Safeguarding resettlement: global expectations and local experiences in Cambodia

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Statement of authorship

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Abstract

Planned community relocation or "resettlement" is not new, however the contexts in which people are being relocated and the safeguards in place to protect them are changing. Multilateral development banks are under competing pressures to minimise the negative impacts of community resettlement without over-burdening the governments of borrowing countries. Intensive debates are underway about what rights should be afforded to resettled people and what safeguards are most effective. Similar concerns are being voiced by policy-makers working on climate change adaptation, who are looking to the World Bank and Asian Development Bank (ADB) to identify ways to safeguard communities being resettled in response to climate change. One of the most important tensions shaping these debates, is how resettlement safeguards developed at an international or "global" level can cater to the needs and aspirations of affected people in different local settings.

As a contribution to this debate, this thesis explores a resettlement scheme for an ADB co-financed railway project in Cambodia in which advocacy interventions resulted in significant improvements in the resettlement sites over the eight years of the project from 2006 to 2014. Drawing on the railway project as a case study, the research focuses on understanding how safeguards, developed at a "headquarter level", aligned and misaligned with community needs and aspirations at different points in time. It investigates how advocacy interventions altered the course of the project and considers the implications of relying on resettlement safeguards in a country where domestic legal protections are otherwise not well-established.

The research is founded on an appreciation of the valuable literature that exists to understand resettlement. It uses legal geography and theories of scale to build on the conceptual frameworks already available. It does this through analysing the socio-legal dimensions of the resettlement process from multiple stakeholder perspectives over time. This approach enables a close field-based analysis of how different actors (communities, NGOs, governments and financiers) experienced and understood resettlement tensions at different scales: at a community level in five locations in Cambodia, and at national, international and institutional scales. Through a qualitative analysis of different stakeholder perspectives, the research goes behind the scenes and behind the paper work to investigate how the risks and impacts of the project were rationalised by decision-makers as they unfolded. It draws on

interviews with NGOs, consultants, safeguards and resettlement specialists in Cambodia and other sites of decision-making and institutional influence: especially within the ADB, World Bank and Australian Government.

From a community perspective, the resettlement process was an uneven and arbitrary experience, but the reactions were different across the five resettlement sites. Like many resettlement schemes, the rights and benefits available to affected people were determined by the precise physical space in which they lived prior to the project. Rather than following the natural contours of how communities were living, the scheme drew new lines of social organisation based on the ADB resettlement policy guidelines. Intensive NGO interventions using creative trans-national strategies brought international scrutiny to the project. Yet, as additional compensation was provided and services and infrastructure slowly improved in the resettlement sites, the resettlement dynamics began to change. The appeal of resettlement increased for many community members who were left behind. Over time resettlement standards improved in some of the sites so much that they became "islands of governance", demarcated or ring-fenced from the otherwise limited support provided to people partially-affected by the project but not given the option of relocation. While efforts were made by NGOs to advocate for those who were partially affected, but not relocated, clear limitations in the scope of the safeguards policy emerged. NGOs were required to navigate complex community tensions, revealing how conflicting community interests and aspirations, which inevitably characterise resettlement, are also inherently difficult to incorporate into advocacy campaigns.

The experiences described provide rich insights into the realities of being embroiled in so-called "community-driven accountability processes",[1] as well as the adaptation strategies community members employed to navigate resettlement. The research explores how community awareness of resettlement safeguards was built through contact with NGOs, and also through the gradual engagement of ADB staff once the project's impacts were publicised. Over time, community members developed a sophisticated understanding of the rights and benefits afforded by the project and the ADB safeguards and accountability framework in place.

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[1] Community-driven or citizen-driven accountability is an approach adopted by the World Bank. For discussion and critique see: Clark, Fox & Treakle (2003); Ebrahim & Herz (2007).

From the perspectives of financiers, the interviews also reveal how debates about the "right" way to address resettlement problems were occurring within the ADB, Cambodian and Australian Governments, and there were many points of controversy among staff members and consultants. There were also many disagreements behind the scenes about the adequacy of the resettlement processes in place, due diligence and accountability.

The case of the Cambodian railway project conveys how resettlement impacts are not easily overcome through internal monitoring, supervision and technical assistance at a project level, even where these aspects of a project are well resourced. These challenges are particularly complex in places where there is a significant disparity between national government standards for resettlement and international, project-specific safeguards, as is the case in Cambodia. The research conveys the extent of influence that international financiers have on the quality of resettlement within the bounds of a given project, as well as the limits of this influence on other aspects of governance external to these projects. The research supports a move away from simple approaches to resettlement premised on the notion that it is possible to mitigate negative social and environmental impacts of infrastructure projects only through the establishment of safeguards and monitoring systems. Instead it supports an approach which more explicitly includes local civil society actors and international advocacy NGOs, recognising the valuable roles they play.

សេចក្ដីសង្ខេប

ជារៀងរាល់ឆ្នាំ មនុស្សរាប់លាននាក់នៅលើពិភពលោកត្រូវផ្លាស់ប្ដូរ កន្លែងរស់នៅដោយសារតែការអភិវឌ្ឍហេដ្ឋារចនាសម្ព័ន្ធ។ ការផ្លាស់ប្ដូរកន្លែងនេះបង្កឡើងដោយផ្ទាល់ និងដោយប្រយោលពី នគរូបនីយកម្ម ការកសាងផ្លូវថ្នល់ ស្ថាន អណ្ដូងរ៉ែ និងគម្រោង វារីអគ្គិសនី។ ការផ្លាស់ប្ដូរទីតាំងរបស់សហគមន៍តាមផែនការ ឬ "ការតាំងទីលំនៅជាថ្មី" បានអនុវត្តឡើងដើម្បីដោះស្រាយឥទ្ធិពល នៃគម្រោងទាំងនេះ ប៉ុន្តែវិធានការគាំពារផ្សេងៗ ដែលបានដាក់ចេញ ដើម្បីការពារសហគមន៍ក្នុងអំឡុងពេល តាំងទីលំនៅជាថ្មី បានក្លាយជាប្រភពទំនាស់រវាងក្រុមសង្គមស៊ីវិល និងអ្នកផ្ដល់ហិរញ្ញវត្ថុដល់គម្រោងអស់ច្រើនទសវត្សរ៍មកហើយ។ ទំនាស់ទាំងនេះរាធន់ធ្ងរជាពិសេស នៅតាមបណ្ដាប្រទេសដែលមាន វិធានការក្នុងស្រុកតិចតួចសម្រាប់ការពារសហគមន៍ដែលអាច រងគ្រោះដោយសារការបង្ខំឱ្យផ្លាស់ប្ដូរកន្លែងរស់នៅ។

យុទ្ធនាការតស៊ូមតិឆ្លងប្រទេស សម្រាប់ជួយទ្រទ្រង់ដល់សហគមន៍ ស្ថិតក្នុងតំបន់ទាំងនោះ បានកើនឡើងទាំងទំហំ និងលក្ខណៈ ស្មុគស្មាញជើ៉នឡើៀន។ ស្ថាប័នដូចជាធនាគារពិភពលោក និង ធនាគារអភិវឌ្ឍន៍អាស៊ី (ADB) ជាដើម កំពុងស្ថិតក្រោមសំពាធ ប្រជែងគ្នាឱ្យជួយកាត់បន្ថយជាអតិបរមានូវផលប៉ះពាល់អវិជ្ជមាន របស់គម្រោងទៅលើសហគមន៍ ដោយជៀសវាងជងដៃរនូវ ការដាក់បន្ទុកច្រើនពេកទៅលើរដ្ឋាភិបាលទទួលកម្ចី ជាពិសេស នៅតាមប្រទេសមានសេដ្ឋកិច្ចជុយខ្សោយទើបដេីបចេញពីជម្លោះ។ ការយល់ដឹងពីសន្ធ្នៃការធ្វើវិនិយោគទៅលើហេដ្ឋារចនាសម្ព័ន្ធ នៅក្នុងតំបន់ទាំងនោះ បានបំផុសនូវការពិភាក្សាខ្លាំងក្លាថា តើប្រជាជនរងផលប៉ះពាល់គួរទទួលបានសិទ្ធិអ្វីខ្លះ៖ តើវិធានការគាំពារអ្វីខ្លះដែលមានប្រសិទ្ធភាពបំផុតសម្រាប់ ការតាំងទីលំនៅជាថ្មី និង តើសិទ្ធិ និងស្ដង់ដាទាំងនេះ អាចពង្រឹងអនុវត្តន៍យ៉ាងណាបាននៅក្នុងបរិបទដែលប្រព័ន្ធច្បាប់ ក្នុងស្រុកនៅមិនទាន់កសាងបានរឹងមាំ។ ក្ដីបារម្មណ៍ស្រដៀងគ្នានេះ ក៏មានលើកឡើងដោយមជ្ឈដ្ឋានអ្នកកសាងគោលនយោបាយ

ដែលកំពុងធ្វើការក្នុងបញ្ហានុវ៉ាំងនឹងការប្រែប្រួលអាកាសធាតុ ហើយវាឯងសង្ស័មកាន់តែច្រើនឡើងទៅលើធនាគារពិភពលោក និង ADB ក្នុងការរកបានយុទ្ធសាស្រ្ត និងវិធានការការពារល្អៗបំផុត សម្រាប់ជួយទ្រទ្រង់ដល់សហគមន៍កំពុងតាំងទីលំនៅជាថ្មី ក្នុងកិច្ចប្រឹងប្រែងបន្សុាំនឹងការប្រែប្រួលអាកាសធាតុ។ ភាពតានតឹងខ្លាំងបំផុតមួយក្នុងការកសាងគោលនយោបាយ តាំងទីលំនៅជាថ្មី គឺ តើវិធានការសម្រាប់គាំពារការតាំងលំនៅជាថ្មី ដែលបានបង្កើតឡើងនៅកម្រិតអន្តរជាតិវាអាចបំពេញ បានល្អប៉ុណ្ណានូវតម្រូវការ និងបំណងប្រាថ្នាខុសៗគ្នារបស់ប្រជាជន រងផលប៉ះពាល់នៅតាមតំបន់ខុសប្លែកគ្នាជាខ្លាំងបែបនេះ?

ដើម្បីរួមចំណែកដល់ការជជែកវែកញែកដ៏ចលើកឡើងនៅខាងលើ និក្ខេបបទនេះនឹងពិនិត្យពីគ្រោងការណ៍តាំងទីលំនៅជាថ្មីមួយ ក្នុងគម្រោងនៅកម្ពុជាមួយរបស់ ADB ដែលក្នុងនោះ អន្តរាគមន៍តស៊ូមតិបានជួយឲ្យទីតាំងសម្រាប់ការតាំងលំនៅជាថ្មី ប្រែប្រួលល្អប្រសើរឡើងគួរឲ្យកត់សំគាល់ ក្នុងរយៈពេល ៨ឆ្នាំ នៃគម្រោងគឺ ចាប់ពីឆ្នាំ២០០៦ ដល់ ២០១៤ ។ ការសិក្សានេះ ជាការវិភាគផ្ដែកលើការចុះអង្កេតដល់កន្លែងថាតើក្រុមអង្គនានា (សហគមន៍ NGOs រដ្ឋាភិបាល និងម្ចាស់ជំនួយ) បានជួប និងបានយល់ដឹងប៉ុណ្ណាពីភាពតានតឹងក្នុងការតាំងទីលំនៅជាថ្មី នៅតាមកម្រិតខុសៗគ្នា៖ នៅកម្រិតសហគមន៍ ក្នុង ៥ទីតាំង នៅកម្ពុជា ហើយនិងនៅកម្រិតជាតិ អន្តរជាតិ និងស្ថាប័ន។ ការសិក្សានេះព្យាយាមស្វែងយល់ថា តើវិធានការគាំពារ ដែលបង្កើតឡើងនៅកម្រិតអន្តរជាតិ ឬ "កម្រិត ទីចាត់ការកណ្ដាល" វាសមស្របឬមិនសមស្របប៉ុណ្ណាទៅនឹង តម្រូវការ និងបំណងប្រាថ្នារបស់សហគមន៍នៅតាមមូលដ្ឋាន និងនៅតាមពេលវេលាខុសៗគ្នានោះ? ការសិក្សានេះ ពិនិត្យពី ផលពាក់ព័ន្ធនៃការពឹងផ្ដែកលើវិធានការគាំពារសម្រាប់ ការតាំងលំនៅជាថ្មី នៅក្នុងប្រទេសដែលមានកិច្ចការពារក្នុងស្រុក ទន់ខ្សោយទល់នឹងការបង្ខំប្រជាជនឲ្យផ្លាស់ប្ដូរកន្លែងរស់នៅ។ ការសិក្សានេះ យកគម្រោងផ្លូវដែកកម្ពុជា របស់ ADB ធ្វើជា ករណីសិក្សា និងផ្ដែកលើការស្រាវជ្រាវបែបគុណភាពស៊ីជម្រៅ ជាមួយ

សមាជិកសហគមន៍ដែលត្រូវផ្លាស់ប្ដូរកន្លែងរស់នៅដោយសារ
គម្រោងផ្លូវដែក និងជាមួយប្រជាជនដែលនៅបន្ដរស់នៅ
ក្នុងទីតាំងដើមរបស់ខ្លួនតាមបណ្ដោយផ្លូវដែក។ ការសិក្សា
ក៏ប្រើប្រាស់ផងដែរនូវរសម្ភាសន៍ជាមួយ អង្គការមិនមែនរដ្ឋាភិបាល
(NGOs) អ្នកកសាងគោលនយោបាយថ្នាក់ខ្ពស់ ទីប្រឹក្សា
និងអ្នកមានជំនាញឯកទេសខាងវិធានការគាំពារ
និងការតាំងលំនៅជាថ្មីនៅតាមដំណាក់កាលសំខាន់ៗផ្សេងទៀត
នៃការសម្រេចចិត្ត៖ ជាពិសេសនៅក្នុង ADB ធនាគារពិភពលោក
និងរដ្ឋាភិបាលអូស្ត្រាលី។

ដោយបន្ដការងារពីការស្រាវជ្រាវមានស្រាប់ស្ដីពីការតាំងលំនៅជាថ្មី
និក្ខេបបទនេះផ្ដល់គំនិតពីភាពគាននឹងកំពុងមានសព្វថ្ងៃ
ក្នុងផ្នែកអភិបាលកិច្ចលើការតាំងលំនៅជាថ្មី។ និក្ខេបបទ
បង្ហាញយ៉ាងច្បាស់ពីទំនាក់ទំនងរវាងការអភិវឌ្ឍ
នឹងការតាំងលំនៅជាថ្មីនៅកម្ពុជា ដោយពន្យល់ពីបែបបទដែល
ដំណើរការទាំងពីរនេះចូលពាក់ព័ន្ធគ្នា។ នៅក្នុងបរិបទនៃគម្រោង
ផ្លូវដែកនេះ៖ សិទ្ធិ និងអត្ថប្រយោជន៍ត្រូវបានដល់
ប្រជាជនរងផលប៉ះពាល់ ត្រូវបានកំណត់ដោយទំហំទីតាំងជាក់លាក់
ដែលពួកគេបានរស់នៅមកដល់ពេលគម្រោងចាប់ផ្ដើម។
ជាជាងធ្វើតាមទម្រង់ធម្មតាដែលសហគមន៍ធ្លាប់រស់នៅនោះ
គម្រោងបានបង្កើតគោលការណ៍ថ្មីនៃរបៀបរៀបចំសង្គម។
ចំណុចនេះនាំឲ្យមានផលប៉ះពាល់មិនស្មើគ្នាជាខ្លាំងនៅកម្រិត
អនុគម្រោង នៅពេលការតាំងលំនៅជាថ្មីចាប់ផ្ដើមឡើង។
អន្តរាគមន៍យ៉ាងខ្លាំងក្លារបស់ NGO ដោយប្រើយុទ្ធសាស្ត្រ
ឆ្លងប្រទេសមានលក្ខណៈថ្ងៃប្រឿតខ្ពស់ បានទាក់ទាញមជ្ឈដ្ឋាន
អន្តរជាតិឲ្យពិនិត្យតាមដានយ៉ាងល្អិតល្អន់លើគម្រោងនេះ។ ប៉ុន្តែ
ស្របគ្នានឹងការផ្ដល់សំណងប៉ះប៉ូវ ហើយសេវា និងហេដ្ឋារចនាសម្ព័ន្ធ
នៅតាមតំបន់តាំងលំនៅជាថ្មីបានល្អប្រសើរឡើងយឺតៗនោះ៖ សន្ធុះ
នៃការតាំងលំនៅជាថ្មីក៏បានផ្លាស់ប្ដូរ។ ការតាំងទីលំនៅជាថ្មី
កាន់តែមានលក្ខណៈទាក់ទាញខ្លាំងឡើងសម្រាប់សមាជិក
សហគមន៍ជាច្រើនដែលនៅងក្រោយក្នុងតំបន់ដើមនៅឡើយ។
មួយរយៈពេលក្រោយមកស្ដុងដានៃការតាំងលំនៅជាថ្មីបានល្អ

ប្រសើរឡើងជាខ្លាំងនៅតាមទីតាំងមួយចំនួន ដែលបានក្លាយជា "កោះនៃអភិបាលកិច្ចល្អ" ដោយមានការកំណត់ព្រំប្រទល់ ឬរបងហ៊ុំព័ទ្ធ ដាច់ពីតំបន់ដែលមានការផ្តល់ជំនួយទ្រទ្រង់ គិតជាងដល់ប្រជាជនរងផលប៉ះពាល់តែមួយភាគ និងមិនត្រូវបាន គិតបញ្ចូលក្នុងគម្រោងតាំងលំនៅដ្ឋាថ្មី។ ការស្រាវជ្រាវនេះ បង្ហាញពី ទំហំទន្ទឹលដែលអ្នកផ្តល់ហិរញ្ញវត្ថុអន្តរជាតិអាចមាននៅក្នុង ក្របខ័ណ្ឌនៃគម្រោងណាមួយ ព្រមទាំងកម្រិតព្រំដែននៃ ទន្ទឹលនេះទៅលើទិដ្ឋភាពផ្សេងទៀតនៃអភិបាលកិច្ច ដែលគ្មានពាក់ព័ន្ធដល់គម្រោង។

ក្នុងពេលដែលអង្គការ NGOs ប្រិងតស៊ូមតិជួយដល់ អ្នករងផលប៉ះពាល់មួយភាគតែគ្មានការកំណត់ឲ្យទៅតាំងទីលំនៅ ជាថ្មីនោះ គេអាចឃើញច្បាស់នូវរំហិតជាច្រើន ក្នុងគោលនយោបាយផ្តល់ការគាំពារ។ NGOs ត្រូវធ្វើការ ក្នុងបរិយាកាសមួយមានភាពតានតឹងយ៉ាងស្វិតស្វាញនៅក្នុង សហគមន៍ដែលបង្ហាញថា ផលប្រយោជន៍ និងបំណងប្រាថ្នារបស់ សហគមន៍វាប្រទាំងប្រទេសគ្នាជាខ្លាំង និងជាបញ្ហាមួយ ជៀសមិនផុតក្នុងការតាំងលំនៅជាថ្មី ហើយក៏ពិបាកនឹង ដាក់បញ្ចូលទៅក្នុងផែនការតាំងលំនៅជាថ្មី និងយុទ្ធនាការតស៊ូមតិ ទាំងឡាយទៀតផង។

ដោយប្រើក្របខ័ណ្ឌច្បាប់ និងទ្រឹស្តីមាត្រដ្ឋាន នោះ និក្ខេបបទនេះ ប្រើប្រាស់ក្របខ័ណ្ឌទស្សនទានដើម្បីស្វែងយល់ពីការតាំងលំនៅជាថ្មី និងគភ្នាប់ ការដជែកវែកញែកពីការតាំងលំនៅជាថ្មី ជាមួយនឹង ការសិក្សាជំទូលាយថ្មីៗជាច្រើនស្តីពី គណនេយ្យភាព និងចលនា សង្គមស៊ីវិលឆ្លងប្រទេស។ តាមរយៈការពិនិត្យលើគម្រោងនៅកម្រិត ផ្សេងៗ (កម្រិតអនុគម្រោង មូលដ្ឋាន តំបន់ និងអន្តរជាតិ) ការសិក្សានេះស្រាវជ្រាវថា តើគោលការណ៍ការតាំងលំនៅជាថ្មី "ដែលមានរបៀបរបបអនុវត្តល្អៗបំផុត" (ទោះបីមានការយកចិត្ត ទុកដាក់ ឬបំណងល្អយ៉ាងណា ក្នុងពេលរចនារៀបចំវាឡើង នៅកម្រិតអន្តរជាតិក្តី) អាចមានផលប៉ះពាល់អវិជ្ជមានក្នុងពេល អនុវត្ត និងកម្របានសមស្របនឹងគម្រូការរបស់ជនទាំងឡាយ ដែលគោលការណ៍ទាំងនោះត្រូវជួយគាំទ្រ យ៉ាងដូចម្តេច?

ការសិក្សានេះបែកញែកថា ដល់ប៉េពាល់នៃការតាំងលំនៅជាថ្មី មិនមែនងាយដោះស្រាយបានតាមការពិនិត្យតាមដានផ្ទៃក្នុង ការគ្រប់គ្រង និងជំនួយបច្ចេកទេសនៅកម្រិតគម្រោងឡើយ ទោះបីទិដ្ឋភាពទាំងអស់នេះបែងទទួលបានការផ្តល់ធនធានច្រើន គ្រប់គ្រាន់នៅក្នុងគម្រោងក៍ដោយ។ បញ្ហាប្រឈមទាំងនេះ បែងស្មុគស្មាញជាពិសេសនៅតាមកន្លែងដែលមានភាពមិនស៊ីគ្នា ខ្លាំងរវាង ស្តង់ដារដ្ឋាភិបាលថ្នាក់ជាតិសម្រាប់ការតាំងលំនៅជាថ្មី ជាមួយនឹងស្តង់ដាគោលការណ៍ដាក់លាក់របស់គម្រោងនិងជាលក្ខណៈ អន្តរជាតិ ដូចករណីនៅប្រទេសកម្ពុជា ជាដើម។

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From my current home in Bangladesh, to all of these people, with love,
Jessie

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Acronyms and abbreviations

ADB	Asian Development Bank
AfDB	African Development Bank
AHRC	Australian Human Rights Commission
AIIB	Asian Infrastructure Investment Bank.
AusAID	Australian Aid Program (now integrated and managed by DFAT)
BABC	Bridges Across Borders Cambodia (now Equitable Cambodia)
BABSEA	Bridges Across Borders South East Asia (now Equitable Cambodia)
BOOT	Build-Own-Operate-Transfer
BRICs	Brazil, Russia, India, China and South Africa
CBNRM	Community-Based Natural Resource Management
COHRE	NGO Centre on Housing Rights and Evictions
CRP	Compliance Review Panel of ADB
CSO	Civil Society Organisation
DIDR	Development-Induced Displacement and Resettlement
DFAT	Department of Foreign Affairs and Trade (Australian Government)
DFDR	Development-Forced Displacement and Resettlement
DFID	Department for International Development (United Kingdom)
DMS	Detailed Measurement Survey
DRD	Declaration on the Right to Development
EC	Equitable Cambodia (formerly BABC/BABSEA)
EIRR	Economic Internal Rate of Return
EBRD	European Bank for Reconstruction and Development
ELC	Economic Land Concession
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit or German Federal Enterprise for International Cooperation

GMS	Greater Mekong Subregion
GONGO	Government-Organised NGO
GSOs	Grassroots Support Organisations
HRTF	Housing Rights Task Force Cambodia
IADB	Inter-American Development Bank
IBRD	International Bank for Reconstruction and Development (World Bank Group)
ICCPR	International Covenant on Civil and Political Rights 1966
ICESCR	International Covenant on Economic, Social and Cultural Rights 1966
IFI	International Financial Institution
IFC	International Finance Corporation
IDI	Inclusive Development International
INGO	International NGO
IRC	Inter-Ministerial Resettlement Committee (Cambodia)
IRC-WG	IRC Working Group
IUCN	International Union for Conservation of Nature
JARTS	Japan Railway Technical Service
KPRP	Kampuchean People's Revolutionary Party
LANGO	Law on Associations and Non-Governmental Organisations
LMAP	Land Management and Administration Program
MDB	Multilateral Development Bank
MIGA	Multilateral Investment Guarantee Agency
NBA	Narmada Bachao Andolan
NDB	New Development Bank (formerly BRICS Bank)
NGO	Non-Governmental Organisation
MPWT	Ministry of Public Works and Transport
OFID	OPEC Fund for International Development

OSPF	Office of the Special Project Facilitator of ADB
OECD	Organisation for Economic Cooperation and Development
OECD-DAC	Organisation for Economic Cooperation and Development – Development Assistance Committee
PPTA	Project Preparatory Technical Assistance
PRSC	Provincial Resettlement Sub-Committee
QUANGO	Quasi-Autonomous NGOs
RCG	Royal Government of Cambodia
RP	Resettlement Plan
RRC	Royal Railway of Cambodia
SDR	Special Drawing Rights
SLR	Systematic Land Registration
STT	Sahmakum Teang Tnaut
TSO-AS	French Railway Company
UDHR	Universal Declaration of Human Rights 1948
UPDF	Urban Poor Development Fund
UNTAC	United Nations Transitional Authority of Cambodia
USAID	United States Agency for International Development

"Everyone has problems like living away from the market. There are some elderly people who cannot do anything. Before in the family almost everyone earned, but when we came here only one person could earn."

Woman living in Battambang resettlement site, March 2012

"Why not me? I want to have my own land. I want a safe place for my children to play. If school is a bit far then I can get a moto-taxi."

Woman living near Sihanoukville railway, February 2012

"If I stick to the rule book, and I do everything by the rules, then I should be safe."

Former ADB staff member describing ADB safeguard approaches, November 2014

"We are advocates after all, not sociologists trying to establish a comprehensive record of the overall resettlement process. However, our advocacy has been firmly grounded in evidence of negative social and human rights impacts, and it is those experiencing negative impacts whom we have worked to support...".

NGO representative working in Phnom Penh, correspondence after interview, June 2013

Timeline of events

French Colonial Period — 1863 -1954

1930s

First railway line built by the French Colonial Authority (Northern Line) linking Phnom Penh and Poipet (386km)

1942 — **Northern railway line extended beyond Poipet across the border and linked to Thailand's rail network. Connection did not operate beyond 1940s.**

Southern railway line built, linking Phnom Penh to Sihanoukville (266km), financed by Australian, French, West German and Chinese Governments.

1953-1970 — Kingdom of Kampuchea under administration of King Norodom Sihanouk. Following his father's death in 1960, Sihanouk won the general election as head of state and received the title of Prince Sihanouk.

1960s

Saturation bombing by the United States of Cambodia, South Vietnam and Laos. Over a million tonnes of explosives were dropped on Cambodian soil.

1969-1973

1970 — King Sihanouk ousted by General Lon Nol during a trip to Moscow.

1970-1975 — Lon Nol abolished the monarchy and established Cambodia as the Khmer Republic.

The Khmer Rouge take control of Cambodia under the leadership of Pol Pot and rename the country Democratic Kampuchea. Over one million people die as a result of starvation, execution and forced labour.

1975-1979

1975 — Prince Sihanouk re-instated as the symbolic head of state.

1976 — Prince Sihanouk resigns as head of state and was placed under house.

Vietnamese army invades Cambodia and defeats Pol Pot. Vietnam occupies Cambodia until the United Nations Transitional Authority of Cambodia (UNTAC) is established. The country is renamed the People's Republic of Kampuchea. Parts of the railway are severely damaged and sections destroyed.

1979-1992

1980 — First Involuntary Resettlement Policy established by the World Bank.

1980-2008 — **Limited rail service resumes until 2008.**

Greater Mekong Subregion initiative developed with support from ADB. Cambodia, China, Laos, Myanmar, Thailand and Vietnam commit to a program of subregional economic cooperation.

1992

1992-1994 — UNTAC is established. Cambodian constitution approved in 1993. The Khmer Rouge continue to wage war in the countryside.

*Railway-related events are in the bolded boxes.

World Bank Inspection Panel established.	1993	1993

First national elections in Cambodia administered by UNTAC. Coalition formed between Hun Sen's Cambodian People's Party and Prince Ranariddh's FUNCINPEC. Sihanouk restored as King. Ranariddh and then Hun Sen become Prime Minister.

Australia elects Liberal Party in Coalition with National Party. Prime Minister: John Howard. Ministers for Trade: Tim Fisher, Mark Vale, Warren Truss. Minister for Foreign Affairs: Alexander Downer.

1996-2007

1995

ADB Involuntary Resettlement Policy adopted.

2000

"Highway One" project commences in Cambodia and displaces approximately 6,000 people. This is ADB's first project under its Greater Mekong Subregion program for development. Initially, none of the families were provided with replacement land.

2001 Land Law introduced into Cambodia, set up processes for registration of private land.

2001

State-owned public enterprise Royal Railway of Cambodia established.

2002

2002

Technical Assistance project on the transport sector undertaken by ADB in Cambodia recommends railway rehabilitation as feasible.

2003

ADB Accountability Mechanism established comprising the Office of the Special Project Facilitator (OSPF) and the Compliance Review Panel (CRP).

2004

Two further studies confirm the feasibility of the railway rehabilitation.

First Resettlement Plan prepared for the ADB railway project in Cambodia.

Oct 2006

2007

2007

First loan agreement for the railway rehabilitation signed between the Kingdom of Cambodia (the borrower) and ADB, dated 5 March 2007 equivalent to around USD 73 million.

Australia elects Federal Labor Party. Prime Minister: Kevin Rudd. Minister for Trade Simon Crean. Minister for Foreign Affairs: Stephen Smith.

2007

Households affected by ADB's "Highway One" project in Cambodia make formal complaint to the OSPF regarding resettlement impacts. The ADB's OSPF found that the project had caused impoverishment of affected households.

*Railway-related events are in the bolded boxes.

| Rail passenger service ceases completely in 2008. | 2008 | 2007-2008 | Global Financial Crisis |
| | | | |

Rail passenger service ceases completely in 2008.

2008

2007-2008 — Global Financial Crisis

Rehabilitation works for the railway begin.

2008

Aug 2008 — Updated Resettlement Plan prepared for Northern line and missing link for the railway project.

OPEC Fund for International Development contributes 13 million to the railway project. Government of Malaysia contributes 2.8 million (in kind).

2009

2009 — Cambodian Government grants Toll Holdings a 30-year concession agreement to rehabilitate the whole railway network.

2009

Department of Railway created within the Ministry of Public Works and Transport (MPWT). MPWT manages the railway project.

Aug 2009 — Resettlement Plan prepared for Samrong Estate for the railway project. Residents told they will need to move.

2009 — Railway design and construction contracts awarded to Nippon Koei Co LTD in association with JARTS. Construction contractor is French company TSO-AS and NAWARAT (joint venture between France and Thailand).

Updated resettlement plan prepared for the Southern line for the railway project.

Sept 2009

Supplementary Loan Agreement signed dated 2 March 2010 provides additional funds equivalent to USD 74.8 million, bringing the total loan cost to USD 147.8 million.

March 2010

2010 — Australia agrees to provide a USD 23 million grant for the modified project.

May 2010

May 2010

Updated Resettlement Plan for Poipet for the railway project

Two children drown at the Battambang resettlement site in May 2010 as they attempt to get water from a deep muddy pond, amidst reports of no clean drinking water available at the resettlement site. News of the deaths reaches the international media.

Updated Resettlement Plan for Phnom Penh for the railway project

June 2010

June 2010 — Prime Minister: Julia Gillard. Ministers for Trade: Simon Crean, Stephen Smith and Craig Emerson. Ministers for Foreign Affairs: Stephen Smith, Kevin Rudd, Bob Carr.

NGOs begin warning AusAID and ADB about potential impacts of the project in 2010. Letter co-signed by an alliance of NGOs was sent to the Australian Government and ADB.

2010

2011 — Local NGO, STT, publishes field data report detailing early problems with resettlement for the railway project, e.g. inadequate and incorrect compensation amounts.

*Railway-related events are in the bolded boxes.

28

2011

Resettlement for the railway project begins in Phnom Penh, Sihanoukville, Battambang, Pursat, and Poipet.

Aug 2011

STT suspended from operating as an NGO for five months for allegedly inciting affected households to protest.

2011

Complaint made to the ADB OSPF on behalf of 150 households affected by the railway, claiming that ADB had not complied with safeguards. Households receive first round of additional compensation.

Feb 2012

"Derailed" report released by NGO Bridges Across Borders (now Equitable Development), argued that ADB safeguard policies had been breached and identified human rights violations resulting from the railway project.

Mar 2012

A leaked letter dated March 16 2012, Toll Royal Railways informed the Cambodian government it would suspend operations until 2013 because delays meant the project was not profitable.

21 July

The contractor TSO abandons plans to rehabilitate the Northern line (386km) and negotiations to resume works fail.

Aug 2012

Complaint made to the Compliance Review Panel (CRP) of ADB on behalf of households adversely affected by the railway project.

Oct 2012

AusAID prepares first resettlement guidelines, operational in October 2012.

Oct 2012

Extra-territorial complaint submitted to the Australian Human Rights Commission on behalf of 30 affected families, alleging that the Australian Government failed to uphold obligations by funding the railway project without sufficient safeguards measures. This was the first time an extra-territorial human rights complaint was filed to the Commission in relation to the impacts of Australian aid overseas.

2012

Australian Government appoints Independent Advisor to monitor the project and commits additional AUD2 million to address problems in the resettlement sites. ADB sends a full-time safeguards specialist to Phnom Penh.

2012

Ongoing reports emerge that the contractor for the rehabilitation of the lines, TSO, is failing to adequately protect railway workers. Mistreatment of workers detailed in Environmental Monitoring Report No.10 prepared by Nippon Koei for ADB.

2012

STT publish "Losing the Plot" detailing household debt levels in the Phnom Penh resettlement site for the railway project.

Mar 2013

NGOs succeed in proposing international resettlement expert, Michael Cernea, visit Cambodia and prepare a consultant's report on resettlement impacts. Report results in major controversy and is not released. Summarised version of the recommendations section is made public.

Mar 2013

Rehabilitation of Southern railway line linking Phnom Penh and Sihanoukville completed.

2013

STT publish "End of the Line" detailing harm experienced by households resettled for the railway project.

*Railway-related events are in the bolded boxes.

2013

Second phase of resettlement begins in Phnom Penh for the railway.

2013

Due to insufficient loan/grant funds, the Cambodian Government confirmed deletion of Samrong components from the Project scope and no further works for the Northern Line.

Sept 2013

Australia elects Liberal Party in Coalition with National Party. Prime Minister: Tony Abbott. Minister for Trade: Andrew Robb. Minister for Foreign Affairs: Julie Bishop.

Sept 2013

AusAID is dissolved and merged with the Department of Foreign Affairs and Trade (DFAT), becomes the "Australian Aid Program" within DFAT.

Jan 2014

ADB admits non-compliance with safeguards. Board of Directors release media statement.

Sept 2014

A 17 month investigation by the ADB's CRP found that ADB had not complied with its safeguards. One of the recommendations was a USD 3-4 million "compensation-deficit payment scheme". The ADB Board approved a modified version of the recommendations in January 2014.

Dec 2014

Toll Holdings sells its 55 percent share in the railway project to Royal Group, citing poor revenue and other setbacks.

Dec 2014

The railway project cancelled. Major change project document prepared by ADB dated September 2014. As of July 2014, USD 21.76 million remained available for contract award. Approximately USD 81.14 million disbursed. An estimated USD 20 million remains uncontracted. ADB initiated discussions with Cambodian Government to cancel this amount. Any further unutilised amounts are automatically cancelled at loan closing, 31 December 2014.

*Railway-related events are in the bolded boxes.

Chapter 1

Introduction

1.1 Overview

Globally, many millions of people are displaced by infrastructure development each year.[2] Displacement occurs directly and indirectly through urbanisation, construction of roads, bridges, mines, and hydropower schemes.[3] Recently, displacement is also occurring through other processes which restrict access to land, such as forest protection and conservation.[4] Since the 1980s, multilateral development banks have required borrowing governments to comply with "safeguards" and prepare resettlement plans to assist people negatively affected by their projects. Yet, the effectiveness of these resettlement safeguards has been the source of conflict between civil society groups and project financiers for many decades.[5] These conflicts have been particularly acute in countries where there are few local protections otherwise available for communities at risk of displacement.[6]

Multilateral development banks, such as the World Bank, are under increasing pressure to reduce the negative community impacts of resettlement, without placing undue burdens on the governments of borrowing countries.[7] Since 2012, the World Bank has been undertaking a multi-country consultation process to both improve its involuntary resettlement policy and to develop a more straight-forward safeguards system in response to borrower demands.[8] Policy-makers around the world are watching the outcomes of these negotiations with interest, especially as resettlement is being proposed as a potential climate change adaptation measure for populations in vulnerable locations.[9] The United Nations Framework Convention on Climate Change has signalled that resettlement may be an adaptation option

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[2] Accurately accessing the numbers of people displaced by development and infrastructure projects is very difficult and the data available is not reliable, see Chapter 2; Also see: McDowell & Morrell (2010, p. 37); Oliver-Smith (2010, p. 12).
[3] See generally: McDowell & Morell (2010); Scudder (2012); Oliver-Smith (2009).
[4] McDowell & Morell (2010); Vandergeest, Bose & Idahosa (2007); Agrawal & Redford (2009); Cernea & Schmidt-Soltau (2006); De Sherbinin, Castro, Gemenne, Cernea, Adamo, Fearnside, Krieger, Lahmani, Oliver-Smith & Pankhurst (2011).
[5] See: Oliver-Smith (2010).
[6] This argument is developed throughout the thesis. See Chapters 2 and 4.
[7] Von Bernstorff & Dann (2013, p. 7).
[8] The consultation began in 2012 and was intended to be a two year consultation, but is still ongoing. For details of the review see: World Bank (2015e).
[9] Ferris (2012); De Sherbinin, Castro, Gemenne, Cernea, Adamo, Fearnside, Krieger, Lahmani, Oliver-Smith & Pankhurst (2011);

for communities exposed to climate change, renewing demand for understanding "best practices" and the safeguards which might be most effective.[10] While refugee resettlement involves different processes again, large influxes of refugees in recent years have also intensified concerns about how to re-establish livelihoods and cohesive communities in new settings.[11]

Drawing on the ADB co-financed railway project in Cambodia as a case study, this thesis explores contemporary tensions shaping the implementation of resettlement safeguards in a country where domestic legal protections are not well established. It explores how communities and advocates used creative strategies to influence the outcomes of the resettlement scheme, resulting in improvements in the resettlement sites over the eight years of the project. It also considers the experience of people who were not provided with the option of relocation and investigates the changing social dynamics of these communities as the project evolved. The findings of the study are based on in-depth interviews with community members in five locations in Cambodia (Pursat, Poipet, Sihanoukville, Phnom Penh and Battambang), and with NGOs and financiers in multiple locations where decisions were being made in relation to the project and where safeguards policies were being generated (Phnom Penh, Australia and Washington D.C.).

This introduction first provides a brief background to understand resettlement safeguards in the context of development and infrastructure projects. It then introduces the railway case study, before explaining the questions guiding the research and the structure of the thesis.

1.2 Safeguards and development-induced displacement

Resettlement schemes for infrastructure projects have a long history of negatively impacting people who are relocated.[12] Early studies in Africa and Latin America in the 1960s describe how resettlement created multi-dimensional types of stress on households relating to anxiety about the resettlement process, abrupt shifts and loss of livelihood opportunities, physiological and health effects as well as socio-cultural stress relating to loss of place and loss of control.[13] Often poorly timed and implemented external assistance exacerbated the

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[10] United Nations Framework Convention on Climate Change (2011).
[11] United Nations High Commissioner for Refugees (2015b, p. 10).
[12] Colson (1971); Scudder (1962, 1993, 2005, 2012); Chambers (1970); Hansen & Oliver-Smith (1982); Oberai (1988); Cernea (1986).
[13] Colson (1971); Scudder (1962, 1993).

stress of relocation, disproportionately impacting vulnerable members, especially older people and children.[14]

In response to concerns about the treatment of resettled people and pressure from advocacy groups throughout the 1970s-80s, multilateral development banks such as the World Bank and ADB, introduced safeguard policies into their internal operations aimed at preventing or mitigating undue harm to people and the environment. Safeguards require certain processes to be followed where there is a risk that an investment will have detrimental impacts on affected populations.[15] The World Bank was the first institution to introduce an Involuntary Resettlement Policy in 1980. The policy influenced other multilateral agencies to adopt similar models, including the ADB, Inter-American Development Bank, the African Development Bank and the European Bank for Reconstruction and Development.[16]

The involuntary resettlement policies of the World Bank and the ADB mandate that involuntary resettlement should be avoided, or minimised, wherever possible exploring all viable alternative project designs.[17] Where it is not possible to avoid resettlement, then displaced persons are to be assisted in their efforts to improve their livelihoods and standards of living, or at least to restore them to pre-displacement levels. Both policies require displacement to be minimised, compensation to be provided and livelihoods to be re-established so that affected households are not adversely affected by resettlement. Detailed resettlement plans must be prepared, including inventories of losses and livelihood baselines. Monitoring processes are also required. These standards are not limited to people being relocated. They also apply to people who have lost access to land on which their livelihoods rely, such as loss of access to forests, farmlands, water bodies or other income-generating resources.[18]

To provide a forum to enforce these safeguards, the World Bank established the Inspection Panel in 1993, which enables project-affected people to make complaints directly to the Bank to seek compliance with the safeguards.[19] The ADB followed suit in 1995 and

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[14] Scudder (1993).
[15] Cernea & Mathur (2011).
[16] Cernea & Mathur (2011). For an analysis of the influence of the World Bank, see: Park (2014).
[17] World Bank (2001); Asian Development Bank (2009b). Note that the World Bank policies are under review, and both banks are piloting various alternative models, such as the "Country Systems" approach, as explored in Chapter 2 and 8.
[18] World Bank (2001); Asian Development Bank (2009b). Specific safeguards were also introduced to protect against a range of other impacts, especially protections for the environment and indigenous people.
[19] Bissell & Nanwani (2009).

established an Inspection Function which became its Accountability Mechanism in 2003, consisting of the Office of the Special Project Facilitator (OSPF) and the Compliance Review Panel (CRP).[20] These mechanisms are often called "community-driven" or "citizen-driven" accountability mechanisms, because while they may have various shortcomings, in theory, they provide a forum to enable project-affected people to make complaints directly, or through a local representative.[21] In exceptional circumstances an international organisation (i.e. an advocacy NGO) acting as an agent for the affected persons may make a complaint. In practice, however, project-affected people are often represented by local or international agents (NGOs), as was the case with the Cambodian railway. These grievance mechanisms are particularly crucial in places where people experience limited protections through their own country's legal systems, as is the case in Cambodia.[22]

Cambodia's social protection system is among the least developed in the Asia Pacific, meaning that there are very limited formal supports or government safety nets available to people experiencing hardship.[23] Legal protections for people at risk of displacement are also very weak.[24] These weak social and legal protections can be partially attributed to Cambodia's recent history, as Cambodia is still recovering from the Khmer Rouge conflict of the 1970s-90s. It was only in the late 1990s that relative political stability was established.[25] A number of authors have identified the consequences of weak legal protections and inequitable government policies as resulting in widespread land conflicts, and highly uneven access to land, land title and protection of land rights.[26] Similar patterns of unevenness shape resettlement processes. In Cambodia, like many countries, the standards set by multilateral development banks for resettlement and the complaints mechanisms available to project-affected people are at odds with the social and legal protections otherwise available to Cambodian citizens. People displaced by infrastructure projects involving a multilateral development bank, such as the World Bank or ADB, are entitled to enforce the safeguards standards through the Banks' complaints mechanisms.[27] Donor countries, such as Australia, provide funding to the World Bank and ADB on the

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[20] See the discussion in Park (2014). Also see Chapter 2.
[21] For a general discussion, see Clark, Fox & Treakle (2003); Ebrahim & Herz (2007).
[22] Williams (2013); Grimsditch & Henderson (2009, pp. 37-39).
[23] Asian Development Bank (2013).
[24] See generally: Williams (2013); Grimsditch, Kol & Sherchan (2012); Grimsditch & Henderson (2009). See the discussion in Chapter 4.
[25] See Chapter 4.
[26] For example, see: Dwyer (2015); Milne (2013); Biddulph (2010).
[27] Bissell & Nanwani (2009); Suzuki & Nanwani (2005); World Bank (2015c); Park (2014). See Chapter 2.

condition that projects in foreign countries are managed in accordance with the safeguard systems. These protections differ for people who are relocated for a Cambodian Government project or for a private investment. These differences have led some authors to describe multilateral development bank projects as creating exceptions, or leading to "islands of governance", which are potentially isolated from broader governmental systems and standards.[28] These notions of "islands of governance" or places of exception is a theme that emerges throughout this thesis, and is developed further in the final empirical chapter (Chapter 8).

The differences between the rights and treatment of ordinary citizens and those who fall within the bounds of certain projects has been subject of debate within the multilateral development banks, and in part, has led to an interest in supporting a "country systems" approach where a borrowing country's own institutions and processes are used to implement development projects.[29] Under these arrangements, borrowing countries are ostensibly provided with intensive support from multilateral development banks prior to and during projects to ensure they meet the benchmark standards required. These new safeguards models are currently being piloted in a number of countries, but have been criticised by civil society groups who argue that these new models reduce the protections available to project-affected people.[30] Debates about how to protect people experiencing displacement, what rights should be afforded to project-affected people, especially in settings where few other protections exist, provide the broad context for this research. Tensions between local, country-level resettlement practices and international multilateral development bank or donor country expectations are exemplified in recent resettlement conflicts in Cambodia, including in the Cambodian railway project.

1.3 The Cambodian railway project

Cambodia has a population of around 15 million people and is one of the poorest countries in Southeast Asia.[31] It is geographically situated between Vietnam to the east and Thailand to the northwest and borders Laos to the northeast and the Gulf of Thailand to the south. As

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[28] CIDSE (2006, 20); Connell & Grimsditch (2014); Johns (2015)

[29] See for example: World Bank (2015a); Asian Development Bank (2015d). Also see Chapter 8. During the research, I conducted a review of the World Bank pilot of the new financing modality, Program-for-Results in Vietnam for the Bank Information Center, which relies on country systems, see: Jessie Connell & Grimsditch (2014).

[30] See for example: Bank Information Center (2005).

[31] Cambodia is listed as a "Least Developed Country" by the United Nations based on several socio-economic indicators, see: < http://www.un.org/en/development/desa/policy/cdp/ldc_info.shtml> accessed 29 November 2015.

is the case in many countries in Southeast Asia, forced community relocations have increased in Cambodia over the past 15 years to make way for public infrastructure projects, private development and urban beautification.[32] In the aftermath of the Khmer Rouge conflict which devastated Cambodia in the 1970s-90s, the Cambodian Government has promoted economic growth. The past decade has seen an increasing number of land conflicts exacerbated by weak land tenure security arrangements across the country. Large numbers of people have been displaced in the absence of clear legal protections.[33] Resettlement processes have been characterised by conflict between communities, financiers of infrastructure projects, NGOs and the Cambodian Government.[34] Advocacy NGOs have emerged as influential actors in resettlement disputes, coordinating vocal, high-profile campaigns. NGOs have compiled data on resettled populations, publicised relocation events locally and internationally and utilised the accountability and complaints mechanisms of the World Bank and the ADB.[35]

The ADB Rehabilitation of the Railway in Cambodia Project (or simply, the "Cambodian railway project"), began in 2006, and involved Cambodia's largest community resettlement for an infrastructure project to date. Co-financed by the Asian Development Bank (ADB) and the Australian Government, it affected approximately 20,000 people, of whom 4,610 were required to relocate.[36] The railway project aimed to improve economic opportunities for Cambodians by integrating Cambodia into the regional railway network of the Western Greater Mekong Sub-region. Under ADB's supervision, the Cambodian Government was responsible for implementing the USD 141 million project in accordance with ADB safeguards and its involuntary resettlement policy.[37] The ADB also managed a USD 21.5 million grant for the project from the Australian Government.[38]

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[32] NGO Forum on Cambodia (2014).
[33] See: NGO Forum on Cambodia (2014); Sahmakum Teang Tnaut (2014); Sahmakum Teang Tnaut (2012); Also see generally: Amnesty International (2008); Hall, Hirsch & Li (2011).
[34] See media reports such as: Lei Win (2011).
[35] Many of these advocacy activities have been undertaken by Equitable Cambodia, (formerly Bridges Across Borders Cambodia), Inclusive Development International, Sahmakum Teang Tnaut (STT) and AidWatch.
[36] (ADB 2014f); Estimates of the number of households affected have varied over the course of the project. ADB's website materials and formal reporting of the numbers of affected households also differ. The ADB in Cambodia calculates the average household size as 4.7 people using demographic data, see: Asian Development Bank (2014b, p. 1). The average urban household (4.8 members) is slightly larger than the average rural household (4.6 members).
[37] The 1995 ADB Policy on Involuntary Resettlement applies to most of the people affected by the project, see: Asian Development Bank (1995); Also see Chapter 5.
[38] See Chapter 5.

The original plan was to rehabilitate the railway system that fell into disrepair in the 1970s and then connect Cambodia by rail from Kunming in China, through Vietnam, all the way to Singapore via Thailand and Malaysia.[39] However, notwithstanding the technical assistance, consultant, capacity building and supervision costs of the project, and the preparation of more than 50 detailed reports, including economic, financial modelling and technical assessments, feasibility studies, multiple revised resettlement plans, numerous social and environmental monitoring studies and income restoration programs, the partly implemented project was cancelled in 2014, with more than 300 km of tracks still awaiting repair.[40] Financiers are reluctant to extend further financing to the beleaguered and costly investment, although the Cambodian Government will still need to repay around USD 81.1 million, with interest, for the partly finished project.[41]

By the time the project was cancelled, resettlement had already taken place. Households were required to relocate if they had residences, structures and other assets within the railway corridor of impact, which is a narrow 7 metre corridor (3.5 metres on either side of the railway centreline). Most of the affected households were considered to be "illegal settlers" under Cambodian law, as the areas directly adjacent to the railway lines were state public property on which occupation is not legal. An important aspect of the ADB resettlement policy was that it compensated people considered to be squatting "illegally" for loss of assets and businesses, but not for loss of land. However, relocated households were provided with new plots of land in the resettlement sites and were promised that they would receive land title if they lived in the resettlement sites for five years or more, although it was not explained how this process would occur.[42]

Only people living within 3.5 metres of the railway centreline were moved to new locations, despite the fact that a much larger number of people were living in the wider railway right of way, which is an area of 20-30 metres on either side of the centreline and also considered state public property.[43] Households in these areas had generally been living in these locations

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[39] Asian Development Bank (2006).

