attitude of appropriately responding to the

dissatisfaction and complaints in the public meetings.

Timing for implementation is:

- (1) when obtaining basic agreement from project affected persons on the project,
- (2) when explaining measures and compensation to the affected persons,
- (3) when confirming the problems in resettlement is obtained, and
- (4) when confirming that their living and living level are secured at the place of resettlement.

Participants are affected persons, heads of the communities where affected, implementing people of resettlement (IRC, MPWT, MEF), NGO, and the external body's monitor representing donors.

### **5.2.9 Resettlement Implementation Organization**

In planning, execution and supervision of the resettlement plan, an organization with appropriate authority and responsibility are required to be set up, which is most important. The organization chart is shown on Figure 5.3. As implementing unit of RAP, (assets survey, public consultation, acting body to settle complaints etc), there are working group (WG) and sub-working group (SWG), on the level of Phnom Penh Municipal/ Kandal Provincial Resettlement Unit on the level of district, municipality, town and village. The Ministry of Land Management and Urban Planning and Construction (MLMUPC) was once a member of IRC, however they participate as SWG, so there are now two ministries only which are Ministry of Economy and Finance (MEF) and Ministry of Public Works and Transport (MPWT) according to the explanation of IRC.

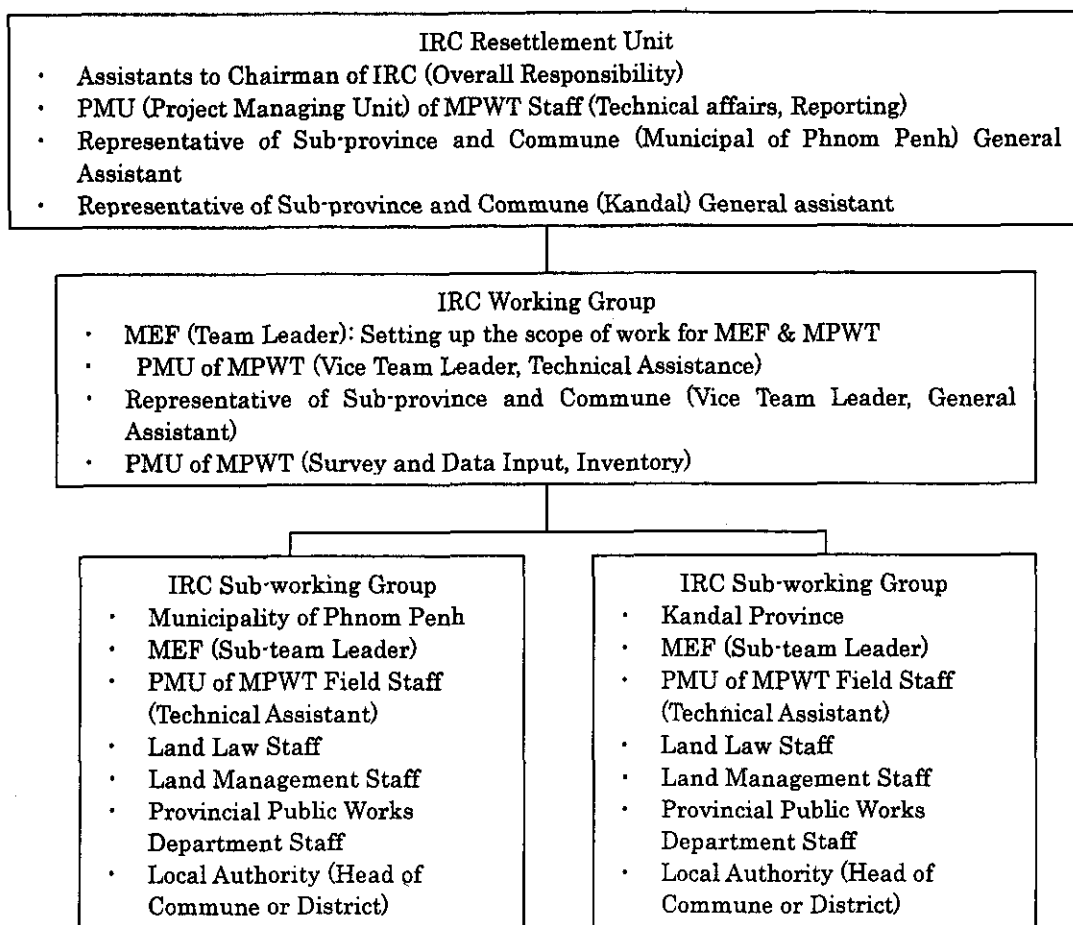
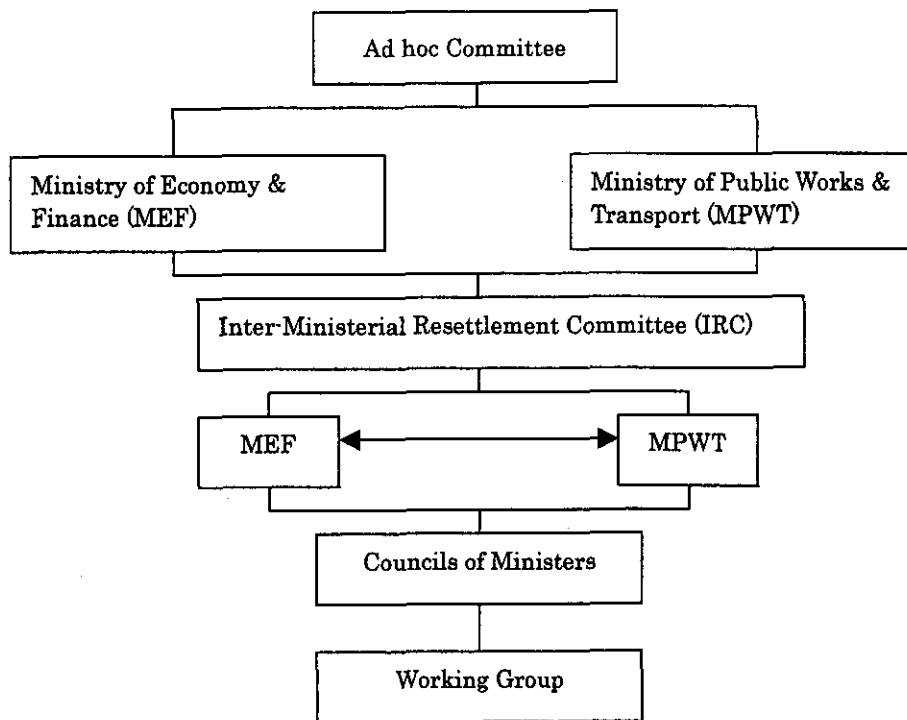