[40] Asian Development Bank (2014g); Asian Development Bank (2014a).

[41] Chapters 5 and 8 go some way to explaining why the project was cancelled, and how the Cambodian Government has been left with an outstanding loan of USD 81.1 million plus interest for the unfinished project. This aspect of the case study is important, but it is not elaborated here as the primary focus of the research relates to the resettlement aspects of the railway project.

[42] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007).

[43] The right of way is 20 metres on each side of the centreline in densely populated areas and 30 metres on each side outside the cities, see: Asian Development Bank (2006, p. 47).

for many years, sometime decades. The resettlement policy did not seek to identify and resettle whole communities, rather it only relocated households who were living precisely within the corridor of impact. The remaining "partially-affected" households who were living in the wider railway right of way were compensated only if their assets and structures were partially within the corridor of impact. These households were generally moved back from the area past the 3.5 metre point, as shown in Figure 1 below. Residents living in the right of way were not provided with land title in the areas beyond 3.5 metres, but it was agreed that they could remain living there for at least five years without being relocated or evicted.[44] In the initial plans, it was promised that if these people were relocated at a later date they would also receive the same compensation and livelihood re-establishment support as those who had relocated earlier,[45] however no formal arrangements were put in place to ensure this would occur after the ADB finalises its involvement in the project.

Figure 1: Railway line depicting corridor of impact
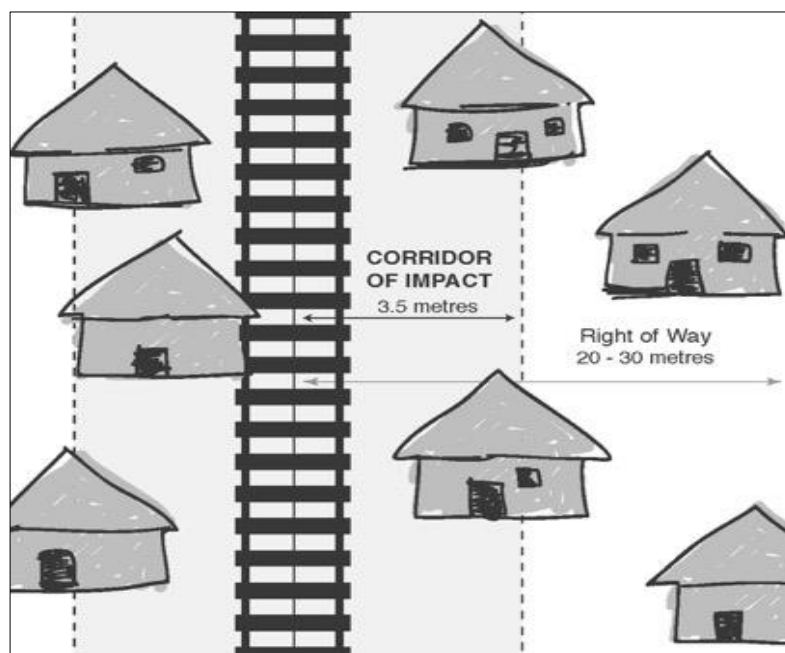
Source: Author's illustration

People were affected by the railway all along the railway line, however the households most directly affected and required to move were located in clusters in five locations: Phnom Penh, Pursat, Sihanoukville, Battambang and Poipet. Resettlement sites were established in

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[44] Asian Development Bank (2014f).
[45] Asian Development Bank (2006, p. 14).

each of the five places to accommodate the relocating households from each area. Figure 2 below shows a map of Cambodia indicating the locations of the resettlement sites.

Figure 2: Map of railway project identifying resettlement sites
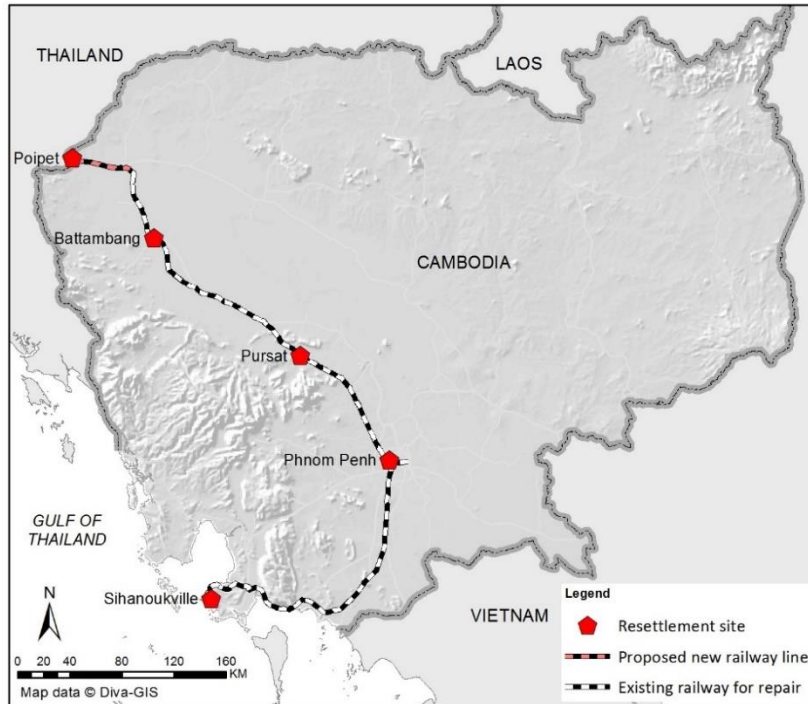
Critical to understanding the resettlement impacts of this particular project is an appreciation of the different micro-geographies of each of the resettlement sites, especially the proximity of the sites to urban centres, sources of employment, and distances from former residences. Figure 3 below shows the different distances people moved from their previous locations.

Figure 3: Approximate distances people moved from previous residences
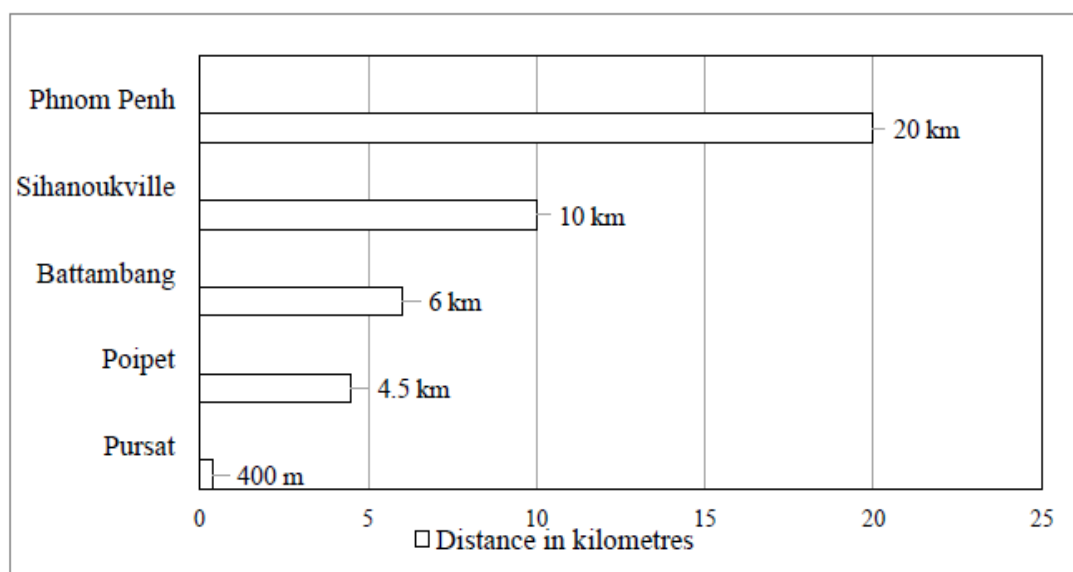
The Phnom Penh resettlement site is in a peri-urban location approximately 20 km from the city and far from where the affected households lived previously. The Battambang site is approximately 5-7 km away, the Sihanoukville site is 10 km away, the Poipet site is 4-5 km away. In the Pursat site, people were relocated only 400 metres from most former residences. In Pursat, people affected were mostly living in the village of Bamnak, which is in the countryside 45 km east of Pursat.[46]

Many of the households affected by the project were already very poor prior to relocation. The original resettlement plan estimated that half of all affected households belonged to poor and vulnerable groups and that poor, female-headed households accounted for 22.3 percent of all affected households.[47]

Resettlement began in 2010 and was beset with problems from the outset. The resettlement process was plagued by reports of intimidation of individuals by Government officials, inadequacies in the conditions and locations of the resettlement sites, and very low amounts of compensation leading to the impoverishment of those who were relocated. [48] At least six different resettlement plans and a detailed measurement survey of the people affected were prepared, as well as an inventory of losses, a baseline of livelihoods and compensation plan.

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[46] While Bamnak is not an "urban centre" as such, the area where most people were living along the railway was still relatively condensed with a local market, and not surrounded by vacant, available land.
[47] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007). This is discussed in further detail in Chapters 5 and 7.
[48] Bugalski & Medallo (2012)

Social and environmental monitoring arrangements were also established.[49] Before the partly-finished project was cancelled in 2014, resettlement costs for the project had grown from USD 3.8 million in 2006, to USD 7.6 million in 2009, to at least USD 14.6 million in 2014.[50]

Local and international advocacy NGOs brought intense international scrutiny to the project. They collected data on affected households, advocated directly to the Australian Government and ADB and supported formal complaints by communities to the ADB Accountability Mechanism and the Australian Human Rights Commission. These complaints resulted in a series of additional compensation payments and improvements in the services available and the amenity of the resettlement sites over time.[51]

Tensions culminated in an internal ADB CRP investigation in 2013, which found that the ADB was in breach of its own safeguards. It identified numerous deficiencies in the original 2006 Resettlement Plan and its implementation. The CRP recommendations included an additional compensation scheme for resettled households to the value of USD 3-4 million, which was approved by the ADB Board.[52] The CRP was particularly critical that ADB staff only became fully engaged in supervising the project after NGOs drew attention to its deficiencies. It stated:

> Gradual proactive engagement at the required level and intensity began only in late 2010 after NGOs presented their concerns to the President of the ADB.[53]

The CRP also stated that:

> In a post-conflict situation, such as that in Cambodia, where a country is emerging from decades of civil war, donors need to proactively engage with the government and provide it with support at a much higher level and intensity than was provided by ADB in this case.[54]

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[49] The resettlement plans are catalogued on the ADB project website at: http://adb.org/projects/37269-013/activities.
[50] The evolving project costs are detailed throughout the project reports uploaded to the ADB project website: http://adb.org/projects/37269-013/activities.
[51] See Chapter 5.
[52] Asian Development Bank (2014f).
[53] Asian Development Bank (2014f, p. 5).
[54] Asian Development Bank (2014f, p. 5)

The railway project is one of a series of internationally financed projects in Cambodia in recent years which have resulted in heightened conflict between donors, financiers, the Cambodian Government and NGOs and communities. Other prominent examples include the Highway One Project, also financed by the ADB, and the Boeung Kak lake conflict, which implicated the World Bank. The Boeung Kak Lake conflict was an extreme example in December 2010, resulting in the World Bank's landmark decision to freeze loans to Cambodia. This followed a World Bank Inspection Panel complaint regarding the Boeung Kak Lake development in central Phnom Penh. In this instance, the Cambodian Government refused to address complaints that a land titling program financed by the World Bank was excluding families living on high-value land who also had a claim to the lake area where the development was taking place.[55] Thus, many of the most publicised resettlement conflicts in Cambodia have involved an international financier, which has opened additional avenues for NGOs and communities to campaign than if only domestic investors were involved. Similar dynamics emerged in these relocation events, including the impoverishment of displaced communities, especially immediately after relocation,[56] at the same time as communities experiencing highly uneven and differentiated impacts and benefits. In the Highway One case, Boeung Kak Lake conflict and the railway project, there have been significant challenges on behalf of the Cambodian Government in meeting the resettlement standards set by international institutions, and very limited monitoring of projects requiring resettlement by international institutions or the Cambodian Government.[57] Yet, in each of these examples, resettlement conditions began to improve slowly in response to NGO advocacy.[58]

1.4 39-40. Research questions

Using the Cambodian railway project as a case study, the research aims to examine the tensions shaping resettlement safeguards at a number of scales: local, national, international and institutional through a close field-based study. It seeks to interrogate whether the actions of different actors involved in the railway resettlement process – local and international

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[55] The impacts of the World Bank's Land Management and Administration Program (LMAP) were brought to the Bank's attention through a complaint to the World Bank Inspection Panel made by the NGO, Equitable Cambodia (then, Bridges Across Borders Cambodia), on behalf of the affected families in the Boeung Kak Lake area; See: Grimsditch, Kol & Sherchan (2012). Also see: Cambodia Daily (2013).

[56] Sugita (2005); Bugalski & Medallo (2012); Sahmakum Teang Tnaut (2013a).

[57] Sugita (2005); Grimsditch & Henderson (2009); Asian Development Bank (2014f).

[58] See Chapters 4, 5,7 and 8.

NGOs, as well as international financiers and the Cambodian Government – aligned with or addressed affected peoples' aspirations or concerns. It seeks to capture how different actors involved in the railway resettlement process understood and approached their roles in the conflict.

The research is premised on the view that resettlement safeguards models and approaches, as well as the advocacy campaigns designed to support communities, need to cater to or reflect the different local needs and aspirations of people affected by relocation.

Accordingly, three broad inter-related questions guided the research:

- How did the actions and responses of the parties involved in resettlement processes for the railway (financiers, governments and NGOs) align with project-affected people's aspirations and concerns?

- Has the experience of involuntary resettlement faced by displaced communities been mitigated by NGO advocacy, and in what ways?

- What are the implications of using international safeguards and accountability mechanisms to influence resettlement processes in a country in which domestic legal systems are not well established?

The thesis links debates about resettlement to other broader emerging literatures on accountability, civil society movements and the nature and role of NGOs in development processes. This approach problematises the role of law, accountability and the operation of trans-national civil society networks in a post-conflict context as expressed in the context of resettlement negotiations. The study also recognises that land conflicts – manifested in the example of the railway resettlement – are taking place on an increasing scale, frequency and complexity in Southeast Asia. As Hall et al argue, these conflicts are "irreversibly shifting the relations between people and land" [59] in contemporary Southeast Asia. Cambodia is an extreme example where these multi-faceted dynamics are unfolding.[60] A transformative dimension of these changing relations is that the sheer number and diversity of actors

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[59] Note that Hall et al. primarily refer to processes of agrarian change. See: Hall, Hirsch & Li (2011, pp. 3-4). On land conflicts, also see: Dwyer (2015); Milne (2013); Biddulph (2010).
[60] Hall, Hirsch & Li (2011, pp. 3-4).

embroiled in these conflicts has increased.[61] Not only are local and national governments involved with "often contradictory agendas, rules and enforcement procedures," there is now a "plethora of agents under the broad umbrella of 'civil society'" whose linkages extend beyond the "nation".[62] There is also a saturation of donors, transnational companies and multilateral organisations involved in either supporting or resisting these processes, directly and tangentially. Thus, the railway resettlement is a highly visible example of land and resettlement conflicts occurring in the region. It is hoped that in drawing out the nuances surrounding the Cambodian railway project, by extension, the dynamics of other, less visible resettlement processes, land conflicts and civil society activities will also become less obscure.

1.5 Thesis structure

Chapter 2 situates the research in the existing literature on resettlement, providing an overview of the main debates and themes underpinning resettlement research. It provides estimates of the number of people affected by development-induced displacement, and introduces the central concepts and language used in the literature. The chapter draws out the different *socio-anthropological* and *rights-based* approaches to understanding resettlement. In doing so, it provides important background about how human rights frameworks, safeguards, and accountability mechanisms have developed over time to support resettlement processes. The final sections of the chapter introduce emerging approaches to resettlement articulated by authors such as Oliver-Smith and Fisher, whose work examines transnational linkages and advocacy organisations and the ways they interact with local populations.[63] These emerging approaches are particularly relevant for building the conceptual framework for the research.

Chapter 3 further develops the theoretical framework and positions the study at the intersection between human geography and socio-legal studies. It draws on theories of scale and legal pluralism, particularly from legal geography. Legal geography is primarily concerned with how law operates to influence or create the (natural or built) environment of specific places.[64] It uses these perspectives to focus attention on how global or universal legal processes are translated into local conditions, shaping communities, not only spatially,

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[61] Hall, Hirsch & Li (2011, pp. 3-4).
[62] Hall, Hirsch & Li (2011, pp.5-6).
[63] Fisher (2009); Oliver-Smith (2010).
[64] Gillespie (2012).

but also socially and politically. This process is sometimes referred to within legal geography as the study of the "localisation of laws".[65] Thinking in this way raises questions about how international law, standards and resettlement policies have potential to re-shape communities by altering the rights, opportunities and living spaces of those affected, creating new legal boundaries between those who are required to move, those who are not, and those whose grievances "fit" within resettlement policy categories. Legal geography provides a powerful lens to examine the current research because of the multiple and contradictory ways in which laws – domestic Cambodian law, local customary norms, international safeguards and resettlement policies – have re-organised the railway communities in Cambodia. Together with the literature examined in Chapter 2, these perspectives provide a conceptual framework for the research.

Chapter 4 turns its focus to Cambodia and provides an outline of the central events shaping Cambodia's recent history. It identifies the multiple legal and cultural regimes shaping its contemporary regulatory environment, and argues that there are few local legal protections for Cambodian citizens at risk of displacement. It also explores recent trends towards financing infrastructure development in the Asia Pacific region through concessional lending, rather than through development assistance or "aid". Chapter 4 situates the railway project in the context of other major infrastructure projects requiring resettlement in Cambodia.

Chapter 5 provides a detailed overview of the stakeholders involved in the railway project, explaining its original aims and how the resettlement plans were developed. It also provides background on the NGOs involved in the railway advocacy and how the financiers responded to advocacy campaigns as the project encountered serious problems from 2010 onwards. This chapter provides critical background to understand the research.

The methodology is explained in Chapter 6. The research began in 2011, however the primary fieldwork was conducted over a six-month period in 2013. A combination of qualitative research methods were used, primarily using field-based research and in-depth interviews with NGOs and project financiers in multiple sites (primarily Phnom Penh, Washington D.C. and Australia) and community-based interviews with people affected by the project in Cambodia in the five locations. Interviews and informal focus groups were

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[65] Gillespie (2012).

conducted with 144 community members across the five resettlement locations: Poipet, Phnom Penh, Battambang, Sihanoukville and Pursat. Around half of the interviews were conducted with people who remained living along the railway in each of these locations who were not given the option of relocation.[66] These people had either received a small amount of compensation to move back from the railway line or had not been considered in the resettlement plans at all. Greater attention was given to communities relocated in parts of the country outside Phnom Penh, as these communities were less frequently accessed by NGOs.

Chapters 7 and 8 explore the central themes emerging from the interviews and field research. Chapter 7 explores how the five communities were affected differently by the resettlement process. It focuses on capturing people's experiences of resettlement, their aspirations and coping strategies, as well as the factors that shaped their decisions about how to navigate resettlement. The chapter draws primarily on qualitative research to understand the responses of people in both the resettlement sites and the communities who remained living along the railway in each of the five locations. It explores the significance of using the ADB accountability mechanism for affected people, many of whom had previously had minimal contact with international organisations and NGOs. It also explores how the resettlement process for the project had very uneven impacts at a sub-project level. As advocates and communities complained and the conditions in the resettlement sites improved, so did the appeal of resettlement for those who were not relocated but instead remained living along the railway without tenure security. Resettlement standards improved in some of the sites so much that it resulted in highly inequitable treatment for people who were partially affected by the project, but not given the option of relocation. Project financiers continued to apply the minimising displacement principle, although it was widely acknowledged that this had created a perverse set of circumstances for people affected by the project in more remote areas.

Chapter 8 explores how the resettlement safeguards were perceived and experienced by critical actors at other scales. It draws on interviews with senior policymakers, consultants, safeguards and resettlement specialists within the ADB, World Bank and Australian Government, as well as interviews with NGOs and community advocates. It also draws on

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[66] See Appendix B.

experiences in Washington D.C. during the Spring Meetings in April 2013, when the World Bank held a series of consultations with civil society groups about reforming its social and environmental safeguards policy.[67] The interviews reveal the challenges of encouraging local country "ownership" of resettlement planning processes on the one hand, and international standards and requirements for "accountability" on the other. As the chapter argues, this tension often manifests itself in so-called "islands of governance", especially where there is a significant disparity between national government standards and international project-specific resettlement policies, as was the case in the railway. Chapter 9 then presents the conclusions of the research, and considers the ways in which scaled approaches offer insights which build on existing knowledge about resettlement.

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[67] I was based in Washington D.C. for 3 months in early 2013 and attended the Civil Society Stream of the Spring Meetings, and the consultations with civil society on the safeguards review. During this time I also interviewed a number of social safeguards specialists working on the review and members of the World Bank Inspection Panel. For details of the Spring Meetings, see: http://www.imf.org/external/spring/2013/. For details of the World Bank safeguards review, see: https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies).

Chapter 2

Approaches and debates in the study of resettlement

Resettlement is a complex multidimensional process that transcends the housing aspect. It has various dimensions: physical, legal, economic, social, cultural, psychological, environmental, political-administrative, and territorial, each with different attributes...[68]

Impoverishment and disempowerment have been the rule rather than the exception with respect to resettled people around the world. [69]

2.1 Overview

In almost all countries of the world, governments acquire land and resettle people to build roads, bridges and other infrastructure, although the legal protections in place, policy procedures and social expectations vary enormously. Community resettlement has been studied within a number of academic disciplines – geography, anthropology, law, and sociology – giving rise to a considerable body of literature to inform the current study.[70] This chapter identifies two broad approaches to writing about resettlement. The first is a

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[68] Correa, Ramirez & Haris (2011, p. 55).

[69] Bartolme, de Wet, Manderm & Kumar Nagraj (2000, p. 7).

[70] While these approaches often overlap, early studies tended to be framed in terms of their disciplinary contribution. Examples from geography include: Hilton (1959), Sendut (1962); from anthropology they include: Colson (1971), Scudder (1962, 1993), Hansen & Oliver-Smith (1982); from law Barutciski (2006); from sociology: Cernea (1986, 1999); Harrell-Bond & Monahan (1988); Recently there has been a tendency towards multi-disciplinary studies. For examples, see: McDowell & Morrell (2010), Bennett & McDowell (2012), Oliver-Smith (2010, 2009), Vandergeest, Bose & Idahosa (2007).

socio-anthropological literature focused on understanding the meaning that communities make of the experience of relocation, its impacts on livelihoods and social and cultural consequences. The second, an increasingly prevailing approach to resettlement studies, is a *rights-based* or *legal-advocacy* literature, which identifies the rights of resettled individuals, the development of legal protections, the gaps that exist in these protections and the ways in which resettlement complies with, or potentially violates, domestic and international law.[71] This chapter argues that while this literature collectively highlights many critical aspects of resettlement, at certain junctures these approaches have also operated independently from one another to obscure the complexity of community resistance and the ways NGOs work with communities throughout resettlement processes. While there are some studies which examine the complexity of grassroots movements and the changing dynamics of communities as they become involved in advocacy campaigns, they are temporally and geographically limited. Many of these studies are situated in India and Latin America, and relate to displacement events that occurred 15-20 years ago, when international accountability structures were different and many of the transnational advocacy groups were first emerging.[72] Advocacy movements have developed rapidly in Cambodia since the 1990s, although there is limited analysis of resettlement or of the ways in which advocates are working to influence resettlement processes in Cambodia, outside the material published directly by NGOs.[73]

First, this chapter provides an understanding of the main debates and themes underpinning resettlement research. It introduces the central concepts and language used in the resettlement literature and estimates the number of people affected by development-induced displacement. Secondly, it draws out the different *socio-anthropological* and *rights-based* approaches to understanding resettlement. In doing so, it provides context about how human rights frameworks and accountability mechanisms have developed over time to support resettlement processes. The chapter then introduces scaled approaches to resettlement

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[71] For example: Barutciski (2006), W. C. Robinson (2003), Penz, Drydyk & Bose (2011), Bissell & Nanwani (2009), Terminski (2013). Human-rights based approaches are becoming increasingly central to the work of advocates, especially in Cambodia: Bugalski & Medallo (2012), Bugalski (2010), Inclusive Development International (2013), Bank Information Center & Inclusive Development International (2013), Bridges Across Borders, Equitable Cambodia & Stiftung (2012), Equitable Cambodia & Inclusive Development International (2013).

[72] See for example: Hansen & Oliver-Smith (1982); Rodrigues (2004); Leslie (2005), Lahiri-Dutt & Wasson (2008). The exception would be Fisher (2009) and Oliver-Smith (2010) who have examined resettlement resistance movements more broadly, rather than in relation to a specific displacement event or location.

[73] Examples of this analysis includes: Bugalski & Medallo (2012), Equitable Cambodia & Inclusive Development International (2013), Bridges Across Borders, Equitable Cambodia & Stiftung (2012), Sahmakum Teang Tnaut (2011, 2013a, 2013b).

articulated by key authors such as Oliver-Smith and Fisher, whose work examines the transnational linkages developed by advocacy organisations and the ways they interact with local populations.[74] The final sections of the chapter also explore intersecting themes relevant to the research, including the literature on NGOs, accountability and risk. Together, these bodies of literature provide important background to situate the current study.

2.2 Conceptualising "resettlement", "relocation", "DIDR" and "DFDR"

Development-induced displacement and resettlement, or "DIDR", broadly encompasses people who are displaced by development and infrastructure projects, such as dams, hydro-power projects, urban upgrading and other state-sanctioned programs.[75] Planned community resettlement for development and infrastructure projects is referred to in the literature in various ways. Some of these terms include "involuntary resettlement", "forced relocation", "forced displacement", "DIDR", "development-forced displacement and resettlement" or "DFDR". These terms are largely interchangeable, although they have slightly different meanings depending on the context in which they are used. The most basic distinction can be made between *displacement*, which relates to the process of being uprooted from one's home or "displaced", whereas *relocation* or *resettlement* relate to the process of moving to a new location. Even then, there is frequent slippage in the literature between the concepts and language of *displacement*, *relocation* and *resettlement*.

While the literature often refers to "relocation" and "resettlement" interchangeably, there are distinctions made between the two processes by multilateral organisations, such as the World Bank. A feature of the World Bank's policy on Involuntary Resettlement is that since the 1980s it has applied both to the physical relocation of communities, as well as to the *loss of access to land and resources* on behalf of those communities, whether or not they are physically relocated. The World Bank describes "resettlement" as a broad process encompassing all direct economic and social losses resulting from land taking and restriction of access to land, including relocation or loss of shelter, loss of assets or access to assets, or loss of income or means of livelihoods whether or not affected persons move to another location. It also includes the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on the livelihoods of displaced persons.[76] In

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[74] Fisher (2009); Oliver-Smith (1994, 2010).
[75] Bennett & McDowell (2012, p. 21).
[76] World Bank (2004, p. 5)

contrast, "relocation" (as a component of resettlement) is considered more narrowly to relate to the "process whereby a community's housing, assets, and public infrastructure are rebuilt in another location."[77] The World Bank has also put forward the "resettlement as development" approach, in which resettlement should be seen as an opportunity to improve the lives of affected people, and that all resettlement programs should be conceived of and executed as development programs in which affected households are also project beneficiaries.[78]

The degree to which people are *forced* to move has been a focus of the forced migration and resettlement literature for many decades.[79] There is no simple dichotomy between voluntary and involuntary relocation, rather the "involuntary" or "forced" aspect of community relocation is best understood on a gradual continuum, depending on the specific factors driving displacement. In the context of internal resettlement in Laos, authors such as Baird and Shoemaker have problematized the notion of volition, arguing that it is not easy to separate voluntary and involuntary resettlement.[80] Their research relates to internal resettlement of villagers, especially ethnic minorities, from the upland areas of Laos to lowland areas with the goal of reducing swidden agriculture and opium production, centralizing people closer to services and ostensibly improving the lives of rural populations. Baird and Shoemaker argue that both state and non-state actors find it convenient to frame resettlement as "voluntary", even though the affected villagers are coerced over a long period of time and the range of options available to them is narrow.

In circumstances relating specifically to infrastructure projects, the academic literature uses terms such as development-induced displacement and resettlement (DIDR), or development-forced displacement and resettlement (DFDR).[81] Both terms denote the process involved in relocation as well as a body of norms and organisational policies related to resettlement, such as the World Bank policy on Involuntary Resettlement. Oliver-Smith, uses the term development-*forced* displacement to recognise that the decision to relocate, or the drivers of relocation, come from "above" as state-planned and enacted processes.[82] Instead of trying to characterise resettlement in voluntary and involuntary terms, Elizabeth

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[77] Jha & Duyne (2010, p. 77)
[78] World Bank (2004, p. 339). Also see Cernea (2003).
[79] Hansen & Oliver-Smith (1982), Hugo (2008, p. 16).
[80] Baird & Shoemaker (2007).
[81] See for example Terminski (2013), de Wet (2006), W. C. Robinson (2003).
[82] Oliver-Smith (2010, p. 2).

Ferris focuses on identifying the "locus of control" in resettlement, as a way of describing how the decision to displace usually rests with external actors, such as the government, rather than the community.[83] In recognition of these debates, the World Bank uses the term "involuntary resettlement" and describes involuntary land acquisition as a "lack of informed consent and power of choice on the part of people directly affected by the acquisition."[84]

Bearing in mind the subtle differences in the language described above, throughout the thesis, terms such as DIDR, resettlement and relocation are often used interchangeably. This interchangeability of language reflects the relatively flexible use of resettlement language in the literature generally.

This thesis focuses on development-induced displacement and resettlement, but it is important to be aware of the other types of resettlement occurring globally and how these processes relate to the current research. A related type of resettlement is that which is taking place in the context of climate change and other large-scale environmental events, such as disasters. Recent literature also suggests an increasing number of people are being resettled by governments for programs targeted at disaster-risk reduction, environmental conservation and climate change adaptation.[85] For example, the planned resettlement of groups of people and sometimes whole communities to locations less vulnerable to the impacts of climate change is underway in the South Pacific, Vietnam, Mozambique and parts of Alaska in the United States.[86] This type of resettlement is not the focus of the current research, however it is relevant. Policy makers tasked with financing and developing climate change adaptation options are increasingly looking to the field of DIDR to understand what can be learnt from these experiences.[87]

There is an obvious distinction between people displaced by conflict and persecution and development-induced displacement. There is very little overlap between these fields, presumably because violent, political and/or ethnic conflicts tend to result in protracted diplomatic processes which raise different issues shaping efforts to stabilise and resettle people displaced in this way. Similarly, a distinction can be drawn between refugee-related

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[83] Ferris (2011, p. 2).
[84] World Bank (2004, p. 4).
[85] See generally: McDowell & Morrell (2010, p. 21); Hall, Hirsch & Li (2011).
[86] See the interview with Professor Graeme Hugo: Radio Australia (28 October 2011); De Sherbinin, Castro, Gemenne, Cernea, Adamo, Fearnside, Krieger, Lahmani, Oliver-Smith & Pankhurst (2011).
[87] See, for example: United Nations High Commissioner for Refugees (2011).

resettlement and other types of planned community resettlement. Refugee resettlement is a narrow concept and process, set up as a discretionary practice under the 1951 Convention relating to the Status of Refugees[88] and adopted only by a small number of the States who are party to the Refugee Convention. It involves people who have been granted refugee status who are resettled in a third country which has agreed to admit them as refugees with permanent residence status (i.e. not repatriating them in their home country and not settling them in the country in which they initially sought asylum, but resettling them in a third country which has agreed to offer protection). [89]

Differences also exist between understandings of resettlement which concentrate on the impacts, processes and rights which attach to an *individual* person being resettled, and understandings concerned with the processes and dynamics of *community* resettlement. Community resettlement involves the movement of a group of people in a way that aims to retain important characteristics, including social structures, cultural rituals, and economic organisation.[90] Ferris argues that the displacement of individual persons, and by extension, issues relating to their decision to move, consent for movement, and the types of compensation they can seek, has become the domain of lawyers and human rights advocates. Alternatively, planned community resettlement has predominantly been the concern of anthropologists, sociologists and economists who focus on the collective impacts of resettlement on the social, cultural and economic fabric of groups of people or communities.[91]

An early typology of community resettlement developed by Oberai provides a useful starting point for understanding the various forms of planned relocation and the spectrum of voluntary and involuntary processes which underpin this type of migration. This typology captures relatively contemporary forced migration processes and does not attempt to incorporate some of the earliest relocation events on record, such as those accompanying the religious military campaigns of the "Crusades" in Europe in the Middle Ages. Oberai

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[88] United Nations General Assembly (1951); Also see the Protocol Relating to the Status of Refugees: United Nations General Assembly (1967).
[89] United Nations High Commissioner for Refugees (2015).
[90] Campbell (2010, pp. 58-59).
[91] Ferris (2011, p. 3).

identifies six broad objectives that past resettlement programs have sought to achieve, summarised below: [92]

- Population redistribution – movement of populations from one part of the country to another, typically to distribute populations more evenly (for example, the transmigration schemes carried out in Indonesia);[93]

- Colonisation and development of new areas – territorialisation through moving populations to new and unexplored areas to expand physical and economic development;

- Provision of land for the landless – where land has been supplied in order to assist poor or unemployed populations, or those with small and fragmented land holdings. This involves moving people to areas where land is available;

- Promotion of regional development – movement of populations to promote industry and trade, exploitation of minerals, forestry and other natural resources in rural areas to discourage rural-urban migration;

- Agricultural development – movement of people to support and increase agricultural production.

- Reducing poverty, improving standards of living and achieving broad social development objectives, for example resettling people who live in very poor areas.

While many of these categories may overlap or the reasons for resettlement may be multiple, there are at least five other processes that can be added to Oberai's typology, including:

- Development-induced displacement and resettlement – resulting from the building of infrastructure, such as roads, bridges, dams and often driven by

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[92] See the original typology developed by Oberai (1988, pp. 8-22).
[93] Also see Scott's discussion of "villagisation" processes: Scott (1998, p. 223).

a combination of actors (e.g. governments, international financiers and private investors);

- Environment and climate change-related resettlement – resulting from environmental events, such as disasters, and or in anticipation of climate change-related processes;

- Movement associated with protected area displacement, such as conservation and forest protection;[94]

- Relocations motivated by ethnic, religious or communal conflicts – involving state-organised integration or separation of communities on these grounds;[95]

- Relocation of people from rural areas to be closer to markets and urban centres, as is occurring in contemporary China;[96]

- Post-conflict related or refugee-related resettlement – following the end of a conflict or resettlement of refugees in a third country when it is not possible for them to be repatriated or reside in the country in which they sought asylum.

Hall et al. also provide a useful way of understanding displacing processes in relation to present-day Southeast Asia, which they prefer to conceptualise in terms of "powers of exclusion".[97] While it is important not to conflate exclusion with displacement, it is worth appreciating how these processes can be interrelated. In their study of land dilemmas they identify six processes driving rural land transformations leading to exclusion. They include: (1) the regularisation of access to land, including state-organised land titling or land formalisation schemes; (2) the expansion of efforts to conserve forests by restricting access to them, especially by limiting agricultural activities incompatible with forest conservation;

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[94] See: Agrawal & Redford (2009); Cernea & Schmidt-Soltau (2006).
[95] See, for example: Muggah (2008).
[96] Bennett & McDowell (2012, p. 9).
[97] Hall, Hirsch & Li (2011).

(3) the conversion of land to support "boom crops", such as rubber; (4) the conversion of agrarian land to "post-agrarian uses", such as peri-urban or tourist uses; (5) conversion of shared or common land into individually owned property at the village level'[98] and (6) mobilization of groups to assert their access to land, at the expense of other land users.[99] Thus, there are many different circumstances in which people are excluded, displaced and/or are subjected to various government-led and private resettlement schemes. Hall et al.'s approach is particularly helpful because it helps situates displacing processes within a much broader context of socio-economic change, land reform and regulation.

Accurately accessing the numbers of people displaced by development and infrastructure projects is very difficult and the data available is not reliable.[100] Many of the well-known large-scale community resettlements have occurred in the context of dam-building. Significant among these are the Kariba Dam on the Zambezi River in Zimbabwe (1955-1959), Volta Dam in Ghana (1960-1968), Sobradinho Dam in Brazil (1974-1977), Sardar Sarovar Dam on the Narmada River in India (1979-2008), Nam Theun 2 in Laos (1993-2010) and the Three Gorges Dam in China (1992-2009).[101]

Many people displaced by development projects are formally resettled to new locations. Many others are simply displaced with nowhere to move, or may experience secondary impacts – such as flooding or reduced food supplies – which make it untenable to continue living in their communities of origin.[102] As such, the numbers of people displaced by development and infrastructure processes are very difficult to assess. The general consensus in the field, however, is that development-induced displacement and resettlement has increased in the past few decades.[103] An often quoted statistic is that the since 1990, roughly 10 million people each year have been physically displaced by infrastructure projects, amounting to more than 200 million people in two decades.[104] Cernea argues that the numbers are closer to around 15 million people each year.[105] The World Commission on

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[98] Also consider the concept of "accumulation by dispossession", see: Harvey (2003).
[99] This is summarised from Hall, Hirsch & Li (2011, pp. 5-22).
[100] McDowell & Morrell (2010, p. 37).
[101] These dates are approximations of the periods from approval to construction.
[102] For a general discussion of these issues, see: McDowell & Morrell (2010); W. C. Robinson (2003); Hall, Hirsch & Li (2011).
[103] See, for example: Bennett & McDowell (2012, p. 12); International Federation of Red Cross and Red Cresent Societies (2012); However, researchers widely acknowledge that estimates of displaced people are difficult to assess accurately.
[104] W. C. Robinson (2003, p. 3).
[105] Personal correspondence between Anthony Oliver Smith and Michael Cernea cited in Oliver-Smith (2010, p. 12). Also see: Bennett & McDowell (2012, p. 10).

Dams report estimated that between 40-80 million people were displaced by hydro-electric dams prior to the year 2000 alone.[106] Other estimates which include river-dependent communities indirectly displaced or adversely impacted by dams are closer to 472 million for the same period.[107] There are certain hydropower projects which have individually involved resettlement on an enormous scale. The Three Gorges Dam in China completed in 2009 is probably the most high-profile example of mass resettlement. It is the world's largest hydropower project, inundating more than 1,000 square km of land and forcing the direct displacement and relocation of more than 1.3 million people. It is also estimated to have displaced 4 million additional people due to reservoir-linked erosion and flooding over a ten-year period.[108]

2.3 Socio-anthropological approaches

Development-related resettlement programs were first described by anthropologists, such as Elizabeth Colson and Thayer Scudder in the 1950s, and the sociologist, Michael Cernea in the 1970s, based on their experiences in Africa and Latin America.[109] Their research is illustrative of a socio-anthropological approach to the study of resettlement, which documents the far-reaching impacts of displacement on communities and the host populations of the relocated. Scudder and Colson's seminal work focused on the involuntary resettlement of 57,000 people in the 1950s for the Kariba Dam, in the former Federation of Rhodesia and Nyasaland, current day Zambia and Zimbabwe. One of the largest dams in the world, the Kariba Dam was the first mainstream dam on the Zambezi River and was partially financed by the largest loan provided by the World Bank until that time.[110] What concerned them in their study before and after relocation, was the "subsequent community unravelling" to which resettlement contributed.[111] The community endured multi-dimensional types of stress relating to anxiety about the resettlement process, abrupt shifts in livelihood opportunities, physiological and health effects, as well as socio-cultural stress relating to

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[106] World Commission on Dams (2000, p. 104).
[107] Richter, Postel, Revenga, Scudder, Lehner, Churchill & Chow (2010, p. 14).
[108] Bennett & McDowell (2012, p. 8); For a detailed examination of the Three Gorges Project see: Tan (2008).
[109] See, for example: Colson (1960; 1971); Scudder (1962); Cernea (1986).
[110] Scudder (2005).
[111] As described in Scudder (2005, p. 2). Also see: Colson (1971).

loss of place and loss of control. All of these effects were experienced disproportionately by vulnerable members, especially children.[112]

The physiological, psychological, and socio-cultural stress that accompanies resettlement is vividly presented in Scudder and Colson's analysis. They argue that the first two years following resettlement were the most difficult for the Gwembe Tonga. The disruption of relocation led to important cultural rituals being discontinued during times when their stabilising effects were needed most.[113] As Scudder, writes: "especially significant were changes in belief systems whereby misfortunes of any sort came to be increasingly blamed on witchcraft".[114] Kinship relationships also intensified during the resettlement time. These changes were considered to be "an attempt to maintain some control over existence by reducing, to the extent possible, further change and hence further stress." [115] New types of sorcery emerged as people also drew on pre-existing meaning systems to explain calamitous events. Host-community conflict exacerbated the stress of relocation. Agricultural rituals which had previously seen whole neighbourhoods synchronising planting and harvesting were also no longer possible. [116]

In the case of the Gwembe Tonga, the community was resettled to land of poorer agricultural value where they had reduced access to water and forest products. Agricultural systems were not able to be reproduced in the new locations within a single year. Support offered by the government and the World Food Programme was not reliably provided at the "right place at the right time".[117] Exposure to different diseases, disease strains and other health hazards following relocation increased morbidity and mortality rates. Greater population densities also brought outbreaks of dysentery, measles and chicken pox, exacerbated by water supplies of poorer quality, as communities now sourced their water from wells and boreholes, rather than flowing rivers. Mortality rates tended to be higher among those people relocated to environmental habitats that were most dissimilar or furthest from their previous homes.[118]

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[112] Scudder (1993, p. 140). Scudder's publications are cited here, but in the text I try to attribute insights jointly to Colson and Scudder, as the original study was undertaken together.
[113] Scudder (1993, pp. 132-142).
[114] Scudder (2005, p. 2).
[115] Scudder (1993, p. 142).
[116] Scudder (1993, p. 141).
[117] Scudder (1993, pp. 140-142).
[118] Scudder (1993, p. 140).

Scudder also identified a tendency for resettlement impacts to begin many years prior to relocation, as government investment in the designated areas is deferred and/or funding for services is withdrawn. Individuals in designated areas also tend to be discouraged from improving their existing housing and landscapes. As Scudder writes:

> even before people become aware of what is about to happen to them
> they are being made worse off than their neighbours, especially in
> terms of such social infrastructure as schools and medical facilities,
> and of community-based development projects... [119]

An important aspect of Scudder's later work is his emphasis on returning to resettled communities to understand how the impacts of resettlement change over time.[120] The study began by Colson and Scudder has continued over at least four decades. While Scudder and Colson argue that the Gwembe Tonga's situation improved over time, they maintain that the improvements were not sustained. Although the hardships endured by the Gwembe Tonga were bound up in other complex political and economic shifts in Zimbabwe and Zambia at that time, they argued that the prospects and opportunities of the Gwembe Tonga were inherently limited because they had been resettled to land of poorer agricultural quality and to areas which could not withstand the growing population over time.[121]

Socio-anthropological studies, such as those by Scudder and Colson, generally approach resettlement as a dynamic process, which is context-bound and culturally specific. Nonetheless, anthropologists working across locations have attempted to capture common aspects of the resettlement experience in their writings. As Scudder suggests, the Kariba experience is instructive of the impacts experienced by resettled communities elsewhere, drawing on subsequent research in Sri Lanka (Mahaweli Project), China (Danjiangkou), India (Sardor Saravor), Lesotho (Highlands Water Project), Kenya (Kiambere), and Ghana (Volta and Kpong).[122] As Scudder also maintains, these dynamics – reduced access to natural resources and livelihoods, increased disease, and poorly timed and implemented

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[119] Scudder (1993, p. 131).
[120] Scudder (1993).
[121] Scudder (1993, p. 146).
[122] Scudder (1993, p. 149).

external assistance – are inherent features of relocation and even the "threat of physical removal sets in motion processes that are similar regardless of the reason for removal."[123]

Indeed, other resettlement literature compiled by Oberai, identifies many similar resettlement challenges relating to diminished employment opportunities in new sites, second generation impacts on children, social tensions between settlers and indigenous or host communities. Other dynamics include the frequent abandonment of settlement areas by resettled communities, a range of barriers limiting the provision of social services, and other typical impacts, such as ecological problems resulting from shifting cultivation from one area to another, high resettlement costs proportionate to project costs, land tenure and management difficulties, and self-perpetuating patterns of "settler dependency" on formal assistance once communities have been relocated.[124]

The importance of minimising the detrimental social consequences that stem from poor planning and implementation has been the focus of the influential sociologist, Michael Cernea. Cernea contributed to an institutional shift in understanding about the impacts of resettlement and the nature of vulnerability experienced by relocated communities. Influenced by Scudder and Colson, he is credited with introducing sociological and anthropological approaches to the World Bank's policy framework in the 1970s, leading to the first World Bank resettlement policy in 1980, which is discussed further in the next section.[125] One of the most significant features of early community relocations that Cernea identifies is the practice of "de-linking"; whereby the resettlement of communities was *de-linked* (considered as a separate responsibility) from the planning of a project and the act of removing the community from the area subject to development. Essentially, he argued that separating these responsibilities had the effect of externalising the resettlement component of a project from the overarching project plan.[126]

In the case of Brazil's Sobradinho Dam, funded by the World Bank in 1974-1977, the de-linking of responsibilities resulted in the late evacuation of 70,000 people living in the areas affected by the dam. Responsibility for resettlement was delegated to local Brazilian municipalities, but without local capacity to resettle a large population and limited oversight,

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[123] Scudder (1993, p. 125).
[124] Oberai (1988).
[125] Cernea & Mathur (2011).
[126] Cernea & Mathur (2011, p. 2).

no resettlement plans were prepared.[127] The inhabitants of four cities and thirty villages (11,853 families) were still living in the downstream area immediately prior to the dam's impoundment. As the impending crisis became clear, the Catholic Church in Brazil led an international campaign to prevent the dam going ahead.[128] Nonetheless, the project continued and water was released into the area where the communities remained. The population was eventually evacuated by the Brazilian army to nearby locations as a temporary solution, but with no plans for where the communities would live.[129] The incident was reportedly embarrassing for the World Bank and the Brazilian Government as the media reported the events locally and internationally. Cernea termed the project a "social disaster", providing partial impetus for ensuing debates about social safeguards within the World Bank.[130]

Another of Cernea's major contributions to the resettlement literature is a study of the risk patterns experienced by resettled communities, which led him to develop a Risks and Reconstruction Model.[131] The model identifies eight impoverishment processes characteristic of displacement: landlessness, joblessness, homelessness, marginalisation, increased morbidity and mortality, food insecurity, loss of access to common property resources and services, and social disarticulation.[132] First landlessness, or the expropriation of land, removes the foundation upon which "productive systems, commercial activities, and livelihoods are constructed."[133] Joblessness, or the loss of wage employment, continues well after physical relocation takes place, as planners often cannot recreate the local networks that support livelihoods. Homelessness, the loss of one's physical home (whether temporary or ongoing), is common as only a proportion of resettled individuals successfully re-build their houses in new areas. Marginalisation results from resettlement, as individuals tend to lose or reduce their economic power and risk entering into a path of downward mobility in terms of economic and social status. [134]

Cernea also argues that increased morbidity and mortality, especially among children and the elderly, is caused by displacement-related stress, insecurity, psychological trauma and

[127] Cernea & Mathur (2011).
[128] Khagram (2004, p. 150).
[129] Cernea & Mathur (2011, p. 2).
[130] Cernea & Mathur (2011, p. 2).
[131] Cernea (1997).
[132] Cernea (1997, pp. 1572-1575).
[133] Cernea (1997, p. 1572).
[134] Cernea (1997, p. 1574).

greater exposure to diseases.[135] Food insecurity stems from a sudden reduction in general crop or food availability and income unpredictability. Loss of access to common property resources and services can occur, as non-individual property assets are often not adequately compensated for by government schemes, such as land for agriculture, forested land, water bodies, and burial grounds.[136] The final aspect of Cernea's model relates to social disarticulation, which results from relocation because it "tears apart the existing social fabric" through the loss of a group's physical and cultural space.[137] Relocation can disperse and fragment communities and kinship relationships, dismantling patterns of social organisation and interpersonal ties, leading to what he describes as the "unravelling of spatially-based patterns of self-organisation, interaction and reciprocity".[138]

One of the strengths of socio-anthropological studies is that they explore the differential impacts of resettlement on communities. Emblematic of resettlement is that while many households are negatively affected, there are also some individuals and families which emerge as beneficiaries of the cultural and physical re-organisation that movement creates.[139] For example, some individuals benefited immediately from the opportunities presented in the Kariba dam context, as articulated by Scudder in later studies.[140] Art Hansen, writing about Zambian villages in the 1980s, draws on the concept of "dislocation" to explain both the negative effects as well as the re-alignment of power that occurs between individuals being resettled as a group. He uses dislocation as a "general term that refers to shifts in peoples' positions." He states:

> These positional changes may be psychological, social, ecological and/or geographical, but they all include shifts in power as well as position.[141]

Awareness of these disparities within the experience of resettlement is an crucial aspect of the socio-anthropological literature. One author, Holly High, has been notably iconoclastic on this issue, in that she has challenged established beliefs about internal resettlement in Laos. In her 2008 article, "The Implications of Aspirations – Reconsidering Resettlement in

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[135] Cernea (1997, p. 1574).
[136] Cernea (1997, p. 1575).
[137] Cernea (1997, p. 1575).
[138] Cernea (1997, p. 1575).
[139] Scudder & Colson (1982, p. 277).
[140] Scudder (1993, p. 144).
[141] Hansen (1982, p. 13).

Laos", High contests the arguments made by other writers that state-supported resettlement from upland to lowland Laos is necessarily unwanted or un-supported by people who are relocated by these schemes.[142] In drawing attention to the agency of resettled populations, High illuminates a central aspect of resettlement; that people respond to relocation differently. She proposes that resettlement from rural areas to locations closer to government services and lowland fields, taps into the aspirations of Lao residents for poverty reduction and involvement in "modernity".[143]

High's argument challenges the prevailing view of resettlement in Laos among other anthropologists and geographers who have conducted empirical work in this region. Notably, her examples relate to resettlement in which communities were induced over long periods of time to move to more central locations through the withdrawal of services in remote locations and the promise of greater access to resources in the centralised areas, which contrasts to situations where communities are required to move within relatively short periods of time. Nonetheless, High's argument and approach, while offering a critique of existing resettlement studies, is not typical of resettlement literature in Laos. For example, Baird et al argue that most of the research available in relation to internal resettlement in Laos points to the "significant harm caused to vulnerable ethnic minority and upland communities as a direct or indirect result of resettlement."[144] High has also been criticised for the quality of her empirical evidence and her selection of interview participants.[145]

2.4 Challenges in measuring resettlement outcomes

The complexity of community responses to resettlement revealed in socio-anthropological studies raises the issue of how resettlement impacts are measured and reported. The empirical studies available suggest that even where there has been significant financial investment and oversight of project implementation, resettlement often results in further impoverishment for communities, or at least for their vulnerable members. Scudder examined multiple resettlements over three periods of time (before 1980, 1980-1990 and 1991-2005), grouping them into categories determined by the resettlement approach employed, namely: "no policy", "cash compensation only", "restoration" and "restoration

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[142] High (2008) critiques Baird & Shoemaker (2007) among others. A rejoinder is provided by Baird, Barney, Vandergeest & Shoemaker (2009).
[143] High (2008).
[144] Baird, Barney, Vandergeest & Shoemaker (2009).
[145] Baird, Barney, Vandergeest & Shoemaker (2009).

with development". He found that across all categories and time periods, there was no statistical evidence that outcomes for the majority had improved over time.[146] A number of other researchers have also argued that the majority of those displaced remain impoverished for at least seven to ten years.[147] Researchers also acknowledge that World Bank-financed projects – which were the original concern of many studies – now tend to be those which are subject to the most scrutiny and supervision both locally and internationally.[148] Notwithstanding this scrutiny, many of these projects still tend to exacerbate impoverishment, a trend acknowledgement by the World Bank itself.[149]

There are few examples in the literature where resettlement is viewed favourably by large sections of the community being removed. Scudder identifies the Egyptian Nubians in the context of the Aswan Dam in the 1960s, although he argues that the community viewed resettlement favourably because they were continually experiencing livelihood impacts from earlier constructions of the dam which had taken place many decades prior.[150] He also notes Sri Lanka's Accelerated Mahaweli Project as one of the more successful World Bank projects, but he goes on to argue that:

> [t]oday, the majority of settlers are poor, while a significant
> proportion, and perhaps a majority, of those involuntarily relocated
> can be considered development refugees.[151]

Recent case studies on development-related resettlement compiled by the International Red Cross refer positively to the resettlement of almost 185,000 people for the Xiaolangdi dam in China. Yet, the authors still report that only 80 per cent of the resettled population were able to restore or improve their living standards. The source of the research also makes it difficult to assess its credibility, as the outcomes were recorded by a self-evaluated World Bank project study.[152] An interesting study by Connell and Tabucanon argues that the resettlement of Banabans from Kiribati to the Fijian island of Rabi in the 1940s, was

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[146] Scudder (2012, p. 52).
[147] Cernea & McDowell (2000); Bennett & McDowell (2012, p. 10).
[148] The recent establishment of the Asian Infrastructure Investment Bank has stimulated debate to this effect, see: Moore (2015); Hameiri (2015). Scudder also acknowledges that more careful supervision now tends to occur in World Bank assisted projects: Scudder (1993, p. 149).
[149] Schlief (2015).
[150] Scudder (1993, p. 131).
[151] Scudder (1993, p. 135).
[152] As reported in International Federation of Red Cross and Red Cresent Societies (2012, p. 158).

"relatively successful".[153] Notwithstanding these claims they also warn against the intricate challenges of resettlement across different cultural and political contexts. The studies also reveal how difficult it is to measure the impacts of resettlement on communities, as there are a range of factors to consider that are not limited only to household incomes. For example, at what point in time should impacts be measured after relocation? Early writings from Scudder reveal how there are many phases of recovery, and while people may initially be supported by compensation payments, these short-term financial circumstances are not indicative of long-term capacity for resilience and wellbeing, especially where people are relocated to areas of poorer land quality and reduced natural resources.[154] Other critical issues are whether a relocation can be considered successful if it has impacted positively on the majority of people resettled? Or should its success be determined by how the resettlement scheme impacted and supported the poorest and most vulnerable in the community?

While it is common for researchers to conclude that resettled people are worse off after resettlement, there are clear differences in the quality of different resettlement schemes, and the extent to which communities are consulted and involved in the resettlement process. In this way, planned community resettlement can be a battleground for articulating different values relating to the rights of individuals and the public good.[155] As demonstrated in the next section, the articulation of these different values in resettlement debates is increasingly taking place within a rights-based framework.

2.5 Rights-based or legal-advocacy approaches

Over time, analysis of resettlement has gradually shifted towards a rights-based approach to understanding the impacts of resettlement and advocating for those being displaced.[156] As Oliver-Smith definitively states:

> At some fundamental level, DFDR resistance is a discourse about
> rights. DFDR pits the rights of the state and, increasingly private

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[153] John Connell & Tabucanon (2016).
[154] Scudder (1993).
[155] Scudder (2012, pp. 41-48).
[156] See for example, the special issue on development-induced displacement in Refugee Studies Centre (2002); See also: Barutciski (2006), W. C. Robinson (2003), Penz, Drydyk & Bose (2011), Bissell & Nanwani (2009), Terminski (2013); Bugalski & Medallo (2012), Bugalski (2010), Inclusive Development International (2013), Bank Information Center & Inclusive Development International (2013), Bridges Across Borders, Equitable Cambodia & Stiftung (2012), Equitable Cambodia & Inclusive Development International (2013).

capital to develop against the rights of specific peoples targeted for displacement and possibly resettlement.[157]

This body of work comprises academic literature examining the nature and scope of rights, the historical development of law designed to protect these rights, and a range of policy papers and articles canvassing the gaps and possibilities that exist for the protection of displaced communities.[158] Much of this work has drawn on empirical research with communities about the impacts of land conflicts generally, including resettlement.[159] Led by activists, academics, advocacy groups and other NGOs, the rights-based approach has prompted a re-framing of the way in which the experiences of resettled communities are interpreted and represented. Rights-based approaches tend to structure analysis of the experiences of affected communities by reference to the rights embodied in international law and policy.[160] As explored further below, this literature is often focused on establishing compliance with international human rights law. There is limited exploration in this literature about how communities and other actors understand or try and make sense of these "rights" and accountability processes in their specific cultural and social contexts.

One of the most significant international political and social shifts of the twentieth century was the emergence of the human rights movement. The Universal Declaration of Human Rights adopted in 1948 (UDHR)[161] marked a fundamental change in the international discourse used to conceptualise and articulate human suffering and the responsibilities of nations to respond to humanitarian concerns outside their borders. Ratified in the aftermath of the Second World War, the UDHR demonstrates a commitment to affording all people protection of their human rights, without discrimination, by virtue of their humanity. As described in the preamble, the UDHR is:

> recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[162]

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[157] Oliver-Smith (2010, p. 28).
[158] See: W. C. Robinson (2003); Barutciski (2006); Wickeri & Anil (2010).
[159] See: Refugee Studies Centre (2002).
[160] Some key examples include: Bank Information Center & Inclusive Development International (2013), Bridges Across Borders, Equitable Cambodia & Stiftung (2012), Equitable Cambodia & Inclusive Development International (2013), Bugalski (2010).
[161] United Nations General Assembly (1948).
[162] As expressed in its preamble: United Nations General Assembly (1948).

There are thirty articles in the UDHR intended to clarify the meaning of the words "fundamental freedoms" and "human rights" which appear in the United Nations Charter. These articles champion rights such as the right to life, liberty and security of person, the right to an education, the right to particulate fully in cultural life, freedom from torture or cruel, inhuman or degrading treatment or punishment and freedom of thought, conscience and religion.[163] Complementing the UDHR are two covenants – the International Covenant on Civil and Political Rights 1966 (the "ICCPR")[164] and the International Covenant on Economic, Social and Cultural Rights 1966 (the "ICESCR").[165] There are also numerous other international treaties which incorporate and develop various aspects of the original human rights instruments.[166] All of these instruments are supported by legal interpretation and analysis exploring and limiting the application of these rights, acknowledging that, for the most part, they are not absolute human rights and are qualified in various ways.[167]

Although human rights are deeply contested in many countries, these international instruments are can still be considered fundamental sources of norm-setting – or at least points of reference – for governments, corporations and trans-national organisations. As the World Commission on Dams report states:

> There is a globally accepted framework for setting universal goals,
> norms and standards. The foundations of the framework are the
> United Nations Charter (1945) and the Universal Declaration of
> Human Rights.[168]

Human rights based approaches have developed in multi-faceted ways since the 1940s, and now influence the development of policy in many spheres.[169] The evolution of rights-based

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[163] United Nations General Assembly (1948).

[164] United Nations General Assembly (1966a). Also see: Optional Protocol to the International Covenant on Civil and Political Rights, United Nations General Assembly (1976).

[165] United Nations General Assembly (1966b); Also see: Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, United Nations General Assembly (2009).

[166] Examples include: the Convention on the Rights of the Child, United Nations General Assembly (1989); the International Convention on the Elimination of All Forms of Racial Discrimination, United Nations General Assembly (1965), Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment United Nations General Assembly (1984), and more.

[167] Many of the economic and social rights contained in ICESCR, such as the right to education, are qualified. See the discussion in Alston & Quinn (1987, p. 165). Some rights are considered absolute rights or peremptory norms (*jus cogens*), see: Bassiouni (1996); Dixon (2013, p. 37).

[168] World Commission on Dams (2000, pp. 199-200).

[169] For example, in the context of environmental conservation, see: Schuijers (2011); Gillespie (2013). Schuijers describes a "step-wise" human rights based approach.

approaches has also occurred simultaneously with the growth of the NGO sector.[170] The rights contained in the UDHR, ICCPR and ICESCR have provided a framework for resistance by advocates of resettled communities and people affected by other types of land conflicts.[171] They have also been used by NGOs as part of their advocacy campaigns to advocate for the right to adequate housing, right to an adequate standard of living, right not to be arbitrarily deprived of property, the right to access information and meaningful consultation.[172]Advocacy campaigns have, in turn, generated a body of "grey" literature relevant to development-induced displacement. For example, UN Habitat has published a detailed report about how to apply the right to adequate housing in different contexts, including how these rights apply to specific groups, including women and children, and how they can be used to inform policy.[173]

The United Nations Guiding Principles on Internal Displacement (the "Guiding Principles")[174] and the lesser known Comprehensive Human Rights Guidelines on Development-Based Displacement 1997,[175] which provide guidance on evictions in the context of development projects, are also important human-rights based instruments relevant to resettlement.[176] The Comprehensive Human Rights Guidelines led to the development of the Basic Principles and Guidelines on Development-Based Evictions and Displacement,[177] which are often cited in the context of forced evictions.[178] These guidelines aim to assist states to develop laws and policies which prevent forced evictions from occurring.[179]

Within this literature, tensions between different types of rights emerge. As McDowell agues, while humanitarian and human rights law prohibit forced movement of persons, the focus is on prohibiting "arbitrary" movement.[180] Indeed, the Basic Principles and Guidelines on Development-Based Evictions and Displacement apply to:

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[170] Also significant is that during the formation of the United Nations in 1945, NGOs were given consultative status, recognising the growth and significance of certain non-state actors. Lewis (2010, p. 1).
[171] These rights have also been developed in General Comment No. 4 on the right to adequate housing, United Nations Committee on Economic (1991) and General Comment No. 7 on forced evictions, United Nations Committee on Economic (1997).
[172] See, for example: Land and Housing Working Group (2009); Bugalski & Medallo (2012).
[173] Office of the High Commissioner for Human Rights & UN Habitat (2009).
[174] Office of the High Commissioner for Human Rights (2004).
[175] United Nations Economic and Social Council (1997).
[176] Leckie (2002, pp. 20-21).
[177] United Nations Special Rapporteur on Adequate Housing (2007).
[178] Leckie (2002); Office of the High Commissioner for Human Rights (2015, p. 12); Advocates for International Development (2012).
[179] Office of the High Commissioner for Human Rights (2015).
[180] McDowell & Morrell (2010, p. 64).

acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.[181]

The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties.[182] Consequently, there are circumstances where displacement of populations by nation-states may be justified under international law. Walter Kälin, former Representative of the United Nations' Secretary-General on the Human Rights of Internally Displaced Persons, has stated that an arbitrary act is one which "contains elements of injustice, unpredictability and unreasonableness", or "suggests a violation by state organs."[183] Pettersson explains that, in international law these competing considerations rest on interpretations of a "legitimate development project of overriding public interest", (protected by the concept of national sovereignty), and a "human rights violation of concern to the international community."[184]

The tension between national development and the rights of individual people were encapsulated in the World Commissions on Dams report, referred to above. This is also another significant example of how human rights-based approaches have been used to defend the rights of displaced people. The process surrounding the World Commission on Dams report revealed major tensions between protecting the rights of those affected, and other national and political priorities. During the 1990s, influential anti-dam campaigns provoked discussions about the costs and benefits of hydro-power projects, leading the World Bank and the International Union for Conservation of Nature (IUCN) to sponsor the World Commission on Dams process. The Commission was mandated to:

- review the development effectiveness of large dams, and assess alternatives for water resources and energy development;

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[181] United Nations Special Rapporteur on Adequate Housing (2007, p. 14).
[182] United Nations Special Rapporteur on Adequate Housing (2007, p. 14).
[183] McDowell & Morrell (2010, p. 64).
[184] Pettersson (2002, p. 18).

- develop internationally acceptable criteria, guidelines and standards for the planning, design, appraisal, construction, operation, monitoring and decommissioning of dams.[185]

One of the conclusions of the report was that resettlement had resulted in impoverishment and disempowerment for many millions of people around the world.[186] The report included detailed case studies of dams, including the Kariba Dam, Pak Mun Dam in Thailand, Tarbela Dam in Pakistan, and the Tucurui Dam in Brazil.[187] The findings of the report emphasised the need for a human rights-based approach and argued that social and environment assessments should be carried out prior to the building of dams. The report also advocated that people who were displaced by dams, should become project-beneficiaries.[188] As others have argued, the World Commission on Dams report also made the critical conceptual link of connecting concepts of rights to the risks associated with development projects by recognising the difference between "risk takers" and "risk bearers". The report stated that: [189]

> Public and private developers of large dam projects have long understood that the sector involves managing risks of a technical, financial and even political nature. Decision-makers have not always acknowledged the differences between "taking risk" and "imposing risk" and between voluntary risk takers and involuntary risk bearers…The "involuntary risk bearers" who are forced to bear the risks include people to be displaced by the project…In these circumstances they often depend entirely on the capacity of government or the developer to manage the resettlement or compensation process on their behalf.

As reflected above, human rights are often in tension with other fundamental values or rights propagated by governments and enshrined in separate international instruments. The right to development was enshrined in the Declaration on the Right to Development (DRD), and

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[185] Tortajada, Altinbilek & Biswas (2012, p. vii).
[186] World Commission on Dams (2000, p. 16).
[187] World Commission on Dams (2000, p. 31).
[188] World Commission on Dams (2000, pp. 278-319).
[189] World Commission on Dams (2000, p. 207).

adopted by the UN General Assembly in 1986.[190] As the World Commission on Dams report explains, the DRD also "marked a significant step by the international community in developing a normative framework that specifies responsibilities in applying a human rights approach to development".[191] The DRD aimed to provide clarity for the planning and implementation of national development projects in ways that protect human rights. Simultaneously, however, it enshrined a number of values in support of development which are potentially in tension with the rights of certain communities at risk of resettlement, such as:

- the right to self-determination on behalf of nation-states;

- the right of peoples to exercise full and complete sovereignty over all their natural wealth and resources; and

- the primary responsibility of states to provide conditions favourable to the development of peoples and individuals.[192]

The World Commission on Dams report offered a set of good practice guidelines, including a step-wise approach to support negotiated decision-making processes which would meaningfully involve affected people.[193] One of the major issues in contest during the World Commission on Dams process was the issue of "Free Prior and Informed Consent" or "FPIC". FPIC was perceived as particularly important for indigenous and tribal peoples affected by development projects.[194] The approach promoted the idea that consent was more than a "one-time contractual event", and instead needed to be a "continuous, iterative process of communication and negotiation spanning the entire planning and project cycles".[195] FPIC is considered best practice in the extractive industries, however the challenges of ensuring FPIC in circumstances where authoritarian governments are in

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[190] United Nations General Assembly (1986).
[191] World Commission on Dams (2000, p. 200).
[192] World Commission on Dams (2000, p. 201).
[193] World Commission on Dams (2000, p. 280).
[194] World Commission on Dams (2000, p. 281).
[195] World Commission on Dams (2000, p. 281).

control need to be acknowledged. These challenges aside, the World Bank has been widely criticised for not adopting the FPIC framework.[196]

2.6 Emergence of resettlement safeguards and accountability mechanisms

In response to pressure from NGOs, activists and researchers about the treatment of resettled people, multilateral banks introduced "safeguard policies" into their internal operations. The World Commission on Dams mentioned above, contributed to this process in part. Safeguards aim to prevent or mitigate undue harm to people and their environment in the development process.[197] They require certain processes and procedures to be followed where there is a risk that a development project has detrimental impacts to project-affected populations.

The World Bank was the first institution to introduce an Involuntary Resettlement Policy in 1980.[198] At this time, no international organisation or government had in place a resettlement policy to protect communities from relocation. In its original form, the policy aimed to ensure that displaced persons benefited from the project, and that they would have their standard of living improved, or at least restored. According to Cernea, the policy evolved and became a "template" or model for similar policies adopted by other multilateral and some bilateral development agencies, followed later by private sector banks and corporations as part of the Equator Principles. The policy was revised and updated at least 4 times within the World Bank: 1986, 1988, 1990 and 2001.[199] It is also currently being reviewed again as part of an overarching safeguards review that began in 2012.[200] Similar policies were adopted by the Inter-American Development Bank (IDB) in the Latin American region, the Asian Development Bank (ADB) in 1995, the African Development Bank (AfDB) in 2003 and the European Bank for Reconstruction and Development (EBRD) in 2003. A similar resettlement policy was also adopted by Organisation for Economic Cooperation and Development (OECD) in 1991 and ostensibly the Bilateral Aid Agencies of all of the 24 developed countries members in the OECD.[201]

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[196] Cariño & Colchester (2010). There has been some recent re-engagement with FPIC by the World Bank, see: World Bank (2013).
[197] World Bank (2015f).
[198] Cernea & Mathur (2011).
[199] Cernea & Mathur (2011, p. 3).
[200] World Bank (2015e); Von Bernstorff & Dann (2013).
[201] Cernea & Mathur (2011, p. 3).

Among other objectives, the current Involuntary Resettlement Policy of the World Bank mandates that:

> Involuntary resettlement should be avoided where feasible, or minimized, exploring all viable alternative project designs;…

> Displaced persons be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.[202]

The current ADB involuntary resettlement policy, introduced in 1995 and refined in 2009, mirrors that of the World Bank, illustrating the norm-setting role of the World Bank in influencing the policies of other multilateral banks and institutions.[203] The tendency for the ADB to mimic the World Bank is explored in detail by Park,[204] who argues that the ADB imitates the World Bank as a result of "institutional isomorphism" or coercion, rather than genuine institutional support for change. Indeed, the equivalent section of the ADB safeguards policy is almost identical, stating the objective as:

> To avoid involuntary resettlement wherever possible; to minimize involuntary resettlement by exploring project and design alternatives; to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups.[205]

These standards are not limited to people who are relocated or experience loss of shelter. They also apply to people experiencing loss of assets or access to assets, or loss of income sources or means of livelihoods, as a result of the involuntary taking of land for a Bank-assisted project. This is regardless of whether affected persons must move to another location.[206] National and regional resettlement policies have also been set up in various

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[202] World Bank (2001). Note that the safeguards are currently under review, see: World Bank (2015e).

[203] The ADB policy was modelled on the World Bank policy, see: Asian Development Bank (2009b, p. 7). Also see: Asian Development Bank (1995).

[204] Park (2014).

[205] Asian Development Bank (2009b, p. 17).

[206] This summary is based on the World Bank's Involuntary Settlement Safeguard Policy, see: World Bank (2001); Also see: World Bank (2004, p. 5).

places, including Vietnam, China, India, Sri Lanka and Laos.[207] In Cambodia, the Constitution and the 2001 Land Law require compensation be paid to people whose land is expropriated, however the institutional framework required to support adequate compensation and livelihood restoration is not in place, as discussed further in Chapter 4 and throughout the thesis.[208]

The safeguards frameworks of the multilateral banks are not laws that can be directly enforced in domestic or international courts. As non-state actors, international organisations enjoy a type of legal immunity from action taken in foreign nations.[209] With few exceptions, multilateral banks are not subject to local courts.[210] Unless multilateral banks partially waive their immunity to engage in negotiation with affected parties, they are not required to abide by the laws of host-nation countries.[211] Adherence to involuntary resettlement principles is dependent on internal and external pressure from shareholders and the public, support from host nation governments and the skills and concern of individual project directors, managers and implementers.

To partially address this gap in accountability, a range of internal mechanisms have been established for project-affected people to make complaints. The World Bank was the first institution to establish a complaints mechanism in 1993, when it set up an Inspection Panel to investigate complaints from project-affected communities.[212] The Inspection Panel is considered the first example of a so-called "citizen-based" accountability mechanism in an international institution.[213] The Panel was created for the purpose of:

> providing people directly affected and adversely affected by a Bank-financed project with an independent forum through which they can request the Bank to act in accordance with its own policies and procedures.[214]

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[207] Bennett & McDowell (2012, p. 12).

[208] Also see the discussion in: Asian Development Bank & Rural Development Institute (2007, pp. 67-77).

[209] Suzuki & Nanwani (2005, p. 182).

[210] This is a complex area of law. There have been recent developments, however liability in foreign countries is still extremely limited, see: Cissé, Bradlow & Kingsbury (2011); Young (2012); Simons (2010).

[211] Bissell & Nanwani (2009, p. 202).

[212] Tortajada, Altinbilek & Biswas (2012, p. vii). Also see: World Bank (2015c).

[213] Hunter (2003, p. 205).

[214] Hunter (2003, p. 205).

The Panel comprises three permanent members who serve for five years. To increase the Panel's independence, Panel members cannot serve in the World Bank in any capacity for two years preceding appointment, and can never work for the World Bank again following their term.[215]

While claims to the Panel need to be framed in terms of a failure to comply with the World Bank's operational policies and procedures, essentially the process sets up an opportunity for affected-persons to make rights-based claims – namely claims informed by international human rights norms – against these institutions. This has been made possible by the gradual inclusion of social safeguards and human rights norms into the World Bank's operational practices over time – even where these "rights" are not explicitly stated in the World Bank's policies as such. Hunter contends that the "original vision" for the Panel came from outside the World Bank, "from critics who were looking for ways to make the Bank more accountable to the communities they served."[216] As Hunter explains, the first step was to pressure the World Bank to adopt safeguards on environmental assessment, consultation, access to information, treatment of indigenous peoples and involuntary resettlement. The next step was to advocate for an independent mechanism to enforce compliance, which was done through an alliance of "legislators in the United States, Switzerland and Germany", along with NGOs such as the Center for International Environmental Law, the Environmental Defense Fund, the Bank Information Center and Friends of the Earth.[217]

The grassroots advocacy campaign surrounding the Sardar Sarovar hydropower project on the Narmada River in eastern Gujarat in India throughout the 1980s and 90s, was also influential in the World Bank's decision to establish the Inspection Panel. The Sardar Sarovar project was a debacle for the World Bank.[218] There are a number of studies which look at how this campaign affected the World Bank's internal governance.[219] As the largest hydropower project on the Narmada River, the Sardar Sarovar project was expected to displace hundreds of thousands of people, although no comprehensive social impact assessment was undertaken.[220] For almost twenty years, campaigners protested against the

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[215] Hunter (2003, p. 205).
[216] Hunter (2003, p. 204).
[217] Hunter (2003, p. 204).
[218] Tortajada, Altinbilek & Biswas (2012, p. v).
[219] See: Clark, Fox & Treakle (2003); Leslie (2005); Lahiri-Dutt & Wasson (2008).
[220] Clark, Fox & Treakle (2003, p. 2).

dam's construction under the infamous mantra, "we will drown but we will not move".[221] The campaign was supported by activists especially in Europe, Japan and North America. [222] Following a "long march" in 1990 of campaigners across the three affected states in India and a hunger strike by six of the most prominent activists, the World Bank eventually agreed to an independent review. The review team, known as the Morse Commission, outlined the deeply flawed process underpinning the dam's approval. While the conflict continued between the World Bank and protesters over the Sardar Sarovar project for many years, the independent review provided the antecedent to the Inspection Panel, established in 1993. [223]

Subsequently, six other multilateral banks also adopted their own accountability mechanisms which would provide avenues for project-affected communities to seek redress, namely the ADB, IDB, International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), EBRD and the AfDB.[224] These mechanisms have varying levels of independence, transparency and powers of enforcement. Some of them focus more on mediation with communities than on inspection and compliance assessment. The ADB mechanism – which is relevant to this study – is comprised of an "Inspection Function", established in 1995 and an "Accountability Mechanism" consisting of the Office of the Special Project Facilitator (OSPF) and the Compliance Review Panel (CRP) established in 2003.[225] Essentially, affected communities undergo mediation with the ADB first and where these issues cannot be resolved an additional compliance review function is available. The accountability mechanisms of the multilateral banks do not only relate only to involuntary resettlement, they address a range of complaints against the banks, especially environmental impacts.

Since 1993, the World Bank Inspection Panel has considered 103 cases, 45 of which related to the issue of involuntary resettlement.[226] The first case considered by the Inspection Panel was a dam in Nepal (Arun III Hydroelectric Project), which the Bank subsequently declined to fund.[227] The ADB has registered 51 complaints to the OSPF since it established the Accountability Mechanism in 2003, 15 of which relate to land acquisition and/or

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[221] Clark, Fox & Treakle (2003, p. 3).
[222] Clark, Fox & Treakle (2003, p. 3).
[223] Clark, Fox & Treakle (2003, pp. 3-10).
[224] Bissell & Nanwani (2009, p. 2).
[225] Bissell & Nanwani (2009, p. 7).
[226] As at June 2014, see: World Bank (2015d).
[227] Tortajada, Altinbilek & Biswas (2012, p. vii).

resettlement.[228] The mechanisms are set up for project-affected people to make complaints directly, or through a local representative. In exceptional circumstances an international organisation acting as an agent for the affected persons may be able to make a compliant.[229] In practice, project affected people are usually represented by local or international agents, as is the case for the railway project in Cambodia. The development of these mechanisms is critical to understanding how events in Cambodia for the railway have unfolded, as project-affected people were assisted by NGOs to file complaints to the ADB OSPF and the CRP. The diagram at Figure 4 depicts how the ADB Accountability Mechanism operates.

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[228] These numbers were compiled in August 2015. The ADB Website presents the complaints registered by year to the OSPF, see: Asian Development Bank (2015b).
[229] For a general discussion of this issue, see: World Bank (2003).

Figure 4: The ADB Accountability Mechanism[230]

ADB Accountability Mechanism

The Accountability Mechanism assists people who are directly, materially and adversely affected by ADB-assisted projects.

Community complaints → **Complaints Receiving Officer**

Receives all community complaints and refers complaints to either the OSPF or the CRP.

Office of the Special Project Facilitator (OSPF)

The OSPF is the problem solving function of the Accountability Mechanism. If the complainant is deemed eligible, the OSPF will engage in (1) constitutive dialogue (2) information sharing (3) joint fact-finding (4) mediation. The focus is on dispute resolution rather than blame.

STEP 1: Determination of eligibility: E.g. Have complainants first tried to resolve grievances at the project-level, with local authorities/the member government?

STEP 2: Review and assessment of complaint, such as review of project documents and visits to affected communities.

STEP 3: Problem solving process initiated, including mediation, dialogue, etc. Often this is where additional compensation may be offered based on recommendations of the OSPF.

STEP 4: Upon completion of OSPF, complainants can request compliance review if they are not satisfied.

Compliance Review Panel (CRP)

The CRP is an 'independent body' appointed by the ADB's Board of Directors. The CRP investigates alleged non-compliance with ADB's operational policies and procedures, including safeguards. It makes recommendations based on findings.

STEP 1: Determination of eligibility: CRP makes initial determination whether complaint falls within mandate. Complaints are advised but not required to approach the OSPF before bringing their grievance to the CRP. The Board must decide whether to authorize a compliance review.

STEP 2: Review and assessment of complaint, such as review of project documents and visits to affected communities.

STEP 3: CRP makes recommendations following investigation. Management must obtain borrower's agreement on remedial actions.

STEP 3: CRP releases report, monitors implementation of remedial action.

[230] Prepared by the author, see the ADB website: http://www.adb.org/site/accountability-mechanism/main.

It is pivotal to understand that these accountability mechanisms exist only within certain international institutions. Private companies operating overseas all have different systems set up to measure their own effectiveness, but there are few examples where companies are subject to legal regulation beyond that of the domestic law of the host nation.[231] There are almost no examples of bilateral institutions involved in delivering aid having set up any mechanisms for accountability or complaints (e.g. USAID, United Kingdom Department for International Development (DFID), or AusAID, now known as the "Australian Aid Program"). There were discussions taking place within the German Federal Enterprise for International Cooperation, or "GIZ"[232] in 2011-2012 about establishing an accountability mechanism. This stemmed from GIZ being criticised for human rights abuses resulting from land reform programs in Namibia and Cambodia. The current status of whether an accountability mechanism is being introduced is unknown.[233] It is also not clear what safeguards or accountability mechanisms the New Development Bank (NDB), formerly known as the BRICS Bank will have, if any.[234] The same applies to the recently established Asian Infrastructure Investment Bank (AIIB).[235]

There is an important literature which identifies the influential role of NGOs in establishing the World Bank inspection panel and bringing about other changes at a project and policy level for displaced people. Notable examples include work by Hunter,[236] Bissel and Nanwani,[237] Suzuki and Nanwani.[238] Some of these writers document the early Inspection Panel cases. These articles provide informative case studies of the early experiences of the Panel and trace the evolution of norms. They convey the importance of some of these cases, especially where communities successfully halted or altered the course of large projects. Notwithstanding the obvious significance of these grassroots campaigns, there is also an inherent tendency within these writings to convey a romanticised narrative, in which project-affected people are helped by advocates to assert their rights against multilateral giants. However, with few exceptions, these studies rarely include interviews or input from project-

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[231] For a discussion of the developments relating to corporate social responsibility and human rights at an international level, see Australian Human Rights Commission (2015). Also see: Council of Europe (2015); Hilson (2012). Also see the literature relating to the Alien Tort Claims Act in the United States, for example: Stewart & Wuerth (2013); Herz (1999).
[232] Deutsche Gesellschaft für Internationale Zusammenarbeit.
[233] BMZ Federal Ministry for Economic Cooperation and Development (2011, p. 21). These discussions were taking place in Cambodia and Washington D.C. during the time of fieldwork for this thesis in 2012-2013.
[234] Grimsditch & Yin (2015).
[235] Moore (2015).
[236] Hunter (2003).
[237] Bissell & Nanwani (2009).
[238] Suzuki & Nanwani (2005).

affected people in any systematic way. Most often they include research with other stakeholders or representatives of local and international civil society organisations, as a proxy for interviewing project-affected people directly.[239]

Singh's approach is slightly different. She explores community aspirations and participation in relocation processes in relation to Nam Theun 2, a major World Bank hydro-power scheme in Laos. A concession was awarded for the scheme in 1993, but it was then subject to an influential anti-dam campaign. Nam Theun 2 was intended to demonstrate the World Bank's capacity to engage in socially and environmentally responsible development.[240] Exploring how the Bank worked with affected communities, Singh argues that in workshops and stakeholder discussions, villagers' participation was a "negotiated performance" within tightly constrained parameters. It was not a "broad-based forum for open and well-informed discussion." She also argues that villagers were selectively recruited, supported and/or intimidated by Lao government officials for and during certain "participatory events". [241] Importantly, Singh argues that the ideal of Nam Theun 2 being a socially and environmentally responsible project was being showcased by only a small number of people within the Bank.[242] In this way, understandings of participation were not necessarily shared or consistent within the Bank, and workshops and consultation activities were an arena in which these contested understandings played out.

Other authors, such as Bebbington et al., have also provided powerful ethnographic insights into the complexity of large multilateral organisations, shifting perceptions of these institutions as monolithic and operating according to rational and centrally-organised processes. Explorations of how social capital values emerged and were treated by different participants in the Bank since the 1980s are presented by Bebbington et al. as "a battlefield of knowledge" in which social values were championed by certain individuals.[243] These individuals re-framed how projects were approached, but genuine appreciations of these values and the practices which supported them across the institution remained relatively unchanged.[244] The diversity of norms and values within such organisations captured by these

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[239] For example, Hunter (2003), provides an excellent analysis and narrative surrounding early use of the World Bank Inspection Panel, but it does not directly incorporate interviews with affected people. There are some examples of this research taking place commissioned by NGOs, discussed further below. See: Pinto, Sarou & Sherchan (2011).
[240] Singh (2009, p. 294).
[241] Singh (2009, p. 294).
[242] Singh (2009, p. 493).
[243] Note that the concept of "battlefields of knowledge" was articulated first by Long & Long (1992).
[244] Bebbington, Guggenheim, Olson & Woolcock (2004, p. 58).

writers is crucial to understanding how policy debates about resettlement are internally negotiated and enacted.

There is also a different literature which explores how accountability mechanisms are an anomaly in international law.[245] Accountability mechanisms are not courts of law, nor are they formal adjudication bodies organised by the State; they are internal bureaucratic processes designed to provide a degree of scrutiny and participation for affected people. As Hunter wrote in 1994 when the Inspection Panel was established, it "has no precedent in international law, outside of a few human rights tribunals."[246]

2.7 Towards an understanding of NGOs as intermediaries in resettlement

The existing resettlement literature does more to confirm the influence of activists in these conflicts, than to understand advocacy experiences from a community perspective. This section explores the work of a small number of writers who have attempted to draw out these tensions in the context of resettlement. Much of the analysis available is in the context of hydropower projects, especially the infamous Narmada Campaign in response to the Sardar Sarovar Dam mentioned above. The work of Oliver-Smith, Fisher, Leslie, Whitehead and Guadalupe is particularly important in this respect.[247]

Leslie provides an intimate account of the trials and tribulations of various "Gandhian" style campaigns surrounding the Narmada, as well as personal narratives of the anti-dam campaigns of South Africa and Australia.[248] His writings capture the personalities involved in advocacy, richly describing firsthand accounts of characters such as, Medha Patkar, a leader of the Narmada campaign, who committed herself to drowning in the river rather than being relocated. He portrays the complicated negotiations between various international organisations, experts, local community members and the media, as well as tracing the responses of hydropower financiers and governments to advocacy efforts over time. These accounts are very real and messy and demonstrate the unpredictable nature of community-advocacy interactions.

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[245] Bissell & Nanwani (2009, p. 10).
[246] Hunter (2003, p. 202). Kingsbury et al. describe these activities as forming a new field which he calls "global administrative law", see: Kingsbury, Krisch & Stewart (2005).
[247] Fisher (2009); Whitehead (2008); Rodrigues (2004); Oliver-Smith (2010); Leslie (2005).
[248] Leslie (2005, p. 15).

Similarly, Guadalupe provides an analysis of the Narmada campaign in a comparative examination of transnational advocacy networks in Brazil, Ecuador and India. [249] Whitehead also examines the Narmada campaign, analysing how it operated simultaneously at local, national and international levels. Drawing on the work of Sen,[250] she explores how it redefined the nature of civil society in both India and overseas.[251] She articulates the strategies used by activists, including the "politics of attrition" which saw bitter rifts emerge in the community as some families eventually accepted resettlement packages, while others continued to resist.[252] She considers the internal complexities of the movement over sixteen years especially within the Narmada Bachao Andolan (NBA), which was the "domestic wing of the international campaign", arguing that:

> [d]espite its espousal of participatory politics and consensual decision-making, most of the important spokespersons in the NBA have been urban-based, middle-class activists...Adivasis in the struggle for their lands and livelihoods do not represent themselves, they are represented.[253]

Whitehead also makes observations about trans-national linkages creating "a double-edged sword, producing unintended effects and consequences for civil society groups."[254] She explains how the ostensibly aligned values of environmentalism and social justice create competing tensions in local settings. She writes:

> From 1988 onwards, there emerged two streams of civil society organizations that were connected to different transnational organizations, constituencies and goals. On the one hand, ARCH-Vahini in Gujarat allied with Oxfam-UK, a critical development organization that focused mainly on the social effects of poorly planned and badly implemented resettlement policies. On the other hand, the various organizations allied with the NBA became associated with international environmental organizations such as

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[249] Rodrigues (2004).
[250] Sen (1999).
[251] Whitehead (2008, p. 295).
[252] Whitehead (2008, p. 309).
[253] Whitehead (2008, p. 304).
[254] Whitehead (2008, p. 302).

the International Rivers' Network, the Environmental Defense Fund and Greenpeace, all of whom possessed a distinctly "northern" perspective on environmental issues.[255]

In a similar style, but drawing on examples from community-based natural resource management (CBNRM) in Southeast Asia, Li also describes the "strategic simplifications" used by advocates to argue for the right for communities to control their own resources.[256] Li deconstructs tensions between advocates and scholars in the context of CBNRM. Advocates, she argues, rely on strategic simplifications to advance the cause of CBNRM, whilst scholars have sought to highlight "inequities, or the mutability of identities and traditions, thus calling concepts such as community, custom, local knowledge and indigeneity into question."[257] Li also provides a useful analysis of "trusteeship". She explores how different actors, including NGOs, position themselves as "trustees" responsible for developing the capacities of others.[258]

Two authors, Oliver-Smith and Fisher, have explicitly set out to define a research agenda for resettlement studies which investigates its complex relationships with transnational advocacy campaigns.[259] Oliver-Smith has been writing about resistance to development-induced displacement since at least the 1990s.[260] He argues that "NGOs have frequently been seen as catalysts through which local people could become participants in rather than objects of development efforts."[261] He also articulates how resettlement resistance movements tend to make contacts at four levels as they develop: "the local community, the project, the national political context and the international or global context."[262] He explains how "the organizational capacity of the movement to operate effectively at both local and national levels will prove important as the movement develops." [263] Oliver-Smith considers the multiple repercussions of resistance at different levels:

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[255] Lahiri-Dutt & Wasson (2008, p. 302).
[256] Li (2002).
[257] Li (2002, pp. 255-256).
[258] Li (2007, p. 5).
[259] Oliver-Smith (1994, 2002, 2010); Fisher (2009).
[260] Oliver-Smith (1994).
[261] Oliver-Smith (2002, p. 13).
[262] Oliver-Smith (2002, p. 42).
[263] Oliver-Smith (2002, p. 42).

In effect, communities and organizations in resistance evolve in response to and in turn oblige national governments and multilateral agencies to evolve.[264]

Fisher has also explored how local experiences of displacement oblige communities to connect with transnational advocacy campaigns, the challenges involved in sustaining transnational collaboration and the potential for alliances to have "unintended impacts" on project-affected groups.[265] Both of these authors also highlight how transnational alliances between NGOs and project-affected people have become pivotal to how "risk" is constructed by financiers of development projects requiring resettlement.[266] The issue of risk, as it is relevant to the research, is explored further in the sections below.

2.8 Inherent tensions in examining advocacy work

Each of the authors above recognise that examining advocacy networks and transnational campaigns can be an uncomfortable area of research.[267] The power dynamics between financiers of development projects and the communities they impact are so uneven, that at times it can seem inconsequential to focus on the role of advocates. Also, research relating to advocates requires a degree of reflexivity about one's own field and values. As evident in the previous section, writers on resettlement regularly traverse multiple and overlapping roles as advocates and researchers. Fisher foreshadows some of these difficulties. In explaining the reasons for reflecting on how NGOs operate as brokers between locally affected populations and development institutions, he states that:

This different and still evolving form of transnational politics offers benefits and poses dangers for local people and their interests. It also presents challenges to scholars and activists seeking to comprehend and influence these structures and forces in the larger world and the way they impinge upon the local people with whom we work.[268]

Fisher continues to argue that:

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264 Oliver-Smith (2002, pp. 10-11).
265 Fisher (2009, p. 164).
266 Oliver-Smith (2002, p. 16).
267 See for example, Fisher (2009, pp. 163-164).
268 Fisher (2009, p. 163).

addressing the complex problems of DFDR entails not just identifying best practices and penning new resettlement guidelines but also understanding and engaging the opportunities and hazards that arise with these evolving, transnational political processes.[269]

The goal for Fisher is "neither to praise nor to criticize transnational advocacy efforts in the case of DFDR, but simply to understand what happens…".[270] Delving into the writings of Fisher, Oliver-Smith and others reveals that there is much to be gained from trying to elucidate the tensions and conflicts inherent in advocacy movements and resettlement resistance.

2.9 Resettlement research in Cambodia

In the Cambodian context, limited literature on resettlement exists outside the literature published directly by NGOs. Academics, such as Brickell, have documented the increasing involvement of women in protest movements against displacement in Cambodia.[271] Springer has examined the discrepancy between local, customary understandings of land-holding and the written law in Cambodia, which he argues has made the dispossession of land possible.[272] Mgbako et al. have investigated forced evictions in Cambodia, comparing the experience of four communities facing displacement.[273] Their research is primarily a legal analysis undertaken within a human rights framework, focusing on identifying the human rights abuses experienced by affected communities. Exploring resettlement in a very different context, there has been a recent proliferation of online media articles about Cambodia's decision to resettle refugees.[274] These media articles relate to refugee-related resettlement for people who have had their asylum claim processed in Australia, but who elect to move to Cambodia rather than remain in mandatory detention.

In terms of research conducted by NGOs and consultants, there are a number of advocacy materials investigating infrastructure projects causing displacement and resettlement. A series of publications on land and property where compiled in 1999-2000 under the Oxfam GB Cambodia Land Study Project, which partially considered how emerging accountability

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[269] Fisher (2009, p. 164).
[270] Fisher (2009, p. 164).
[271] Brickell (2014).
[272] Springer (2013).
[273] Mgbako, Gao, Joynes, Cave & Mikhailevich (2010).
[274] Crothers & Farrell (2015).

mechanisms could be leveraged by NGOs to assist affected communities.[275] A best practice guide to resettlement was prepared by Baird in 2009, in anticipation of displacement in relation to the Lower Sesan 2 dam in Stung Treng Province, northeastern Cambodia.[276] The report considered the policy and legal framework of Cambodia relating to resettlement, and included consultations with people who would be potentially affected, capturing their views on the proposed development and their preferences regarding compensation if they were displaced.[277]

There are also a number of important publications relating to the Cambodian railway project itself, which are directly relevant to the current study.[278] A significant study was undertaken by the organisation, Equitable Cambodia (formerly, Bridges Across Borders Cambodia), which published "DERAILED: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway in 2012."[279] The publication is a detailed study of the railway resettlement in its early stages, primarily assessing compliance with policy and legal instruments, human rights covenants, Cambodian law and the ADB safeguards on involuntary resettlement.[280] This report is re-visited throughout the thesis as an important document setting out the advocacy position of the NGOs representing households affected by the railway project. The report provides in-depth information about the process of accessing relevant information, participating in consultations about the railway project, the resettlement process and the entitlements of those affected. It also made early findings about the outcomes of the resettlement at a mid-way point during the resettlement process between September 2010 and October 2011. Of the 200 households interviewed by Equitable Cambodia, they found that sixty percent perceived that their living conditions had been made worse by the railway project, or would be made worse in the future. Only 20 percent felt that their lives would improve. The remaining households perceived that the project would not make any material difference to their living standards.[281] The report also found that the resettlement sites were too far from previous residences and urban centres, resulting in lost income, reduced access to schools, health centres and other facilities.[282] The report also

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[275] See generally, Oxfam GB (1999-2000). Note the publication by Williams (2000).
[276] Baird (2009).
[277] Baird (2009).
[278] This is the same ADB railway resettlement that is the subject of this PhD research.
[279] Bugalski & Medallo (2012).
[280] Bugalski & Medallo (2012, p. iii).
[281] Bugalski & Medallo (2012, p. 66).
[282] Bugalski & Medallo (2012, p. 67).

concluded that none of the project-sponsored resettlement sites were fully prepared with services when resettlement commenced.[283] This study is a powerful investigation and provides background for the current research, however its focus is on gathering data from communities in ways that fit within categories of international law and policy. In this way, it is an effective piece of advocacy which will be examined as part of the current study.

There are also a number of smaller, yet similar, documents that have been released by NGOs on the railway project. For example, the publication by AidWATCH, entitled "Off the Rails – AusAID and the Troubled Cambodian Railways Project," which outlines the impacts on the communities and the policy considerations relevant to whether Australian aid money should be used for such a project.[284] Sahmakum Teang Tnaut (STT) published a report detailing early problems with the railway project, reporting that inadequate and incorrect compensation amounts were offered to affected households.[285] In 2013, STT also published "End of the Line" which assessed the impacts of resettlement on communities affected by the project in Phnom Penh.[286]

One internal publication commissioned by Oxfam Australia, employs a different approach to the existing studies on the railway. The research is an evaluation of the resettlement process which occurred for the Highway One Project in Cambodia, which began in 2000. The Highway One Project was the first project in Cambodia to be implemented as part of ADB's Greater Mekong Subregion initiative, the first project requiring a resettlement policy and also the first ADB project in Cambodia for which a complaint was registered with the OSPF of the ADB.[287] The evaluation was undertaken many years after the resettlement began, but it investigated the support provided by one NGO, CDCam, to the resettled populations. Some of the findings are particularly relevant to the current study. Among the findings of the evaluation, it was reported that the use of the Accountability Mechanism resulted in a shift in focus by the NGOs from the broader community network, to the complaint.[288] The Urban Poor Development Fund (UPDF), which had been working with the communities to re-build sources of self-reliant livelihoods, found the shift problematic,

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[283] Bugalski & Medallo (2012, p. 67).
[284] AidWatch (2012).
[285] Sahmakum Teang Tnaut (2011).
[286] Sahmakum Teang Tnaut (2013a).
[287] Pinto, Sarou & Sherchan (2011, p. 12).
[288] Pinto, Sarou & Sherchan (2011, p. 12).

as communities involved in the complaints began waiting for compensation from ADB rather than mobilising their own resources for recovery. [289]

The insights made in the report suggest that there is a much larger gap in knowledge relating to how civil society organisations engage with local communities than is readily apparent. An examination of the Cambodian railway project as a case study provides an opportunity to explore these issues further. It is also an opportunity to examine how the dynamics of civil society relations are reproduced at a number of scales – local, national and international – as different actors bring to the project diverse expectations about resettlement and the railway project's value.

2.10 Cross-cutting themes: NGOs, aid politics, accountability and risk

This study also intersects a number of other relevant bodies of scholarship, including literature on civil society and NGOs, as well as literature on accountability, aid politics and risk. A significant literature exists in relation to each of these areas, and many of the authors already explored in this chapter have touched on these themes. For example, Section 2.6 above examines the emergence of safeguards and accountability mechanisms within multilateral banks.[290] Given the relevance of these intersecting themes, it is important to identify some of the key conceptual aspects of the literature in each area. Briefly, the sections below introduce the literature on NGOs, aid politics, accountability and risk respectively. These themes are also revisited throughout the thesis as relevant to the research.

There is a large body of work critiquing the emergence of NGOs and non-state actors generally.[291] This literature identifies the heterogeneous histories and internal processes of NGOs and examines the strategies used by NGOs to connect people's local struggles to sites of national and transnational activism.[292] NGOs are often understood in terms of (and sometimes conflated with) notions of civil society. The broad understanding of civil society provided by Smith is helpful in understanding how NGOs are only one aspect of a much larger assemblage of ideas. He writes that:

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[289] Pinto, Sarou & Sherchan (2011, p. 12).
[290] See for example: Bissell & Nanwani (2009); Suzuki & Nanwani (2005); Hunter (2003).
[291] Keck & Sikkink (1999), A. Andrews (2014), Brown, Ebrahim & Batliwala (2012), Kilby (2006),Bratton (1989), Frantz (1987), Atack (1999), White (1999), Stiles (2002), Edwards (2011).
[292] Fisher (1997).

a connecting thread that runs through many different definitions is that civil society is the space of voluntary association and activity that exists in relative separation from the state and the market.[293]

The literature on NGOs debates the various distinctions between civil society organisations (CSOs), NGOs, International NGOs (INGOs), grassroots support organisations (GSOs), government-organised NGOs or government-supported groups (GONGOs), quasi-autonomous NGOs (QUANGOs) and more.[294] This literature is useful in that it helps conceptualise "advocacy NGOs" in relation to other organisations. Advocacy NGOs can be distinguished by their promotion of a specific cause for which they seek to raise awareness, how they share information and lobby for change, rather than necessarily focusing on service delivery and project management. Advocacy is closely associated with activism, and with legal advocacy, in which a person is represented or defended by an advocate who pleads their case. The United States Institution for Peace describes the distinct nature of human rights advocacy NGOs:

Organizations active in human rights are distinct from other NGOs in their style and their activities. Generally, their goal is to seek out, research, and address specific and general situations where repression occurs. Once abuses are found and documented, human rights NGOs tend first to encourage the voluntary correction of the abuse, then to pressure governments to change, and ultimately to publicly stigmatize the violator.[295]

As Keck and Sikkink argue, advocacy networks devote considerable energy to convincing governments and other actors to change positions or to legislate on certain issues which may appear inconsequential in the short term. Once a government commits itself to a principle or policy, advocates can use these public commitments to leverage for action.[296] They define transnational advocacy as "those actors working internationally on an issue, who are bound by shared values, a common discourse, and dense exchanges of information and services."[297]

[293] Smith (2011, p. 30).
[294] Fisher (1997, p. 448).
[295] United States Institute for Peace (2015).
[296] Keck & Sikkink (1999).
[297] Keck & Sikkink (1999, p. 100).

The work of Keck and Sikkink helps to conceptualise understandings of "accountability advocacy", an idea that is returned to throughout the thesis. Keck and Sikkink describe the categorise the tactics that advocacy networks use, including:

a) information politics, or the ability to move politically usable information quickly and credibly to where it will have the most impact;

b) symbolic politics, or the ability to call upon symbols, actions or stories that make sense of a situation or claim for an audience that is frequently far away…;

c) leverage politics, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and

d) accountability politics, or the effort to oblige more powerful actors to act on vaguer policies or principles they have formally endorsed.[298]

Many NGOs do not engage in overt advocacy as such, especially in human rights advocacy. The literature on NGOs in Bangladesh makes this comparison clear. Stiles argues in relation to Bangladesh, that NGOs such as BRAC,[299] "are careful not to challenge the state directly, or especially the strong role of foreign capital in the country."[300] BRAC is the largest NGO in the world and offers many basic services to citizens of Bangladesh, including an "an extensive network of schools that provide more nonformal education than the government."[301] Thus, the composition of NGOs and other civil society groups in a given society, and their relationships with and functions they fulfil in relation to the state, vary enormously.