Figure 5.2 Organization of Resettlement Implementing Organization

### Inter-Ministerial Resettlement Committee

The IRC has been established by the Royal Government of Cambodia that consists of representatives of the Ministry of Economy and Finance, the Ministry of Public Works and Transport, the Ministry of Agriculture, Forestry and Fisheries, representatives of Phnom Penh Municipality, Governors and Deputy Governors of the project related provinces.

### Resettlement Unit

A Resettlement Unit will be set up under the IRC and will work in cooperation with the Project Management Unit (PMU) of the MPWT to ensure the effective implementation of the project. The Resettlement Unit should:

- a) Conduct Detailed Measurement Surveys/Census.
- b) Undertake overall planning, management and monitoring of resettlement programs.
- c) Ensure that all eligible PAPs have been identified and are aware of their entitlements.
- d) Ensure that staff at all levels understand the project and train resettlement staff at Provincial, District and Commune level in the planning and implementation of the project's resettlement activities.
- e) Be responsible for supervising the disbursement of compensation to PAPs.
- f) Ensure that an effective monitoring system is developed and that local staff is capable of processing relevant data. This will take the form of maintaining a database of resettlement information to be updated on a regular basis and ensuring that compensation payments are completed on schedule.

### Provincial and Municipal Resettlement units

Resettlement offices will be established at Provincial level and administered by a Provincial Resettlement unit, which is headed by Provincial Governors or Deputy Governors and located within the Provincial Public Works Department. They will be responsible for all aspects of resettlement organization within the provinces. In the municipality areas Municipality Resettlement Units will be responsible for implementation of the RAP for compensating recognized losses of the project affected people. Municipality and Provincial Resettlement Units will be established to handle the resettlement issues properly.