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[298] Keck & Sikkink (1999, p. 95).
[299] Founded as the Bangladesh Rural Advancement Committee, but most commonly referred to as BRAC.
[300] Stiles (2002, p. 843).
[301] Stiles (2002, p. 843).

The NGO literature is also concerned with the politics of community representation. Fisher argues that NGOs are intimately "tied up with contested notions of what it means to 'do good'…the process of deciding what it is and how to pursue it.'[302] There is also an increasing literature critiquing NGOs for being unrepresentative and unaccountable to the "poor" in whose name they claim to work.[303] This literature on NGOs is broadly connected to debates about "aid accountability", especially accountability "from below."[304]

In Cambodia, the literature on NGOs emphasises the extraordinary growth of NGOs in the post 1993 period, following the end of Vietnamese occupation. Cambodia's concentration of NGOs is among the highest in the world.[305] Much of the literature identifies the problematic nature of dependency on foreign aid and NGO support.[306] As Godfrey et al state:

> Cambodia's experience since 1993 suggests that most projects in such a situation are donor-driven in their identification, design and implementation, to the detriment of capacity development. Connected with this is the chronic underfunding of government in such an economy, which hinders implementation of projects and threatens post-project financial sustainability.[307]

Hughes has made a significant contribution to research on NGOs, multilateral institutions and accountability in Cambodia.[308] Her recent book co-authored with Rodan is a comprehensive analysis of accountability politics in Southeast Asia with selected chapters focusing on Cambodia.[309] They analyse how different actors have tried to promote social accountability in Cambodia, especially the World Bank and certain NGOs. Hughes and Rodan consider the types of NGOs active in Cambodia and highlight the different social and political roles they play. The study draws on field research with Cambodian Government officials, articulating the tensions that exist in the Cambodian NGO sector, especially given

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[302] Fisher (1997, p. 446).
[303] Bebbington (2005).
[304] See, for example: Kilby (2006); A. Andrews (2014).
[305] Frewer (2013, p. 98); Hughes (2009b).
[306] Note that writers such as Biddulph, Hughes and others have challenged these perceptions of aid dependency. See the discussion on this issue in Chapter 4 of this thesis at Section 4.4; Biddulph (2010, pp. 82-83); Hughes (2009b).
[307] Godfrey, Sophal, Kato, Vou Piseth, Dorina, Saravy, Savora & Sovannarith (2002, p. 355).
[308] Rodan & Hughes (2014); Hughes & Hutchison (2012); Hughes (2007, 2009a, 2009b).
[309] Rodan & Hughes (2014).

Cambodia's turbulent political history.[310] Importantly, they identify a well-established division in Cambodia among NGOs focused on community-development related work and NGOs working to highlight the abuse and exploitation experienced by communities, particularly in relation to land and natural resources.[311]

Frewer's study of NGOs in Mondulkiri province in Cambodia also illustrates the complexity of the NGO environment in Cambodia and the importance of recognising the different NGO agendas and their sources of support. He groups the different types of NGOs in Mondulkiri into: "Community development NGOs", "Conservation NGOs", and "Human Rights NGOs".[312] Other authors have argued that the involvement of foreign actors in Cambodia tends to "stifle active engagement" by its citizens.[313] A number of writers have emphasised that "the politics of fear"[314] combined with donor dependence shapes the way people engage with authority in Cambodia, and works to limit local support for social mobilisation or the evolution of civil society genuinely independent of the State.[315]

Accountability is a central theme relevant to this research. The literature relating to the emergence of accountability mechanisms within multilateral institutions has already been explored above at Section 2.6. This literature explores notions of community-driven accountability in an international context.[316] In the broader literature there are a number of different understandings of accountability. A helpful, practical interpretation is offered by Stapenhurst and Mitchell: [317]

> The notion of accountability is an amorphous concept that is difficult to define in precise terms. However, broadly speaking, accountability exists when there is a relationship where an individual or body, and the performance of tasks or functions by that individual or body, are subject to another's oversight, direction

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[310] Rodan & Hughes (2014).
[311] These issues are explored in more detail in Chapter 4 of this thesis.
[312] Frewer (2013, p. 103).
[313] Hughes (2009b).
[314] Frewer (2013).
[315] Hughes (2009b).
[316] See for example: Bissell & Nanwani (2009); Suzuki & Nanwani (2005); Hunter (2003).
[317] Stapenhurst & O'Brien (Undated).

or request that they provide information or justification for their actions.[318]

Much of the accountability literature overlaps with civil society literature in various ways. For example, Kilby explores notions of "downward accountability" in relation to NGOs. He focuses especially on the conditions which foster greater "downward accountability" of NGOs towards their beneficiaries.[319] Kilby conceives "downward accountability" to be the accountability of NGOs to their constituents or the intended beneficiaries of their work, arguing that downward accountability of NGOs is important in "their effectiveness as empowerment agents." He also argues that values-based public-benefit organisations, such as NGOs, have few incentives to be accountable in this way.[320]

A similar approach has been taken by authors who frame accountability in international development in terms of a "moral hazard".[321] A moral hazard is a concept from economic theory in the nineteenth century in which there is a "lack of incentive to guard against risk where one is protected from its consequences."[322] Limited formal accountability between international development actors (institutions, NGOs, individuals and other entities) can be understood as a type of moral hazard. Related to this discussion are the critical perspectives on aid politics and practices by authors such as Li, Mosse, and Scott, which are also broadly relevant to the current study.[323] Their work provides insights into the socially constructed nature of aid, its recipients and donors. It interrogates the categories that aid organisations create and perpetuate. Much of this work is in the form of ethnographies revealing how attempts to assist "poorer" countries have been unsuccessful and often detrimental to the populations they intend to assist.[324] This work provides valuable insights useful for interrogating notions of accountability in relation to resettlement.

Risk is also a central concept, and has already been mentioned above in the context of the World Commission on Dams report, which articulated the relationship between "risk takers" and "risk bearers". However, there is also a broader, relevant body of literature on risk.

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[318] Stapenhurst & O'Brien (Undated, p. 1).
[319] Kilby (2006).
[320] Kilby (2006, p. 951).
[321] See for example: A. Andrews (2014); Goldsmith (2001).
[322] Oxford Dictionary Online (2015).
[323] Scott (1977, 1998, 2008); Li (2007); Mosse (2004, 2005).
[324] See for example: Li (2007); Also see Ferguson (1990); For an overview of critical perspectives on aid, see: Howes (2014).

Understandings of risk have evolved considerably in recent decades. A growing appreciation of the way risk shapes contemporary life and underpins political and economic relations has been largely brought about by the influential work of the sociologist, Beck.[325] One of Beck's central arguments is that the nature of risk has changed in modern society, so much so that the risks involved in a given action are now "unknowable".[326] Central to this idea is the notion that modern regulatory institutions are not well-suited to grappling with contemporary risks, as these risks are not geographically or institutionally confined to a controllable or calculable set of circumstances.[327] Beck identified three aspects (spatial, temporal and social) which have implications for the incalculability of modern-day risk. He argues that contemporary risks have new *spatial* dimensions, in that they are not confined within nation-states or other political borders. They have complex *temporal* dimensions, as materials such as nuclear waste have a long latency period. The *social* dimensions of contemporary risk are also changing, as it is now so difficult to assign causes and consequences with a degree of reliability. He refers to the example of financial crises brought about by interconnected global markets.[328]

Many authors have since elaborated on Beck's work in various contexts.[329] Wyatt has usefully drawn on Beck's perspective to develop understandings of risk in the context of large-scale infrastructure projects in Southeast Asia.[330] His work is particularly relevant to the current research. Wyatt undertook a detailed case study of Build-Own-Operate-Transfer (BOOT) projects in the two transitioning economies of Laos and Vietnam. In a BOOT project, the private sector finances, builds and operates the infrastructure project, e.g. a hydropower investment, for an agreed period, and collects the profits of the enterprise during this period. Once the agreed period has ended, the investment is returned to the government at no cost.[331] For these reasons, BOOT projects are promoted by International Financial Institutions and bilateral donors because they are perceived to overcome the constraints of limited public capital, thereby reducing risks. However, Wyatt's research found that the

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[325] Beck (1992).
[326] Beck (2006).
[327] Beck (1992); Also see: Gandy (1999).
[328] Beck (2006, p. 334).
[329] For example, see: Gandy (1999); Renn (2008); Simpson & Park (2013); For a discussion about the implications of the risk literature for social theory see: Adam, Beck & Van Loon (2000).
[330] Wyatt (2004).
[331] Wyatt (2004, p. 2).

inherent complexity of BOOT projects, and the inexperience of dealing with international capital in the transitional economy context, essentially renders risks invisible. He writes that:

> the governmental BOOT knowledge deficit and inexperience with international capital that characterises the transitional economy context, combined with the BOOT project's inherent structural complexity, disadvantages the state and other less powerful actors in their capacity to protect their interests… In the interplay between due diligence, the private incentive of profit and risk management, risks are rendered invisible, are shifted from powerful actors to actors with less power, and constructed by those able to control the definition of risks and their management. The process of attempting to manage increasingly complex technologies, systems and risks leads to the broadening of uncertainties.[332]

Wyatt's insights are significant because he articulates how risks become hidden in the structural complexity of the international arrangements surrounding infrastructure projects financed by multiple entities. The relevance of these insights will become clear throughout the following chapters, as the complexity of the arrangements surrounding the financing of the ADB co-financed railway project in Cambodia is explored in more detail.

2.11 Chapter review

There is a considerable body of literature that exists on resettlement. Expanding interest in resettlement reflects the growing importance of understanding and responding to displacement challenges in many different places and contexts. As argued above, the dominant approaches to resettlement studies are framed within either a socio-anthropological approach or a human-rights based approach. The focus of most of these studies has been to document the extent of dislocation experienced by relocated communities. There is also a central tension that exists between these two bodies of literature, as socio-anthropological approaches tend to be concerned with local, embedded experiences, and the rights-based literature is often focused on assessing compliance with laws and other standards.

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[332] Wyatt (2004, p. 3).

The chapter argues that while focusing on compliance is a key aspect of representing resettlement experiences, it can also obscure more reflexive questions about the nature and impacts of resettlement advocacy, changing local interpretations of the accountability process and the role of civil society organisations in representing the needs of communities being relocated.

A small number of studies have attempted to grapple with some of the implications of transnational advocacy networks in the context of resettlement, but they are geographically and temporally limited. Many of these studies took place in India in relation to Narmada and relate to events that were occurring many decades ago when the accountability structures that existed at an international level were first being introduced and when many of the transnational advocacy groups were newly formed. They are also almost entirely in relation to the hydropower projects financed by the World Bank.

Related literatures on NGOs, accountability, aid practices and risk intersect the research in multiple ways. This chapter situates resettlement within broader discussions about population displacement, land conflicts and changing land use. It also conveys how evolving resettlement standards and policies are increasingly intertwined with contested notions of accountability and aid practices, and bound up in debates about the role of NGO movements in these processes.

Chapter 3

Building the conceptual framework: Legal geography and problems of scale in development

> [Legal geography involves a] pronounced suspension of belief in "The Law" as such and in its self-authorizing claims of unity and coherence.[333]

3.1 Overview

To deepen the conceptual framework for the research, this chapter canvasses insights from critical human geography and legal geography. Core concerns of these streams of scholarship include the spatial dimensions of justice, the inclusionary and exclusionary aspects of land regulation, concepts of scale and legal pluralism.[334] Legal geography is concerned with how laws operate to influence or create the physical and spatial environment of specific places, including its social and cultural dimensions. It focuses attention on how global or international legal principles or processes are translated into local conditions, shaping communities, socially, politically and spatially. This process is sometimes referred to as the study of the "localisation of laws".[335] Simultaneously, legal geography is concerned with how the local adaptation, interpretation and understandings of law, may offer insights that require re-conceptualisation of law and policy at a global level. [336]

Legal geography is relevant to the current research because of the multiple and contradictory ways in which laws – domestic Cambodian law, local customary law, and international law and resettlement policies – have re-organised the railway communities in Cambodia. "Law"

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[333] Delaney (2014, p. 2).
[334] See for example: Blomley (1994); Delaney (2001); Gillespie (2010, 2011); Braverman, Blomley, Delaney & Kedar (2014); Blomley & Bakan (1992); Delaney (2010).
[335] Gillespie (2012).
[336] Gillespie (2012).

in this chapter is understood not only as the formal laws inscribed in legislation, it is also the policies, regulations and informal, customary practices and traditions that govern a society.[337] In this way, the chapter draws on understandings of "soft law", which refers to norms or rules which may not be strictly enforceable in a traditional sense, but still work to inform and condition decision-making.[338] The chapter also emphasises interrelated concepts of scale and space drawn from critical human geography, which enable layered understandings of how legal and policy processes are enacted. Together, with the literature examined in Chapter 2, these perspectives provide a conceptual framework for the research.

3.2 Legal geography: an interdisciplinary lens

Scholars debate whether legal geography is a sub-discipline of human geography or a "truly interdisciplinary intellectual project".[339] This study is less concerned about demarcating firm boundaries around certain fields, or with whether legal geography is a sub-discipline of either law or geography. Instead, it utilises legal geography as an *inter-disciplinary* lens, perspective or an approach, so that it provides a way of thinking about, analysing and approaching the research. The sections below outline the emergence of legal geography, its core concerns and assumptions, and its relationships with other important critical approaches in the social sciences.

Legal geography fuses legal and geographical perspectives, taking "the interconnections between law and spatiality, and especially their reciprocal construction, as core objects of inquiry."[340] It is attuned not only to the often uneven social dimensions of law and regulation, but also to the *spatial* inequalities and impacts created or altered by law, and the *physical* implications of constructing legal, policy or regulatory categories. While these "legal" dimensions are often a product or expression of broader social, political and cultural tensions or values in a society – spheres that some might perceive as "non-legal" – legal geography sets out to illuminate the legal phenomena at work and to articulate how these categories are enmeshed. Like human geography scholarship, legal geography draws on

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[337] Blandy & Sibley (2010, p. 346); Legal Geography has a "western" cultural inflection. There are only a small number of studies writing about legal geography in Southeast Asia drawing on an empirical basis, see: Gillespie (2011, 2014a, 2015); D. Robinson (2013); Vandergeest (2007).
[338] Boer, Hirsch, Johns, Saul & Scurrah (2016 forthcoming, page numbers undetermined).
[339] Braverman, Blomley, Delaney & Kedar (2014, p. 1).
[340] Braverman, Blomley, Delaney & Kedar (2014, p. 1).

concepts of space and more recently, scale – focusing on their entangled relationships.[341] In describing the starting point of legal geography, Blomley states:

> It begins with the argument that law – as a set of practices, discourses and forms of knowledge – frequently draws upon or helps to constitute spaces. A sidewalk, city, or maple tree is thus a legal product. These legal spaces, it is argued, matter. At a minimum, the ways in which space is imbued with legal meaning is very often significant, given the differentiated ways in which law operates within the spaces that it partially produces.[342]

In this way, spaces (such as public land, development projects, international borders and resettlement sites) are not isolated places. They are "assemblages" of social and legal significance and which are mutually constitutive.[343] According to Delaney, spaces "are the contingent products of pervasive cultural processes and forces associated with ideological projects."[344] As Blomley explains, spaces are "made meaningful through various forms of human practice, including that of legal actors".[345]

This relational view of how space is constructed and imbued with social and legal meaning has led to a focus on the so-called "microspaces" of law, such as restrooms and courtrooms.[346] It has also lead to an examination of places where physical and social tensions coalesce, such as struggles over public space, land tenure security, property and land.[347] These struggles are manifested in the "right to exclude" people from land – an inherent right of property ownership which is in tension with other rights and expectations of access. Hall et al. discuss this tension in relation to land, arguing that exclusion is a *process* and a *condition*, and that "all land use and access requires exclusion of some kind."[348] Thus, studies of cities, urbanisation, property and land struggles fall naturally within the ambit of legal geography's core concerns.

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[341] See, for example: Blomley & Bakan (1992); Bartel, Graham, Jackson, Prior, Robinson, Sherval & Williams (2013); Jessup (2013).
[342] Blomley (2014, p. 2).
[343] Braverman, Blomley, Delaney & Kedar (2014, p. 11); Blandy & Sibley (2010, p. 282).
[344] Delaney (2010); Braverman, Blomley, Delaney & Kedar (2014, p. 11).
[345] Blomley (2014, p. 1).
[346] Braverman, Blomley, Delaney & Kedar (2014, p. 8).
[347] See for example: Gillespie (2010, p.24).
[348] Hall, Hirsch & Li (2011, p. 4); Also see: Gillespie (2014).

The dynamic relationship between space, law and scale becomes even more complex in contexts of legal pluralism, where spaces are subject to regulation from multiple legal regimes, as is the case in Cambodia.[349] Legal pluralism in this context is taken to mean that more than one legal system is in operation over a defined area at once. It also means that there are multiple and overlapping jurisdictions occurring in the same place, discussed further in the sections below.[350]

2.3   Assumptions and influences

It is worth recognising that much of the legal geography scholarship is inspired by the work of post-structuralists, especially Foucault's writings on the socially contingent nature of law, power and knowledge.[351] In his early writings, Foucault also described the use of surveillance, punishment and theatre in the penal system, concentrating on the ways power is inscribed on the bodies of prisoners and the walls and floors of the prison. He famously describes the "Panopticon", a mechanism architecturally designed for the potential of constant observation, and thus control. [352] Similarly, Foucault's genealogy of biopolitics reveals the ways the state has gradually made "the body", especially the female body, a subject of state regulation.[353] Foucault's other writings on discourse, discursive networks and the diffuse nature of power, align with much of the legal geography scholarship.[354]

The even earlier writings of other theorists, such as Lefebvre, are also fundamental influences on legal geography and its evolving concern with spatial dimensions of inequality, power and access.[355] In The Right to the City, first published in 1968, Lefebvre articulated the need to restructure the underlying power relationships that produce urban space and its inhabitants. Lefebvre's spatialised right to the city has been taken up and extended by Mitchell and Harvey, who both focus on the exclusionary processes inherent in urbanisation – made possible and reinforced by law through the restriction of access to previously "public" spaces, criminalisation of behaviour central to survival and regulation of other aspects of everyday life.[356] In recent years, the right to the city framework has

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[349] See: Gillespie (2011).
[350] Gillespie (2011, p. 3).
[351] Foucault (1977); Foucault (1980).
[352] Foucault (1977).
[353] Foucault (1978); Foucault (1973).
[354] A number of legal geographers reference Foucault as an important influence: See, for example: Blandy & Sibley (2010, p. 280).
[355] Lefebvre (1968); Lefebvre (1996); Purcell (2002).
[356] Mitchell (2003); Harvey (2010).

arguably come to embody more than merely contestations over urban space. Some have used it to support "calls for more substantive forms of citizenship",[357] which has immediate relevance for displacement conflicts in Cambodia and debates about the Government's role in regulating, restricting and enabling access to private and public land. Stead uses the approach to explore the "possibilities and limitations of land rights discourse" for citizens of the newly formed Timor-Leste.[358] While she focuses on the city of Dili, the right to the city framework is used as a motif for inclusion within the nation-state. Stead also uses the right to the city approach to locate forced evictions within the global context of rapid population growth, increasing land acquisition, infrastructure projects, real estate speculation and slum control or clearance. [359]

Similarly, Soja argues that all inquiry can be "advanced by adopting a critical spatial perspective."[360] In analysing the impact of a court decision that reoriented the Los Angeles public transport system in favour of the city's poorest residents, he argues that the "spatiality" of justice is "an integral and formative component of how justice and injustice are socially constructed and evolve over time."[361] Soja also examines processes of coalition building which united diverse and disparate organisations in "cooperative struggles."[362] For Soja, it is "this coming together of activist groups and social movements where the spatiality of justice is most relevant."[363]

A critical aspect of legal geography is that it entails a rejection of legal positivism and requires an interrogation of the meaning and idea of "law" itself.[364] Forsyth describes legal positivism as the "notion that law necessarily is the law of the State, is uniform and exclusive and is administered by state institutions."[365] She argues that this positivist framework can be critiqued for its assumption that the idea of law is universal, that the state has a monopolistic claim to determine the legitimacy of laws, and that laws are coherent and uniform.[366]

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[357] Stead (2015, p. 2).
[358] Stead (2015, p. 1).
[359] Stead (2015).
[360] Soja (2010, p. 22).
[361] Soja (2010, pp. 1-2).
[362] Soja (2010, p. 11).
[363] Soja (2010, p. 11).
[364] Bartel, Graham, Jackson, Prior, Robinson, Sherval & Williams (2013, p. 346); Braverman, Blomley, Delaney & Kedar (2014, p. 15).
[365] Forsyth (2009, p. 36).
[366] Forsyth (2009, p. 36).

There are similarities in Delaney's argument that legal geography is premised on a "pronounced suspension of belief in 'The Law' as such and in its self-authorizing claims of unity and coherence."[367] As Delaney states:

> [f]or legal geographers, as for socio-legal scholars more generally,
> law is less a thing – like a giraffe, say, than a dynamic, shifting, often
> contradictory, multi-point process – like the movement of a swarm
> of hornets.[368]

Underpinning these insights is a shared appreciation of formal and non-formal sources of law. For Bartel et al., formal laws and institutions are only one aspect of the "rule-based architecture that structures and governs society.[369] They argue that

> so-called "formal" laws interact with informal customs and lore,
> social conventions and norms, religion and dogma, as well as the
> economy.[370]

Concepts of "hard" and "soft" law are also helpful to understand these debates. Hard law is often considered to be formal, binding laws, as expressed in legislation.[371] Soft law is often thought to include the less binding, quasi-legal sources of law, which are not always directly enforceable, but still work to achieve compliance.[372] For example, Boer et al. described the safeguards of the World Bank as soft law, or the Equator Principles adopted by commercial banks.[373] As Boer et al. also argue, however, there is a longstanding tendency to underestimate the "hardness" of soft law, suggesting that these formal and informal systems are not so distinct.[374]

At the same time as legal geography tries to draw out these overlapping formal and informal processes, it does not necessarily consider all forms of social control to be "law". Distinguishing the legal from the non-legal is a fuzzy endeavour. One conventional understanding by Hoebel is useful, which is that a:

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[367] Delaney (2014, p. 2).
[368] Delaney (2014, p. 2).
[369] Bartel, Graham, Jackson, Prior, Robinson, Sherval & Williams (2013, p. 346).
[370] Bartel, Graham, Jackson, Prior, Robinson, Sherval & Williams (2013, p. 346).
[371] Boer, Hirsch, Johns, Saul & Scurrah (2016 forthcoming, page numbers undetermined).
[372] Boer, Hirsch, Johns, Saul & Scurrah (2016 forthcoming, page numbers undetermined).
[373] Boer, Hirsch, Johns, Saul & Scurrah (2016 forthcoming, page numbers undetermined).
[374] Boer, Hirsch, Johns, Saul & Scurrah (2016 forthcoming, page numbers undetermined).

> social norm is legal if its neglect or infraction is regularly met, in
> threat or in fact, by the application of physical force by an individual
> or possessing the socially recognised privilege of so acting.[375]

However, others have more recently adopted more pluralist understandings of law. For example, Boer et al. argue that "many sorts of regulatory forms may be approached and analysed as law, beyond legislation, executive degrees, the rulings of state-sponsored tribunals…".[376] These approaches provide a foundation through which to perceive the legal dimensions of a broad range of legal and regulatory processes.

Legal geography is not only a critique of legal positivism and the discipline of law, but also of human geography. Efforts to carve out legal geography in the late 1980s and early 1990s as a discrete field emphasised the limited engagement of social, political and economic geography with the legal dimensions of geographical inquiry.[377] As Delaney has also recently stated, "For most of its professional existence human geography was essentially lawless."[378] For Delaney:

> the point is that many entities we take to be of central concern to the
> broader project of human geography are not a-, pre-, or extra-legal
> things or processes. Rather, entities such as the home, the
> corporation, the environment, along with "the city", "the state", "the
> citizen", "the worker", "the market", "money", "war", "necessary
> suffering" and so much more including "law" itself, are legally
> constituted and reconstituted.[379]

Underpinning legal geography is an appreciation of the incredibly powerful role of law, in all its forms, in regulating, shaping and constituting everyday life. It also appreciates the duality of law – as both an apparatus of power that can legitimise dispossession and exclusion, but one that can also operate as a protective force. The next section explores how these insights are most powerful when they are examined at various "scales" and in contexts where there are multiple, overlapping sources of law.

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[375] Forsyth (2009, p.39) summarising Hoebel (1954, p.28).
[376] Boer, Hirsch, Johns, Saul & Scurrah (2016 forthcoming, page numbers undetermined).
[377] Bartel, Graham, Jackson, Prior, Robinson, Sherval & Williams (2013, p. 339)
[378] Delaney (2014, p. 2).
[379] Delaney (2014, p. 3).

3.5 Law, geography and scale

Considerable scholarship has focused on how "geographic phenomena interact"[380] at different scales. At its most basic conceptual definition, scale refers to a "level of representation"[381] but could also be considered a layered "unit of analysis".[382] Notions of scale have evolved from their early cartographic uses, in which they primarily depicted physical referents on maps, to encompass a range of social, legal, political and even temporal analytic units.[383] Underpinning these efforts is an understanding of the social construction of scale.[384] The scales investigated by human geographers often include the "local-global" or "micro-", "meso-" and "macro-scale".[385] Other continuums include "the self to the global"[386] or "grass-roots to the global"[387], and have been well suited to critiques of globalisation and even "glocalisation".[388] There have also been efforts to understand regional scales as sites or levels at which phenomena are analysed, recognising that "the region" is not a "fixed geographic scale" but a "relational and political construct."[389]

Writings on scale have described how certain phenomena can be understood as nested or enmeshed within larger phenomena.[390] For example, local economies exist within regional and global economies. The more nuanced writings in this vein appreciate how local economies have potential to shape and influence regional and global economies and vice versa. Like economies, law is a scaled phenomenon designed to regulate life at various local, domestic and international levels."[391] Increasingly, however, scale is being perceived not only as nested, but also as networked within various relationships between and across different sites.[392]

The inclination to think of scale in vertical or hierarchical terms has led to the concept being critiqued for privileging the "global" and thus supporting "top-down" approaches. Debates have revolved around whether using the language of scale – i.e. "local", "regional", "global"

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[380] Smelser & Baltes (2001, p. 13503).
[381] Johnston, Gregory & Smith (1994; Marston (2000, p. 220).
[382] Smelser & Baltes (2001, pp. 13501-13502).
[383] Smelser & Baltes (2001, p. 13501).
[384] Marston (2000).
[385] Smelser & Baltes (2001, p. 275); Also see: Oliver-Smith (1994, p. 197).
[386] Blandy & Sibley (2010, p. 275).
[387] See: Fisher (2009).
[388] Swyngedouw (2004); Robertson (2012).
[389] Jonas (2006, p. 42).
[390] Marston, Jones & Woodward (2005, p. 416).
[391] Jessup (2013, p. 74).
[392] Jonas (2006, p. 402).

successfully makes visible local experiences, or if it simply reinforces a hierarchy of scale.[393] Marston et al argue that "hierarchical scale comes with a number of foundational weaknesses that cannot be overcome simply by adding on to or integrating with network theorizing."[394] To address the hierarchical tendencies of scalar language, they argue away from notions of scale towards "flat ontologies". One of the reasons they give for this shift is that the "local-to-global conceptual architecture intrinsic to hierarchical scale" pre-assigns a "cordoned register for resistance."[395] Instead of using the framework of scale, they propose that the interrelatedness between humans and objects should be examined across a "multiplicity of social sites".[396] Their justification for proposing a horizontal or flat ontology is that it:

> provides more entry points – conceived as both open multi-directionally and unfolding non-linearly – for progressive politics, offering the possibility of enhanced connections across social sites, in contrast to the vertical model that, despite attempts to bob and weave, is in the end limited by top-down structural constraints.[397]

What Marston et al.'s arguments seem to belie, is that scale – with its local-global language – is what has made it especially possible to shine attention on the "local" dimensions and impacts of economics, law, development, and many other processes that are otherwise largely invisible.[398] While many writers are in agreement that there are intrinsically hierarchical tendencies to scale, and that some writers, such as Taylor,[399] have privileged the "global" as the "ultimate" scale and the one that "really matters", doing away with scale in its entirety, and replacing it with a flat ontology does not satisfactorily address these concerns. I am in agreement with the authors who have rejected these attempts to do away with scale.[400] Hoefle, for example, has warned against flat ontologies as a "philosophical red herring"[401] and Jonas has described it as creating a "false 'site-versus-scale' dualism".[402] Instead, Marston's earlier writings on scale offer a more fruitful approach,

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[393] See generally: Marston, Jones & Woodward (2005).
[394] Marston, Jones & Woodward (2005, p. 417).
[395] Marston, Jones & Woodward (2005, p. 427).
[396] Marston, Jones & Woodward (2005, p. 427).
[397] Marston, Jones & Woodward (2005, p. 427).
[398] On this debate also see: Howitt (1993).
[399] Taylor (1982) is given as an example in Marston, Jones & Woodward (2005, p. 217).
[400] See the commentary published by: Hoefle (2006); Jonas (2006); Leitner & Miller (2007); Escobar (2007).
[401] Hoefle (2006, p. 240).
[402] Jonas (2006, p. 404).

where she considers scale, like space, to be "relational" and socially contingent. As Marston described in 2000:

> …scale is not necessarily a preordained hierarchical framework for ordering the world – local, regional, national and global. It is instead a contingent outcome of the tensions which exist between structural forces and the practices of human agents.[403]

Similarly, the work of Andrews and McCarthy is helpful. They argue that:

> while scale should never be treated as easily equivalent to levels of government nor should it be naturalized, many of our most deeply embedded and operative notions of scale do correspond to long-established levels of government.[404]

MacKinnon also rejects the notion of flat ontologies and proposes instead to think in terms of "scalar politics", suggesting that it is "often not scale *per se* that is the prime object of contestation between social actors".[405] He focuses on specific processes and institutionalised practices that are "differentially scaled."[406] MacKinnon's approach focuses on the "strategic deployment of scale" by different actors, institutions, movements and organisations.[407]

Combining legal geography and scale has potential to illuminate the spatially uneven impacts of law. Through drawing on concepts of scale in the context of a waste development project, the in the rural Australian town of Molong, Jessup shows how regionally uneven developments can be constructed using the law. While the framing of the waste disposal facility by its proponents offered "regional" benefits, once examined it was clear that "One place [the city of Orange] would generate waste, the other [the town of Molong] would receive it and bury it, all the while suffering lasting effects.[408] Jessup explains how:

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[403] Marston (2000, p. 200).
[404] E. Andrews & McCarthy (2014, p. 10) Also see: McCarthy (2005).
[405] MacKinnon (2011, pp. 22-23).
[406] MacKinnon (2011, pp. 22-23).
[407] MacKinnon (2011, pp. 22-23).
[408] Jessup (2013, p. 100).

the law that oversaw the assessment and ultimate approval of the Orange Waste Project constructed and prioritised particular spaces and scales. The community, and indeed the judiciary, had limited control over the scale of the assessment. The law…displaced and repositioned the conflict and the matters of concern to the communities involved.[409]

Bartel et al. also capture the potential of combining legal geography and scalar approaches. As they explain:

> What is unlawful at one scale, for example, may be challenged by legislation at another scale, or established social norms at another scale, and this can generate imbrication and disjuncture between legal geographies at different overlapping scales.[410]

This tension between understandings of law at different scales – potentially leading to "multi-scalar conflicts" – has considerable analytical potential. Similarly, legal geography and scale also have important intersections with political ecology, another significant stream of human geography scholarship. These are complementary rather than discrete traditions, and have much to offer when drawn on together. Andrews and McCarthy are proponents for greater engagement between these perspectives, arguing that legal geography has explored how various levels of governance "are imagined and produced" and have "tremendous power to shape material realities, particularly through law and other regulatory structures…".[411] Political ecology enhances this perspective, as it takes as its starting point "an emphasis on how 'local' dynamics cannot be understood without looking at their connections to other places around the globe …".[412] What Gillespie calls the study of the "localisation of laws"[413] is an illustration of this combined approach. She argues that scale-oriented approaches focus our attention on how global or universal legal processes (such as international law) are translated into local conditions and vice versa.[414]

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[409] Jessup (2013, p. 105).
[410] Bartel, Graham, Jackson, Prior, Robinson, Sherval & Williams (2013, p. 345).
[411] E. Andrews & McCarthy (2014, p. 7).
[412] E. Andrews & McCarthy (2014, p. 7).
[413] Gillespie (2012).
[414] Gillespie (2012b, 2013b).

Variations of these approaches have been taken by authors such as Hirsch and Vandergeest. In the Mekong region, Hirsch has analysed processes of "regionalisation", in which national politics and resource tensions are recast into regional development agendas. In analysing how these processes take effect in the context of dams, he argues that the development agendas of organisations such as the ADB, provide national decision makers with convenient narratives in which to frame their local and national politics. Local decisions are "re-scaled" as regional and global ones, against which leaders can argue that "they have no alternative" but to participate.[415]

Vandergeest has examined how similar processes take effect in Laos and Thailand in relation to tenure insecurity, where he argues that "development is inherently about reorganising space…".[416] He examines how recent land tenure reform agendas propagated by state and international aid organisations have displacing effects on communities at a local level, even where these land titling and reform agendas are motivated by poverty alleviation objectives. Vandergeest traces the way land reform programs conceived at a global, regional or national level fit uneasily with local customary land use, in ways that indirectly pressure Lao villagers to stop swidden agriculture, resettle and engage in more permanent cultivation. These policies have ethnic dimensions as they preference ethnic Lao groups. Vandergeest argues that while land reform of this type is part of the Lao Government's agenda to reorganise and administer space within its national boundaries, it has been assisted by the agendas of other organisations at regional and international scales. He states:

> Today, the program is justified through managerial forms of environmental knowledge produced by (or more accurately, recycled by) newly greened development agencies such as the World Bank… and the Asian Development Bank (ADB). …What the international agencies have done is to help the Lao Government systemize this reorganization into a national program and rationalize it through combining scientific discourses around biodiversity, land classification, and watershed production.[417]

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[415] Hirsch (2001, pp. 237-251); Also see: Singer (1999).
[416] Vandergeest (2007).
[417] Vandergeest (2007, p. 145) Note that Vandergeest cites Goldman (2001); Evans (1999) in this section.

The re-scaling of local policies and agendas into regional and global frameworks (and vice versa) is a powerful influence on Southeast Asia's development processes.

Other authors, such as Dwyer[418], Milne[419] and Biddulph[420], have drawn on similar approaches to analyse land conflicts in Cambodia. Dwyer explores the "formalisation fix", which is a way of describing how land titling programs seek to resolve land conflicts and practices of "land-grabbing" through formalising ownership of land. In doing so, he illuminate the unevenness of these interventions in Cambodia and draws attention to patterns identified by a number of researchers in Cambodia, whereby land titling efforts (often driven by donors and at the national government level) have been systematically avoiding areas that are too complex, for example where smallholder tenure is insecure, where there are competing claims to land, forest areas and other contested places.[421] Biddulph has described these patterns in Cambodia in terms of "geographies of evasion".[422] Milne has also developed a similar analysis of the unevenness of land reform interventions in terms of Prime Minister Hun Sen's Order 01, or the "leopard skin policy". Under the policy, households that were previously living on communally on state land would be allowed to create private, individually held farms, differentiated like a leopard's spots on the landscape.[423] Order 01 is explored further in the next chapter (Chapter 4).

To an extent, concepts of scale have already influenced Oliver-Smith and Fisher whose work was introduced in Chapter 2.[424] This is revealed in Oliver-Smith's insights about the transnational linkages established by resettled people:

> Resistance movements tend to generate contacts and linkages with social actors that operate at four levels: the local community, the project, the national political context, and the international or global context.[425]

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[418] Dwyer (2015).
[419] Milne (2013).
[420] Biddulph (2010).
[421] Dwyer (2015).
[422] Biddulph (2010).
[423] Milne (2013).
[424] See: Oliver-Smith (1994, 2010); Fisher (2009).
[425] Oliver-Smith (2010, p. 194).

In other publications Oliver-Smith has also argued against trying to establish a "natural history of resistance movements" and instead advocated for developing:

> a set of contexts or levels of analysis in which resistance movements
> must act and an array of variables which will affect the evolution of
> structure and action of a movement.[426]

Oliver-Smith also perceives the legal significance of devising resettlement schemes. He argues that "the categories that are established [in resettlement] bring with them bundles of rights that are themselves attached to material and social benefits or costs."[427] The dynamic relationship between space, law and scale becomes even more complex in contexts of legal pluralism, where spaces are subject to regulation from multiple legal regimes, as is the case in Cambodia.[428]

3.5 Scale, space and legal pluralism

As already indicated throughout the chapter, legal pluralism has implications for this research. Legal pluralism is defined well by Griffiths as "the presence in a social field of more than one legal order."[429] Griffiths also explains how a situation of legal pluralism is:

> one in which law and legal institutions are not all subsumable within
> one "system" but have their sources in the self-regulatory activities
> which may support, complement, ignore or frustrate one another, so
> that the "law" which is actually effective on the "ground floor" of
> society is a result of enormously complex and usually in practice
> unpredictable patterns of competition, interaction, negotiation,
> isolationism and the like.[430]

The potential of legal pluralism to deepen understandings of local settings during field research is demonstrated by the work of Gillespie.[431] Gillespie has investigated how the legally plural landscape of Cambodia affects the conservation management of Angkor Archaeological Park. Legal pluralism in this context is taken to mean that more than one

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[426] Oliver-Smith (1994, p. 197).
[427] Oliver-Smith (2010, p. 99).
[428] Gillespie (2011).
[429] Griffiths (1986, p.1).
[430] Griffiths (1986, p. 39).
[431] Gillespie (2011).

legal system is in operation over a defined area at once. It also means that there are multiple and overlapping jurisdictions occurring in the same place.[432] In the context of Angkor, Gillespie identifies at least four systems which influence the regulatory landscape:

- the existing, current legal regime of the post 1993 UNTAC period;
- that of former (post-independence) regimes, such as that of Vietnamese occupation (1978-1989);
- that remaining from French colonial rule;
- more traditional, customary legal systems. [433]

In addition to these sources of regulation, the World Heritage listing of the Park means it is subject to a body of administrative policies and obligations under the Convention Concerning the Protection of the World Cultural and Natural Heritage.[434] Thus, the space of "Angkor Archaeological Park" is not only a local space but also an international one, demarcated and regulated by international law in ways that differ to other parts of Cambodia.

Gillespie draws on the work of Benda-Beckmann et al.[435] to argue that legal pluralism deserves more attention, because it is in these contexts where "alternative (and often conflicting) perceptions of the legal or normative significance of space and boundaries are most apparent."[436] In Gillespie's study, local residents of Angkor perceived the new rules and regulations limiting their capacity to build and repair structures to be too draconian, as they "disallowed or prohibited what were perceived to be ordinary land usages."[437]

Legal ambiguity and "forum-shopping", which are considered by some to be implications of legal pluralism, offer insights that relate to the Cambodian context.[438] Unruh and Williams argue that legal ambiguity, particularly relating to land ownership, often emerges following conflict and has a clear link to tenure insecurity.[439] In post-conflict and post-colonial scenarios there are often unclear rights of access over land and resources, and overlapping or inconsistently applied policies regarding land and property. "Forum-shopping" is presented by Unruh and Williams as a challenge of legal pluralism, whereby actors involved

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[432] Gillespie (2011, p. 3).
[433] Adapted from Gillespie (2010; 2011, p. 6).
[434] United Nations Educational, Scientific and Cultural Organisation (1972).
[435] Gillespie (2011, p. 3).
[436] Gillespie (2011, p. 3).
[437] Gillespie (2011, p. 19).
[438] Unruh & Williams (2013); Meinzen-Dick (2009, p. 3).
[439] Unruh & Williams (2013).

in a dispute will seek the forum (a preferred law, adjudication mechanism or other formal or informal dispute resolution process) that they believe will be more advantageous. While this enables flexibility and negotiation, it also generates conflicting land decisions and creates the pre-conditions for forum-shopping to be used as a means of legitimizing dispossession of land.[440] Unruh and Williams also suggest that in a post-conflict setting, legal pluralism can sometimes be rationalised too quickly by introducing a single legal system for land governance which does not fit well with, align with or reflect the customary or everyday practices of communities subjected to a newly imposed, singular legal system.[441] This potential misalignment of laws and ordinary community practices and land uses echoes Gillespie's examination of the experiences of local residents in Angkor Archaeological Park, discussed above. Meinzen-Dick's analysis of legal pluralism and forum-shopping also usefully articulates how property rights cannot be understood as deriving from statues or formal rules; rather they should be understood as negotiated outcomes. Furthermore, legal pluralism does not imply that all laws are equal or there is a hierarchy of laws. Instead, for Meinzen-Dick, each law is conceived as creating a certain type of "force-field" or influence, which may be stronger in some areas than others.[442]

Legal geography, legal pluralism and political ecology have also provided fruitful ways to examine international legal processes, given the diffuse sources or norms, practices and systems shaping this arena. Pearson has examined the landscapes of international law, arguing that the "public space" of international law production centres on "global" cities, such as New York and Geneva, yet international law is manifested and can be found in many other unlikely places.[443] One of the complexities of examining any project, process or event involving international law, is its amorphous nature. Johnstone describes the fluidity of international law well when he states:

> A distinctive feature of the international legal system is its decentralized character: there is no global legislative body, no central tribunal with compulsory jurisdiction over all disputes, and no administrative body with overarching executive powers. [444]

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[440] Unruh & Williams (2013).
[441] Unruh & Williams (2013).
[442] Meinzen-Dick (2009, p. 3)
[443] Pearson (2008).
[444] Johnstone (2005, p. 187).

Braverman et al. refer to Santos's work to describe the highly dynamic process of "interlegality", to involve "different legal spaces [that] are non-synchronic and thus result in uneven and unstable mixing of legal codes."[445] Yet the presence of multiple laws and legal systems does not necessarily diminish the influence of law. Exploring the way that law operates, especially at an international level, Johnstone explains how international law is deployed through "the discursive interaction of relevant actors, usually in response to specific disputes or international incidents and often in international organizations."[446] In these specific contexts international law has normative effects even where it is not directly enforceable. For Johnstone, this is because "[t]he invocation of legal norms imposes limits on the style of argument or mode of deliberating."[447]

3.6 Implications for the research

Conceptual approaches which take law to be a messy, often incoherent product of social and political relations especially when viewed at different "scales", have enormous potential to enhance understandings of the Cambodian railway project. As the next chapters explore, the railway project is simultaneously a domestic project supported by the Cambodian Government. It is also an ADB Mekong Subregion project with significance for the Mekong region. For the Australian Government it is both an "aid" project and a strategic infrastructure project aimed at enhancing trade within the broader Asia-Pacific. For *Toll Holdings*, the Australian company with Cambodian affiliations responsible for operating the railway, it is a private investment.

Multiple legal systems and expectations bear on the railway project. These include: the fractured Cambodian domestic legal system, in which oversight is limited and patchy at best;[448] a legacy of post-conflict governance effects, as well as remnants of French and Vietnamese structures and customs; and local, long-standing "village" level systems and practices, often imbued with Buddhist beliefs.[449] At the same time, the ADB is a regional organisation based in Manila in the Philippines, which has a set of regulations (largely adopted from the World Bank – a global institution based in Washington D.C. in the United States) which ostensibly govern its investments in borrower countries. To an extent, the

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[445] Braverman, Blomley, Delaney & Kedar (2014, p. 3) Also see: de Sousa Santos (1987).
[446] Johnstone (2005, p. 187).
[447] Johnstone (2005, p. 187).
[448] See the discussion in Chapter 4.
[449] Gillespie (2010; 2011, 2014).

Australian Government brings to bear influences or expectations based on Australian domestic law (based on the common law system of the United Kingdom) – as well as a range of aid policies, processes and broader public expectations – influencing its engagement. Human rights activists operating in Cambodia are largely trained in the United States, Australia and the United Kingdom (or are local activists trained and supported by international counterparts).[450] Many of these actors take international doctrines of human rights law as their guiding ethical framework in a professional sense.[451] The people impacted by the railway, many of whom have never travelled outside Cambodia, have their own personal histories of surviving the Khmer Rouge and are now governed by multiple local and external (and often contradictory) sources of law and expectations.

3.7 Chapter review

Legal geography, legal pluralism and scale offer powerful ways to analyse the multiple local, regional and international actors and sources of legal and regulatory authority in Cambodia, especially as they are implicated in the Cambodian railway project. These perspectives help to analyse the spatially uneven impacts of laws, policies and safeguards, and to understand how the "spaces" of the railway project (the railway tracks, the resettlement sites, the boardrooms where negotiations between the Government and ADB take place) may be influenced by multiple and conflicting legal, regulatory and cultural expectations. These approaches also help to understand how the local politics of the Cambodian Government may be re-scaled, and re-shaped by the agendas of international organisations (such as the ADB) working within its borders. It recognises that the resettlement dynamics of the project are not only comprised of local processes occurring in Cambodia. They are shaped by external actors, networks, events and decisions being made elsewhere. To contextualise and ground these perspectives further, the next chapter provides an overview of the central events shaping Cambodia's recent history and its current development and investment landscape.

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[450] The background to the advocacy groups working in Cambodia is explored further in Chapter 4.
[451] This statement is not intended to be a comprehensive statement about the ethical frameworks of advocates working in Cambodia, it is merely intended to emphasise the influence of human rights approaches on the work of professional advocates. See for example: Inclusive Development International (2015b).

Chapter 4

Setting the scene: Conflict, investment and displacement in Cambodia

4.1 Overview

Cambodia has a population of around 15 million people and is one of the poorest countries in Southeast Asia.[452] Since French colonisation of Cambodia ended in 1953-54, it has experienced repeated eruptions of local violence, saturation bombing by the United States, a brutal revolution led by the Khmer Rouge in the 1970s, followed by Vietnamese occupation and a United Nations transitional government.[453] These events have important ramifications for understanding Cambodia's history of forced relocation, its contemporary governance and accountability structures, fragmented land tenure system, as well as its relationships with external or foreign actors and other countries in Southeast Asia.

The past two decades of relative political stability have seen a diverse range of international actors support different types investment in Cambodia, especially through co-financing arrangements set up by multilateral institutions, bilateral donors, and more recently through private investment.[454] Infrastructure development has been a major focus of this activity,[455] however foreign and private investment partners have brought with them different sets of legal and cultural expectations about how these projects and activities should be undertaken. Cambodia's history of violence and instability means that the domestic institutions which might support well-planned infrastructure development and regulate the influx of these different actors and influences, are not well established. This chapter provides an outline of the central events shaping Cambodia's recent history, and identifies the multiple legal and institutional regimes, especially national laws and the safeguard policies of international

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[452] Cambodia is listed as a "Least Developed Country" by the United Nations based on several socio-economic indicators, see: < http://www.un.org/en/development/desa/policy/cdp/ldc_info.shtml> accessed 29 November 2015. Note that the population of Cambodia is also available via this link.
[453] For a broad overview of Cambodian history, see: Chandler (2008).
[454] See generally, Hughes & Un (2011); Grimsditch (2014); Fforde & Seidel (2010); Greenhill (2013)
[455] Cambodian Rehabilitation and Development Board of the Council for the Development of Cambodia (2014, p. 2).

financial institutions, shaping its contemporary regulatory environment that are relevant to the current research.

4.2 Conflict and regime change in Cambodian history

Cambodian history is shaped conflict, foreign interventions and the legacies of colonialism. Cambodia's geographical location between its two neighbours, Vietnam and Thailand has also long shaped its relationships in the region. The country identified as Cambodia today emerged from a much larger Khmer empire which flourished between the ninth and fifteenth centuries in the Angkorian era. The Angkorian Empire extended across most of the land known today as southern Vietnam, Laos, Thailand, Burma, Malaysia, and Cambodia.[456] The legacy of this empire is embodied in the largest religious building in the world, Angkor Wat, which is part of a large complex of temples located near Siem Reap in north western Cambodia. Between the decline of the Angkorian civilisation in the fifteenth century and the arrival of the French in 1864, Khmer elites carefully balanced their alliances between Thailand and Vietnam.[457] By 1794, most of the Khmer royal family was in exile, while the Siamese (Thai) or Vietnamese installed the various monarchs of Cambodia in their absence.[458] In an attempt to secure Cambodia's survival, the exiled Khmer King, *Duang*, appealed to the French in Indo-China, creating an unusual relationship between the Khmer and French colonisers from the outset. [459] In 1864, the French established Cambodia as a protectorate, partially constructing the current, but still disputed borders of present-day Cambodia.[460]

Like many colonial regimes, the French in Cambodia left a legacy of psycho-social, political and legal impacts. The French wrote about the "inferior state" of Khmer governance. [461] They systematically made derogative comparisons between the Khmer and the Vietnamese, whom they perceived to incorporate French laws and systems into their society comparatively easily. To compound these dynamics, the French recruited the Vietnamese to staff the colonial administration in Cambodia, even in some of the lowest positions.[462] De-

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[456] Ablin & Hood (1987, p. xviii).
[457] Chandler (2008, pp. 136-140).
[458] Ablin & Hood (1987, p. xix).
[459] Chandler (2008, p. 171).
[460] Ablin & Hood (1987, p. xxi).
[461] Chandler (2008).
[462] Chandler (2008); Ablin & Hood (1987, p. xx).

colonisation in Cambodia, like in many places, was a fraught and complex process, shaping the rise to power of the Khmer Rouge. [463]

Between 1975 and 1979, under the communist leadership of Pol Pot, the Khmer Rouge initiated one of the most radical attempts at social engineering ever undertaken by state leaders.[464] By 1979, an estimated 1.7 million deaths had occurred as a result of execution, starvation, forced labour and disease.[465] Re-naming the country "Democratic Kampuchea", the population of Phnom Penh was evacuated to the country-side where the Khmer Rouge tried to eradicate many cultural, educational, and political influences of the past.[466] In an effort to create a self-sufficient agricultural collective, almost all diplomatic and trade relations with other countries were severed. The Khmer Rouge closed schools and hospitals and monetary currency was abolished. Basic elements of life were highly regulated including eating and marriage.[467] The Khmer Rouge set out to destroy what they perceived as impure, bourgeois, foreign or colonial elements of society. Uneducated farmers were considered uncontaminated by colonialism and other foreign influences.[468] Educated professionals who were unable to disguise their socio-economic backgrounds were often persecuted, and in many cases killed.[469] Buddhist Monks were attacked and temples were dismantled.[470] Minorities, including the Chinese, Cham Muslims, and the Vietnamese were also targeted.[471]

A remarkable feature of Khmer Rouge policy was the reversal of power-relations between children and parents. The regime extolled children as untainted by colonialism, re-educating them for the purposes of producing a "pure" Cambodian society.[472] Children were conscripted, armed with weapons, and encouraged to spy and inform on their parents, and often did.[473] Doctors and pharmacists were persecuted, their responsibilities transferred to children of thirteen to fifteen years of age with very little medical training.[474]

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[463] See generally: Chandler (2008).
[464] Ablin & Hood (1987); Becker (1986, p. 220).
[465] Ledgerwood & Un (2002, p. 3).
[466] Ablin & Hood (1987, p. xxxv-xxxvi).
[467] Ablin & Hood (1987, p. xxxv).
[468] See generally: Ablin and Hood (1987).
[469] Banister & Johnston (1993, p. 102). Also see: Thion (1993, p. 166).
[470] Deng (1993, p. 100).
[471] Becker (1986, p. 167).
[472] Thion (1993, p. 169-171).
[473] Becker (1986, p. 221).
[474] Banister & Johnston (1993, p. 102).

Pol Pot's ideology of turning Cambodia "back to year zero" was based on a vision of establishing a pre-Hindu, pre-urban, pre-colonial Cambodian society and an independent state, free from foreign interference or influence."[475] Destroying Cambodia's "bourgeois" and "foreign" elements, including monetary systems and infrastructure, was considered necessary to locate the "Original Khmer", extolled by Pol Pot.[476] Pol Pot used this post-colonial rhetoric to appeal to a devastated Cambodian countryside following the saturation bombing campaign by the United States in the 1960s and 1970s, which was designed to weaken Vietnamese strongholds within Cambodian territory. It is estimated that this bombing campaign dropped over a million tonnes of explosives, estimated to "have the effect of 25 Hiroshima style nuclear explosions" on Cambodia.[477] Some have argued that the saturation campaign left young people in rural Cambodia vulnerable to radicalisation by the Khmer Rouge.[478]

It was not until the Vietnamese invaded in 1978 that the Khmer Rouge were removed from power in 1979, although they continued to wage war in the countryside well into the 1990s. Although the Vietnamese invasion ended the destruction of the Khmer Rouge, it was viewed by other foreign governments, especially the United States, in the context the Vietnam War and the Cold War more generally.[479] During Vietnamese occupation the Khmer Rouge maintained control of sections of Cambodian territory and represented Cambodia at the United Nations until 1991.[480]

The years following the removal from power of the Khmer Rouge saw various interventions from external actors. Cambodia experienced Vietnamese occupation between 1978-1989, before the United Nations Transitional Authority of Cambodia (UNTAC) was established between 1991-1993. UNTAC was the first occasion where the United Nations had taken over the administration of a member state, with the aim of restoring peace and civil government, holding "free and fair" elections and establishing the foundations for the rehabilitation of the country.[481] While UNTAC resulted in elections which saw 89.5 percent of the population vote, the extent to which real change or transition occurred during this

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[475] Thion (1993, p. 169); Ponchaud (1978).
[476] Thion (1993, p. 169).
[477] P. Davies & Dunlop (1994, p. 5).
[478] Kiernan (1989).
[479] See the historical account by Findlay (1995, pp. 1-20).
[480] Kiernan (1993, p. 18).
[481] Findlay (1995).

period is generally debated. Biddulph argues that the UNTAC period demonstrates how national elites in Cambodia are able to co-opt external agendas for their own objectives.[482] He describes the UNTAC intervention as "emblematic of a tendency for international actors to promise transformation, but to effect change at only the most superficial levels."[483] While the period following UNTAC has been relatively stable politically – in the sense that Hun Sen has remained Prime Minister since he came to power through a coup in 1997 – the continued use of state violence to oppress opposition continues into the current day.[484]

4.3 Land disputes, titling and exclusions

Cambodia's history has impacted on its contemporary land management systems in multiple ways.[485] Prior to the arrival of the French, land essentially belonged to the King, but was available for use or for "acquisition by the plough".[486] The Land Act 1884 was one of the first statutes introduced by the French regulating land use, but was not fully implemented until the 1930s.[487] French colonisation also saw the introduction of the cadastral system in 1912, but it was the Civil Code of 1920 that is considered to mark the establishment of private property in Cambodia.[488] Nonetheless, throughout the French colonial period and post-independence, limited progress in terms of formal land registration occurred. The systems that were in place were largely abolished by the Khmer Rouge in the 1970s when private land was nationalised, and cadastral records were destroyed along with other boundary markers.[489]

During the 1980s the process of re-claiming land after the Khmer Rouge was often haphazard and few people acquired documentation for their land.[490] Since the early 1990s, the Cambodian Government has been gradually formalising land ownership across Cambodia.[491] The currently applicable 2001 Land Law sets up a process for people to register title and ownership to land they have been continuously occupying for five years or

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[482] Biddulph (2010), p.78.
[483] Biddulph (2010, p.108).
[484] Biddulph (2010, p. 79).
[485] For a comprehensive analysis, see: Gillespie (2010, pp.126-140).
[486] Hall, Hirsch & Li (2011, p. 209) These sections of the chapter have also been partially published in a book chapter, see: Jessie Connell & Grimsditch (2016).
[487] Hall, Hirsch & Li (2011, p. 209).
[488] Hall, Hirsch & Li (2011, p. 209).
[489] Hall, Hirsch & Li (2011, p. 210).
[490] Grimsditch, Kol & Sherchan (2012, p. 1). See the broad discussion on this issue in Biddulph (2010, p. 91) and note that there was continuity of land ownership for some farming households.
[491] See Dwyer (2015).

more. It recognizes "peaceful, uncontested possession" for no less than five years to land, so long as the possession took place prior to 2001 and the land can "lawfully be privately possessed".[492] In practice, reclaiming land and asserting ownership over occupied land has often been extremely fraught, resulting in numerous conflicts.[493] As also illustrated throughout the examples that follow (see, especially the story of Dey Krahorm in Section 4.6 below), the processes for resolving land conflicts are very varied depending on the type of conflict taking place.

A particularly high profile land conflict centred around the World Bank's support for the Cambodian Government's land titling scheme. A multi-donor program primarily financed by the World Bank, known as the Land Management and Administration Program (LMAP) was established in 2002 to support land registration processes. Like many development initiatives, LMAP had ambitious goals and sought to reduce poverty, promote social stability, and stimulate economic development through improving land tenure security and efficient land markets.[494] LMAP culminated in the dramatic conflict between local residents of Boeung Kak Lake in central Phnom Penh, the Cambodian Government and the World Bank. The residents claimed they were being excluded from land titling because of the high value and private interest in their land.[495] Although LMAP was discontinued, Cambodia's land registration program continued. By 2012, the Systematic Land Registration (SLR) process continued by the Cambodian Government had successfully registered more than 1.7 million titles.[496] Yet, there have been many examples of people being excluded from land titling, especially where they live on contested land or where the land is designated for a public purpose.[497] More generally, land disputes and evictions have been particularly high in the capital, Phnom Penh.[498]

As mentioned in the previous chapter, authors including Biddulph[499] and Dwyer[500] have articulated the unevenness of land titling interventions in Cambodia, such as LMAP. Their

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[492] Grimsditch, Kol & Sherchan (2012, p. 17) (Article 30 of the 2001 Land Law).
[493] See generally: Grimsditch, Kol & Sherchan (2012); For a critical perspective on the geographical distribution of land conflicts, see Biddulph (2010, pp. 84-103). Also see: Hall, Hirsch & Li (2011).
[494] World Bank (2002, p. 2); Also see: Grimsditch, Kol & Sherchan (2012, p. 18); Biddulph (2010, p. 95).
[495] For an overview of the conflict see: Biddulph (2014); Inclusive Development International (2015a). This conflict is also discussed further towards the end of this Chapter at Section 4.7.
[496] Grimsditch, Kol & Sherchan (2012, p. ii).
[497] Dwyer (2015); Grimsditch, Kol & Sherchan (2012, pp. iii-iv).
[498] Sahmakum Teang Tnaut (2014).
[499] Biddulph (2010).
[500] Dwyer (2015).

work helps to highlight the spatial distribution of land reform initiatives in Cambodia; how the impacts of these policies manifest differently across the country. Biddulph's thesis of the geographies of evasion articulates a practice of systemic avoidance, whereby land titling is not occurring in the areas where it may be needed most (contested areas, areas where community land rights are not well protected, forest areas etc.) Biddulph's evasion critique identifies how, in the beginning, LMAP appeared to meet both Government and donor objectives, representing a "consensus between donors and a host nation government during the planning and approval of the intervention", but which dissolved "into conflict during implementation" as it became clear that the Cambodian political elite was "systematically excising high value urban land" from the land title registration process.[501] Both Biddulph and Dwyer acknowledge that land titling or formalisation of land ownership is often presented as a somewhat simple "fix" to a set of complex socio-political circumstances. Dwyer describes this as the "formalisation fix", and identifies how formalisation of land ownership through land titling is employed selectively and unevenly in Cambodia and in the global South more generally. He argues for greater spatial transparency of property formalisation efforts, especially as it as being applied to unmapped state land.[502]

The gradual alienation of communities from land and forest resources in Cambodia through large economic land concessions (ELCs) is also well documented, although it is difficult to get access to credible data on the extent of land conceded.[503] ELCs involve the granting of state private land to private companies for agro-industrial development. The system for granting ELCs was formally set up under the 2001 Land Law. Since 2001, it is estimated that anywhere between 1.2 and 2 million hectares of land has been granted or transferred to over 117 private companies for commercial use.[504] Conflicts stemming from communities affected by the granting of ELCs have been numerous. There have been reports of evictions, destruction of indigenous land and communities being restricted from accessing natural resources that they previously relied on to support their livelihoods.[505] In May 2012, these conflicts led to the Cambodian Government issuing "Order 01", which suspended the granting of all new ELCs and ordered a review of all existing concessions. Those ELCs

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[501] Biddulph (2014, Abstract unpaginated and p.8)
[502] Dwyer (2015).
[503] Grimsditch & Schoenberger (2015, p. 5).
[504] There are a number of different estimates available of the land transferred and the number of companies that have benefited. The data is not compiled together by a single Cambodian Government Ministry. See: Grimsditch & Schoenberger (2015, pp. 5, 10-11).
[505] Grimsditch & Schoenberger (2015, pp. 5-6).

which did not comply with the law were to be seized or cancelled. This included concessionaires that had expropriated land from local or indigenous peoples.[506] Order 01 was also supported by a scaled up land titling scheme, for which "youth volunteers", who were often university students, were recruited as part of a campaign to survey and issue private individual land titles to people living on state land, including forest land, ELCs and forest concessions, however this campaign ceased in 2013.[507] As mentioned in Chapter 3, Section 3.5, Order 01 was known as the "leopard skin policy" because it granted private individual titles to families otherwise living on communally occupied land. Milne explores the painful dilemmas confronted by Indigenous villages as some families chose to take up private individual title and create privately owned farms, while other community members declined.[508] Like Biddulph and Dwyer, Milne articulates an analysis of Cambodia's land management system which is fragmented, often arbitrary and which potentially exacerbates pre-existing inequalities, especially for those left out of new initiatives.

4.4 Development assistance, foreign and private investment post 1993

As illustrated by the conflicts relating to ELCs, foreign and private investment in Cambodia has rapidly increased since the post UNTAC period of the 1990s. There are various figures reported for these financial flows and it is difficult to find precise, consistent and reliable information on this topic. Foreign investment approved by the Council of Development of Cambodia reportedly increased from USD 2.3 billion dollars in 1995 to USD 10.89 billion dollars by 2008.[509] More recent figures from the World Bank indicate foreign investment amounted to USD1.44 billion in 2012, reducing slightly to USD 1.34 billion in 2013.[510]

Development assistance or "aid" has also flowed into the country from a variety of sources. Since 1993, there have been at least 35 official donors and hundreds of NGOs providing aid to Cambodia.[511] On average Cambodia received around USD 600 million a year in the decade prior to 2008.[512] In 2013, the amount of development cooperation finance disbursed

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[506] Grimsditch & Schoenberger (2015, p. 6); Also see: Milne (2013).
[507] The land titling campaign to support Order 01 was put on hold prior to the 2013 national elections and was not re-activated after the elections. See: Grimsditch & Schoenberger (2015, p. 7).
[508] Milne (2013, p. 323.)
[509] Council for the Development of Cambodia (2015)
[510] Note that these figures have not necessarily been collected using the same methodology. See: World Bank (2015b); Grimsditch (2014, p. 11).
[511] Chanboreth & Hach (2008, p. 1).
[512] Chanboreth & Hach (2008, p. 1).

in Cambodia, including concessional loans, reached USD 1.46 billion.[513] The main sectors supported by aid in Cambodia include health, agriculture and rural development, governance, education and infrastructure, especially transportation. Since 2012, the infrastructure sector has received the most external support, particularly roads, rail, water and air transport.[514] Recently, there has been an increase in concessional loan financing (such as loans from ADB and World Bank). Thus rather than grants or aid, which do not require repayment from the borrowing country, concessional loans are extended with interest rates and terms that are substantially lower than market rates. In 2013, concessional loans to Cambodia were greater than development aid for the first time, a trend which is predicted to continue.[515] This shift is particularly significant because if the projects organised and driven by external development partners and supported by loans are not successful, then the burden of repayment rests on the borrowing country. In this way, concessional loans shift a large portion of the burden of financial risk onto the borrowing country government.

The shift towards concessional lending, rather than aid, especially for infrastructure building is also reflected at a regional level. The recent establishment of the Asian Infrastructure Investment Bank (AIIB) has seen a renewed focus on lending for infrastructure and other productive sectors in Asia.[516] In 2010, the ADB also published a report anticipating demand in the Asia-Pacific region for USD 8 trillion of investment to support infrastructure development between 2010-2020, presumably to be financed at least in part by ADB loans.[517] The anticipated demand for investment is primarily in the energy, transport and telecommunications sectors within the region.

While the ADB has published scoping studies on infrastructure investment needs in Cambodia,[518] other sections of the Bank have written extensively about Cambodia's weak governance mechanisms and its "limited tradition of accountability for performance through either financial oversight or political mechanisms".[519] The ADB has identified legislative gaps, weak mechanisms for complaints and appeals, major shortcomings in the judicial

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[513] Cambodian Rehabilitation and Development Board of the Council for the Development of Cambodia (2014, p. 1).
[514] Cambodian Rehabilitation and Development Board of the Council for the Development of Cambodia (2014, p. 2).
[515] Cambodian Rehabilitation and Development Board of the Council for the Development of Cambodia (2014, p. 1).
[516] Asian Infrastructure Investment Bank (2015).
[517] Bhattacharyay (2010, p. 20).
[518] Bhattacharyay (2010).
[519] Asian Development Bank (2012a, p. viii).

sector (in terms of police, prosecutors and courts) and has also stated that "corruption remains significant and difficult to mitigate in the short term."[520] Thus, it is possible to identify a push towards financing large infrastructure projects through concessional lending in countries such as Cambodia, even though domestic institutions, public financial management skills and capacity to manage loans and large projects are weak.

Cambodia's aid, investment and development sectors are also highly fragmented and de-centralised.[521] Like many countries, one of the critical pressures shaping its development landscape is a tension between the country's "ownership" over its domestic development agenda and its "accountability" to donors and investors, as well as the Cambodian public. Both country ownership and accountability have been promoted equally as important aid effectiveness values by the donors which played a significant role in Cambodia's immediate reconstruction post-1993.[522] This tension between "ownership" and "accountability" underpins relationships particularly between the Government and so-called "traditional" donors. So-called traditional donors include, the World Bank and country members of the Organisation for Economic Cooperation and Development – Development Assistance Committee (OECD-DAC).[523] Non-traditional donors, sometimes referred to as "emerging donors", include China and India, and also broadly refer to the new BRICS Bank and the AIIB. Terms such as "emerging donors" and "traditional donors" have been questioned by researchers who argue that both China and India have been providing aid since the 1950s.[524] This way of referring to donors is only useful in so far as it conveys broad traditions, cultures and requirements attached to certain lenders or donors.

The sometimes competing values and principles of accountability and local ownership have been re-affirmed numerous times in various international agreements. For example, in 2005, OECD countries committed to the Paris Declaration on Aid Effectiveness, which emphasises five central pillars of aid delivery: "ownership", "alignment", "harmonisation", "results" and "mutual accountability".[525] Accordingly, the Cambodian government and other governments in receipt of development assistance, are simultaneously encouraged to

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[520] Asian Development Bank (2012a, p.x).
[521] Chanboreth & Hach (2008, pp. 1-2, 20).
[522] See: OECD (2008).
[523] Greenhill (2013, p. 1).
[524] See: Xiaoyun & Taidong (2015).
[525] Also see the 2008 Accra Agenda for Action: OECD (2008).

"take control" of the design and implementation of their development programs, at the same time as being "accountable" to the priorities and requirements of donors.

Partly as a result of these conflicting pressures, the Cambodian Government's interest in working with traditional donors is thought to be decreasing.[526] Multiple donor requirements have many practical and bureaucratic implications for the Cambodian Government. As Chanboreth and Hack explain:

> Due to a large number of donors, the Royal Government of Cambodia (RGC) has to spend a lot of time on meeting and reporting. The costs of aid fragmentation in Cambodia include the establishment of about 100 parallel project implementation units, the existence of 400 donor missions, reviews, and studies per year, and the provision of duplicated technical cooperation and funding.[527]

Greenhill argues that China has been a major support to the Cambodian government in terms of enabling it to be more assertive in dealing with traditional donors.[528] Large amounts of the financial flows moving from China to Cambodia are in the form of private investment. Of the cumulative Foreign Direct Investment between 1995 and 2008, China's share was the largest at 23.97 percent, directed mostly at resource development, rubber and tourism. China was followed by Korea (at 10.68 percent) and other major sources were from Malaysia, Taiwan, Hong Kong and Thailand, primarily directed at garment industries.[529] Chinese development assistance has also increased from less than USD 6 million in 2002 to USD 114 million in 2009.[530] In 2013, China also reportedly offered Cambodia USD 2.5 billion in development assistance, investments and concessional loans.[531] Writers, including Biddulph and Hughes, have also argued that the narrative of Cambodia's reliance on aid (from traditional donors) is misleading.[532] Grimsditch explains the current tension well:

> [T]he Cambodian Government has become increasingly frustrated with "traditional" donors and the perceived conditionalities attached

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[526] Greenhill (2013, p. 1).
[527] Chanboreth & Hach (2008, p. 2).
[528] Greenhill (2013, p. 14).
[529] Council for the Development of Cambodia (2015).
[530] Greenhill (2013, p. 6).
[531] The figure reported combines development assistance and foreign investment. See: Center for Strategic and International Studies (2012, pp. 9-10).
[532] For a discussion of this issue and further references, see Biddulph (2010, pp. 82-83); Hughes (2009b).

to their lending. Chinese aid and investment has the potential to bring significant benefits to Cambodia, and has injected much needed resources into its long neglected infrastructure. However, this also poses new and interesting challenges for those working to encourage donor accountability, corporate social responsibility, and adherence to social and environmental safeguards.[533]

Aid from non-traditional donors is often not conditional on many of the same accountability measures that govern traditional forms of aid and lending.[534] The involuntary resettlement standards required by the World Bank and the ADB are examples of this, as these standards are not necessarily required by other donors in relation to infrastructure projects.[535] Non-traditional donors may of course have other requirements and obligations they expect the Cambodian Government to respect. Greenhill describes this environment as an "age of choice"[536], which is much like Fforde's description of Cambodia as a "donor playground"[537] and also resonates with the idea of "forum-shopping" which emerges in legally plural environments, as discussed in Chapter 3, Section 3.5.[538] The proliferation of NGOs in Cambodia has also contributed to this pluralistic environment, as already explored in detail in Chapter 2, Section 2.10.

Understanding the different financial flows and pressures shaping Cambodia's development and investment landscape helps to understand the circumstances surrounding the ADB financed railway project in Cambodia and the associated community resettlement process. They also help to conceptualize the different spaces that different donors and lenders influence, depending on the bounds of a given project and the requirements attached to individual lending and donors agreements. As this thesis develops, this idea of a spheres of influence that are shaped and constructed by different donors and lenders is developed into the idea of "islands of governance"[539], referring specifically to the resettlement sites as physically demarcated areas where ADB safeguards requirements apply. These islands of governance are mutually constructed through a negotiated process between the Cambodian

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[533] Grimsditch (2012, p. 4).
[534] In relation to aid from China, see: Greenhill (2013, p. 25).
[535] This is discussed further in this Chapter in Sections 4.5-4.7. Also see a critique of the new AIIB safeguards by: International Network on Displacement and Resetttlement (2015).
[536] Greenhill (2013).
[537] Fforde & Seidel (2010).
[538] Meinzen-Dick (2009, p. 3)
[539] These ideas are explored in detail in Chapter 8.

Government and the ADB where various conflicting standards and expectations are battled out imperfectly, but ultimately produce areas or spaces (such as the resettlement sites) where ADB policies and standards awkwardly take precedence over pre-existing local practices and policies.

4.5 Displacement in Cambodia

In the post-UNTAC period, the Cambodian Government has welcomed investment to support development in a range of spheres. As many authors have identified and NGOs have publicised widely, there have been numerous land disputes and conflicts with communities who have been affected by these efforts.[540]

Accurately accessing the numbers of people displaced by private investment, infrastructure development and urbanisation processes in Cambodia is very difficult. There is no central government ministry or organisation which collates or publicises displacement data. The use of data relating to displaced communities is highly sensitive and there are limited reliable records of who is being displaced and where they move. NGOs have attempted to quantify the number of people affected by land conflicts and displacement, and different figures have been quoted in the media and the literature. Focusing only on Phnom Penh, the local urban NGO Sahmakum Teang Tnaut (STT) has released statistics documenting the eviction of 29,715 families in the capital between 1990 and 2014.[541] In 2008, Amnesty International estimated that at least 150,000 Cambodians were known to be at risk of displacement as a result of land disputes and development projects.[542] More recently, LICADHO registered 10,625 families, or an estimated 49,519 individuals, who were newly affected by land conflicts in 2014 alone.[543] Others have documented the impacts of land concessions, although specific data on the estimated number of people displaced is not readily available.[544] Often only examples of direct displacement are recorded by NGOs as indirect or secondary types of displacement are more difficult to capture. The various statistics gathered by NGOs are also based on different methodologies and tend to be based on

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[540] Hall, Hirsch & Li (2011); Grimsditch (2014); Grimsditch (2012); Vrieze & Naren (2012); Cambodian Human Rights Action Committee (2009).
[541] Sahmakum Teang Tnaut (2014).
[542] Amnesty International (2008).
[543] LICADHO (2015). Also see NGO Forum on Cambodia (2014).
[544] Vrieze & Naren (2012).

disputes reported in the media or to an NGO, and it can be assumed that many more go unrecorded.[545]

4.6 Legal framework relating to displacement

The legal avenues available to protect people from displacement in Cambodia are weak, and tend to depend on the circumstances driving the displacement.[546] The Cambodian Constitution recognises the right to private ownership, that ownership should be protected by law, and that confiscation of private property may only occur when it is deemed to be in the public interest, with fair and just compensation.[547] These rights and protections are also reflected in the 2001 Land Law.[548] The 2001 Land Law was formulated in the context of significant pressure from NGOs in Cambodia to improve the land law regime during the drafting of the law.[549] It was also a product of initial technical support from the ADB, who encouraged the inclusion of provisions to create a foundation for land and housing rights protections.[550] Substantial external technical assistance also supported the preparation of Cambodia's Constitution during the UNTAC period, which recognizes the Universal Declaration of Human Rights and the covenants and conventions related to human rights.[551] By extension, this includes the Covenant on Economic Social and Cultural Rights, which sets out the right to adequate housing.[552]

At various points in time, different external actors have worked with Cambodian Government ministries to develop specific legislation to protect citizens from arbitrary displacement. For example, in May 2010, with the support of the German Federal Enterprise for International Cooperation (GIZ),[553] the Cambodian Government passed Circular 03 on the "Resolution of Temporary Settlement on Land Which Has Been Illegally Occupied in the Capital, Municipal, and Urban Areas".[554] For the first time, a process was set up within Cambodia's legal framework to convert "illegal" occupation of state land into legal

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[545] These sections have been published in Jessie Connell & Grimsditch (2016).
[546] For general background on land, housing and property rights in Cambodia, see: Williams (2013).
[547] Constitution of the Kingdom of Cambodia (1993), Article 44. These sections were published as part of a co-authored article, see: Jessie Connell & Grimsditch (2016).
[548] Land Law (Kingdom of Cambodia) (2001), Article 5.
[549] See Baird (2011).
[550] Williams (2013, p. 419).
[551] Constitution of the Kingdom of Cambodia (1993), Article 31.
[552] United Nations General Assembly (1966b), Article 11. NGOs have used these undertakings in the Constitution to advocate for displaced people, see: Land and Housing Working Group (2009).
[553] Deutsche Gesellschaft für Internationale Zusammenarbeit.
[554] Royal Government of Cambodia (2010).

occupation or ownership. The Circular also set out a basic framework for resettlement for those who cannot be upgraded on-site. However, the Circular is a brief document and has not been fully implemented.[555] There have also been other examples of external partners working with different agencies within the Cambodian Government to develop the institutional and legal framework around displacement. During the Highway One project (discussed below) and even more recently during the current Cambodian railway project, the ADB has worked with the Government to develop its involuntary resettlement policy. The recent initiative aims to "enhance the capacity" of the Cambodian Government to implement resettlement activities, however the degree to which different actors within Government have adopted or supported these reforms is unclear.[556]

Thus, the Cambodian Government has formal legal obligations in place to protect the rights of citizens at risk of displacement, regardless of whether their tenure status is "legal" or "illegal", and to comply with decent resettlement standards. Yet, in numerous cases where communities have been threatened with eviction, the legal system has proved inaccessible. For example, in Dey Krahorm, in Phnom Penh, community members had tried to apply for land titles for many years in order to formalise their land claims. When community members applied for land titles, the authorities refused to provide application forms. Finally, after application forms were obtained, the land department refused to accept the completed title requests. The community had lived under the threat of eviction for several years before eventually being moved by police and private security guards in 2009.[557] There are numerous similar stories, especially in Phnom Penh, including the community of Group 78, evicted in 2009, who also had land title applications rejected. In this case, community members filed a complaint in 2006 to the Cadastral Commission, which hears disputes over unregistered land. The Commission finally issued a response in July 2009, stating that it had no competence to resolve the issue. The response came after the residents had been forcibly evicted.[558] These two cases illustrate the limited enforcement of legal protections in practice, as well as the limited influence or "force field"[559] of the existing law in spaces that are (1) of high financial value and (2) where an international actor is not involved. In both cases,

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[555] Lindstrom & Grimsditch (2013, pp. II-III).
[556] No project documents are available on the ADB website for this project, but a summary is available, see: Asian Development Bank (2014c).
[557] Grimsditch & Henderson (2009, pp. 68-70).
[558] Grimsditch & Henderson (2009, pp. 37-39).
[559] Cf. Meinzen-Dick (2009, p. 3) above in Section 3.5.

the land in question was valuable inner-city real estate which had been sold to well-connected local companies.[560]

The protections available to communities are different when multilateral banks, such as the World Bank or ADB, are involved in an infrastructure project requiring relocation, revealing how this involvement opens up space for the influence of international norms relating to rights and protection to operate in certain confined spheres. In these circumstances, local legal frameworks are supplemented by institutional safeguards and mechanisms developed at international forums or scales (Bissell and Nanwani 2009). As a 2014 document prepared by the ADB explained:

> In dealing with externally-financed projects, the [Cambodian] Government has adapted on a project-by-project basis, the resettlement policies of donors. Projects supported by external agencies are governed by the resettlement policies of donors and relevant laws and government regulations not consistent with donor policies are waived.[561]

The statement above reveals how, in reality, a plethora of different resettlement norms and standards have emerged in Cambodia. The conditions attached to relocation, such as the quality of resettlement packages, compensation, transparency and the availability of complaints mechanisms, are often dependent on the particular alignment of donors, private investors or local actors involved in a given project.[562] While an Inter-Ministerial Committee on Resettlement exists in Cambodia to oversee resettlement, in reality resettlement is carried out by many different actors in different ways. Multilateral banks, private investors and the Government can have very different standards and processes for relocation, and there is no central government agency which regulates this process. In circumstances where the World Bank and Asian Development Bank (ADB) are involved, formal grievance mechanisms are in place for affected people to seek redress for harm resulting from poorly implemented projects.[563] Local grievance mechanisms are otherwise weak. Additionally, bilateral finance from countries such as China does not currently come with stringent requirements related to

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[560] This discussion has also been published in a co-authored chapter: Jessie Connell & Grimsditch (2016).
[561] Asian Development Bank, Ministry of Water Resources and Meteorology, Ministry of Public Works and Transport & Ministry of Rural Development (2014, p. 6).
[562] See the different case studies compiled in Cambodian Human Rights Action Committee (2009).
[563] Bissell & Nanwani (2009).

resettlement and relocation, and compensation issues are generally handled according to the policies of the Cambodian Government, without imposition of external standards.[564] Consistent with the implications of legally plural environments presented in Chapter 3, it is possible to see how legal ambiguity emerges from this project-by-project approach. The authority for ADB policies and safeguards to take precedence over relevant domestic laws and regulations comes from inclusion of this commitment in an ADB contract with the Government. Thus, the agreement to waive relevant domestic laws and regulations it is not necessarily inscribed into Cambodian legislation or the constitution, consequently its legal authority is tenuous at best and in practice, dependent on the negotiation that takes places between the Cambodian Government and ADB once problems arise. It is noteworthy that Unruh and Williams argue that legal ambiguity, particularly relating to land ownership, often emerges following conflict and has a clear link to tenure insecurity.[565]

Determining standards, rights and protections according to a project-by-project approach, also echoes the strategies described by Ong,[566] who has analysed how Southeast Asian states make exceptions to their governance practices in response to foreign demands. Through ethnographic case studies, Ong articulates how Southeast Asian states use various neoliberal strategies to position themselves to compete in the global economy, resulting in many spheres of life being politically re-engineered as relationships, expectations and practices are reconfigured. She argues that the rights afforded to people and the governance practices that emerge in these spaces are developing in accordance with market-demand, and not applied consistency across the nation-state. One dimension of the changes underway that Ong identifies is that these places of exception open up spaces for NGOs to advocate for the human rights of those excluded from the potential benefits that new neoliberal engagement and emerging governance practices offer.

While resettlement practices are a somewhat different context to Ong's focus of enquiry, there are resonances with notions of exceptionalism. In recent years, there have been a number of examples of NGOs in Cambodia using both the formal complaints mechanisms

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[564] Further research is needed in this area. On Cambodia, see: Grimsditch (2012); More generally, see: International Network on Displacement and Resetttlement (2015); Greenhill (2013).
[565] Unruh & Williams (2013).
[566] Ong (2006).

of the multilateral banks and the media to advocate on behalf of affected communities, as explored in the next section.

4.7 Contesting displacement

There have been a series of high profile, large-scale relocation events in Cambodia which have been contested by affected communities with the support of local and international NGOs. In some cases these events have involved international financiers and/or developers, which has opened additional avenues for NGOs and communities to campaign than if only domestic investors were involved. In the examples explored below, NGOs successfully publicised the impacts of relocation and assisted affected communities to use the accountability and complaints mechanisms of the World Bank and the ADB, illustrating how NGOs can act as conduits, connecting actors across different scales (local to global). Similar dynamics emerged in many of these relocation events, including the impoverishment of displaced communities immediately after relocation, highly uneven impacts and then gradual improvements over time once advocates succeeded in publicising community experiences.[567]

The Highway One Project, approved in 1998 and then commenced in 2000, was the first infrastructure project requiring the Cambodian Government to comply with resettlement standards set by an international institution. It was also the first ADB project in Cambodia in which affected communities made a complaint to the ADB's Accountability Mechanism.[568] The ADB approved a USD 40 million loan to the Cambodian Government to improve a 105 km section of Highway One, from the east bank of the Mekong River at Neak Loeung to the Cambodian-Vietnam borderlands.[569] The road was to be widened, raised and repaved, affecting around 1,200 households (approximately 6,000 people) living alongside the road. In the early stages, the Cambodian Government did not have laws or policies in place relating to involuntary resettlement. Thus, the ADB's Safeguard Policy on Involuntary Resettlement 1995 (since updated) was the only framework which offered detailed protections.[570] As stated earlier, the aims of the ADB policy were to minimize resettlement wherever possible. Where displacement was unavoidable the policy required

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[567] Sugita (2005); Bugalski & Medallo (2012); Sahmakum Teang Tnaut (2013b).
[568] Pinto, Sarou & Sherchan (2011, p. 12).
[569] Sugita (2005, p. 40).
[570] Sugita (2005, p. 40).

that affected people be compensated for lost assets, income and livelihoods, assisted to relocate, provided with appropriate land, housing and infrastructure, in such a way that "their economic and social future" would be generally "at least as favourable with the project as without it".[571] The 1995 Policy also specified that lack of formal legal title was "not a bar to compensation", so that protection was offered to a range of informal dwellers, land users with traditional or customary rights, or those with adverse possession rights but no formal legal title to land and assets.[572]

Notwithstanding the ADB policy, numerous problems emerged. The ADB did not set up adequate monitoring mechanisms, communities were not informed of the ADB Safeguard Policy, compensation was *ad hoc* and inadequate, and local authorities were accused of arbitrarily depreciating the value of assets so as to avoid the costs of compensation. Initially, none of the families were provided with replacement land, meaning that they were displaced with nowhere to resettle.[573] The "right of way" extended 30 metres from the centreline of the highway, which meant that people living next to the road were deemed "illegal squatters".[574] The communities made complaints to the ADB Accountability Mechanism, supported by NGOs, resulting in a decade-long battle. An ADB audit of the resettlement process validated the community complaints.[575] A resettlement site was not allocated to the communities until 2003, although many people were not accommodated in the site until 2006.[576] From April to October 2006, the Inter-Ministerial Committee on Resettlement, delivered compensation, allowances and additional cash assistance to approximately 1,000 affected people. As of 2011, 11 years after the project began, there were still approximately 137 compensation cases unresolved or not addressed by the IRC.[577]

Different dynamics unfolded in the infamous displacement conflict relating to the Boeung Kak Lake development in central Phnom Penh, affecting over 20,000 people. The conflict began when a 99-year lease was granted to private developer Shukaku Inc. over a 133-hectare area covering the lake and the surrounding villages. It was made more complex by its interactions with the concurrent land-titling scheme described earlier, which was a multi-

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[571] Asian Development Bank (1995, p. 10).
[572] Asian Development Bank (1995, p. 10).
[573] Sugita (2005, p. 44).
[574] Sugita (2005, p. 43).
[575] Pinto, Sarou & Sherchan (2011, p. 12).
[576] NGO Forum on ADB (2011).
[577] Pinto, Sarou & Sherchan (2011, p. 12).

donor program primarily financed by the World Bank (LMAP).[578] LMAP aimed to stimulate economic development by improving land tenure security through land-titling across the country.[579] LMAP was prematurely cancelled due to the dramatic conflict between local residents of Boeung Kak Lake and the World Bank. The residents claimed they were excluded from the titling process because of the high value and private interest in their land. As the developers began filling the lake with sand, residents were gradually flooded out of their homes. A complaint was made to the World Bank Inspection Panel by the NGO Centre on Housing Rights and Evictions (COHRE) on behalf of the families in the Boeung Kak Lake area threatened with eviction. The complaint alleged that by arbitrarily excluding the area around the lake, the program had the effect of weakening the residents existing land tenure, which subsequently facilitated their displacement.[580] The World Bank Inspection Panel investigated and confirmed the complaints. In turn, the Bank put pressure on the Cambodian Government to remedy the problems identified with LMAP in the Inspection Panel report. The Cambodian Government responded by cancelling the project, stating that the Bank attached too many "difficult conditions".[581] The World Bank then suspended further lending to Cambodia indefinitely in response to the Cambodian Government's failure to address the problems that had emerged. The conflict seemed to result from the inclusion of a land titling adjudication area within an area where a land concession had been granted. Drawing on Biddulph's geography of evasion thesis[582] to analyse the event, this would be an example of land titling not evading a contested area, but as a result, creating far-reaching consequences for the land titling scheme and for the Government's relationship with the World Bank.

Both the Highway One project and the LMAP/Boeung Kak lake conflict provide context against which to understand the Cambodian railway project. They both involved a multilateral bank and illustrate past attempts to utilize international complaints structures in Cambodia to influence displacement events occurring locally.

Reflecting on the patterns of displacement, tenure insecurity and community protest that have emerged in Cambodia, especially when considered against the legal geography theory

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[578] See: Inclusive Development International (2015a); World Bank (2002).
[579] Grimsditch, Kol & Sherchan (2012).
[580] Details of the complaints are available on the World Bank Inspection Panel Website: http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=7.
[581] See the summary in: Grimsditch, Kol & Sherchan (2012, p. 21).
[582] Biddulph (2010; 2014).

presented in the previous chapter, a number of dynamics are revealed. The leopard's spots analogy[583] used to describe how the land of some farmers is carved out and transformed into individually titled private farms, within parcels that are otherwise state land or communally occupied, presents a patch-work type picture of Cambodia's land titling process. As does Biddulph's geography of evasion thesis,[584] which articulates how land titling schemes evade certain contested, high value spaces, especially those where land concessions have been awarded, even though these are the areas where clarity over land ownership might be needed most. As such, land titling tends to occur in some spaces, and land concessions to commercial interests in others. Similarly, resettlement safeguards apply to certain spaces (and the families living within them) as negotiated by influential actors in Government and the ADB, and do not apply to others. While there may be clear project rationales for the inclusion and exclusion of certain pieces of land within project areas, the impact of these different policies and schemes, as experienced by community members, is highly arbitrary. In many instances, as is the case with the Cambodian railway project, legal ambiguity[585] – a product of legal pluralism – pervades interactions between community members and the Cambodian Government and exacerbates tenure insecurity.

Following Pearson's[586] argument that international law (in various forms) can be found in many unlikely places, the influence of international protection norms, as manifested in the form of ADB resettlement safeguards, can be found in project locations spotted on the Cambodian landscape. Resettlement standards within the ambit of ADB project sites stand out as places of exception or islands of governance, where the rights and benefits that may be provided to affected people (if the safeguards are enforced) are significantly higher than what may be provided without the involvement an international actor. This resonates with the arguments of Ong, presented above, who has described how Southeast Asian states make exceptions to their usual practices of governance in response to external demands in order to participate in the global economy.[587]

The patterns also reveal a type of wilful blindness on the part of international financers in Cambodia, whereby in the initial phases of planning the needs and objectives of donors,

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[583] The "Leopard skin" policy refers to Order 01, discussed above in Section 3.5 and 4.3. See Milne (2013).
[584] Biddulph (2010).
[585] Unruh & Williams (2013).
[586] Pearson (2008).
[587] Ong (2006).

lenders and the Government appear to align, but which disintegrates into conflict upon project implementation. Biddulph[588] has made this argument in the context of LMAP, and as the following chapters sharply reveal, a similar type of blindness features in the trajectory of the railway project.

4.8 Chapter review

Displacement is inherently bound up in Cambodia's uneven economic development, efforts to attract foreign and private investment, and ongoing struggles over natural resources, private land ownership and enjoyment of public space. Tensions between country "ownership" and requirements for "accountability" shape many of these relationships, but these dynamics are changing as non-traditional donors play a more significant role. The past fifteen years has seen large numbers of people displaced in Cambodia to make way for infrastructure projects, urban beautification, private development and land speculation.

Although Cambodia has a land registration program, which has issued land titles to several million households, weak dispute resolution mechanisms and exclusions from the system leave many exposed to chronic tenure insecurity. This is exacerbated by limited transparency and accountability in urban planning decisions. It is also aggravated by a weakly implemented legal framework that provides uneven protections to citizens. The rights afforded to displaced people are ambiguous, and depend on the alignment of financiers and actors involved in driving the relocation.

This chapter has helped to conceptualise the spaces and scales at which aid, advocacy and resettlement politics operate. It has emphasised how multilateral banks, such as the ADB, are simultaneously interested in financing large-scale infrastructure development in the region, at the same time as recognising that the necessary local institutions and accountability structures required to support these projects are not in place. The next chapter turns specifically to the ADB co-financed railway project in Cambodia, which is the focus of this study.

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[588] Biddulph (2014).

Chapter 5

The Railway Rehabilitation Project in Cambodia

5.1 Overview

This chapter explains the Cambodian railway project in detail. The precise name of the project is the "Greater Mekong Subregion Rehabilitation of the Railway in Cambodia". For simplicity it is referred to variously as the Cambodian Railway Project or simply, the railway project. The chapter provides background about the original vision and rationale of the project and the history of the railway network. It introduces the parties to the loan agreements, the various contractors and consultants involved, and the community resettlement plans that were prepared. In doing so it provides a basic timeline of project implementation, which is also visually depicted in the timeline of events at the beginning of the thesis.[589]

A critical part of the chapter is that it sets out the information available publicly to understand how the USD 141 million railway project due for completion in 2009, was delayed and eventually cancelled in 2014. At cancellation, there were more than 300 km of approximately 650 km of railway tracks yet to be repaired,[590] although the Cambodian Government will still need to repay around USD 81.1 million, with interest, to the Asian Development Bank (ADB) for the partly finished project.[591] Before the project was cancelled in 2014, resettlement costs for the project had grown from USD 3.8 million in 2006, to USD 7.6 million in 2009, to at least USD14.6 million in 2014.[592] Over the course of the project, more than fifty detailed economic, financial and technical proposals, feasibility studies, resettlement plans, technical assessments, social and environmental

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[589] See the "Timeline of events" included in the thesis immediately before Chapter 1 (Introduction).

[590] There are slightly different distance approximations in the various documents. For example, compare: Asian Development Bank (2006, p. ii) and Asian Development Bank (2014h, p. 1).

[591] These sums have been calculated based on the information in Asian Development Bank (2014h). See Section 5.4 below for details of the loan agreements and applicable interest rates.

[592] The evolving project costs are detailed throughout the project reports uploaded to the ADB project website: http://adb.org/projects/37269-013/activities.

monitoring studies had been prepared by various consultants, ADB staff, the Cambodian Government and others. In July 2015, the Cambodian Government announced it would commit USD 33 million to complete the project, in the absence of continued donor support, however the viability of these recent plans remain unclear.[593]

The purpose of setting out the detail behind the project in this way is to convey the complexity of the loan arrangements, and the institutional and commercial trans-national agreements in place to support infrastructure projects of this kind. It helps to understand the internal contradictions of such projects, the scales and spaces at which different types of laws and regulations operate, the different cultural expectations brought to bear from different actors, as well as how risk is assessed and mitigated by multilateral banks, such as the ADB. The chapter also conveys how there was an awareness of the need to address various risks in the railway project from the outset, including resettlement impacts on communities. Notwithstanding this awareness, the safeguards and checks and balances that were put in place were not able to protect the project from these known risks during implementation.

The chapter first provides a brief project history and rationale, before explaining the roles of different stakeholders and turning to the risk assessments, resettlement plans and then the advocacy surrounding the project. The final section explains the current status of the project as at December 2015.

5.2 History of the rail network

Cambodia once had a functioning railway system which fell into disrepair during the Khmer Rouge conflict in the 1970s. Construction of Cambodia's railway network began during French colonisation. The first railway line was built in the 1930s forming the Northern line, a stretch of railway approximately 386 km in length, connecting the capital, Phnom Penh, to Poipet near the Cambodian-Thai border.[594] In 1942, under Japanese occupation, the Northern Line was extended beyond Poipet and linked with Thailand's rail network. However, the connection did not operate beyond the end of the 1940s due to a political impasse between Cambodia and Thailand and other security-related issues.[595] The Southern

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[593] Zsombor (2015a).
[594] Open Development Cambodia (2015).
[595] Open Development Cambodia (2015).

Line, linking Phnom Penh to the coastal and port town of Sihanoukville through a line of around 264 km, was built in the 1960s with financial support from the Australian, French, West German and Chinese Governments. [596] The railway is described as operating well until the Khmer Rouge gained control of Cambodia in the 1970s.[597] One source describes how between 1969-1970 there were 37 trains per day operating at a speed of 60 km an hour. [598]

Throughout the 1980s the railway was severely damaged and partly destroyed, with sections dangerously laid with landmines. The last 48 km of the railway line between Sisophon and the border near Poipet was almost entirely destroyed, referred to throughout ADB documentation as the "missing link".[599] The managerial aspects of the railway were also impacted during this period. As the concept paper prepared for the railway rehabilitation in 2009 stated, "During the 1970s, the link was lost both physically and institutionally."[600] In the 1980s, the rail service resumed limited operations and gradually increased in the 1990s as Cambodia's security situation improved and international organisations and investment began to flow into the country.[601] However, due to increasing physical deterioration and competition from road transport, by 2008 the passenger service had ceased completely and only a freight service continued on the Southern Line.[602]

Plans to restore the railway began in 2002 following a Technical Assistance project on the transport sector undertaken by ADB in Cambodia.[603] The 2002 report found that access to efficient railway transport would be economically beneficial for Cambodia, and that the railway could become commercially viable if rehabilitated.[604] Two further technical assistance studies were conducted which reportedly confirmed the conclusions of the first report.[605] These studies are repeatedly cited throughout ADB's project documents as

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[596] Open Development Cambodia (2015).
[597] Moly (2008, p. 5).
[598] Moly (2008, p. 5); Also see the discussion in Open Development Cambodia (2015).
[599] Asian Development Bank (2009a, p. 3).
[600] AusAID (2009b, p. 6).
[601] Open Development Cambodia (2015). Note that analysis of the railway's history in ADB project documents is limited. It has been difficult to find a comprehensive history of the railway network, hence the reliance on Open Development Cambodia (2015) and Moly (2008).
[602] Asian Development Bank (2006, p. 3); Open Development Cambodia (2015).
[603] Asian Development Bank (2009a, p. 3).
[604] Asian Development Bank (2002); The 2002 report is repeatedly cited throughout ADB's project documents as providing the initial research in support of the railway rehabilitation. For example: Asian Development Bank (2006, p. 3); Asian Development Bank (2009a, p. 3).
[605] COWI (2004); Canarail Consultants Incorporated (2004). At the time of conducting the research these studies were not available on the ADB website.

providing the initial research in support of the railway rehabilitation. As the 2009 ADB Report and Recommendations of the President to the Board of Directors, states:

> These studies confirmed sufficient future demand to make rehabilitation of the railway economically, financially, and commercially viable for the private sector once its infrastructure had been rehabilitated.[606]

On this basis that the ADB provided a loan to the Cambodian Government for the railway rehabilitation.[607] A map prepared by the Ministry of Public Works and Transport (MPWT) depicting the proposed railway rehabilitation indicating the "missing link" between Poipet and Sisophon is provided below.

Figure 5: Map of the railway to be rehabilitated[608]
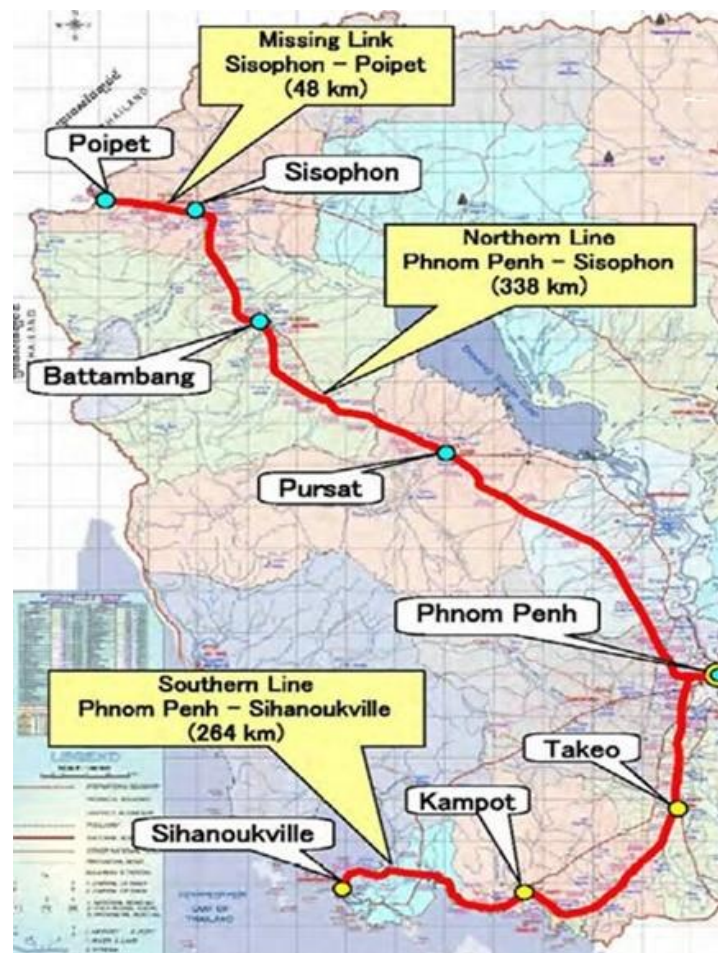
[606] Asian Development Bank (2009a, p. 3).
[607] Asian Development Bank (2009a, p. 3).
[608] Ministry of Public Works and Transport Cambodia (2012).

5.3 Railway rehabilitation: vision and rationale

Plans to restore Cambodia's existing railway network formed part of a much larger vision of transport and connectivity in Cambodia and the region.[609] Its stated aim was to improve economic opportunities for Cambodians by integrating Cambodia into the regional railway network of the Western Greater Mekong Subregion (GMS). The GMS is an economic area designated by the Asian Development Bank (ADB) and includes the six countries situated on the Mekong River: Cambodia, China, Laos, Myanmar, Thailand and Vietnam with a combined population of 326 million.[610] In 1992, with support from ADB, the six countries committed to a program of subregional economic cooperation, "designed to enhance economic relations among the countries."[611] The program focuses on investing in transport, telecommunications, energy, environment, human resource development, trade, tourism, private sector development, and agriculture. The ADB GMS strategy describes the vast natural resources of the GMS region – oil, gas, water and coal – as largely underutilised and positions the Mekong as "the new frontier of Asian economic growth." [612] A map of the GMS and its economic corridors as designated by the ADB strategy are depicted below, indicating how connectivity is central to the strategy.