### District and Commune Resettlement Units

District Resettlement Units will be responsible for the identification of resettlement sites if needed, the development of on-site services and the allocation of plots within sites; while the Commune Resettlement Units (composed of local officials and PAPs) will act principally as information conduits to ensure the timely implementation of the project activities. This will ensure that PAPs are kept fully informed of the project development and that the Commune Resettlement Units inform the District and Provincial Resettlement Units of PAPs opinions and of any problems at the earliest possible stage. Figure 5.1 shows the RAP implementation organization.\_

### Inter-Ministerial Resettlement Committee (IRC)

Inter-Ministerial Resettlement Committee consisting of representatives of Ministry of Economy and Finance, Ministry of Public Works and Transport, Ministry of Land Management and Urban planning and Construction, representatives of Phnom Penh and other related ministries will be established.

### Grievance Redress Committee

Cambodian development projects involving land acquisition keep provision for grievance redress process (through Grievance Committee) where the affected persons can apply to resolve their grievances. In most cases, grievances are disputes relating to ownership of the property and sharing of compensation. Sometimes, loss recorded against somebody can also be an issue. In order to resolve any problem or constraints for smooth operation of resettlement, Grievance Redress Committee should be a legal platform for the affected people to suit their complaints and have solutions. Grievance Redress Committees in other Asian countries are acronymed as GRC.

Formation of the GRC: GRCs can be formed under the lowest administrative units in the affected area. The representative members of the GRCs should generally be from (i) representative from the Project Executing Agency as the Covenor (ii) representative from the NGO involved in resettlement monitoring (iii) representative from the lowest local government institutions and (iv) representative from the project affected people.

The formation of GRC as above should be constituted through gazette notification with reference of the project requiring body with detailed operation procedure.

Power and function: GRC is the civil court at project level to address all issues except

those supposed to be settled under the law of the Royal Government of Cambodia. Cases under litigation cannot be solved in GRC. In all other cases permissible under the policy of the Resettlement Action Plan (RAP), the NGO representative as the member secretary of the GRC should help receive complaints and organize GRC sessions for hearing. GRC resolutions should be formally adopted and the decisions forwarded to the IRC for implementation with information to the complainant affected persons.

#### Property Valuation Committee

In Cambodia, compensation for different types of losses and disturbances in development projects are fixed through individual negotiation during Detailed Measurement Survey (DMS). As a result, those who have higher bargaining capacity can benefit more, causing delay in project implementation. It can also make differential treatment to PAPs and generally the poorer section of the people deprive. In the WB, ADB and JBIC supported projects there is a criteria to establish market value of the affected property. The criteria can be summarized as;

1. A Property Valuation Committee (PVC) is established taking representatives from Executing Agency, the NGO and the community and is declared through Gazette Notification.
2. The EA then engage an independent consultant to carry out market survey for land, structure, tree and other types of losses, following the methodology prescribed by the PVC.
3. After the survey the consultant submits a report on the Property Valuation Survey together with the findings of the market price of all the different types of properties affected.
4. The PVC carry out an investigation on a sample basis to be sure that the findings are correct.
5. A national level workshop organized to discuss the RAP issues also discuss the price and basis for recommending the rates for different categories and qualities of losses and make adjustment, if needed, to reach at a consensus. The committee then approve it.
6. The quantity of losses identified through DMS for individual owner are then treated with the market rates to get the total entitlement of an individual very quickly.
7. The chances of error, manipulation and unreasonable bargaining can be minimised through this process.

### **5.2.10 Assistance to RAP Planning**

Cambodian Government is preparing RAP by showing understanding of the policy of the Japanese Government under JICA's assistance. It is obtaining basic agreement of the affected persons to the project (consent to the project and as the case may be, understanding that resettlement is unavoidable depending on the case).

The Study Team will not only formulate RAP but also establish for assisting public consultation through the external monitoring.

### **5.2.11 NGOs in Cambodia**

Participation of NGO in involuntary resettlement is inevitable today. According to the directory prepared by the Cooperation Committee of Cambodia (CCC), membership organization in Cambodia are three, which are CCC, MEDICUM and NGO Forum. Each has its sub-body. About 30 Japanese NGO groups also work there. The Study team met with following NGO.