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[609] Asian Development Bank (2009a).
[610] Asian Development Bank (2015c).
[611] Asian Development Bank (2015c).
[612] Asian Development Bank (2015c).

Figure 6: Map of the Greater Mekong Subregion Economic Corridors[613]

In 2008, at the third GMS Summit in Laos, the six countries reaffirmed their commitment to integrating transport and trade in the region, notably through expanding the GMS corridor network through "multimodal linkages", including the Singapore-Kunming Rail Link.[614] A

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[613] AmCHAM Vietnam and Asian Development Bank (2015).
[614] Asian Development Bank (2008a, p. 5).

multimodal form of transport requires an integrated economic system and set of agreements. It is defined as:

> the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.[615]

Cambodia's road transport system was considered inefficient because of its "inadequate modal and route competition."[616] Rehabilitation of the Cambodian railway was promoted as an early realisation of the ADB GMS program and the commitment made at the 2008 Summit to expand the economic corridor network through multimodal links. Once the Cambodian railway was restored, the plan was for a new agreement to be made between Cambodia and Thailand, which would provide Cambodia with an alternative means of transporting containers and bulk commodities across the border. [617]

The ADB also argued that the railway project in Cambodia contributed to ADB's Strategy 2020, because it pursued "inclusive growth, environmentally sustainable growth, and regional integration."[618] At this early stage, the potential to offer passenger services on the railway was still being canvassed. The ADB 2006 proposal explains how increasing the diversity of transport options would give "shippers and passengers alternatives to existing routes and modes of transport".[619] It continues with the following rationale:

> Rail can be a highly competitive option, because its cost structure differs substantially from transport by road and sea. The differences in cost structure would make it difficult to establish and maintain cross-modal collusion between road and rail transport operators. Geographically, rail would also be an efficient competitor because the railway runs parallel to the country's busiest highways— National Roads 3, 4, and 5—and serves two international connection

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[615] United Nations (1980) (Article 1).
[616] Asian Development Bank (2009a, p. 4).
[617] AusAID (2009b, p. 6).
[618] Asian Development Bank (2008b); Asian Development Bank (2009a, p. 9).
[619] Asian Development Bank (2009a, p. 4).

points—one at the Sihanoukville port and another at Poipet on the border with Thailand. The railway is also connected to the Mekong River via the river port in Phnom Penh. These links would enable multimodal integration that could form the basis for efficient distribution of bulk commodities to northeastern and northwestern Cambodia. The scope for additional railway traffic is substantial.[620]

The significance of the section reproduced above will become increasingly clear, as the controversies surrounding the railway are gradually explained in the later sections of this chapter.[621]

The Cambodian railway project also had a number of additional aims, including improved safety by reducing the transport of bulky, hazardous cargo on the road and reducing road traffic through populated villages. It also aimed to reduce overall transportation costs, reduce road maintenance costs through reduced heavy truck traffic, and to improve access to import and export markets via the Thai border in Poipet.[622]

The plan complemented other railway plans in Cambodia and the region. For example, in 2011 the ADB described widespread interest in building a railway from Thailand to Vietnam to connect with rail lines in China. The 2011 ADB transport assessment stated that:

> To achieve the link to Viet Nam, a new railway line must be built through Phnom Penh to Ho Chi Minh City. A feasibility study for this line will be finished by 2012 and private financing of $500 million–$600 million will be sought to pay for it. All of this proposed construction aligns with the GMS railway strategy… [623]

There have also been numerous reports in the local and international media that Chinese companies are interested in investing in the railway network in Cambodia and Lao PDR. In January 2013, Reuters published an article titled "Chinese firm plans $11 billion rail, port and steel projects in Cambodia", which set out plans by two Chinese companies to build a 400 km rail line that would link a steel facility in northern Preah Vihear to a port at the

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[620] Asian Development Bank (2009a, pp. 4-5).
[621] Also cross-reference with Chapter 8, Section 8.5.
[622] Asian Development Bank (2006, p. ii).
[623] Asian Development Bank (2011, p. 6).

southern island of Koh Kong.[624] The formal details of these plans have not yet emerged. Nonetheless, restoration of the Cambodian railway was seen as contributing to a much larger set of projects supported by a range of different investors in the region all aimed at enhancing economic integration, transport and trade within and beyond Cambodia's borders.

5.4 The loan agreements

5.4.1   The first loan agreement 2007

The first loan agreement for the railway project was signed between the Kingdom of Cambodia (the borrower) and the ADB on 5 March 2007 for 28,277,000 Special Drawing Rights (SDR)[625] equivalent to around USD 42 million.[626] The OPEC Fund for International Development (OFID) provided a loan of USD 13 million to jointly finance the civil works component with the ADB. The original project also included a grant "in kind" from Malaysia in the form of reclaimed railway lines to the value of USD 2.8 million. The Cambodian Government agreed to provide USD 15.2 million, comprising the costs of project administration, taxes, clearance of unexploded devices (landmines), compensation of railway staff in connection with restructuring, and resettlement and land acquisition. The first ADB loan is repayable over 32 years, including an 8 year grace period. An interest rate of 1.0 percent applies during the grace period and 1.5 percent over the remainder of the loan. The loan from OFID is repayable over 20 years including a five year grace period, with a fixed interest rate of 1.0 percent per year and a fixed service charge of 1.0 percent per year.[627] The total investment for the original project totalled around USD 73 million, depicted below.

Table 1: Original project financing plan[628]

Source	Total (USD million)	Percentage of total project costs
ADB	42.0	57.0
OFID	13.0	18.0
Government of Malaysia (grant in kind)	2.8	4.0
Government of Cambodia	15.2	21.0
Total	**73**	**100**

[624] Prak (2015).
[625] Asian Development Bank (2007).
[626] Asian Development Bank (2009a, p. 6).
[627] Asian Development Bank (2009a, p. 6).
[628] For details of calculations and assumptions, see: Asian Development Bank (2006, p. 10).

A further breakdown of the details of how the finances would be used is set out below in Table 2.

Table 2: Summary of estimated costs of original project[629]

Item	Purpose	Amount USD million
A.	**Base Cost**	
	Civil works	52.9
	Equipment	2.8
	Land acquisition, resettlement, social mitigation	3.8
	Restructuring costs	0.7
	Consulting services	3.4
Subtotal A.		**63.6**
B.	Contingencies	7.9
C.	Financing charges during implementation	1.5
Total (A+B+C)		**73**

The first loan was for rehabilitation of 594 km of existing railway tracks and associated structures, passing loops and spur lines, as well as reconstruction of the 48 km destroyed section (the "missing link") of the railway line from Sisophon to Thailand. The loan was also for construction of direct access to the container terminal in the port of Sihanoukville and for the costs associated with restructuring the railway subsector, assisting employees following redundancy and providing for project monitoring, engineering design and supervision of civil works. External funding was not used for the community resettlement costs, this was financed by the Government of Cambodia.[630]

The railway tracks were to be "meter gauge" as this was perceived to be "consistent with the railway networks in neighboring countries".[631] The ADB proposal explained the significance of choosing meter gauge as follows:

> The gauge of a railway is the distance between the inside of the rails
>
> constituting the track. Meter gauge refers to rails spaced 1.0 meter

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[629] These figures are taken directly from the ADB documentation. For additional financial details and assumptions, see: Asian Development Bank (2009a, p. 6).
[630] See Appendix E.
[631] Asian Development Bank (2006, p. 5).

apart. Other common gauges are standard gauge (about 1.4 meters spacing), which is used in the PRC, North and South America, and most of Europe and Australia; and broad gauge (about 1.5 meters) which is used in the Russian Federation, Central Asia, South Asia and parts of Europe. Trains constructed to operate on one gauge cannot operate on another gauge without modification. Meter gauge is the common railway standard in Southeast Asia, which means that trains from various national railways can interoperate.[632]

In parallel to the negotiations for the loan, arrangements were underway to select a concessionaire to rehabilitate and operate the railway.

5.4.2 Public-private partnership arrangements

The state-owned railway enterprise, Royal Railway of Cambodia (RRC) established in 2002, was the main institution responsible for operating the railway until 2009.[633] ADB provided technical assistance to the Cambodian Government to establish a concession agreement to operate the railway commercially. Management of the railway rehabilitation was the responsibility of the Cambodian Ministry of Public Works and Transport (MPWT) with technical assistance and support from the ADB (the "public sector component"). A commercial operator was to be selected to operate the railway (the "private sector component").[634] In this respect, the arrangements differed from the Build-Own-Operate-Transfer (BOOT) model that has been used in Southeast Asia previously, described by Wyatt in Chapter 2 of this thesis.[635] For the Cambodian railway project, the infrastructure rehabilitation was to be done by the public sector (the Cambodian Government), financed primarily through loans from the ADB, and then operated by the private sector.[636] Poor maintenance, lack of funds, train delays and cancellations by the state-owned enterprise were ostensibly the reasons why the Cambodian Government agreed to the privatisation arrangements.[637]

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[632] Asian Development Bank (2009a, p. 3).
[633] Open Development Cambodia (2015).
[634] These arrangements were eventually clarified through written correspondence with the ADB, see Appendices D and E.
[635] Wyatt (2004); See Chapter 2, Section 2.10.
[636] See Appendix E.
[637] Open Development Cambodia (2015).

Selection of the private operator was a "condition for loan effectiveness" as stated in the ADB proposal for the railway rehabilitation.[638] A 30 year concession was granted to the Australian company, Toll Holdings, in 2009 to operate the railways once they were rehabilitated. Toll Holdings was to be the majority partner with a 55 per cent share in the investment. The private Cambodian company, Royal Group, committed to a 45 per cent stake. The plan was for the two companies to jointly operate the railway as Toll Royal Railways.[639]

The Technical Assistance provided by ADB in relation to the concession was twofold: (1) advice to the Cambodian Government on how to restructure the railway and how to develop and negotiate the long-term concession agreement for private sector operation of the railway, and (2) strengthening capacity of the Ministry of Public Works and Transport (MPWT) to manage the concession and provide regulatory oversight for the railway subsector.[640] The Canadian consulting firm, Canarail, was also to provide capacity building to the MPWT to manage the concession agreement.[641]

Advice on the restructuring of the railway was provided in January 2006 by ADB via various consultants, and the concessionaire (Toll Holdings) was selected in 2007 after an "international competitive bidding" process.[642] Toll Holdings is an Australian company working in 50 countries around the world, already had pre-existing operations in Cambodia in the banking, telecommunications and media sectors. Royal Group is run by the well-known Cambodian businessman and former refugee to Australia, Kith Meng.[643] Meng attended university in Australia and since returning to Cambodia has become the Chairman of Royal Group. Meng also owns a majority stake in Cambodia's leading television and telecommunications networks, Cambodia Broadcasting Corporation and CamGSM.[644] The concession agreement between the Cambodian Government and Toll Holdings was signed on 12 June 2009.[645] The legal status of the RRC was terminated and the Department of Railway was created within MPWT.[646] The 2009 ADB documentation describes Toll

[638] Asian Development Bank (2006, p. ii).
[639] Asian Development Bank (2014h, p. 4).
[640] Asian Development Bank (2009a, p. 6).
[641] Asian Development Bank (2014h, p. 2).
[642] Asian Development Bank (2006, p. 7).
[643] Toll Holdings Limited (2009).
[644] Crispin (2007).
[645] Toll Holdings Limited (2009).
[646] Open Development Cambodia (2015).

Holdings as "a large international logistics firm that operates worldwide." It also describes how the:

> [C]oncessionaire's business plan aims to develop railway traffic, as well as support the integration of the railway into a seamless subregional, multimodal transport system... Achieving hub status could create significant additional long-term development prospects in Cambodia...[647]

Thus, the concession agreement between the Cambodian Government, Toll Holdings and Royal Group was seen as a key aspect of the project's future success. The ADB was not a party to the concession agreement and did not finance the concession. There is no information available publicly about the specific financial arrangements in place between the concessionaire and the Cambodian Government.[648] It is clear that the Cambodian Government took on the financial burden of the ADB loans as well as contributing additional finances to undertake the rehabilitation component.[649]

5.4.3   The civil works contractors

While Toll Holdings was to be the private concessionaire and operate the railway, different contractors were hired to undertake the civil works to physically rehabilitate the railway. The process of contracting out various aspects of the work was to be managed by the MPWT with technical assistance and support from the ADB. The National Committee for the Singapore-Kunming railway link was also designated as the Steering Committee for the project.[650] Companies, TSO-AS and Nawarat, were selected as a joint venture to be the construction contractor for both the Northern and Southern lines.[651] An agreement was made between the MPWT and TSO Company's representative in Phnom Penh on January 11 2008.[652] TSO is a French company founded in 1927 and specialises in the construction, renewal, laying and maintenance of railway tracks for railways and urban networks.[653]

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[647] Asian Development Bank (2009a, p. 4).
[648] This information is to the best of my knowledge. I attempted to contact Toll Holdings for an interview a number of times throughout the research.
[649] See Appendix E.
[650] Asian Development Bank (2006, p. iv).
[651] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2014, p. 2).
[652] Royal Embassy of Cambodia in Washington D.C. (2008).
[653] TSO (2015).

Nawarat is a Thai company, established in 1976 as Nawarat Patanakarn Public Company Limited, is one of Thailand's largest construction firms.[654] The Japanese company, Nippon Koei CO LTD in association with the Japan Railway Technical Service (JARTS) were selected as the design and construction "supervision consultants".[655] Nippon Koei Co Ltd was responsible for supervising and monitoring the construction of works of TSO-AS and Nawarat and was required to provide regular Environmental Monitoring Reports. As at March 2015, there were thirty-seven Environmental Monitoring Reports prepared by Nippoen Koei uploaded to the ADB website for the railway.[656]

5.4.4   The "supplementary loan" or second loan agreement 2010

Once the original railway project gathered momentum, it became clear that the original cost estimates were inadequate. Pressure grew for ADB to provide additional finance. The reasons for requiring additional finance were explained in a concept paper prepared by AusAID:

> Partly because the railway has deteriorated substantially since the
> original rehabilitation studies were done, but more so because the
> railway operator had presented a business plan that would, with
> additional financing for the rehabilitation operation, greatly increase
> the effectiveness of the railway in the country's transport space,
> additional financing is required.[657]

The concept paper also detailed how the process of selecting the concessionaire had been more complicated than anticipated and that in the three years that had elapsed since the original project was approved, there had been numerous changes in the project's scope and so in cost.[658] Additional financing was also sought to establish a new freight and rolling stock maintenance facility at Samrong, 10 km west of Phnom Penh which would enable multimodal transport. The additional financing would also contribute to upgrading and strengthening parts of the main line and establishing sidings to terminals to facilitate multimodal services and connectivity.[659] The new expanded project promised to increase

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654 Nawarat (2013).
655 The Terms of Reference for the supervision consultants is set out in: Asian Development Bank (2006, p. 38)
656 Asian Development Bank (2015a).
657 AusAID (2009b, p. 5).
658 AusAID (2009b, p. 5).
659 Asian Development Bank (2009a, p. ii).

the regional integration of the railway and expand its "national development impacts".[660] As the Report and Recommendations of the President to the ADB Board of Directors states:

> The impact of the modified project…will be increased domestic and regional trade movement on the railway, thereby supporting sustainable economic growth and poverty reduction. This will be achieved by developing the railway in Cambodia into a provider of logistics services in Cambodia and neighboring GMS countries.[661]

In 2009 the ADB agreed to a supplementary loan, signed and dated 2 March 2010, for an additional SDR 26,408,000, equivalent to USD 42 million. The Government of Australia also agreed to provide a grant of USD 22 million that would be managed and administered by the ADB, explained in the next section. The Cambodian Government agreed to provide an additional USD 5.1 million. The total revised cost was USD 141.6 million, including taxes and duties of around USD 14.9 million. The revised cost plan was almost twice the amount originally estimated. The ADB supplementary loan has a thirty-two year maturity, including an eight year grace period. The annual interest rate is 1.0 percent during the grace period and 1.5 percent over the remainder of the loan. The documentation also states that the financing charges during the implementation of the loan will be capitalized.[662] The costs of the modified project are set out at Table 3 below.

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[660] Asian Development Bank (2009a, p. 7).
[661] Asian Development Bank (2009a, p. 8).
[662] Asian Development Bank (2009a, p. 11).

Table 3: Combined loan costs for the modified project[663]

Source	Original loan		Supplementary loan		Modified Project	
	USD million	Share of total (%)	USD million	Share of total (%)	USD million	Share of total (%)
ADB	42.0	57.6	42.0	61.2	84.0	59.3
Government of Australia	0.0	0.0	21.5	31.3	21.5	15.2
OFID	13.0	17.8	0.0	0.0	13.0	9.2
Government of Malaysia (in kind)	2.8	3.8	0.0	0.0	2.8	2.0
Government of Cambodia	15.2	20.8	5.1	7.4	20.3	14.3
Total	**73**	**100**	**68.6**	**100.0**	**141.6**	**100.0**

The revised break-down of costs is below at Table 4. The estimated costs of land acquisition, resettlement and social mitigation increased from USD 3.8 million in 2007 to USD 7.6 million 2010. The supplementary loan would also increase the technical assistance provided by the ADB for outcome monitoring and procurement review.[664] The project was originally expected to be completed by May 2013.

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[663] These figures are taken directly from the ADB documentation. For additional financial details and assumptions, see: Asian Development Bank (2009a, p. 12).
[664] Asian Development Bank (2009a, p. 14).

Table 4: Revised project investment plan[665]

Item	Purpose	USD million		
		Original	Supplementary	Modified Project
A.	**Base Cost**			
	Civil works	52.9	50.0	102.9
	Equipment	2.8	3.2	6.0
	Land acquisition, resettlement, social mitigation	3.8	3.8	7.6
	Restructuring costs	0.7	0.1	0.8
	Consulting services	3.4	2.5	5.9
	Institutional support and capacity building	0.0	3.0	3.0
	Project administration	0.2	0.2	0.4
Subtotal A.		**63.8**	**62.8**	**126.6**
B.	**Contingencies**	7.7	4.8	12.5
C.	**Financing charges during implementation**	1.5	1.0	2.5
Total (A+B+C)		**73**	**68.6**	**141.6**

5.4.5   Additional grant from Australia

In 2009, the Australian Government, through the agency then known as AusAID, agreed to provide USD 22 million for the modified project which would be administered and managed by the ADB.[666] AusAID support for the railway project was positioned within the overall context of promoting economic growth in the region, good infrastructure being essential for growth. Support for the project was also framed within the dynamics of the Global Economic Crisis, as investing infrastructure development within Cambodia was an opportunity to generate employment in Cambodia.[667] A 2009 AusAID concept paper estimated that the project would provide employment for around 1,200-1,500 employees either directly or indirectly over four years and subsequently during the operation of the railway.[668] It argued

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[665] These figures are taken directly from the ADB documentation. For additional financial details and assumptions, see: Asian Development Bank (2009a, p. 11).

[666] AusAID (2009b, p. 6). Note that in 2012 after a change in Government in Australia, AusAID was subsumed into the Department of Foreign Affairs and Trade (DFAT), and has since been referred to as the Australian Aid Program.

[667] AusAID (2009b, p. 6).

[668] AusAID (2009b, p. 7).

that the project was convergent with a number of objectives of the Australian aid program, explaining that:

> …the Project presents strong economic and financial viability. It lays the foundations for a far more integrated transport and logistics network for Cambodia than the country possesses at present. It moves the operations and management of a major public asset from the public sector, where it is poorly performing and rapidly deteriorating, to a private sector operator that has a sound and practical plan for restoring it to former central place in the country's, and the region's transport system. [669]

The concept paper relied on information gathered through a number of exercises: (1) an economic and financial procurement review commissioned by AusAID, (2) a fact-finding mission undertaken by ADB in July-August 2009 and (3) the inputs of a report from a monitoring and evaluation/social development consultant engaged by AusAID. These reports were attached to the original report as appendices but are not available in the online version.[670] The allocation of Australian Government funding (to be administered by the ADB) is presented in Table 5 below.

Table 5: Allocation of Australian financing (USD)[671]

| Activity		Amount AUD
1.	Construction works	18.45 million
2.	Capacity building assistance to MPWT	3 million
3.	Technical assistance (For outcomes monitoring and procurement review)	400,000
4.	Resettlement advisory services (Support to ADB and Australia for oversight of project's resettlement program)	150, 000
	Total	**22 million**

A stakeholder map depicting the key stakeholders involved in the railway project is set out below. As depicted in the map, ADB was responsible for administering all external grants and contributions.

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[669] AusAID (2009b, p. 7).
[670] AusAID (2009b, p. 4).
[671] AusAID (2009a, p. 3).

Figure 7: Railway stakeholder map
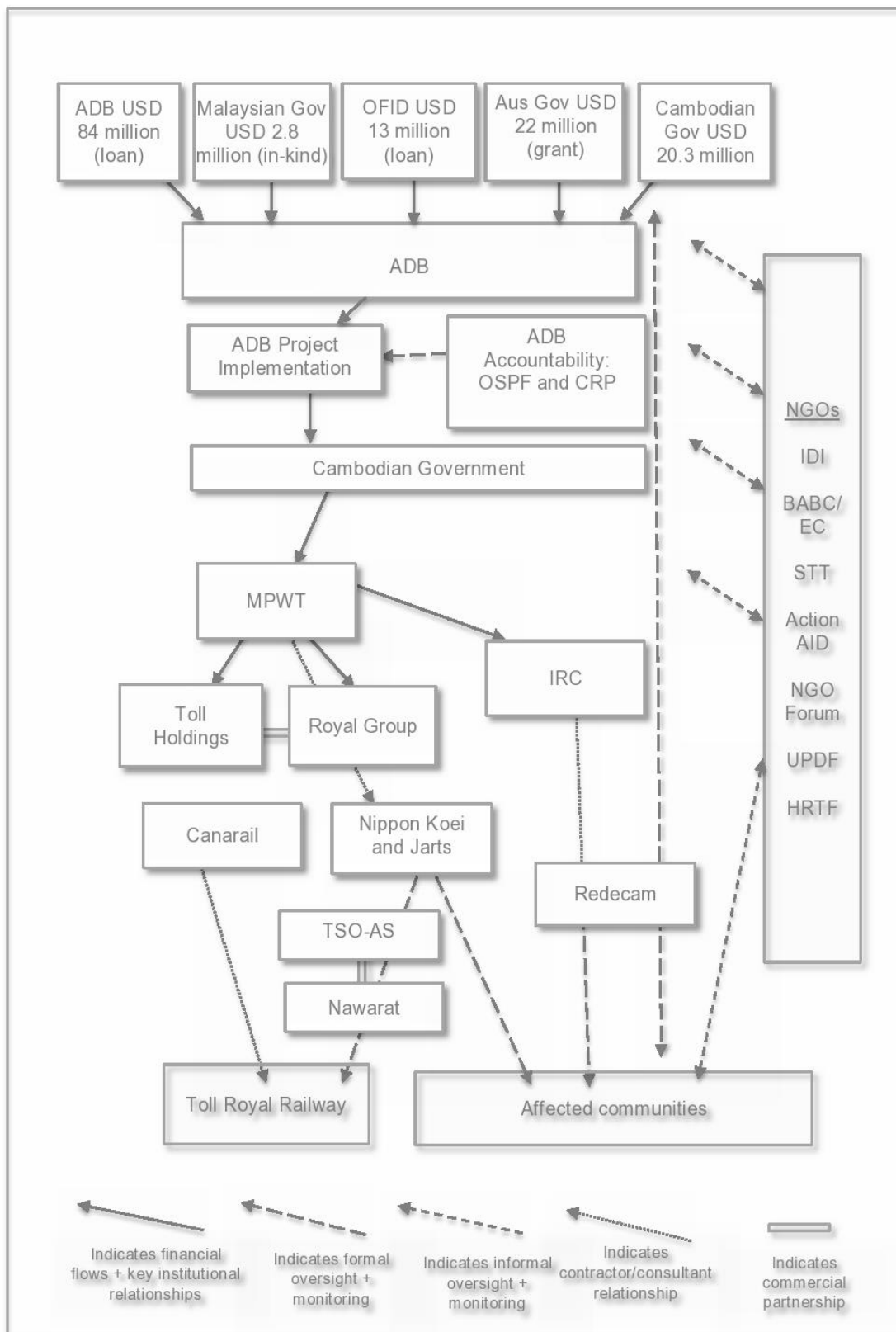
Source: Author's illustration

5.5 Projected benefits of the project

Significant financial benefits (both commercial and public) were forecast to result from the restoration of the railway. The 2009 ADB proposal described the activities covered by the supplementary financing as "technically feasible, institutionally sound [and] economically viable…".[672] The report estimated that the economic internal rate of return would be 20.7 percent, and that the financial internal return of about 9.2 percent.[673] In 2011, an ADB Transport Sector Assessment and Roadmap, explained how the principal goods to be carried by rail once the modified project was implemented would be cement, petroleum, and containers. The assessment estimated that:

> rail traffic is expected to grow by 7%–12% per year to 2030, with a
> projected increase in locomotives from the current 4 to 30. Railways
> are also expected to reduce the load on the road network.[674]

Some of the factors which might reduce the economic viability of the project were canvassed, including (1) possible failure to reconnect with the railway in Thailand; (2) forecast demand for railway transport, especially the schedule for bringing the planned new cement factories in Kampot Province into operation; (3) the efficiency of the future railway operator; (4) the future price for oil which has been volatile in recent years and (5) possibly higher project implementation costs if yet unidentified weaknesses in the existing railway infrastructure were identified during detailed design. A Sensitivity Test and a Risk Analysis was applied using a number of these variables, which concluded that there was a 96% probability that the project would achieve an estimated economic internal rate of return (EIRR) of 12 percent or more. [675]

The Economic Analysis prepared in 2006 considered the distributional benefits of the project, noting that one third of Cambodians fall beneath the poverty line and 90 percent live in rural areas.[676] The benefits of the project were expected to flow to poorer households in three ways:

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[672] Asian Development Bank (2009a, p. 9).
[673] Asian Development Bank (2009a, p. 9).
[674] Asian Development Bank (2011).
[675] Asian Development Bank (2006, pp. 50-60). A sensitivity analysis was undertaken, see: Asian Development Bank (2006, p. 50).
[676] Asian Development Bank (2006).

- direct benefits from reduced personal transport costs;

- indirect benefits from lower costs of transport for staple commodities; and

- economic activity that could create additional income generation and employment opportunities.[677]

The analysis explained that most of the benefits would flow from reducing the costs of transporting people and basic commodities.[678] This was predicted to have a positive impact on the cost of living, trade and economic growth.[679] Cumulatively, these benefits were considered to be "a strong catalyst for overall poverty reduction."[680]

However, passenger services were not considered economically viable without significant subsidies from the Cambodian Government. Based on a number of assumptions, the 2006 assessment concluded that ticket revenues could cover around 50 percent of the capital costs attributable to passenger traffic, resulting in an annual revenue shortfall of $0.6 million in the first year of operation, which would increase to $3.1 million in 2030.[681] Projected deficits were estimated to grow exponentially after 2020, on the basis that passenger frequency would increase first on the Northern Line and then on the Southern Line.[682] This Economic Analysis, which clearly sheds doubt on the viability of passenger services, was buried in Appendix 14 of the 2006 ADB proposal. The updated Economic Analysis prepared in 2009 was not attached to the publicly available version of the proposal for the Supplementary Loan.[683] In the finalised plans for the railway, no passenger service was included.[684]

5.6 Risks and safeguards

The ADB proposal documents contain varying assessments of the severity and likelihood of risks relating to social and environmental impacts, fiduciary risks, contractor non-performance and economic loss.[685] According to the AusAID concept paper, the risk of non-

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[677] Asian Development Bank (2006, p. 60).
[678] Asian Development Bank (2006, p. 60).
[679] Asian Development Bank (2006, p. 60).
[680] Asian Development Bank (2006, p. 61).
[681] Asian Development Bank (2006, p. 61).
[682] Asian Development Bank (2006, p. 61).
[683] Asian Development Bank (2009a).
[684] Note that in the late stages of finalising this thesis, the Phnom Penh Post reported that the Cambodian Government had revitalised the idea of operating the passenger service, starting with the Sihanoukville line, see: Crane (2016).
[685] The Environmental Assessment for both the original and modified project classified the investment as "Category B", in that it is not expected to have any permanent adverse environmental effects. The social risks related to resettlement were not explicitly categorised in the risk summary, see: Asian Development Bank (2009a, p. i). The CRP Report prepared in 2014 assesses the project was Category A in relation to resettlement, see: Asian Development Bank (2014f, p. iv).

performance by any of the contractors was not considered significant. Toll Holding's business plan and corporate logistics history were considered credible.[686]

The risk of delay or difficulties on behalf of the contractor was also not considered significant, or at least could be mitigated by various measures. Evident in the 2009 AusAID concept paper is a limited understanding of the complexity of the work to be undertaken. It states *(emphasis added)*:

> Delayed completion of the rehabilitation works – This risk would arise from non-performance by the selected civil works contractor. It has largely been mitigated by the selection of a competent contractor, and <u>by the relatively simple nature of the works themselves</u>.[687]

Notwithstanding the assessment that there was a 96 percent probability that the project would achieve an EIRR of 12 percent or more, certain measures were considered critical to ensure this was the case. The Economic Analysis prepared in 2006 set out the strategies to avoid or mitigate loss, including the commercialisation of the railway operator, scheduling rehabilitation so that the sections with high economic potential would be rehabilitated first, and securing assurances from the Thai Government that the border crossing could be re-established.[688]

The social and environmental risks posed by the project were downplayed in the Executive Summaries of the proposal documents. However the full reports provide more detailed considerations. It is noteworthy that the assessment describes the responsible Cambodian Government department (MPWT) as having previously implemented internationally financed projects well. The Executive Summary of the 2009 proposal states the following *(emphasis added)*:

> The modified project is not expected to be subject to any significant technical, environmental, or social risks. <u>The MPWT has performed satisfactorily in implementing internationally financed projects.</u> The modified project has been formulated to reduce potential economic,

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[686] AusAID (2009b, p. 17).
[687] AusAID (2009b, p. 17).
[688] Asian Development Bank (2006, p. 53).

financial, and social risks…The economic risks are minimized by the involvement of a private railway operator that will realize the modified project's benefits by providing railway services on a commercial basis. The social risks include resettlement, the possible spread of HIV infection during construction, and the retrenchment of redundant railway staff in connection with restructuring. Appropriate mitigation measures are included in the resettlement plan and the social safety protection program.[689]

The body of the report analyses the potential risks in more depth. In relation to resettlement risks, the proposal explains that the project would permanently clear a 7 metre corridor-of-impact, centred on the middle of the railway line. The proposal also explains how the corridor of impact is narrower than the railway's right-of-way to minimize resettlement impacts. The initial assessment estimated that around 2,630 households would be affected by the Project, of which about 965 households (about 4,150 people) would be displaced and about 1,660 households (about 7,140 people) would experience "minor impacts" caused by the loss of secondary structures (wells, fences, etcetera) and trees.[690] Importantly, the report made the following assessment about the impoverishment risks facing the households *(emphasis added)*:

> Displaced households and businesses face the risk of losing access to their sources of income if they are moved too far away from their current residence, thus resettlement sites have been identified close to current places of occupancy. Resettlement is most significant in Poipet, on the border with Thailand, where large numbers of people have settled on the railway's currently unused land. About 635 households (about 2,730 people) will be displaced in Poipet, equivalent to 66% of total displacement. The area required for reconstructing the Poipet station has been reduced from 6 hectares to 3 hectares to minimize displacement."[691]

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[689] Asian Development Bank (2009a, p. v). Similar statement included in original proposal: Asian Development Bank (2006, p. v).
[690] Asian Development Bank (2006, pp. 13-14).
[691] Asian Development Bank (2006, p. 14).

Both the 2006 and 2009 proposal documents also mention anticipated impacts to "bamboo transport operators". The bamboo transport operators were operating an informal transport system along sections of the railway tracks, using a small motorised trolley made mostly from bamboo. In some villages there was no road access and the bamboo rail transport service was the only means of transport. It was predicted that the bamboo operators would lose their livelihoods once the railway was rehabilitated and the tracks began operation. The census conducted revealed that there were 189 operators, 12 of whom were women. Plans were made to compensate the bamboo operators with funds to enable them to switch from rail to road transport providers. Access roads that were planned for the railway project would be left in place after the project to ensure access to the remote communities affected by the loss of the bamboo transport system would still be possible.[692]

The 2009 ADB proposal identified resettlement impacts to an additional 232 households at Samrong in Phnom Penh, because of the new freight facility.[693] The proposal explains that the 2006 Resettlement Plan, already prepared, would be adjusted to include the additional affected households at Samrong, explained further below. The Cambodian Government was required to comply with ADB's social and environmental safeguards. The loan agreements placed the following obligations on the Cambodian Government extracted below *(emphasis added)*. This extract clearly conveys the requirements placed on the Cambodian Government within the bounds of the project.

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[692] Asian Development Bank (2006, p. 14).
[693] Asian Development Bank (2009a, p. 17).

Box 3: Excerpt from Supplementary Loan Agreement 2 March 2010 between the ADB and Kingdom of Cambodia (the borrower).

(emphasis added)

B: SAFEGUARDS AND OTHER MATTERS

Environment and Social

4. The Borrower shall ensure that all Works contracts under the Project incorporate provisions to ensure that contractors (i) comply with the Borrower's environmental regulations, ADB's Environment Policy (2002), the environmental management plan and the Initial Environmental Examination for the Project; (ii) comply with all applicable laws and regulations of the Borrower, including ratified international treaty obligations; (iii) do not employ child labor and provide safe working conditions for male and female workers; (iv) do not provide male and female workers with different wages or benefits for work of equal value to the extent that it is applicable to contractors; and (v) carry out training programs and awareness campaigns on the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) at campsites and in communities along the railway lines. The MPWT shall monitor compliance through the Project consultant which has been recruited for independent monitoring of compliance with safeguard requirements.

Resettlement

5. The Borrower shall ensure that IRC updates the Resettlement Plan after detailed project design based on a detailed measurement survey of losses. The assignments of the independent monitoring agency and the Project consultant's resettlement specialists already engaged for the initial project shall be expanded to also include monitoring and supervision at Samrong. The update shall be prepared in full consultation with affected persons and shall be disclosed to them through relevant commune offices. The updated Resettlement Plan for any section of the railway shall be submitted to ADB for review and approval before commencement of any land acquisition and relocation activities for that section. IRC shall implement the approved, updated Resettlement Plans in accordance with the Borrower's laws, regulations, and procedures and ADB's Involuntary Resettlement Policy (1995). In the case of discrepancies between the Borrower's laws, regulations, and procedures and ADB's policy, ADB's policy shall prevail.

6. The Borrower shall ensure that Works contractors are not issued a notice of possession of the pertinent section of railway until (i) the satisfactory completion of compensation payments and relocation to new sites for that particular section; (ii) the agreed rehabilitation assistance is in place; and (iii) the particular section is free from all encumbrances.

7. The Borrower shall ensure that if people in the remaining right-of-way beyond the corridor of impact are resettled in the future, the resettlement shall be carried out in accordance with the standards established for the Project.

8. The Borrower shall ensure the timely provision of counterpart funds for resettlement to meet any unforeseen obligations in excess of the resettlement budget estimates to satisfy resettlement requirements and objectives

The other risks identified in the reports and proposals related to gender inclusion, potential HIV risks, financial risks, environmental risks, and other uncertainties relating to whether the Thai Government would agree to re-establish the cross-border connection near Poipet.[694] The HIV risks stemmed from the potential spread of HIV/AIDS infection during construction due to the influx of workers in the railway area. To address this the civil works contractors were required to develop and implement an awareness and prevention campaign during the construction period for both workers and nearby communities.[695] Other mitigation measures were also detailed in the proposal. For example, gender concerns were integrated into the project so that both male and female representatives of affected households in each commune would be involved in the resettlement working group. Gender-sensitivity training was to be provided to MPWT personnel and the working group through a resettlement specialist. Project indicators and monitoring data was to be disaggregated by gender. Negotiations regarding the cross-border railway connection with Thailand were to be re-opened by the Cambodian Minister of Public Works and the ADB committed to providing technical assistance support through its resident missions in Cambodia and Thailand. [696]

The original ADB Project Report and Recommendations prepared in 2006 identified financial risks relating to the MPWT that were minimised in the later 2009 report. The earlier 2006 report stated that *(emphasis added)*:

> MPWT's capacity to handle ADB-financed projects has improved considerably in recent years... but certain aspects need improvement. Earlier loans, both closed and ongoing loans, encountered delays in relation to procurement, resettlement and compensation, and counterpart fund payments. The key lessons from these loans were that there was a need to ensure that (i) procurement approval is delegated to the project management unit; (ii) processes for approving bid documents and awarding contracts that are applicable to ADB-financed contracts under a loan are

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[694] Asian Development Bank (2009a, p. 16).
[695] Asian Development Bank (2009a, p. 16).
[696] Asian Development Bank (2009a, p. 16).

clarified at the outset; (iii) <u>satisfactory resettlement plans and</u> <u>frameworks are in place before loans are approved; (iv) specific</u> <u>environmental requirements, including documentation and</u> <u>reporting requirements, are included in loan covenant and bidding</u> <u>documents…</u>[697]

The 2006 proposal framed the project as an opportunity to further develop the capacity of the MPWT in relation to social and environmental safeguards. It acknowledges that MPWT's dependence on consultants was high under earlier loans, especially with respect to procurement, social and environmental studies, and project performance monitoring. The plan was that MPWT's capacity would be enhanced the railway project by "involving MPWT staff in all stages of project implementation".[698]

Instead of identifying these shortcomings and potential risks, the 2009 proposal for the modified project instead states that, "MPWT has a long-standing record of satisfactorily implementing ADB projects." It referred back to the 2006 report, stating that the "financial management capacity of the executing agency was assessed during preparation of the original loan and remains valid."[699] It was anticipated that there would still need to be substantial support from national and international consultants in almost all aspects of the project, including supervision of construction works, capacity building within MPWT, financial management, resettlement, gender sensitivity training, monitoring of the project (including of construction, resettlement, environment and gender components). The original 2006 project budgeted around USD 3.43 million for consultants.[700] An additional USD 2.5 million was added to the estimated cost of consultants in the 2009 proposal, bringing the total estimated cost of consultants to USD 5.9 million. The Cambodian Government was required to select consultants in accordance with ADB's Guidelines on the Use of Consultants (2007).[701] Consultants would also be required to supervise and train MPWT staff in the processes and standards that need to be met in the procurement of consultants process.

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[697] Asian Development Bank (2006, p. 6).
[698] Asian Development Bank (2006, p. 6).
[699] Asian Development Bank (2009a, p. 17).
[700] Asian Development Bank (2006, p. 33).
[701] Asian Development Bank (2009a, p. 13).

Both the 2006 and 2009 proposal required the Cambodian Government to undertake specific assurances and conditions. These related to railway law reform, undertakings that all contractors comply with ADB's safeguards, in particular the resettlement safeguards, anticorruption policies, the gender sensitivity strategy, and project monitoring, including establishing baseline target values for all indicators prior to the commencement of the project. These assurances included:

- preparation of a detailed measurement survey (DMS) of losses resulting from land acquisition;
- provision of compensation, assistance, and suitable alternative land before displacement;
- assistance to the poorest and most vulnerable people to improve their socioeconomic status;
- capacity-building programs to help with the impacts of resettlement;
- timely provision of funds for resettlement to meet any unforeseen obligations exceeding the resettlement budget estimates. [702]

The resettlement plans are explained further below. The 2006 ADB proposal included a number of other frameworks and assessments designed to mitigate any potentially negative impacts of the project. These additional plans are set out below to convey that there was extensive documentation of various aspects of the project and the risks they posed. These plans and documents included:

- The Design and Monitoring Framework (Appendix 1);
- Sector Analysis (Appendix 2);
- External Assistance (Appendix 3);
- Outline of the station in Poipet and port access in Sihanoukville (Appendix 4);
- Policy Letter from the Government to the Asian Development Bank (Appendix 5);
- Detailed Cost Estimates (Appendix 6);
- Implementation Schedule (Appendix 7);
- Procurement Plan (Appendix 8);
- Terms of Reference for the Supervision Consultant (Appendix 9);

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[702] Asian Development Bank (2014f, p. vi).

- Benefit Monitoring (Appendix 10);

- Summary Poverty Reduction and Social Strategy (Appendix 11);

- Summary Resettlement Plan (Appendix 12);

- Financial Analysis (Appendix 13);

- Economic Analysis (Appendix 14);

- Summary Initial Environmental Examination (available on request) (Appendix 15);

Many of the frameworks and assessments were updated in the 2009 proposal, and some additional plans were included such as:

- Development coordination (Appendix 2);

- Summary Resettlement Plan for Samrong (Appendix 4);

- Scope of work for Capacity Development Assistance to the ministry of Public Works and Transport (Appendix 6);

- Technical assistance for outcome monitoring review and procurement review (Appendix 10);

- Governance Framework (Appendix 11);

- Status of Loan Covenants (Appendix A);

- Summary Environmental Examination for Samrong (Appendix B).[703]

AusAID also prepared a risk assessment of the project. The AusAID concept paper identified a number of risks relating to resettlement, HIV/AIDs, and potential impacts on women. It focuses primarily on the resettlement risks and states that there is a "potential reputational risk for AusAID and ADB" if the involuntary resettlement program is not well-managed and the people affected by the project are not able to restore their pre-project livelihoods.[704] In particular it focuses on the impacts of resettlement. It explains that years of conflict and neglect of the railway have resulted in "severe encroachment" of the railway right-of-way by "formal and informal communities". The original right-of-way was forty metres wide, but the concept paper acknowledges that "it is no longer possible, nor is it necessary to entirely recover this" and that, in accordance with ADB's involuntary resettlement policy,

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[703] Note these appendices are not included in this thesis – they refer to the appendices of the Updated 2009 proposal.
[704] AusAID (2009b, p. 8).

land clearance will be limited so that involuntary resettlement is minimized to the extent possible. [705]

The concept paper continues to re-state that the project's resettlement program is being implemented in accordance with ADB's policy on involuntary resettlement, and reiterates the strength of the processes, noting that the full resettlement plan was uploaded to the ADB resettlement website prior to approval of the original project loan. [706]

Noteworthy in the analysis is the comments that the IRC is experienced in undertaking resettlement work and is familiar with ADB's safeguard requirements. The concept paper states:

> The program is being implemented by the Inter-Ministerial Resettlement Committee (IRC), under the Ministry of Economy and Finance. The IRC has done this work on many earlier ADB, World Bank, and other donor financed projects, and is very familiar with policy requirements. They will be assisted by the Project consultant's international and domestic resettlement specialists, and the program will be monitored for compliance with the resettlement plan by an independent monitoring agency. This agency, engaged by the Government, is already in place. ADB's Manila and Phnom Penh based resettlement specialists will also monitor the program."[707]

The concept paper also explains that AusAID will allocate a portion of its funding to support an international resettlement specialist to provide ADB and AusAID with the assurance that the resettlement plans are being implemented as intended. [708]

The AusAID concept paper also noted "the presence of a large body of NGOs interested in land and settlement matters" and suggested that ADB and AusAID take a "pro-active approach" to monitoring the resettlement program. [709] The remainder of the AusAID concept

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[705] AusAID (2009b, p. 8).
[706] AusAID (2009b, p. 9).
[707] AusAID (2009b, p. 9).
[708] AusAID (2009b, p. 10).
[709] AusAID (2009b, p. 10).

paper mostly re-states the analysis provided in the ADB proposals and re-states the specific assurances and risk mitigation measures that the ADB had in place.

5.7 Resettlement plans

The Cambodian Government, through the IRC, was responsible for resettlement and for monitoring resettlement activities in accordance with ADB's policies and requirements. Consultants were engaged to supervise and build capacity within the IRC, which initially included one international resettlement specialist, one national resettlement specialist, and one national gender specialist.[710] The IRC established a working group (IRC-WG) for the project, which was intended to work closely with the Provincial Resettlement Sub-Committee (PRSC) in each province to implement the resettlement plans.[711]

The first Resettlement Plan was agreed between the Government of Cambodia and ADB in 2006.[712] Since the original 2006 Resettlement Plan, five updated Resettlement Plans were also prepared for each section: Missing Link, Northern Line, Southern Line, Phnom Penh Station and Poipet Station. In addition, in July 2009, during the preparation of Supplementary Loan for the Project, a Resettlement Plan for Samrong Estate in Phnom Penh was agreed between ADB and the Government. The consultants, Redecam Group and then Nippon Keoi Co Ltd in association with Jarts, were the primary consultants involved in preparing the Resettlement Plans.

The households required to relocate were those with residences, structures and other assets within the railway corridor of impact, which is a narrow area of 3.5 metres on either side of the railway centreline. With the exception of households in Samrong, Phnom Penh, very few of the affected people in the corridor of impact had legal documents which confirmed their right to residency and the Cambodian Government viewed them as illegal settlers or "squatters". Some residents of Samrong Estate did possess legal documentation establishing ownership, which became the subject of an ongoing dispute. Thus, for most affected households, the Resettlement Plan did not provide compensation for loss of land, however their lack of legal status did not preclude them from receiving other project entitlements. The resettlement assistance package offered compensation for loss of houses, businesses and

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[710] Asian Development Bank (2009a, p. 48).
[711] Ministry of Public Works and Transport, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2008, p. 15).
[712] Asian Development Bank (2006, p. 47).

other assets, and basic services in the new sites, explained further below. Resettlement was to be guided by the principle that "all those affected, irrespective of their tenure status" would be able to "restore or improve their socioeconomic conditions."[713]

Efforts were made to minimize displacement. Only people living within 3.5 metres of the centreline were required to move. Initially, this varied slightly depending on the location. In rural areas the corridor of impact was initially up to 5 metres, whereas in the densely populated and urban areas the corridor of impact was 3.5 metres on either side of the centreline.[714] The 2006 Resettlement Plan outlined three options for affected households: (1) reorganize themselves within the remaining right of way and be allowed to remain there for at least five years, (but not receive land title in the right of way); (2) move outside the right of way to the resettlement sites which were to be "in close proximity (3 km to 5 km) to their previous locations", where they would receive land title if they resided for five years or more, or (3) receive cash assistance for loss of land use and make their own arrangements for relocation.[715]

"Partially-affected" households were to be compensated if their assets and structures were partially within the corridor of impact. They were required to move back from the area past the 3.5 metre point so that they were fully within the right of way and not in the corridor of impact. Partially affected households were not provided with land title in the areas beyond 3.5 metres, however they were guaranteed that they would not be evicted for a period of five years. No new permanent structures were allowed to be built in the right of way once the households had moved back from the corridor of impact, and partially affected households were told that after the five year period they may also be relocated in accordance with the terms of the 2006 Resettlement Plan and the Government's legal framework.[716] The minimum land size viable for households to reorganise in the right of way was 30m^2. Thus, if a household had less than 30m^2 remaining once the corridor of impact was cleared, they would be considered wholly affected and required to move either to the resettlement site or

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[713] Asian Development Bank (2006, p. 47).
[714] Over time, references in ADB documents to 3.5-5 metres from the centre line as the corridor of impact became only 3.5 metres.
[715] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, pp. i-v.).
[716] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 41).

to make their own arrangements for relocation.[717] Figure 1 (from Chapter 1), is presented again below.

Figure 1 (from Chapter 1): Railway line depicting corridor of impact
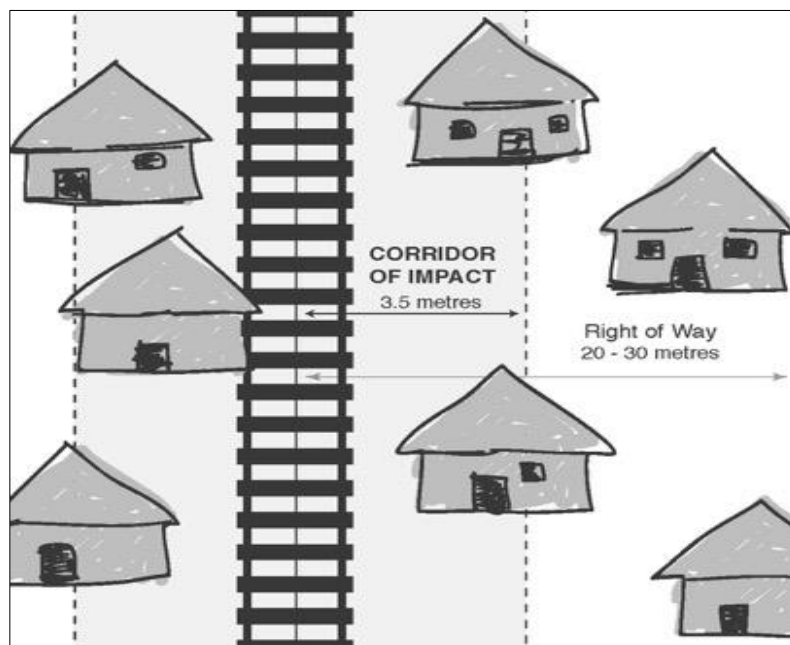
Source: Author's illustration

The distribution and location of project-affected households are presented in the table below.

Table 6: Distribution and location of affected households[718]

Location/identification of households	Affected households	Relocating households
Poipet	1094	588
Northern Line and Missing Link (Battambang and Pursat)	1165	51
Southern Line (Sihanoukville)	206	30
Phnom Penh	1289	169
Bamboo rail transport operators*	189	52

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[717] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 41).

[718] These numbers have changed multiple times in the ADB documentation. This table is based on information on the ADB Website in 2013, however it appears to have been removed from the website. The numbers are broadly consistent with those included in the various resettlement plans, see: Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010); Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010); Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co Ltd in association with JARTS (2009); Ministry of Public Works and Transport, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2008). Inter-Ministerial Resettlement Committee Cambodia & Asian Development Bank (2007).

Addendum to the Updated RP for Phnom Penh (Additional affected households)		248
Samrong Estate (Phnom Penh)	231	62
Total	**4174**	**1200**
* Bamboo rail transport operators in all sections.		

Although the railway project did not take effect until 30 January 2008, and households began the relocation process in 2010, the compensation provided to households was based on the entitlement matrix set out four years earlier in the 2006 Resettlement Plan. The Resettlement Plan included a Detailed Measurement Survey (DMS) which included a census of people affected and inventory of losses. Compensation for land use and assets was to be at replacement cost. A Replacement Cost Study was undertaken of all structures, land and other assets for purposes of arriving at the valuation of assets impacted by the project. The study was undertaken by the local resettlement consultant.[719] The DMS was undertaken again in 2008-2009, during which time field staff compared and verified the data collected for the 2006 DMS.[720]

5.7.1 Compensation packages

The compensation assistance package developed in 2006 was intended to include the following:

- compensation for land used within the corridor of impact and station area irrespective of tenure status, including permanent loss of agricultural land use and loss of land for residential and commercial purposes;

- compensation for non-land assets affected by the project – including payments for partial and/or fully affected structures (house, shops/businesses), and crops, trees, open wells and fences;

- compensation for relocation and loss of income or sources of livelihood, including transportation allowance, living allowance, rental allowance,

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[719] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 73).
[720] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 2). This issue is discussed further in later sections of the chapter.

relocation of business, cash compensation for lost wage by employees of affected businesses, loss of income for the Bamboo Rail Transport Operators, and special assistance to vulnerable groups;

- compensation for private land acquired for individual/group resettlement site(s) at current market value or replacement costs, cash compensation against loss of land use rights within corridor of impact for "self-relocation", onsite relocation within the available right of way and project-sponsored sites with security of tenure.[721]

The entitlement matrix in the 2006 Resettlement Plan explains that all affected persons moving out of the right of way to a resettlement site would be provided with compensation for loss of livelihoods comprising 20 kg of rice, per person, per month for three months for houses made with light materials and wooden houses. For people with concrete, brick and large wooden houses, they would receive 20 kg of rice, per person, per month for six months.[722] However, different information is provided in various places in the 2006 Resettlement Plan and there was confusion about whether the rice entitlement was per person or per five-person household.[723]

Vulnerable households, such as those who were female-headed households, elderly, or disabled, very low income earners (below USD 20 per month), were to receive special assistance by way of 20 kg of rice, per person, per month for six months.[724] Affected households relocating out of the right of way would receive a USD 70 transportation allowance irrespective of the distance to the resettlement site.[725] Those households relocating to the resettlement sites would be provided with a plot of land approximately 7m x 15 m.[726] The cut-off date for eligibility for entitlements was the completion of the census and Inventory of Losses in June 2006. During preparation of the Inventory, identification

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[721] Ministry of Public Works and Transport, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2008, p. 10).

[722] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 44).

[723] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 46).

[724] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 46).

[725] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 44).

[726] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 11).

cards were posted on all affected houses. This was to intended to avoid new "encroachers" into the right of way.[727]

A Public Information Document was prepared and distributed to affected households explaining what they would receive. The English version is reprinted in Appendix K.[728] Compensation for loss of land use in the right of way was costed at a standard price of USD 0.50 per m^2 throughout the project areas (including Phnom Penh). Thus, regardless of where the land was located and whether the land use was residential, commercial or agricultural, the same rate of compensation applied. The rationale for providing a standard compensation rate reveals early tensions in the resettlement arrangements between Government practice and ADB standards. The 2006 Resettlement Plan states:

> The main reason for establishing a single uniform price for loss of ROW [right of way] land use, regardless of differences in the market price of unencumbered land outside the ROW in these vicinities, is that this is regarded by both APs [Affected Persons] and Government as adequate and fair for their loss of promissory land use, given that they cannot be "compensated" for loss of public land. In accordance with ADB Policy, they will be compensated for loss of non-land assets (structures) and loss of income. They will be resettled to locations within the vicinity of the current location so that they will not lose their jobs or other livelihood base. The landless will be provided with replacement land. All will be assisted to restore pre-project conditions. The poor and vulnerable will be assisted to improve pre-project conditions.

The Updated Resettlement Plans prepared in 2009-2010, reiterated that the cash compensation rate for loss of land use was USD 0.50 per m^2 for all locations.[729] By way of comparison, the estimated land value of the surrounding areas in Phnom Penh where the railway residents were living was USD 150 per m^2 in the Updated Resettlement Plan for

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[727] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007). See "Definition of Terms".

[728] Note the Public Information Booklet was updated in 2010, see Annex: Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010).

[729] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 11).

Phnom Penh.[730] The Entitlement Matrix annexed to the 2010 Updated Resettlement Plan restated that the compensation package and other entitlements were "as per agreed" in the 2006 Resettlement Plan.

Income restoration was considered central to the resettlement strategy. The 2006 Resettlement Plan reiterated the importance of developing an income restoration plan and canvassed a range of ideas that would potentially assist affected households, including a draft terms of reference for the strategy.[731] However, it explained that a "detailed income restoration strategy will be finalized during implementation, according to the actual need of APs [affected persons]." The strategy was to be based on affected people's preferences, level of preparedness to participate and economic viability. Further details were provided in the updated resettlement plans, which included a finalised Terms of Reference agreed with ADB for an NGO or consulting firm to be hired to finalise the income restoration plan.[732]

Potential locations for the resettlement sites were canvassed in the resettlement plans but not finalised. As stated, resettlement was originally to be "in close proximity (3 km to 5 km) to their current locations so that incomes will not be affected".[733] The 2006 Resettlement Plan explored options within this range, however as the project progressed these distances changed. In Phnom Penh, for example, the resettlement site was later moved in 2010. The justification provided in the Updated Resettlement plan for Phnom Penh was as follows:

> [I]t was found than [sic] no large land (2.5 ha) was available around the affected area and that price of land in Phnom Penh urban area was too high (150 USD/m^2) around the affected areas and not affordable. Therefore, the RS [resettlement site] has to be located in the outskirts of the City. We should note that most of the relocation sites built by Phnom Penh municipality are located at least 15 km from the center of the City.[734]

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[730] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 14).

[731] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007) see Annex 3.

[732] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 15).

[733] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, pp. i-v.).

[734] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 14).

Thus, the final selection of resettlement sites took place after the bulk of the formal community consultation process had already taken place and were located further away than originally intended or agreed, especially in the case of Phnom Penh.

5.7.2 Community consultation and disclosure

The Resettlement Plan stated that "the DMS surveys were conducted in full consultation with AHs [affected households] and affected villages/communes leaders."[735] Details were provided of a series of community meetings, public meetings and village discussions with affected people and local officials. A list of the early meetings is provided below.

Table 7: ADB community consultations in Poipet[736]

Timing	Consultation for disclosure of Resettlement Plan
3 April 2006	Public consultation in Poipet – 2 half day sessions for villages Kbal Speaen, Baleley, and Kilometer 4.
4- 12 April 2006	Village discussions with census and inventory team members in Poipet.
24 April 2006	Public consultation for Environmental and Social Impacts held in Phnom Penh – with attendees from Poipet/Banteay Meanchey, Northern Line and Southern Line AP's and local officials, national agency, NGO, and international development organization representatives.
17 May 2006	Discussion with Ms. Tundra Tan, village chief of Domnak Smach village, Northern Line.
19 May 2006	Community meeting in Battambang affected village near the rail way station.
20 May 2006	Community meeting in Veal Rinh village in Sihanoukville, a Southern Line affected village.
20 May 2006	Community meeting in Phum Bei village in Sihanoukville, a Southern Line affected village.
25 May 2006	Community meeting in Beaung Saloung village, a Phnom Penh affected village.
22 May - 20 June	Village discussions with census, inventory, and socioeconomic survey team supervisors and members for "missing link", Northern Line, Phnom Penh, and Southern Line.

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[735] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 3).
[736] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 48).

Further meetings were carried out throughout 2009-2010 with affected households. Meetings or consultations with affected households tended to be held in large groups where details of the project were announced followed by opportunities for affected people to ask questions and express concerns. Individual and small group meetings were conducted with severely affected and vulnerable households.[737] A summary of community concerns provided in the 2006 Resettlement Plan listed some of the issues raised by participants. These concerns are excerpted below:

- May lose their homes especially those near the tracks;
- May not be properly compensated if impacts cannot be avoided;
- May affect their businesses if they are to be relocated;
- Households do not have land certificates and claim that they are landless;
- Residual ROW land may not be available to some households, and therefore cannot shift back;
- Type of assistance to poor renters and if they will also be given housing and other forms of assistance;
- May take time to relocate and re-establish themselves in a new location, hence, may disrupt their time for making a living;
- May take time to integrate with host communities if moved to another location;
- Women and other vulnerable households may experience more difficulty.
- They said female-headed households and disabled may need to pay more money to help them relocate and rebuild their houses;
- The new relocation site may be too far from school. [738]

Participants were also favourable towards the railway project for the following reasons:

- Improved railway will provide faster means of transportation;
- Better railway is an indication of the country's development;
- Road travel is good but travel via train is more comfortable;

[737] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 49).
[738] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 48).

- Riding trains gives them more security and therefore less worries;

- Train fares are expected to be cheaper than other land transportation.[739]

It is noteworthy that the affected households describe the potential benefits of the railway as providing cheaper, safer, faster and more comfortable transportation. This suggests that at the time the meetings were held it was either still considered feasible that the rehabilitated railway would operate as a passenger service or it was not disclosed to the affected households that the railway was not intended to be a passenger service. [740]

A grievance mechanism was set up for the project. The Resettlement Plans describe how affected people were also made aware of their rights to complain to the ADB. The ADB's Accountability Mechanism (2003) Policy field guide was translated into Khmer and was reportedly distributed to affected persons together with the public information booklet.[741]

The legal and policy framework for compensation and resettlement were also set out in the resettlement plan. The project was to be governed by the "relevant laws and regulations of the Government of Cambodia" and the ADB's policies on Involuntary Resettlement (1995), Indigenous Peoples (1998), Gender and Development (2006), Accountability Mechanism (2003), and Public Communications (2005). In the event of any discrepancies between the laws of the Cambodian Government and the ADB, the plans clearly state that "ADB's policies and requirements will prevail."[742]

Resettlement for the project began in 2010, first along the Northern Line in Pursat, Battambang and Poipet. According to ADB records, the concessionaire originally wanted to pursue rehabilitation of the Northern Line from Phnom Penh to the Thai border in Poipet first, but changed its mind while resettlement was taking place in the north and requested to rehabilitate the Southern Line instead. Resettlement then went ahead in the south in 2011 in Sihanoukville and Phnom Penh. [743]

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[739] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 48).
[740] Note that in the late stages of finalising this thesis, the Phnom Penh Post reported that the Cambodian Government had revitalised the idea of operating the passenger service, starting with the Sihanoukville line, see: Crane (2016).
[741] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007); Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 17). See Appendix K of this thesis.
[742] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 47).
[743] Asian Development Bank (2014f, p. 3).

5.8 Advocacy and the railway project

The most prominent NGOs working on advocacy in relation to the railway were Equitable Cambodia, Inclusive Development International (IDI), and Sahmakum Teang Tnaut (STT). Some of the NGOs involved began as international NGOs and gradually "localised". Equitable Cambodia, formerly Bridges Across Borders Cambodia (BABC) is now run by Cambodian citizens and works on local campaigns relating to land and housing. IDI supports Equitable Cambodia and works trans-nationally to increase the accountability of business and development actors mostly through legal advocacy. STT is an urban NGO which does not describe itself as a human rights-based organization, but does draw on human rights frameworks in its work.[744] The Housing Rights Task Force Cambodia (HRTF) also worked on railway advocacy, which began as a coalition of local and international NGOs in 2003 and localised in 2010. Other NGOs involved included the independent aid monitor, AidWatch, Urban Poor Development Fund (UPDF) based in Cambodia and NGO Forum on Cambodia, which represents 88 NGOs.

NGOs began informally warning AusAID and the ADB about the potential and actual impacts of resettlement during the early stages of the railway project. In May 2010, two children died in the Battambang resettlement site shortly after they were relocated. News of the children's deaths featured in the international media. The Age newspaper in Australia reported that there was no clean drinking water at the site and that the children were attempting to get water from the only available source, a deep muddy pond.[745]

Following the events in Battambang, NGOs began working in a range of different ways to support communities in the relocation process and to draw attention to the project's impacts. STT published a report in 2011 which detailed early problems with project, especially that inadequate and incorrect compensation amounts were being offered to households.[746] A letter co-signed by STT, BABC, NGO Forum and HRTF was sent to the Australian Government and ADB.[747] The Cambodian Government responded sharply to these events. Newspapers reported how the Minister of Economy and Finance wrote to the Prime Minister requesting him to "take immediate action" to stem NGO activities and requested him to "not

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[744] Sahmakum Teang Tnaut (2013a, p. 73).
[745] Baker & McKenzie (2010).
[746] Sahmakum Teang Tnaut (2011).
[747] Lei Win (2011).

allow foreign NGOs to do advocacy work".[748] A Cambodian radio station repeatedly broadcast an interview with Government officials who identified a group of NGOs that were "composed of foreigners" believed to be exploiting "affected people" to make their careers.[749] The NGOs were warned in a formal letter from the Government and were called to a meeting with the Ministry of Foreign Affairs. STT was suspended from operating as an NGO for five months for allegedly inciting villagers to protest.[750]

In 2012, BABC released "Derailed" based on almost two years of research.[751] The report assessed the extent to which the project met human rights obligations and ADB safeguard policies, identifying many aspects of the process which constituted serious violations. It also reported that of the 200 households interviewed by BABC, sixty percent felt that their living conditions had been made worse by the Railway Project, or would be made worse in the future. Only 20 percent felt that their lives would improve.[752] Derailed was released at a forum jointly hosted by Monash University and Oxfam Australia, in February 2012.[753] A series of media releases referenced the more detailed research reports and were circulated with headlines such as: "Cambodian railway development causes human rights abuses – AusAID complicit"[754], "Families displaced by Cambodian railway project seek justice from the Asian Development Bank",[755] and "Resettled to poverty".[756] Simultaneously, BABC made recommendations to AusAID to adopt an involuntary resettlement policy. Experts from a range of organizations worked with AusAID to prepare guidelines for AusAID which became operational in October 2012.[757] Concurrently, AusAID appointed an Independent Advisor to monitor the project and committed an additional AUD 2 million to address problems in the relocation sites. ADB also sent a full-time safeguards specialist to Phnom Penh.

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[748] Strangio (2011).
[749] Strangio (2011).
[750] Bridges Across Bordess Cambodia (2011, p. 5).
[751] Bugalski & Medallo (2012).
[752] Bugalski & Medallo (2012, p. 66).
[753] Oxfam Australia was not directly involved in advocacy surrounding the railway but provided financial support to conduct the research for the "Derailed" report.
[754] Equitable Cambodia (2012a).
[755] Equitable Cambodia (2012b)
[756] Sahmakum Teang Tnaut (2013b).
[757] The policy was updated in 2014: Australian Government Department of Foreign Affiars and Trade (2014), and again in 2015, see: Australian Department of Foreign Affiars and Trade (2015a).

Pressure from NGOs in 2012 also led the ADB to appoint the resettlement expert, Michael Cernea, as an independent consultant to report on the impacts of the project.[758] This resulted in a major controversy when the body of Cernea's report was not publicly released by the Cambodian Government and the ADB.[759] By this stage, relationships between NGOs, the ADB and the Cambodian Government had deteriorated significantly and were highly polarised, reflected in a series of media headlines, including: "Cambodia Resettlement Debacle Cover Up: ADB Conceals Critical Expert Report."[760] The ADB began compiling good news stories about the resettlement sites, profiling families that had benefited from the project, including a short video and "photo essay" titled "Moving on to Better Lives in Cambodia" explaining improvements to the resettlement sites and the ways the project had improved people's living conditions.[761] This provoked outrage from NGOs, prompting media releases titled "Propaganda mill at full tilt" and descriptions of the ADB video as "a piece of propaganda that would make Goebbels blush."[762] Relationships between the NGOs and the ADB became increasingly fraught; with some personal tensions emerging. For example, while the ADB was still holding consultative meetings with the NGOs, ADB staff members issued warnings at the beginning of meetings requiring NGO participants to control their body language and etiquette.[763] In 2013, STT also released "End of the Line" focussing specifically on impacts experienced by communities in Phnom Penh, providing empirical evidence of how communities has been impoverished by the project.[764]

5.8.1   Community complaints

Affected households also made a series of formal complaints to both the ADB's Office of the Special Project Facilitator (OSPF) and the Compliance Review Panel (CRP), which comprise its Accountability Mechanism. In November 2011, BABC made a complaint on behalf of 155 households to the OSPF arguing that the ADB failed to comply with its own safeguards during the resettlement process, resulting in significant harm.[765]

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[758] See the summary report released: Cernea (2013). Also cross-reference this section with the discussion in Chapter 8, Section 8.3.
[759] See: Inclusive Development International (2013).
[760] Inclusive Development International (2013).
[761] Asian Development Bank (2012b).
[762] Bugalski (2012).
[763] Meeting and information update with NGOs at ADB, Phnom Penh, 19 February 2013.
[764] Sahmakum Teang Tnaut (2013a).
[765] Bridges Across Bordess Cambodia (2011).

The complaint was considered eligible by the OSPF in January 2012, which mediated the complaints throughout 2012-2013 and produced a Final Report in April 2014. The initial 155 complainants were reduced to 116 after verification in the field and the withdrawal of some complaints. The nature of the complaints focused on the level of compensation, inadequate facilities in the resettlement sites and indebtedness, among other issues.[766] Three other complaints were made to the OSPF however they were not deemed eligible primarily because they had not used the local grievance mechanisms and formally complained to the IRC/Cambodian Government before complaining to the ADB.[767] In October 2012, an extra-territorial complaint was also submitted to the Australian Human Rights Commission by IDI and Equitable Cambodia on behalf of 30 affected families, alleging that the Australian Government failed to uphold its international human rights obligations by funding the project without sufficient measures in place to safeguard the human rights of those affected. This is the first time an extra-territorial human rights complaint has been filed with the AHRC in relation to the impacts of Australian aid overseas.[768]

The OSPF review began in 2012. The OSPF has a problem-solving function under the Accountability Mechanism and its role is to mediate rather than draw firm conclusions about ADB compliance.[769] The process involved individual household mediation with the complainants, as well as assessment workshops from November 2012 through to January 2013 to investigate the problems and attempt to resolve them through a "multistakeholder problem-solving process".[770] The mediation also attempted to resolve issues relating to the access roads to the various sites, availability of fresh water especially in Battambang, and flooding in the resettlement sites.[771] In the Final Report, the Special Project Facilitator stated that: "There was broad acknowledgement that the complaint issues were legitimate and should be addressed."[772] The Facilitator recommended several courses of action, including additional compensation for most of the households that had made the complaint as their

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[766] Asian Development Bank (2014e, p. 1).
[767] OSPF complaints can be viewed on the ADB website at: http://www.adb.org/site/accountability-mechanism/problem-solving-function/complaint-registry-region.
[768] See: Inclusive Development International & Equitable Cambodia (2012). Unfortunately, information about the complaint to the Australian Human Rights Commission is not available publicly. I contacted the Commission for an update but was told that no information could be shared with people who were not party to the complaint. There is also no decision available online, which suggests it may have been deemed ineligible.
[769] See the discussion and diagram of the ADB Accountability Mechanism in Chapter 2, Section 2.6.
[770] Asian Development Bank (2014e, p. 6).
[771] Asian Development Bank (2014e, p. 6).
[772] Asian Development Bank (2014e, p. 6).

original compensation amounts had been calculated wrongly.[773] Two of the 116 households were from Samrong and their concerns were postponed to be addressed at a later date as they had not yet relocated. Of the 114 households remaining, 75 received additional compensation. The number of households receiving additional compensation is depicted below in Table 8.

Table 8: Results of the individual sessions to resolve compensation issues[774]

Resettlement Site	Offered additional compensation	Rejected offer	Moved to Resettlement Site	Correct compensation	Total
Poipet	3	2	0	3	8
Battambang	3	0	0	0	3
Sihanoukville	3	0	0	0	3
Phnom Penh	66	17	13	4	100
Total	**75**	**19**	**13**	**7**	**114**

The Facilitator also sought to address other issues in the resettlement sites, especially relating to infrastructure. By February 2013, committees were established in all resettlement sites to manage local infrastructure works. It was agreed that AusAID would finance most of the infrastructure works and would engage an engineer to oversee these works.[775]

Notwithstanding these developments, a formal complaint was made by 22 households to the CRP of ADB for compliance review on 28 August 2012. Eligibility was granted on 24 October 2012, which meant that compliance with safeguards was then investigated across the whole project, and was not only isolated to the 22 households which had complained. The investigation process began in October 2012, however the field visit was made a year later as part of the review in October 2013.[776] (It is important to note that the fieldwork for this PhD took place in 2012 and 2013 prior to the CRP mission, as explained in the methodology in the next chapter).

The complaint to the CRP raised numerous issues. Some of the most pertinent complaints included, insufficient compensation for loss of property and income, inadequate transition allowances, the distant location of three resettlement sites and inadequate basic services,

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[773] Asian Development Bank (2014e, p. 8).
[774] Adapted from Asian Development Bank (2014e, p. 8).
[775] Asian Development Bank (2014e, p. 9).
[776] Asian Development Bank (2014f).

such as water, electricity, waste disposal, roads, health facilities, and schools, at all sites. It also provided evidence that residents had been threatened and argued that human rights violations had occurred, contra to the rights guaranteed in the Cambodian Constitution and laws, and under international treaties ratified by Cambodia. [777]

The CRP findings presented in January 2014 "found major design flaws" in the original 2006 Resettlement Plan.[778] It found that there was inadequate consultation with affected households, a lack of provision for "inflation-indexed compensation", no provision for replacement housing of a minimum standard, inadequate planning and a weak capacity building for government entities involved in the project.[779]

It also found that compensation paid in 2010 and 2011 was based on the 2006 rates and did not take into account price increases over the intervening 4-5 years.[780] The CRP report provided a detailed analysis of the failings of the project and identified several lessons for the ADB Board to consider. It was unequivocal about the need for change within ADB, stating that *(emphasis added)*:

> First, there is a need for an urgent, firm, and clear message to ADB Management that resettlement, environmental, and public disclosure and consultation issues should be taken seriously and accorded the priority consideration they deserve. ADB operational, sectoral, and regional staff must undergo a mind shift in the treatment of resettlement, environment, and public disclosure and consultation. Their perspective must be based on the recognition already existing in ADB's safeguard policies that involuntary resettlement is a development opportunity, intrinsic to achieving the developmental goals of projects.[781]

It also made the significant comment that:

> In a post-conflict situation, such as that in Cambodia, where a country is emerging from decades of civil war, donors need to

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[777] As summarised in the Final CRP Report: Asian Development Bank (2014f, p. iv).
[778] Asian Development Bank (2014f, p. vi)
[779] Asian Development Bank (2014f, p. vi).
[780] Asian Development Bank (2014f, p. vii).
[781] Asian Development Bank (2014f, p. viii).

proactively engage with the government and provide it with support at a much higher level and intensity than was provided by ADB in this case.[782]

A set of recommendations were made by the CRP, the majority of which were adopted by the ADB Board. Some of the key features included:

- The establishment of a remedial action program to compensate affected households to the value of an additional USD 3-4 million for families that had been relocated;
- Improve the functioning of the grievance redress mechanism;
- Develop a program to build capacity within the IRC;
- Establish a debt workout scheme to help highly indebted families repay their loans.[783]

Note that the additional compensation payments were to be made only to people who were relocated. Progress reports uploaded to the ADB website confirm that the IRC commenced the additional compensation scheme in January 2015, starting with affected households along the Southern Line and Poipet sections.[784] Thus, a series of additional compensation payments have flowed to into the resettlement sites since the project's inception.

At the same time as complaints were being made about the resettlement aspects of the project, serious problems emerged in relation to the civil works and rehabilitation components. From at least early 2012 onwards, the supervision consultants hired to oversee the rehabilitation, Nippon Koei Co Ltd, began reporting that the contractors, TSO-AS & Nawarat, were in serious breach of health and safety requirements for workers along the railway line. The issues included crowding and poor provision of basic services to workers, including fresh water in the workers' camps. The use of safety equipment was also lacking. The reports also alleged that TSO-AS & Nawarat also failed to submit monthly environmental reports on the status of works, and how risks were being mitigated.[785]

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[782] Asian Development Bank (2014f, p. 5).
[783] Asian Development Bank (2014f, 2014d).
[784] Asian Development Bank (2015e).
[785] Nippon Koei Co Ltd (2012); These issues were also catalogued the website Cambodia Trainspotter: https://cambodiatrainspotter.wordpress.com/tag/tso/.

5.9 The railway project on hold

Challenges surrounding the project escalated in March 2012 when a letter was leaked from Toll Royal Railways to the Cambodian Government informing them that it would suspend operations on the railway because the delays and problems had made it unprofitable.[786] In 2014, Toll Holdings confirmed that the railway project was on hold indefinitely. The contractor for the Northern Line stopped the work in June 2012 and negotiations to resume the works failed. The remaining funds (from ADB, OFID and AusAID) were deemed insufficient to complete the rehabilitation of the Northern Line and Samrong freight facilities.[787] The Director of the MPWT explained to the media that the project had run out of money and were postponing operations until further funds could be found.[788]

At this point, the Southern Line had been completed and trains were running intermittently from Phnom Penh to the port in Sihanoukville. A section 42 km between Poipet and Sisophon had been repaired and another section of 23 km from Sisophon running east was finished, however, more than 300 km of tracks were still to be repaired. Works on the Northern Line had been abandoned entirely. [789] In December 2014, Toll Holdings sold its stake in the railway to Royal Group, citing poor revenue from the Southern Line and a series of delays and setbacks that made the investment unprofitable.[790] An article in the *Cambodian Daily* on 11 March 2015 stated that the ADB would not provide any more money to rehabilitate the railways. It estimated that at least USD 75 million is required to finish the railway lines.[791]

The events that transpired raised major questions in the Australian media about Australia's role in financing infrastructure developments overseas, and about how lines of accountability for expenditure of overseas aid can and should be drawn.[792] AusAID staff members were repeatedly required to appear before Senate Estimates Committees to explain why Australia had financed a project which displaced large numbers of people, and why the project was experiencing so many challenges. An excerpt of a Senate Estimates Hearing in

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[786] Philip Heijmans & Tom Hyland (2012).
[787] Asian Development Bank (2014g)
[788] Phorn Bopha (2014).
[789] Phorn Bopha (2014).
[790] Morton (2014). Note, it remains unclear precisely how much money was invested by Toll Holdings in the railway project, however the available documents suggest Toll's investment was confined to managing and operating the railway once it was rehabilitated.
[791] Zsombor (2015b).
[792] This is discussed in detail in Chapter 8.

2011 is included as Appendix L. In the midst of the ongoing controversies, in 2013 federal elections were held in Australia which resulted in a change of government. The centre-right Liberal/National coalition were elected, defeating the centre-left Labor Party. Consequently, AusAID was merged with the Department of Foreign Affairs and Trade, thereafter referred to as the Australian Aid Program, and no longer was a separate identifiable entity. The media surrounding the railway project somewhat eased after these events, although not completely, as the government responsible for approving the project was no longer in power.[793]

5.9.1 Status of the loans

In September 2014 the ADB announced a major change in scope to the railway project and the existing loans were amended. At this time, 78.416 percent of the loan had been disbursed. As of 14 July 2014, the cumulative actual contract awards totalled USD 97.6 million, however actual disbursements were USD 81.1 million.[794] The ADB initiated discussions with the Government to cancel the remaining uncontracted amount. Any further unutilized amount was automatically cancelled at loan closing, which was 31 December 2014.[795]

The changes listed in the "major change" document were:

- a reduction in track rehabilitation of the Northern Line by 318 km against the original plan;
- cancellation of new freight and rolling stock maintenance facility at Samrong;
- exclusion of passing loops and a station in Poipet with facilities for the border crossing; and
- exclusion of a rail link to a second dry port in Phnom Penh.[796]

The reasons for the project's disintegration can be gleaned through a detailed reading of the major change document. It outlines a number of problems that were encountered throughout the project. It explains how Toll Royal Railway refused to formally take over the operations of the Southern Line on the basis of "insufficient technical performance". The Cambodian Government requested the contractor, TSO-AS and Nawarat, to rectify defects however the

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[793] See Chapter 8 for a more detailed discussed of these issues.
[794] Asian Development Bank (2014h, p. 2).
[795] Asian Development Bank (2014a, p. 4).
[796] Asian Development Bank (2014h).

contractor had stopped works. The supervision consultants, Nippon Koei Co Ltd, provided contract specialists to assist in ensuring that the tracks meet the minimum line standards as specified under the civil works contracts.[797]

Numerous problems stemmed from inaccurate feasibility studies and assessments conducted prior to the beginning of the project. For example, it was found that the "extent and nature of repair and rehabilitation works was significantly different from what had been assumed at appraisal."[798] The ADB documentation explains that the original Project Preparatory Technical Assistance (PPTA) consultants had not done their due diligence well.[799] It states *(emphasis added)*:

> The PPTA consultants assumed that most bridges only required repair of the superstructure and no provisions were made for substructure works except for a few cases where the substructure clearly was missing. The preliminary design also assumed that no new culverts were required. In reality about 46 new culverts had to be built on Southern Line alone. <u>Eventually, it turned out that the PPTA consultants had never reviewed the residual carrying capacity of the bridges on the two lines, i.e. whether they were indeed capable of carrying the line design axle load (15 or 20 tons) at the design speed (average of 50 km/h) or not.</u>[800]

In addition, the PPTA consultants apparently "based their preliminary design on reusing the existing wooden sleepers on the assumption that about 70% of these would be reusable."[801] They had proposed concrete sleepers for the remainder not considering that concrete sleepers require a wider embankment compared to wooden and steel sleepers, increasing the earthworks costs. Further, apparently closer inspection of the old wooden sleepers at a later date revealed that only about 3 percent of the original 70 percent were reusable anyway.[802]

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[797] Asian Development Bank (2014h, p. 3).
[798] Asian Development Bank (2014h, p. 4).
[799] A letter was sent to ADB requesting confirmation of the name of the PPTA consultant firm. While the response provided some detail, it did not explicitly answer this question. See Appendices D and E.
[800] Asian Development Bank (2014a)
[801] Asian Development Bank (2014a, p. 3).
[802] Asian Development Bank (2014a, p. 3).

The major change documents describe a litany of these sort of challenges creating substantial cost increases. The costs on the Southern Line alone increased from USD 38.34 million to USD 61.8 million. Consulting services increased from USD 5.29 million to USD 8.7 million. Materials increased from USD 6 million to about USD 10 million.[803] These developments are said to have "soured the relationship between the Employer, Engineer and the Contractors".[804] The Employer was the Cambodian Government (via MPWT), the Engineer was Nippon Koei, and the civil works Contractor was TSO-AS and Nawarat.[805] To aggravate this situation, USD 12.869 million was disbursed under the Northern Line contract that could not be recovered. The Analysis of Cost Increase describes "gross negligence" on behalf of the Engineer, stating that *(emphasis added)*:

> The performance security and advance payment security under N-Line contract expired in May 2012. Though it is the Contractor's responsibility to extend these securities until the works are completed, the Engineer, as representative of the Employer, or the Employer himself, should have ensured that those did not lapse. Due to this gross negligence by the Engineer, the Employer will not be able to recover the $3.9 million that has been paid to the Contractor as advance, and will not be able to encash about $2.5 million under the performance security if the contract eventually is terminated, thus a total loss of about $6.4 million to the Employer.[806]

Arbitration has been initiated by the Contractor through a letter sent on behalf of the Contractor by the international Court of Arbitration, Paris, on July 4 2014 to the Cambodian Government. The Government responded on 1 August 2014 "disputing the process".[807] There is very limited specific information available beyond what is included in the Major Change document, hence many questions remain unanswered about what occurred.

In July 2015, the media reported that the Cambodian Government had decided to forge ahead and finance the remainder of the project so that it could be completed. They have reportedly

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[803] Asian Development Bank (2014a, p. 2).
[804] Asian Development Bank (2014a, p. 4).
[805] This was eventually established through correspondence with ADB, see Appendix E.
[806] Asian Development Bank (2014a, p. 5).
[807] Asian Development Bank (2014a, p. 4).

allocated USD 33.5 million towards re-building the Northern Line, of which more than 300 km remain to be repaired. Only around 63-65 km of the Northern Line had been completed when the project ceased. A deputy director of MPWT, Chreung Sok-Tharath, is quoted in the article explaining how the ADB will not finance the project further because of its resettlement impacts, stating:

> The government process takes a long time, and we tried to negotiate with the [ADB] but it said no because of the resettlement problems.[808]

The deputy director of MPWT also acknowledged in the article that even if the railway was rehabilitated, trains are expected to travel at around 15 km per hour, not the 50 km per hour originally envisioned.[809]

5.10   Chapter review

Weak project management, coordination, quality control and oversight seems to have beset the project in relation to both the resettlement and civil works components. The extensive documentation reveals that many risks were known and understood prior to project implementation. Financiers were optimistic at the beginning, yet were ultimately unable to control the risks present in the project. Mitigation plans and safeguards frameworks sought to make the risks rational, knowable and controllable. Notwithstanding the technical assistance, consultant and supervision costs, which amounted to more than USD 8.7 million, and more than fifty detailed economic, financial and technical proposals, feasibility studies, resettlement plans, technical assessments, social and environmental monitoring studies, the project was abandoned. Over the next thirty or more years, the Cambodian Government will be required to repay the USD 81.1 million disbursed under the loan – with interest – for the partly finished project. There is a possibility that the project will be completed using funds from the Cambodian Government or from other willing donors and financiers, however the commercial viability of the railway as an alternative transportation mode to road transport, even if it is completed, is uncertain. The passenger service component of the project was also abandoned relatively early in the project, limiting the project's public value to the

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[808] Zsombor (2015a).
[809] Zsombor (2015a).

Cambodian population if it is to be completed.[810] This chapter provides the technical background necessary to understand the different components of the railway project, as well as the safeguards and resettlement plans in place. It conveys the practical, technical dimensions of the interface between development, displacement and resettlement and provides a foreground against which deeper analysis of stakeholder dynamics can take place. The next chapter outlines the methodology for the research.

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[810] Note that in the late stages of finalising this thesis, the Phnom Penh Post reported that the Cambodian Government had revitalised the idea of operating the passenger service, starting with the Sihanoukville line, see: Crane (2016).

Chapter 6

Methodology and fieldwork

6.1 Overview

The methodology for this research set out to investigate the operation of resettlement safeguards at a number of scales: at the local community level, at the institutional level within organisations, and at regional and international levels where decisions about community resettlement were being made. At the community level, it also aimed to capture local experiences at a "sub-project scale", to understand the different ways the communities navigated and made sense of the policies in each of the five resettlement sites. To this end, the methodology employed a multi-scaled, qualitative, case study approach, explained further below.[811] It also advances the idea of an "iconic case study",[812] recognising that the research is not a case study of resettlement in Cambodia per se; it is not necessarily representative of all displacement taking place in Cambodia. Rather it is a case study of resettlement in Cambodia involving an international financier. It is "iconic", because it has come to represent a set of irreconcilable tensions and pressures that are produced in high-profile resettlement events, which occur in settings where national standards and processes for resettlement are significantly different to international project-specific safeguards and requirements.

The lens of a researcher is shaped by many layers of influence that exist prior to field work: cultural and familial value systems, gender, areas of personal interest, sensitives, normative perceptions of how things *should* be done, especially pre-conceptions of the standards and expectations of rights and protections built up in one's own country and culture, among other factors. Once reaching the field, the research experience and knowledge developed is again shaped by those who assist us, especially our interpreters and the participants we encounter – their personal backgrounds, values, interests and ways of relating to external visitors or

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[811] Also see the discussion in Hay (2010, pp. 81-97).
[812] Iconic case studies have been conceptualised by Smits (2013, pp. 50-60).

"outsiders". These influences were forefront in my mind while preparing for the research, but even more so as the fieldwork got underway.

Undertaking research is not a perfect process, and doing research in Cambodia on a controversial project like the railway was no exception. Approaches to fieldwork by authors such as Turner[813] and Scott et. al. [814] encourage researchers to articulate these personal challenges and reflect on how they influence their work. As a female, Australian researcher, who had been living and visiting Cambodia in the years prior to the research, I had established many personal friendships with people working in civil society organisations and within AusAID. During the formulation of the research project, I also established connections with people working at the ADB. These relationships had pros and cons. They provided me with a behind-the-scenes understanding of the dynamics, tensions and conflicts that were taking place, but also placed me in a fundamentally fraught and sometimes agonising position when deciding how to deal with information conveyed to me confidentially, especially with information that could not be easily verified, or about how to present certain viewpoints in the text, about what obligations I owed various people who had confided in me, and most of all how to make sense of the often very different value positions and accounts of the events taking place. Trying to get to the "bottom of things", to understand what was really going on, often felt incredibly fraught.

The writings of Salemink[815] resonate with how I sometimes felt about the consequences of being pulled in many directions and not being able to describe people (especially those working with NGOs, AusAID and ADB) or events in intimate detail, because of the need to anonymise participants and organisations during the research. He describes doing ethnographic research in the Central Highlands of Vietnam with communities and explains how in order to shield them from unwarranted scrutiny, he needed to anonymise the descriptions so much that the ethnography became almost "bland". This tension between providing enough information to describe the tensions fully, and not unduly revealing information about individuals or their distinctive identifiable features, was a genuine challenge during the research, especially relating to my interviews and conversations with NGOs and donors. Many of these tensions were never resolved, but rather they were partially

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[813] Turner (2013, p. 1).
[814] S. Scott, Miller & Lloyd (2006).
[815] Salemink (2013).

managed through reflection and through trying continuously to present a balanced view of events that took place. I also made a decision to convey a broad understanding of resettlement tensions, rather than to try and capture individual personality clashes and conflicts, of which there were many.

The interpreters who worked with me during the community-based research need to be acknowledged from the outset. It was only through their assistance and translation that I was able to reach the communities affected by the project and to gain some level of understanding about what they were experiencing. I worked with two researchers during the fieldwork. One was a male, aged 21 years, who was currently attending the University of Phnom Penh, studying media and communications. The other was a female aged around 24 years, who had recently graduated from a degree in Social Sciences. Both were originally from outside Phnom Penh, but not from areas where the fieldwork for the railway project took place. Neither interpreter was familiar with the railway resettlement and its related conflicts in any significant detail prior to the research. They had not been working with the NGOs who had been involved in advocacy for the railway, although over the course of the research both became increasingly interested in the plight of the households affected by the project. Of course, these interpreters brought their own views, pre-conceptions and positionality to the interviews with households, which most likely shaped how they translated the discussions to me. As explored below, following each day of interviewing, I spent time with the interpreter who had joined me on that day to try and deconstruct the interviews that had taken place with community-members and to explore the interpreter's point of view on the information we had both learned.

This chapter first outlines the multi-scaled conceptual approach to the research in more detail, and then discusses the fieldwork technique and process. In summary, the method primarily involved field-based research, using in-depth semi-structured interviews with affected populations, local and international advocacy NGOs, representatives of the Asian Development Bank (ADB), Australian and Cambodian Governments, as well as resettlement and safeguards specialists from the World Bank. This was complemented by ethnographic research based in Phnom Penh with NGOs and project financiers throughout 2011-2013. During this time I was embedded at Oxfam International in Phnom Penh to

facilitate access to a range of NGO networks.[816] The fieldwork also included two months in Washington D.C. in the United States during the World Bank 2013 "Spring Meetings".[817] The Spring Meetings are an annual event held by the World Bank attended by international financers, ministers of finance and development, private sector representatives, and academics. A civil society stream is held alongside the Spring Meetings each year which provides an opportunity for civil society to engage with the multilateral banks over issues of concern. In the 2013 Spring Meetings, the issue of multilateral safeguards was a core agenda item. A substantial review of documentary materials was also conducted to analyse the texts produced by different resettlement stakeholders.[818]

Prior to the fieldwork, an analysis of the different actors and stakeholders involved in the railway was undertaken, which assisted to establish the scope of the interviews, explained in the following sections.[819] The primary locations for the interviews were Cambodia (Phnom Penh, Poipet, Battambang, Sihanoukville and Pursat), and other critical sites of decision-making, such as Australia (Canberra where the Australian Government is based) and the United States (Washington D.C., where the World Bank and other resettlement and safeguards specialists are situated). Representatives of the ADB were interviewed in Phnom Penh. Significant preliminary scoping work was carried out in a series of trips in June-July and December in 2011 and between June-August 2012. Formal fieldwork was conducted over six months in 2013. Community-based interviews were carried out with the assistance of Cambodian interpreters. Overall, 144 community members were interviewed for the research, and 22 interviews were conducted with additional stakeholders. The interview participants are included in Appendices B and C of the thesis. The limitations of the research are discussed throughout this chapter as relevant to different aspects of the thesis, rather than brought together in one section. They are also referred to again in the Conclusion at Section 9.4.

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[816] By "embedded" I mean that I was given an office space at the Phnom Penh office, and discussed the advocacy issues surrounding the railway regularly with staff. Oxfam was not directly involved in the advocacy for the railway at the time I was there, but had facilitated the railway advocacy in the earlier stages of the campaign. I did not do paid work for Oxfam during this period. Also see discussion in Section 5.8.

[817] For details of the Spring Meetings, see: http://www.imf.org/external/spring/2013/.

[818] See Chapter 5 for the analysis of railway related documents. The literature review supporting the thesis is presented in Chapters 2,3 and 4.

[819] See Section 6.4 below.

6.2 The iconic case study

The research is founded on a case study methodology, which is best understood as a conceptual approach, rather than simply a method for undertaking research.[820] Case study approaches can be framed in many ways. They can be oriented around a community, project, process, idea or concept, so long as they explore how the various elements of a subject interact with one another "intensively and holistically".[821] Case studies also have different objectives, they can be theory testing, aim to elucidate rare or unusual circumstances, be representative or typical of certain processes, or aim to capture change over time through longitudinal research.[822]

Contemporary case study approaches were pioneered by the Chicago School of Sociology in the 1920s.[823] Early studies in the Chicago School tradition involved rich ethnographic accounts of human experience steeped in conceptual detail, however they were often perceived as being dense and inaccessible.[824] Case study methodologies have evolved over time to incorporate a range of perspectives. They have been adopted by human geographers to explore contextualised meanings ascribed to physical spaces in innovative ways. According to Hay, case study methodologies are appealing to human geographers interested in:

> the manifestation of various phenomena in "places" imbued with contextualised meaning rather than contextualised simply as "locations".[825]

Case studies are also compatible with legal geography and human ecology approaches, which as Andrews and McCarthy argue, tend to rely on "deeply empirical and field-based knowledge."[826] This knowledge is often of the type "that is typically only accessible through intensive, qualitative, often semi-ethnographic research – the type of information that does not appear in official documents." [827] This last statement captures the approach applied in this thesis. The nature of the research was semi-ethnographic, dependent on gaining a deep

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[820] Hay (2010, pp. 81-97); Also see: Lijphart (1971); Levy (2008).
[821] Hay (2010, p. 85).
[822] Smits (2013, p. 50); Yin (2009).
[823] Hay (2010, pp. 81-97).
[824] Hay (2010, pp. 83-84).
[825] Hay (2010, pp. 83-84). Also see Tuan (1977).
[826] E. Andrews & McCarthy (2014, p. 2).
[827] E. Andrews & McCarthy (2014, p. 2).

understanding of context through personal familiarity with stakeholders and seeking to understand "off-the-record" complexities underlying official documents that were released. It also required investigating community dynamics directly and not relying on reports or descriptions of community needs and circumstances produced by either the ADB or by NGOs working with these communities.

Important philosophical assumptions underpin case study methodologies. The primary guiding assumption, according to Hay, is that an:

> in-depth understanding about one manifestation of a phenomenon (a case) is valuable on its own without specific regard to how the phenomenon is manifest in cases that are not studied.[828]

As such, case studies are considered valuable in themselves, in terms of what they can reveal about a specific problem, as well as what they can reveal about the manifestation of a broader phenomenon in other contexts.[829] This research aims to investigate the case study of the railway resettlement process as a phenomenon in itself, but also in such a way that provides insights into the dynamics of resettlement advocacy that may be occurring in other contexts. This requires drawing out concepts concretely in ways that have multiple levels of relevance beyond the immediate problem being analysed. As revealed in Chapter 5, in the case of the Cambodian railway, themes emerge which relate not only to resettlement, but also to notions of risk, accountability, trans-national advocacy networks, legal pluralism, and the governance of large-sale infrastructure projects.

The notion of an "iconic case study" as explored by Smits,[830] is particularly useful in this setting. Smits argues that an iconic case study is one that is not only reflective of certain phenomena, as would be the case for "typical" case studies, but is also constitutive of phenomena beyond their immediate locality and beyond their "proportional contribution" to the sum of their parts.[831] The use of the iconic case study here bears resemblance to how the term is ordinarily understood: To be iconic is to be "very famous or popular, especially being considered to represent particular opinions or a particular time" [832] or emblematic, symbolic

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[828] Hay (2010, p. 82).
[829] Hay (2010, p. 86).
[830] Smits (2013, p. 55).
[831] Smits (2013, p. 55).
[832] Cambridge Dictionary (2015).

or representative in a way that is renowned or infamous. The Cambodian Railway is iconic for a number of reasons. Its highly publicised notoriety encapsulates the "local"-"global" conflicts that have come to shape Cambodia's contemporary relationship with foreign investors, aid and development partners. The Cambodian railway resettlement followed a series of other high-profile resettlement events in which international expectations about resettlement were not met.[833] Yet, notwithstanding these previous events, the railway project again fell subject to what could be called a "classic" set of challenges that have plagued development partners working in Cambodia for years and do not seem to be abating. Thus, through a case study approach, the study seeks to understand the cyclical way in which donors and international financial institutions again presumed that accountability challenges in the context of resettlement could be met through contractually obligating the Cambodian Government to comply, and then proceeding to monitor compliance in a relatively non-intensive way until NGOs alerted them to emerging problems.[834]

The research approach is also primarily qualitative in nature, in that it aims to understand the production and effect of social structures and processes in relation to certain places and events.[835] Drawing on an approach to qualitative research adopted by Gillespie, I focus on understanding the meaning people give to their world in different contexts and the wide-ranging accounts they provide of their situations.[836] Gillespie refers to the meaning of qualitative research as described by Labuschagne:

> The word qualitative implies an emphasis on processes and meanings
> that are rigorously examined… (they) typically produce a wealth of
> detailed data about a much smaller number of people and cases.
> Qualitative data provide depth and detail through direct quotation
> and careful description of situations, events, interactions and
> observed behaviours.[837]

Adopting a qualitative approach to the study provides a way of exploring how different stakeholders make sense of the railway project and its impacts, recognising that they bring different value systems and expectations to bear on the discussion. Consistent with this

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[833] See the discussion in Chapter 4, Section 4.7 about the Highway One Project and the Boeung Kak Lake conflict.
[834] See Asian Development Bank (2014f).
[835] Hay (2010, p. 5).
[836] Gillespie (2010, p. 172).
[837] Labuschagne (2003, p. 100) ; Gillespie (2010, p. 172)

approach is that the study is founded on what could be called a "constructivist epistemology".[838] "Epistemology" is understood here as "the nature of knowledge, its possibility, scope and general bias."[839] In this context, "constructivism" is based on an understanding of the world in which "[m]eaning is not discovered" as if it is a fundamental truth, it is "constructed" and therefore culturally and socially dependent.[840] In this way, "meanings" are made by human beings through interaction and they are contextually contingent. Thus, underpinning the study is the assumption that international, globally circulating concepts, such as "resettlement", "risk", "rights" and "accountability", will have specific, unpredictable and heterogeneous expressions in local contexts.

6.3 A multi-scaled ethnographic lens

One of the most powerful ways to capture and understand the different value systems and expectations influencing different groups is to do ethnographic research. At the outset, I want to make clear that I have not undertaken ethnographic research with the affected communities, but I have approached the research with NGOs, donors and financiers with an ethnographic lens. One understanding of ethnography is that it aims to capture the social meanings and ordinary activities of people in "naturally occurring settings" commonly referred to as "the field".[841] For Geertz, the resulting field study reflected the knowledge and the system of meanings in the lives of a cultural group.[842] Ethnography is understood today to be a reflexive process, where the ethnographer reflects on their relationship to "the other" or to those they are setting out to understand, as well as the many layers of meaning systems that the researcher brings to their interpretation of events and observations, which operate like filters.[843]

Traditionally, ethnographies are based on extended periods of fieldwork (years) in which a researcher lives with the community being studied.[844] In the context of this research, the "communities" being studied are not conceived in the conventional way, i.e. only as the Cambodian communities living in the resettlement sites and along the railway, they are also within the NGOs, the ADB, World Bank and the Australian and Cambodian Governments.

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[838] For a detailed discussion of this topic, see: Crotty (1998).
[839] Hamlyn (1995, p. 242); Also see: Crotty (1998, p. 8).
[840] Crotty (1998, p. 9).
[841] Brewer (2000, pp. 10-11).
[842] See generally, Geertz (1973, pp. 3-30).
[843] S. Scott, Miller & Lloyd (2006)
[844] Hay (2010, p. 12 and 375).

The study considers these groups to have their own language and meaning systems which bind them, culturally in various ways. An in-depth ethnography of each of the various cultures was not logistically possible. Instead, an "ethnographic stance"[845] was adopted which was sensitive to the values of ethnography and aimed to understand the social structures, behaviour and meaning systems of each of the groups or interview participants in their accustomed settings. Tania Li's description of the powerful potential of the ethnographic stance is helpful:

> An ethnographic stance enabled me to explore how subjectivities were produced in the complex conjunctures where multiple powers coincide, how critical practices emerged, and how they provoked new attempts to govern. By expanding the study of government to incorporate the rich insights of people at the receiving end of governmental schemes, I avoided attributing to these schemes a coherence they do not have…[846]

Writers, such as Bebbington et al., have explored similar approaches, extending traditional notions of "the field" within human geography.[847] Their study of social capital debates within the World Bank aims to turn the ethnographic or research stance "upwards" and "inwards" to understand, for example, the environment within the World Bank as new policy was developed, circulated and debated within the organisation. This approach is also consistent with Foucault's approach to discourse analysis, whereby every document, conversation, policy response is a "text" in which discursive meanings can be found.[848]

Both the field work in Washington D.C. in April-June 2013 (in which I participated in the Spring Meetings civil society stream) and being based at Oxfam International in Phnom Penh for a total of seven months, made it possible to develop an understanding of the values and priorities of the different stakeholder groups involved in resettlement conflicts. During the thesis, I also undertook a consultancy for the Bank Information Center, a Washington D.C. based civil society group, which aims to influence the actions of multilateral institutions. The consultancy centred on the new World Bank lending modality known as

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[845] Li (2007, p. 282)
[846] Li (2007, pp. 282-283)
[847] Bebbington, Guggenheim, Olson & Woolcock (2004).
[848] See generally: Foucault (1972).