#### **1) The NGO Forum on Cambodia**

We collected a series of information by discussion at the representative office. NGO Forum is the representative for active 70 NGOs in Cambodia. The secretary is:

Ms Kol Leakhana

Development Issue Project Assistant

The NGO Forum on Cambodia

Tel: 855-23-986-269

#### **2) Committee for Free and Fair Election in Cambodia (COMFREL)**

Mr. Bona (Tel: 016-835-979), who belongs to COMFREL under the NGO Forum, joined the discussion and suggested as follows:

- COMFREL is made up of 13 NGO members and handle the resettlement issue with election surveillance. He personally has experiences of involvement to Improvement and Irrigation Projects by ADB and believes it is favorable that foreign consultants prepare RAP and NGO monitor the implementation. JICA is welcomed if JICA follows like that.
- On behalf of some of PAPs at C-2 Project by ADB, a petition report was presented



to IRC and ADB.

- However, COMFREL as the name indicates, participated in general election of Cambodia in 2003 and worked such as recommending to King Sianouk for early settlement etc.

### 3) LAC ( Legal Aid of Cambodia)

LAC is a non-governmental organization established in 1995 by Cambodian lawyers and supporters and they provide free legal services to the poor people in Cambodia in all types of criminal and civil law cases.

LAC handles about 1,000 law suits every year upto 1999 and most of which are to prevent adults from crimes. Since then LAC has established special unit and represent the cases which involve land owners, children, workers and those who are ill-treated. (LAC has unit for research of human rights of children, publishing, monitoring and training).

There are 70 Cambodian staff in LAC and 24 out of which are lawyers attached by one foreign consultant. There are 9 offices in Cambodia, i.e., Phnom Penh, Kandal, Siemriup, Batanban, Sveireingn, Kurathai, Kokon, Componsum, and Komponchan.

LAC is operated by Cambodian and its management control the LAC. Management staff are selected by lawyers and partly by the staff. There is a joint committee by Cambodians and foreigners and budget and financial status are supervised.

LAC undergoes annual audit by the Price Water House Coopers.

In Cambodia, there are only two legal supporting organizations and LAC is one of them. The other one is Cambodian Defenders Project (CD) and organized by the branch of LAC. LAC and CDP implement legal assistance to the poor people in Cambodia (Cambodian Bar Association extend free services by limited number of lawyers.)

Main capital investors of LAC are NOVIB (Oxfam Holland) and Dutch Embassy in Bangkok. Special section where LAC exists are Finnish Embassy in Bangkok, EU through Dan Church Aid, USAID through American Center of International Labor Union, Save the Children campaign of Norway, Oxfam of UK, Development Agency of Canada and the Asia Foundation, who provide fund.

#### 4) ACHR (Asian Coalition for Housing Right)

We have obtained a copy of *Housing by People in Asia*, October 2003, No.15 published by ACHR working for diminishing poor residents in city area, which is one of grass root group from NGO.

This book has made a special edition spotlighting on eviction of the residents in each country of East Asia. According to this, it reports about the resettlement of Cambodia as follows:

- Notice of eviction: There is no governing law regarding eviction and notice is given between 4 days to 3 weeks prior to execution of eviction.
- Negotiation before resettlement: There is no governing law. Depending on region, negotiation is made for resettlement and allocation of land
- Removal of structures: There is no governing law. Under the supervision of policemen, those employed by the city authority remove them.
- Compensation: There is no governing law. Through discussion, compensation by equivalent land is made, however depending of negotiation power, compensation is from the range of just a token money to the equivalent valued land.
- Provision of land for resettlement: There is no governing law. However, according to the past 5 years' experience, land for resettlement has been provided free of cost.
- Public services in the resettlement area: There is no governing law. Most of the land for resettlement are far and the government provide no public services.
- Assistance to social rehabilitation in the resettlement and re-establishment of livelihood: There is no governing law. NGO extend these assistances.
- Land ownership in the resettlement: There is no governing law. Normally, after 5 years of occupancy, land occupancy right is given to the individuals.
- NGO in Cambodia lack experience in resettlement, and they have not enough idea how to cope with the powerful authority which has resettlement budget and policy.