"Program-for-Results" or "P4R". It required me to travel to Vietnam in April 2014 and required an extensive analysis of safeguards documents and approaches that were broadly relevant to my thesis research.[849] Living in Cambodia for an extended period of time also provided many opportunities to debate the safeguards and resettlement issues surrounding the railway project with many different people who lived and worked in the country. This aspect of the field work is explained further below. The challenges these experiences posed relating to positionality have already been acknowledged in beginning of this chapter at Section 6.1 and are further elaborated at Section 6.10 below.

6.4 Entering the "field": Practicalities and challenges

Community resettlement involves inherent dynamics explored earlier in the literature review, which had clear implications for the fieldwork method. An awareness of scale was fundamental – of the local community level, as well as national, regional, international and institutional levels. It also required thinking about project and sub-project levels – and how the project related to other program objectives of the ADB and other stakeholders. The field work aimed to explore the research questions at these different scales, to draw out the perspectives of communities, the NGOs, the Cambodian Government and the project-financiers. Wherever possible, the research also aimed to gather the perspectives of related actors who were able to provide insights on safeguards and resettlement.

Broad groups of actors – or stakeholders – who were involved or implicated in the railway project were identified as relevant to the research. The term stakeholder is used here to refer to any group or person who may be impacted by the project, who has a "stake" in its outcomes, who has influence or power over its trajectory, and who has knowledge of or who can shed light on its inherent tensions and processes. In using the term stakeholder I recognise that not all "stakes" are equal and that the affected communities had far more to lose or gain from the resettlement process than other actors. [850]

The different actors who were relevant to the research, were identified through a set of core questions: [851]

- Who is intended to benefit from the railway project?

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[849] See: Jessie Connell & Grimsditch (2014, p. 49).
[850] This approach was inspired by Phirun, Khiev & Whitehead (2011, pp. 10-18).
[851] See the stakeholder approach described in Phirun, Khiev & Whitehead (2011, pp. 10-18).

- Who controls or can make decisions which influence the outcomes of the project?
- Who may be potentially impacted by the project, directly or indirectly?
- Who has rights and responsibilities stemming from or relating to the project?
- Who may have knowledge, experience or expertise who can shed light on the project dynamics and their broader significance and implications?

This section should also be read in conjunction with the previous chapter where an extensive discussion about how different actors related to one another in the railway project, especially regarding the affected communities at Section 5.7 and the NGO sector in 5.8. A stakeholder map was also presented at Figure 7, in Section 5.4.5. However, it is important to note that the stakeholder map and discussion in Chapter 5 focused considerably on the broader commercial actors and contractors involved in the railway. These actors were always considered relevant to the broader context, but they were never the core focus. As the thesis aim relates to understanding resettlement tensions, priority was given to those who were impacted most directly (the affected communities); those who were most directly able to influence the resettlement outcomes (NGOs, financiers, the Cambodian Government), and those who were able to shine a comparative light on the resettlement dynamics (resettlement practitioners within ADB and the World Bank, including those who were not necessarily directly involved in the railway project, but had broad understandings of multilateral safeguards).

On this basis, five broad categories of stakeholders or research participants were identified for the in-depth, contextualised interviews:

1. Community members affected by the railway project in the five resettlement sites (and after fieldwork began, this extended to community members who remained living in the previous locations along the railway, see the discussion in Section 6.5);

2. Representatives of international financial institutions (ADB and World Bank), including safeguards specialists, ADB Accountability Mechanism staff, Work Bank Inspection Panel staff, social

development specialists;

3. Representatives of the Australian Government, from AusAID and DFAT, and contractors working on the railway;

4. Representatives of the Cambodian Government (such as the Inter-ministerial Committee on Resettlement, Provincial, District, Commune and village level officials, where this was practically possible;[852] and

5. Local and international NGOs, focusing on those involved in the railway project.

First the practicalities of the community-based fieldwork are explained, before turning to the research with other participants.

6.5 Deciding who to interview

The first challenge encountered in the fieldwork was that there was a very large number of people at the "community" level whose views were considered relevant to understanding the project. Thus, a key methodological and conceptual issue for this study was how the relevant population for the community-based research should be defined. There were a number of distinct population groups which were expected to provide different perspectives on resettlement processes. ADB estimates of the affected households have varied over the course of the project. According to recent documentation, a total of 4,174 households fell within the ambit of "affected households" under the ADB Resettlement Plans.[853] Approximately 1,200 households were totally affected and have been required to relocate. At the time of field work, 150 relocated households had made a complaint to the Office of the Special Project Facilitator (OSPF) and then later to the Compliance Review Panel (CRP) within the ADB. Thirty households had made a complaint to the AHRC in Australia.[854] It is

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[852] See the discussion in Section 6.11, where it is acknowledged that a limitation of the research was that I was not able to engage in-depth with representatives of the Cambodian Government, especially at the provincial level.

[853] Estimates of the number of households affected have varied over the course of the project. ADB's website materials and formal reporting of the numbers of affected households also differ. The ADB in Cambodia calculates average households size as 4.7 people. See: Asian Development Bank (2014f).

[854] Inclusive Development International & Equitable Cambodia (2012); Asian Development Bank (2014e); Asian Development Bank (2014f).

important to note that the ADB planning documents consider affected persons by "household" rather than as individuals, which had implications both for the individuals themselves and also for the research.

As stated earlier, the affected households who were required to relocate were those with residences, structures and/or other assets situated within the corridor of impact of the railway line or on land required for the construction of stations, depots or other project-related infrastructure.[855] The corridor of impact extended 3.5 metres on either side of the centreline of the tracks. A corridor of impact approach was used by the ADB to reduce the number of household relocations, allowing people to continue living as close as 3.5 metres from the railroad depending on their situation. Community relocations began in mid-2010. As of July 2012, the corridor of impact had almost been completely cleared of residents.

The initial proposal was to interview roughly 10 percent of resettled households at the railway resettlement sites (approximately 120 households). This was partially a way of sampling the community, and to ensure that the research was broadly representative. Following initial contact with the communities, this approach was refined as it became clear that the relevant "population" was not only those people who had been relocated. It needed to include people who were impacted by the development who were not considered in (or were excluded from) relocation, i.e. the people who lived outside the 3.5 metre area who were not given the option of resettlement, but who were expected to be experiencing changes as a result of the railway project. Many of these people were still considered to be "project affected persons", as they were still living in the larger railway right of way area (a minimum area of 20 metres on each side of the railway centreline). As the ADB project documentation revealed in Chapter 5, some of these people had been provided with small amounts of compensation where their structures partially extended into the corridor of impact.

The initial contact with people who remained living along the railway in the right of way suggested that they had significant views about how the resettlement and compensation processes unfolded. Thus a number of distinct groups were identified as being directly relevant to the community-based research, depicted below in Table 9. Following these

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[855] See Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007); Asian Development Bank (2006); Inclusive Development International & Equitable Cambodia (2012) at para 16.

adjustments, the field research set out to interview as many of these people from the different groups as possible in the research period, as explained below.

Table 9: Different types of affected households

Type of population group	No. of Households
Total project-affected households assessed by ADB	4,174
Resettled households	1,200
Household complainants to the OSPF (ADB)	150
Household complainants to the CRP (ADB)	Unknown
Household complainants to the AHRC (Australia)	30
Other affected households not considered in ADB plans	Unknown

While people were affected all along the railway, the areas where people were "wholly affected" and required to relocate, tended to be in clusters. These clusters were in five provinces: Poipet, Battambang, Pursat, Phnom Penh and Sihanoukville. At least two study sites were identified in each province, so that interviews could be conducted both with people living in the resettlement sites and people who continued to live along the railway in each location. Figure 2 (from Chapter 1) is presented below, depicting a map of the five locations and indicating the resettlement sites.

Figure 2 (from Chapter 1): Map of railway project identifying resettlement sites
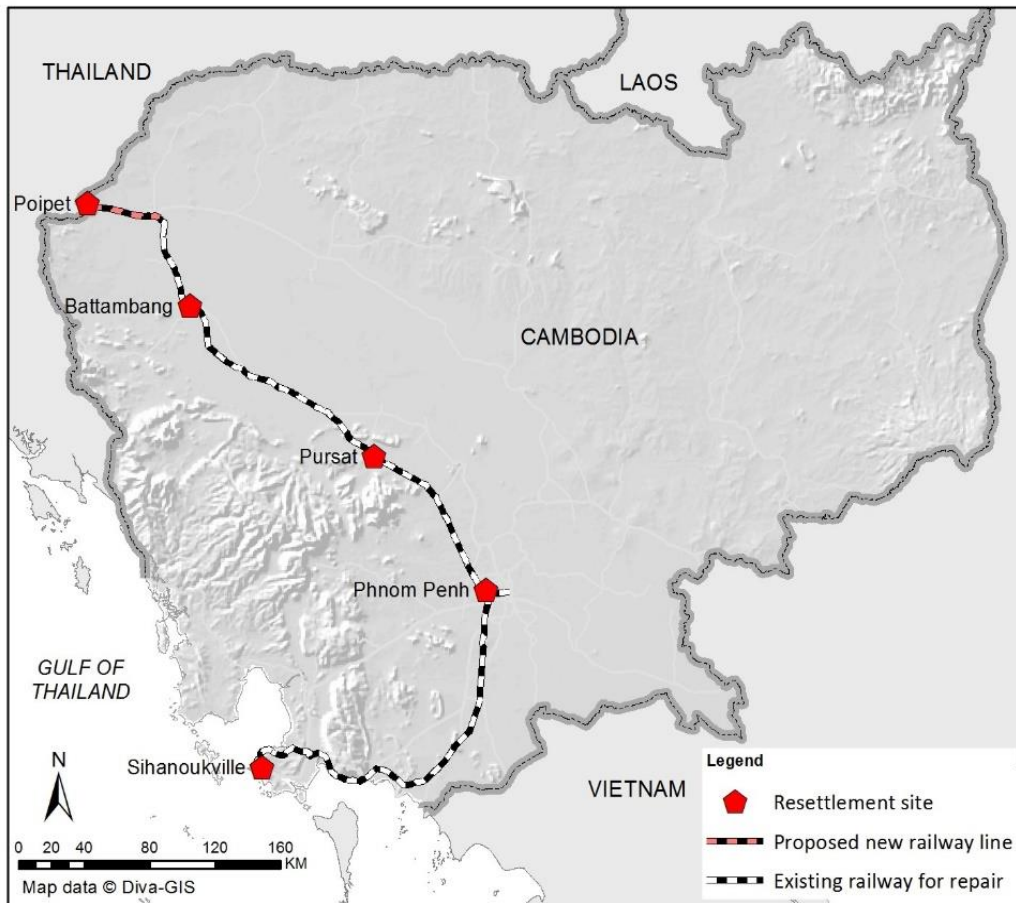
The Table below (also included in Chapter 5) shows the distribution and location of project-affected households. The "bamboo transport operators" identified in the table lived in all locations. They were considered to be affected by the project because their livelihoods were expected to be diminished as the new train service would prevent them from operating their established businesses along the railway lines.[856] While the bamboo operators would no doubt have offered an interesting perspective on the railway project, a decision was made early on to focus on households who were to be physically displaced or those who lived immediately near them in the previous locations, so as to concentrate on the relocation dynamics of the resettlement process.

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[856] Asian Development Bank (2006, p. 14).

Table 10: Distribution and location of affected households[857]

Location of households	No. of affected households	No. of relocating households
Poipet	1094	588
Northern Line and Missing Link (Battambang and Pursat)	1165	51
Southern Line (Sihanoukville)	206	30
Phnom Penh	1289	169
Bamboo rail transport operators*	189	52
Addendum to the Updated RP for Phnom Penh (Additional affected households)		248
Samrong Estate (Phnom Penh)	231	62
Total	4174	1200
* Bamboo rail transport operators in all sections.		

6.6 Finding the communities

A major initial barrier to the community-based research was the lack of transparency surrounding the details of the project and the remoteness of some of the resettlement site locations. Access to the communities was only possible due to the significant scoping time invested in preparing for the fieldwork and networking in the Phnom Penh community. While the ADB published the map above on its website (at Figure 5), further details about the locations of the resettlement sites were extremely difficult to attain. When ADB staff were asked directly about how to access the communities, they were not able to point to any detailed maps or able to provide specific locations. Eventually, one of the ADB interview participants offered to put me in contact with a local driver who had accompanied their visits. Without this contact, it would only have been possible to interview the communities

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[857] These numbers have changed multiple times in the ADB documentation. The numbers included in the table were available on the ADB website for the railway project until recently. Other, slightly different numbers are included in various other ADB documents, for example: Asian Development Bank (2014f). The numbers of people expected to be affected changed as the project evolved and adjusted its scope.

who had been relocated to the peri-urban area immediately outside Phnom Penh, as the NGOs were familiar with and willing to share the details of this location with me.

Using the same driver as an ADB employee raised the issue of how I might be perceived in the community upon arrival. Aware that it might be possible that community members would perceive me to be associated with the ADB, I spent considerable time reiterating to the community leaders and other members of the community that I was an independent researcher doing my PhD research and was not in any way associated with the financiers of the project or the NGOs who had previously visited them. These introductions and discussion were carried out with the assistance of interpreters, explained further below.

Some of the locations were considerably remote, particularly the Pursat resettlement site, which was approximately 45 km off the main highway (National Highway 5), mostly via a dirt road towards Kaun Barok Village, in Krakor District. It was considered particularly important to reach these groups, as these were the people with the least contact with NGOs who are mostly based in the capital, Phnom Penh.

6.6 Community interviews

Over the course of 2013, in-depth interviews were conducted with 144 community members across the five provinces: Poipet, Phnom Penh, Battambang, Sihanoukville and Pursat. Each person was allocated a participant number, as set out in Appendix B. These community members interviewed represented approximately 105 households in total. Almost half of the interviews were conducted with participants who remained living along the railway in each of these locations. As depicted below, 68 of the participants lived along the railway, compared to 73 who lived in the resettlement sites. These participants were from 43 railway households and 59 resettlement households.

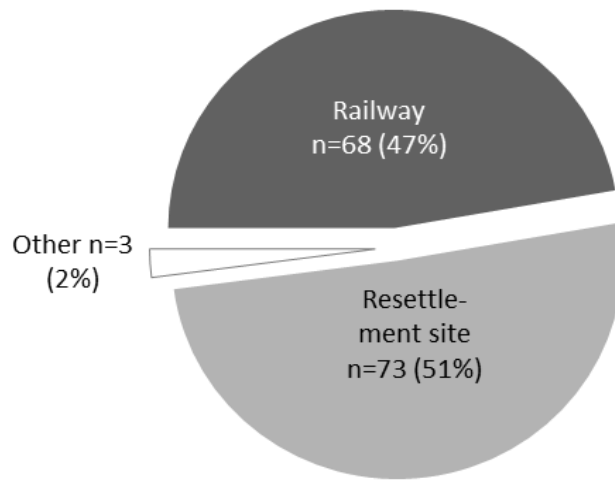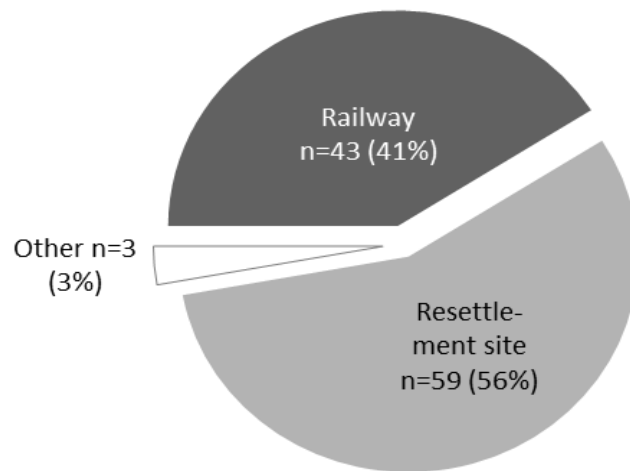Figure 8: Total participants by settlement type (n=144)[858]

Figure 9: Total households by settlement type (n=105)

Semi-structured interviews were held in the communities, usually in people's homes. The interviews were conducted with the assistance of Cambodian interpreters, who translated

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[858] "Other" refers to 3 people who were either living in the resettlement sites or along the railway, but had moved to the community at a later date or did not fall within the definition of project-affected person for one reason or another, e.g. one was a construction worker living in the resettlement site in Poipet, one was a self-appointed community leader and another was the Village Chief of the host community.

questions and responses during the interviews (see Section 6.1 above and Section 6.8 below). As mentioned earlier, the Cambodian interpreters were living in Phnom Penh. One was a male university student and the other was a female recent university graduate. Interviews were around 45 minutes to 1 hour in length, often longer where more than one person was present. In Pursat particularly, especially along the railway, informal group interviews were held instead of individual interviews. These group interviews came about as people joined the individual interviews. While these were not focus groups in the planned sense that may be conducted by a social research firm, they did function as a type of informal focus group. In Appendix B, those participants who were interviewed in groups are identified.[859] Repeat visits were made to some of the communities (Poipet, Phnom Penh and Sihanoukville) over a six-month period, which was an important way of establishing trust and familiarity. Some community members were interviewed more than once, especially if a significant period of time had lapsed since the last visit. These interviews helped to understand how the experience of resettlement was changing over time, discussed further at Section 6.9.

The number of interviews in each area was roughly proportionate to the number of people affected in each area. As presented below in Figure 10, 41 community members were interviewed in Poipet, where the project affected the most people; 36 people in Pursat; 25 people in Sihanoukville; 14 people in Battambang and 25 people in Phnom Penh. The interviews were accompanied by detailed visual assessments of the sites, people's houses and living conditions, identification of nearby schools and discussions with community leaders in each area.

[859] Appendix B only identifies group interview where more than 3-4 people were present. Interviews where up to 3 people were present were conducted in a one-on-one style where individuals were able to explain their circumstances and responses in turn.

Figure 10: Participants and households interviewed by location
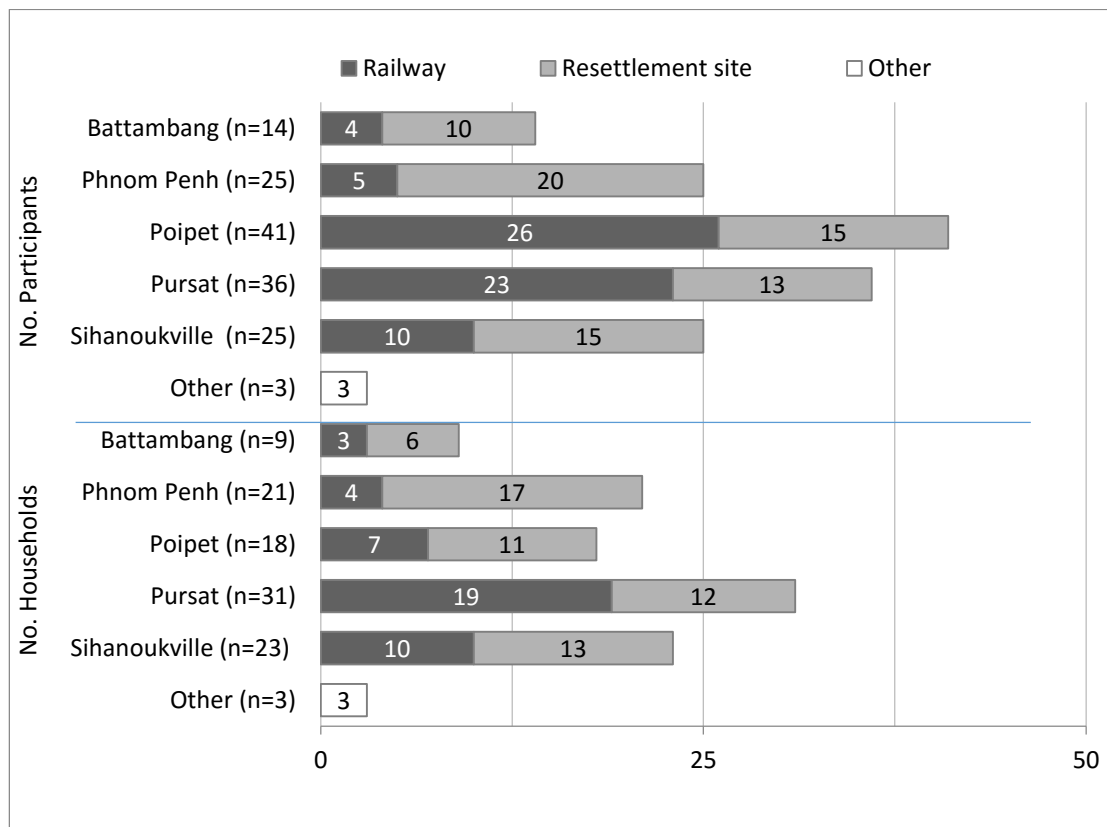
During the interviews, community members were asked to tell the story of their experience with the railway project. They were asked about project's impacts, both positive and negative, what they valued and what their aspirations were for themselves and their families. Throughout the interviews, people were also asked about their surroundings, sources of livelihood, whether their children were going to school and who they went to when they needed support. For those who had made formal complaints to the ADB, they were asked what they understood about the process, whether they thought the mediation process was "fair", what it was like working with the NGOs involved and what could be improved. Others who had not made complaints were asked whether they knew that they could make a complaint and the factors they considered in deciding not to complain. People were also asked whether relationships across the community had changed as a result of the project or the complaints process. Approximately one-third of those people interviewed had been involved in making a making a formal complaint to the ADB, as depicted below in Figure 11.

Figure 11: Participants who made an ADB complaint (n=144)
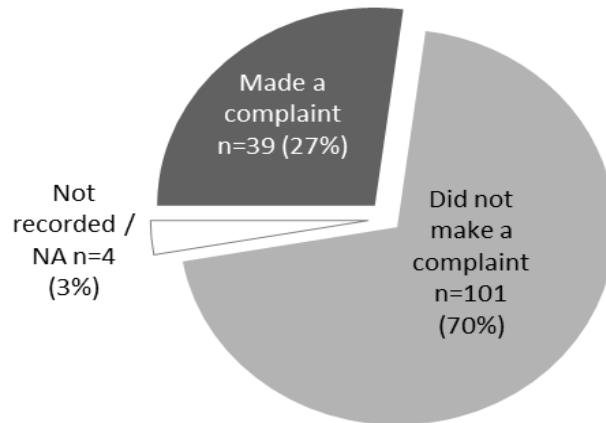
As indicated in Figure 12 below, the research participants were overwhelmingly female. Seventy-eight of the participants were female, compared to 42 who were male. Twenty-four were not recorded, as they were involved in the informal focus groups and did not participate in an extended individual interview where their particular characteristics could be recorded. As mentioned, a number of the interviews along the railway turned into informal focus groups, as people from the community joined the discussion. There were often logistical issues during the community interviews that prevented all the information about each member being recorded systematically e.g. people's children would begin crying and they would leave the interview or group. Or one family member would be replaced by another when they returned home.

Figure 12: Sex of Participants (n=144)
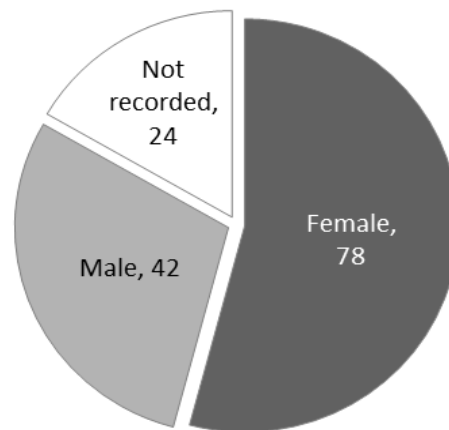
This gender balance was not intentional, however visiting people in their homes during the day meant that there was a greater likelihood of being able to incorporate women's voices in the research. Women were often working at home and looking after children during the interviews. Being a female researcher also made it easier to bond with the women who were present in the community. There were a number of times when the men left the room when I arrived, leaving the women to answer my questions. If I had held a workshop in a location outside the communities, i.e. not in peoples' homes, it is possible that the gender balance of the research participants would have been different. Children were not interviewed directly during the research, however, they were discussed in the interviews with older participants and observed where they were present in the interviews with parents.

A basic questionnaire was developed to guide the discussions with communities, included as Appendix F. The questionnaire was designed so that the discussion could be relatively unstructured, but also so that certain basic questions were covered in relation to the circumstances of the communities. The questionnaire was reviewed by certain stakeholders involved in the railway, namely a representative of the Australian Aid Program and a contact within one of the NGOs. Yet while this review process was informative, it also meant that the questionnaire became very long and unwieldy by the time it was finalised.

Ultimately, the questionnaire was a helpful guide and a useful reminder of the core subjects of concern, but it was not helpful or productive to try and conduct every interview strictly

using its format.[860] There are a number of reasons for this. First, capturing seemingly straight-forward "data" (for example, in relation to incomes) using the questionnaire was not straight-forward or simple at all. People reported incomes very differently – some of the variables included reporting incomes in Cambodian riel, in US dollars, calculating per day, per week or per month, per household (which included up to 25 people in one household) or per person. Very often people did not know precisely how much they earned or they did not have sources of livelihoods that they were able to predict with any certainty. People were also in a state of transition, especially amongst the relocated communities. Many people's lives were in a state of turmoil – some in gradual recovery and others in crisis. This degree of variability was similar for a lot of the questions included in the questionnaire as "background", including debt levels, and travel and housing construction costs.

Indeed, the ADB and the NGOs were also experiencing difficulties in these respects. At one point, disagreements between the NGOs and the ADB about how much people were earning in the Phnom Penh resettlement site became a huge public controversy, resulting in two different reports recording significant income differences. The ADB report claimed the households were earning up to three times as much as what was being reported by the NGOs.[861] For these reasons, the questionnaire was used a guide during the interviews, but for the most part, each interview participant was encouraged to tell their story in a relatively unstructured way which focused on the issues that were important to them on their own terms.

The approach taken during the interviews was very much consistent with how Scott et al. describe doing field research with communities in Vietnam, in which they "highlight the need for a negotiated, adaptive, and flexible approach, and one that is sensitive to the changing research context."[862]

6.7 Ethical considerations and initial contact with communities

The University of Sydney Ethics Committee required that Participant Information Sheets, Discussion Guides and Consent Forms be prepared and translated into Khmer prior to commencement of the research. These are included as Appendices G, H, I and J. This

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[860] See Turner (2013, p.1) for a useful discussion about the messiness and compromises of fieldwork.
[861] See: Sahmakum Teang Tnaut (2013a, p. 30); The 2013 ADB update on incomes in the Phnom Penh resettlement site is no longer available on the website.
[862] S. Scott, Miller & Lloyd (2006, p. 38).

documentation was given to the Village Chief or Community Leader upon arrival in each community and was received very well. It was clear that written documentation was appreciated in the community and considered valuable to people. This appeared to be the case even where the research participants were not able to read the documents themselves. During the interviews, community members showed me numerous documents they had kept from ADB and other sources over the course of their lives that had been meticulously maintained over many years. One community leader read my research proposal out loud, word-for-word to a group of interested residents.

Participation in the interviews was voluntary and this was reiterated numerous times to community members. Community members were extremely willing and interested in participating in the research. With their consent, most interviews were recorded. Consent was attained verbally, rather than in written form. Written consent (or consent by thumb printing as is custom in Cambodia) has a number of negative historical associations for Cambodian communities. Thumb printing for people who are illiterate has especially been used in the past to fraudulently dispossess people of land in Cambodia. This issue was submitted to the Ethics Committee in advance of the fieldwork and it was agreed that verbal recorded consent would suffice. Interview participants were not paid for the interviews, however I brought food as gifts to the communities – usually a bag of green apples – which was given to each household on arrival.

As a female non-Cambodian researcher, there were many limitations in terms of understanding the subtleties of the conversations, but it also had advantages. People sometimes stated that they felt safer talking to a foreigner about human rights, corruption and other similar issues. Being a woman also seemed to make it easier for me to join the discussions among women at home during the day time, although it may have also accounted for why, overall, men were more difficult to engage during the research and tended to defer to their wives to complete the interviews.

6.8 Interpreter-researcher relationships

As mentioned, two Cambodian interpreters assisted me during the fieldwork. The interpreters were briefed about the research project over a series of days before accompanying me on the field trips, and de-briefed afterwards to reflect on the research. As Scott et al. argue in their article about doing field research as early career researchers in

Vietnam, the researcher-interpreter relationship is an central influence on the data gathered.[863] Scott et al.'s starting point is helpful in itself, which is that "[n]otions of research being objective and value-free have been radically changed by feminist theorists…"[864]. These theorists have explored how relationships between researchers, interpreters and informants shape "how knowledge is interpreted and represented". [865] For this research, the interpreters not only provided translations of the interviews, they provided invaluable insights and reflections on the interviews during debriefs. They also helped to develop strategies for approaching certain groups and provided on-going advice about cultural appropriateness, nuance and safety.

At the same time, the interpreter-researcher relationship was sometimes challenging, as the interpreters would often re-shape the questions I posed according to what they thought was useful. It was often possible to decipher that this was occurring using the small amount of Khmer that I had developed. In many instances this re-shaping of my questions was a necessary process of trying to communicate my questions in ways which made sense to the interview participants. In other situations, it also came from me not explaining enough information in advance about why a certain question was relevant. We would often spend time after the interviews discussing these issues, the importance of different questions and pieces of information so that slowly we could come to a shared understanding of why and how certain topics should be approached during the interview. Notwithstanding some of these challenges, the presence of the interpreter as a travel companion, someone to develop ideas with and analyse the meaning of certain interviews, was a very rich aspect of the field work.

6.9 Evolving views and perspectives: the observer effect?

An important feature of research with communities affected by the project was the evolving nature of their views, perceptions and aspirations, especially in relation to the relocation process. Very early in the field research it became clear that community views were changing over the course of the project and that they would continue to evolve long after the initial resettlement process occurred. Most of the field research was conducted throughout the first half of 2013, which for most of the families, was around 18 months after relocation

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[863] S. Scott, Miller & Lloyd (2006, p. 36).
[864] Scott et al. refer to a number of feminist theorists in their article, see: S. Scott, Miller & Lloyd (2006, p. 36).
[865] S. Scott, Miller & Lloyd (2006, p. 36).

had taken place. Perceptions of loss, or of what will be lost, as well as aspirations for the future fluctuated as conditions changed and as new information became available about opportunities or risks in the resettlement sites as compared to the communities of origin. The aspirations and fears of those left behind also changed as remaining residents watched their neighbours adapt to resettlement conditions or be adversely affected by them.

The potential for me as an "outsider" and researcher to influence the community views on resettlement (through the interview process) was apparent. There were also opportunities for me to shape the behaviour of the advocates and ADB (by feeding back information to them). This operated as a type of "observer effect", in which the nature of the subject being studied was and could be changed once it became subjected to analysis.

There was also a type of "advocacy effect" occurring over the course of the study, in which community views on resettlement changed as the advocates achieved certain results or changes in policy through their public campaigns. This is discussed in detail in Chapter 8, Section 8.4. For example, the amount of compensation people received for relocation increased a number of times, which meant that the appeal of resettlement started to increase in the communities left behind. These were all ethical issues that needed to be confronted during the research. I dealt with this issue mostly through trying to be aware of these temporal dimensions. This means that the research was only able to capture the views of people at a certain time and place, and these views can be expected to change over time. I was cognisant that the community views were not fixed and that they were responding to the advocacy taking place and then in turn to the changes in policy being made. This is an issue that resettlement advocates and researchers need to be aware of in their work, and is explored further in the findings chapters that follow.

6.10 Positionality

Positionality was discussed at the beginning of this chapter, however it warrants further attention. The original motivation for this research came from hearing reflections from people within the NGO sector about doing advocacy work. This came about through working in Cambodia in 2010-2011 on a separate project, during which time I became familiar with the organisational landscape of the NGOs, including some of the key personalities involved in land rights advocacy. At this time, the focus of advocacy efforts

was primarily on the Boeung Kak Lake conflict.[866] Being familiar and known to the NGOs on a personal level created many opportunities for interesting discussions, as well as personal challenges in terms of how the findings of the current research should be framed. This was a difficult experience. Like the advocates, I was motivated by a concern for the people impacted by the railway project. In a tense advocacy environment there is pressure not to put information into the public domain which contradicts or weakens the efforts of advocates working towards a certain cause. Ultimately, this had to be overcome, with an acknowledgement that social research is messy and community information does not always fit within neat boundaries. Every effort has been made to present the findings of the research without these advocacy pressures in mind, but these challenges need to be acknowledged.

During the field research period, I was fortunate enough to be based at the Oxfam International office in Phnom Penh. Oxfam was not directly involved in advocacy relating to resettled communities, but it was working closely with the advocates who were most vocal about the railway project. Being based with Oxfam facilitated access to a range of NGO and organisational networks to conduct interviews and was extremely helpful by providing a desk and computer space during the field work period. It also provided a supportive environment in which I could freely discuss the emerging research.

6.11 In-depth contextualised interviews at other scales

An additional 22 interviews were carried out with representatives of NGOs, the Australian and Cambodian Governments, the ADB and the World Bank, as set out in Table 11 below. Due to the sensitivities of the railway project and that many of the people interviewed expressed a desire for their identities to be concealed, a decision was made to de-identify all interviewees. These interviewees were allocated a participant number, included in Appendix C. The stakeholders are presented below in groups, so that it is not easily possible to deduce their identities. Throughout the research discussion, individuals are only identified when they explicitly expressed a desire to be identified. Where individuals are not identified, wherever possible there has been an attempt to contextualise these interview participants' perspectives without revealing their identities.

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[866] See Chapter 4, Section 4.7.

Table 11: Interviews with other research participants

Stakeholder group, indicating organisations	No. of participants interviewed	Approached and declined
Cambodian Government and Australian Government	3	3
ADB (staff and consultants)	3	3
World Bank	5	1
Local and international NGOs, including former and current employees of Equitable Cambodia, Inclusive Development International, Oxfam, STT, Habitat for Humanity, Earth Rights International, Bank Information Center, NGO Forum on Cambodia.	11	0
Toll Holdings		2
Total	**22**	**9**

The most difficult stakeholders to access were the Australian Government, Toll Holdings and the Cambodian Government. The Australian Government required a detailed contract to be signed in which they would be able to review and edit the research findings prior to them being released into the public domain. After many months of negotiations in 2013, I decided not to enter into the contract. Instead, the interviews I have conducted with Australian Government former and current employees were in a personal capacity. A similar situation existed for the ADB and representatives of the Cambodian Government, for whom the railway project was a highly sensitive issue. In terms of the Cambodian Government, I was unable to engage with representatives of the Government significantly beyond the central level. This is a limitation of the research that needs to be acknowledged. My reluctance to actively approach government representatives at the provincial, district and commune level was primarily driven by a concern that the research would be stalled or prevented in some way if I drew attention to myself. These concerns were confirmed through discussions I was having with NGOs and ADB staff during this time. It is worth noting, however, that two of the community participants interviewed were also Village Chiefs,[867]

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[867] These government officials have been included in Figure 10 with the community participants and not included in Figure 11.

although they have not been explicitly identified in the interviews throughout the empirical chapters. This is primarily because their identity would be revealed if information about these individuals was provided and because the perspectives they shared were critical of the project and its impacts. A further limitation is that while I interviewed some ADB staff members from headquarters who were present in Phnom Penh, I was not able to visit the ADB headquarters in Manila in person, primarily because the financial resources for the project had been exhausted and because I had already gathered considerable material.

A series of interviews were also undertaken in Washington D.C. with World Bank representatives, in order to capture the broader history of involuntary resettlement in Cambodia at other pivotal sites of decision-making. These interviews took place during the World Bank's Safeguards Review in April 2013. Most of the interviews with World Bank representatives were with current or former members of the Inspection Panel who had direct experience in investigating the Boeung Kak Lake case in Cambodia, described in Chapter 4. These additional interviews provided perspective on the functioning of community-driven accountability mechanisms (such as the World Bank Inspection Panel and the ADB Accountability Mechanism). They also provided insights into how resettlement advocacy was being received and understood by project financiers and implementers inside and outside Cambodia.

6.12 Chapter review

The thesis is founded on qualitative, field-based research at multiple scales and sites to gain a situated understanding of the perspectives and priorities of different groups of people, as shaped by their environments. Investigating concepts of resettlement, risk and accountability at different scales enables an understanding of how concepts and norms developed in an international or global forum or setting, are translated into local conditions. This chapter has also outlined some of the conceptual and logistical challenges encountered, including difficulty getting access to certain stakeholder groups due to the sensitive nature of the research. It has also emphasised the challenges associated with capturing evolving community views over the course of the research. The next two chapters explore the perspectives of people interviewed for the research, first at a community and sub-project level in Chapter 7, before turning to governments, financiers and NGOs at other scales in Chapter 8.

Chapter 7

A tale of five cities:
Community perspectives of the railway
project

> Everyone has problems like living away from the market. There are some elderly people who cannot do anything. Before in the family almost everyone earned, but when we came here only one person could earn.[868]

> If we move we will die.[869]

> Why not me? I want to have my own land. I want a safe place for my children to play. If school is a bit far then I can get a moto-taxi.[870]

> We should all receive the same compensation together.[871]

7.1 Overview

This chapter explores community perspectives of the railway project in Cambodia. It focuses on capturing people's experiences of resettlement, their aspirations and coping strategies, as well as the factors that shaped their decisions about how to navigate resettlement. The chapter draws primarily on qualitative research to understand the responses of people in both

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[868] Interview with older couple in Battambang resettlement site, 6 March 2015. (Participants 91A and 92A). These comments were made by the woman in the couple. Quotation paraphrased.
[869] Older woman interviewed at Battambang railway, 6 March 2013 (Participant 99A), aged 72 years.
[870] Woman interviewed at Sihanoukville railway, 25 February 2013 (Participant 39A), aged around 25 years.
[871] Woman interviewed at Poipet railway, 5 March 2013 (Participant 130A), aged around 45 years.

the resettlement sites and the communities who remained living along the railway in each of the five locations: Phnom Penh, Pursat, Sihanoukville, Battambang and Poipet.

In-depth interviews and informal focus groups with 144 people reveal the differences that emerged between the Phnom Penh resettlement site and the more remote resettlement sites, particularly Poipet and Pursat in the north. Resettlement impacts were highly uneven at a sub-project level, shaped to a large extent by the micro-geography of each resettlement site.

The timing of the field research was a crucial aspect of contextualising the stories and experiences of resettlement described by community members. As additional compensation was provided and services and infrastructure improved in the sites, so did the appeal of resettlement for many community members who were left behind. This research was conducted after the first round of complaints was made to the ADB in 2012 and after intensified investment was focused on the resettlement sites, but before the third round of compensation from the additional USD 3-4 million scheme began in January 2015. The point in time in which the field visits took place appeared to influence how people formed their perceptions of relocation, their views on what was possible in the future, and the types of barriers they needed to overcome.

In exploring community experiences of the project, the chapter addresses two questions for the research:

- How did the actions and responses of the parties involved in resettlement processes for the railway (financiers, governments and NGOs) align with project-affected people's aspirations and concerns?

- Has the experience of involuntary resettlement faced by displaced communities been mitigated by NGO advocacy, and in what ways?

The chapter first introduces the different communities affected by the project. It describes their locations, distance from markets and urban centres and provides maps of each resettlement site in proximity to the railway line. The maps have been made using the best available information. The chapter then describes the experience of relocation and conditions in the resettlement sites, as observed during the field visits and as described by

the community members themselves. It examines the significance of using the ADB complaints mechanism, through drawing on interviews with the small number of people who were able to make a complaint. The chapter then moves to exploring the experiences of people who were not relocated. In doing so it compares the perspectives of those who moved and those who continued to live along the railway in the five locations. The chapter concludes by drawing out a number of conceptual and overarching themes emerging from the field research, which are developed further in Chapter 8 using a thematic analysis of the interviews with other stakeholders, including the Cambodian and Australian Government, ADB and the NGOs.

Throughout this chapter, it is important to bear in mind that there are many inconsistencies in the formal documentation available from the ADB and the Ministry of Public Works and Transport (MPWT) about the households affected and the reality of what was encountered in the communities (e.g. different estimates of people affected, different locations cited as to where people were living previously, different resettlement site locations, as they changed a number of times). As much as possible, information was verified during visits to the communities, however there have been many changes and developments in the project over time and not all inconsistencies can be explained or resolved. When changes were made to the project, a rationale for the change was often documented by the ADB (as evidenced in Chapter 5), but many changes or anomalies were also not explained. To an extent, this reflects the complexity of trying to manage a complex process such as resettlement. But as the ADB Compliance Review Panel (CRP) also found in 2013, there were many omissions and mistakes made, especially in the early resettlement plans and documents.[872] One omission was that the project lacked detailed mapping of the affected communities' previous locations and the new resettlement sites. Although a Detailed Measurement Survey (DMS) was carried out to assess losses and to record the socio-economic status of affected households, detailed GIS mapping was not conducted or was not included in the resettlement plans available publicly. While it is possible to locate the resettlement sites, it has been especially difficult to piece together precisely where people lived previously. The information used in this chapter to identify previous locations and distances to the resettlement sites, has come from triangulating the fragmented information available in the

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[872] See generally: Asian Development Bank (2014f).

Resettlement Plans, with community descriptions of where people lived previously, as well as informal discussions with either consultants or employees of ADB working on the project.

7.2 The communities

People were deemed to be affected by the project all along the railway line. This was described in Chapter 5 at Section 5.7. However, those who were wholly affected and required to relocate were largely in clusters near town centres in five locations: Phnom Penh, Pursat, Sihanoukville, Battambang and Poipet. Resettlement sites were established in each of the five places. The map depicting the five resettlement sites is reproduced below for ease of reference.

Figure 2 (from Chapter 1): Map of railway project identifying resettlement sites
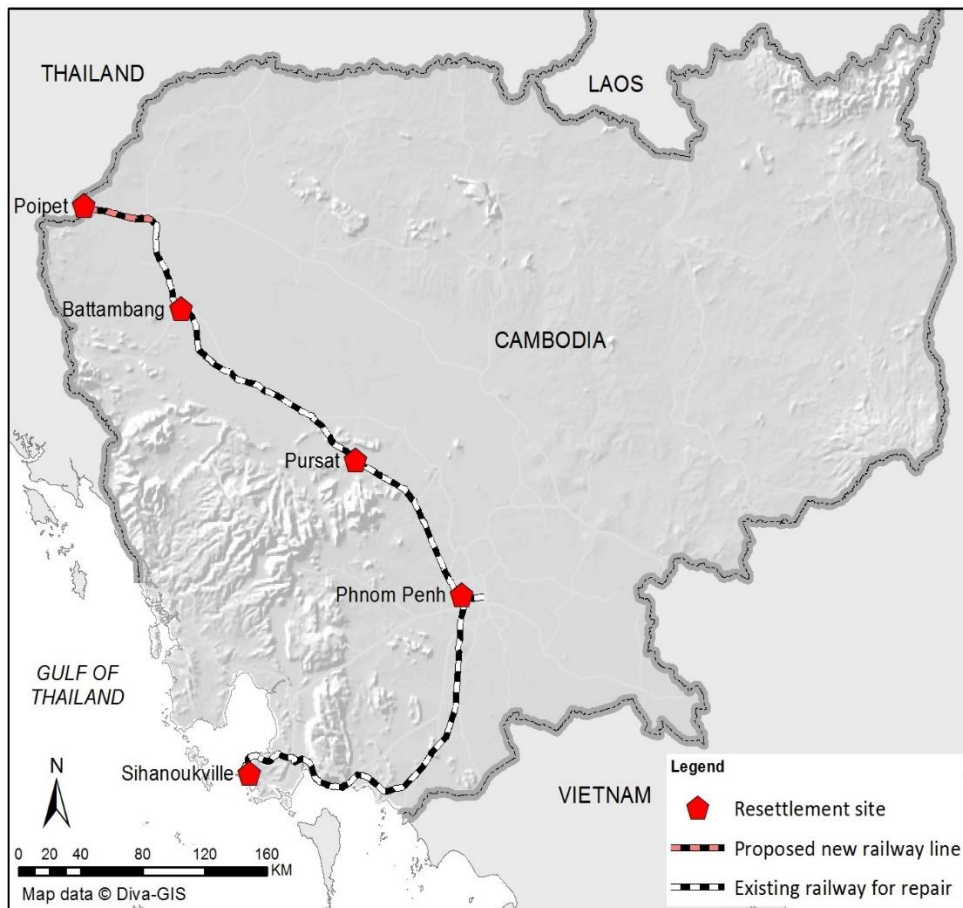
Only those people who lived within the corridor of impact, which was a 3.5 metre area on either side of the railway centreline were required to move and given the option of relocation. Those who were partially living in the corridor of impact were generally required to move

back and re-organise their homes in the railway right of way, where there was sufficient space to do so. They were not given the option to move to the resettlement sites. See Chapter 5, Section 5.7 for details of the arrangements. People who were required to relocate to the resettlement sites were promised that after five years they would receive full land ownership and land titles for the plots of land that they had been allocated. In the intervening period they were given a type of temporary or interim documentation relating to the land.

Critical to understanding the resettlement impacts of the project is an appreciation of the micro-geography of the resettlement sites, especially the different distances that people were relocated from their former residences. In this context, "micro-geography" refers to the social, cultural and environmental features of the sites, the resources available in or near the sites, proximity to markets and in some cases international borders (as is the case in Poipet), availability of affordable transport, relationships with other community members and pre-existing host communities, potential economic opportunities and other variables. Some communities were relocated much further away from their previous locations than others (see the Figure below). The Phnom Penh resettlement site is in a peri-urban location approximately 20 kms from the city by road, and far from where the affected households lived previously. The Battambang site is approximately 5-7 kms away, the Sihanoukville site is 10 kms away and the Poipet site is 4-5 kms away. The Pursat site is only around 400 metres from most former residences, which is close enough for the families who remained along the railway in Pursat to see the new houses of families who had moved. Thus, only two of the resettlement sites eventually selected (Poipet and Pursat) squarely met the criteria in the original Resettlement Plan prepared in 2006, which required that all resettlement sites be "in close proximity (3 km to 5 km) to their current locations so that incomes will not be affected".[873] The Figure below shows the approximate distances people moved from their previous locations once the resettlement plans were finalised.

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[873] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, pp. i-v).

Figure 3 (from Chapter 1): Approximate distances people moved from their previous residences
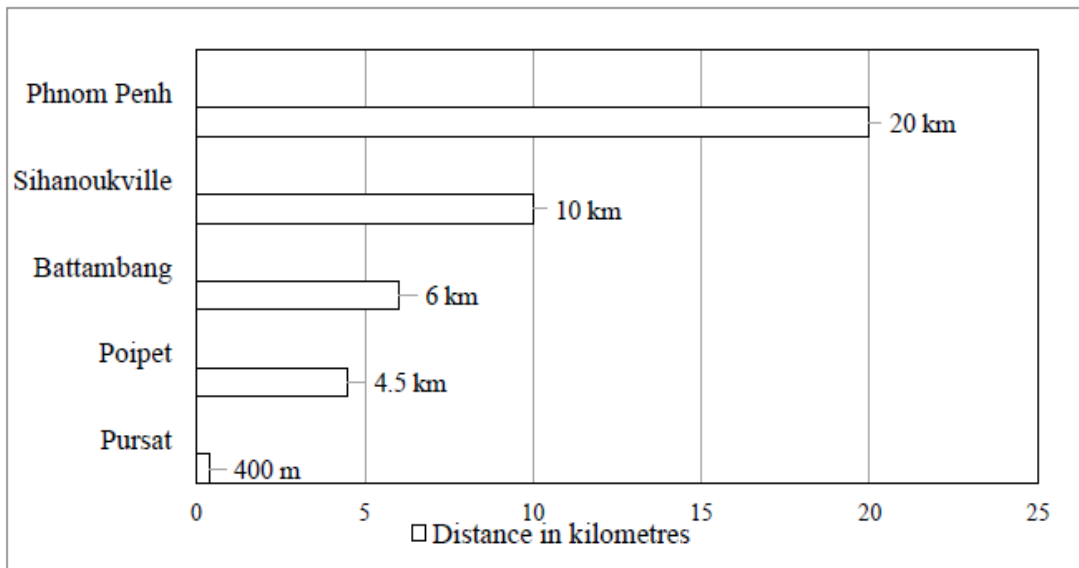
Figure 13, below is a comparative diagram, depicting maps of each community indicating the different distances people were relocated from their previous locations, to convey the variation of the sites. Further explanation and maps of each site are also provided later in the chapter.

Figure 13: Comparative map of resettlement sites and previous locations
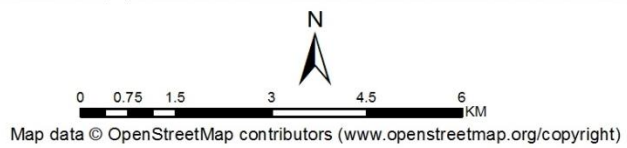
To an extent, these distances were a function of the size of the relevant city or town and the availability of nearby land, since the initial residences were generally close to the centres of each town, discussed further below. Many of the households affected by the project in each location were already very poor prior to relocation. The original 2006 Resettlement Plan estimated that half of all affected households belonged to poor and vulnerable groups and that poor female-headed households accounted for 22.3 percent of all affected households. In the 2006 Resettlement Plan, 50 percent of the people who were required to relocate were considered to be "landless", 23 percent were "female-headed".[874] The poverty line used by the Cambodian Government's Ministry of Planning was also used in the resettlement planning and was set very low. People were considered to be living below the poverty line in if they earned an average of USD 0.45 per day (around USD 15 per person per month).[875]

In the 2006 Resettlement Plan, between 5-14 percent of the households assessed were considered to be living below the poverty line (earning less than USD 15 per month, per person). However many more affected households were very poor, with around 69 percent of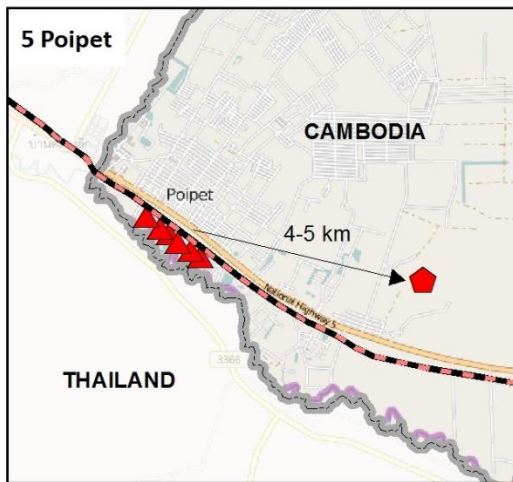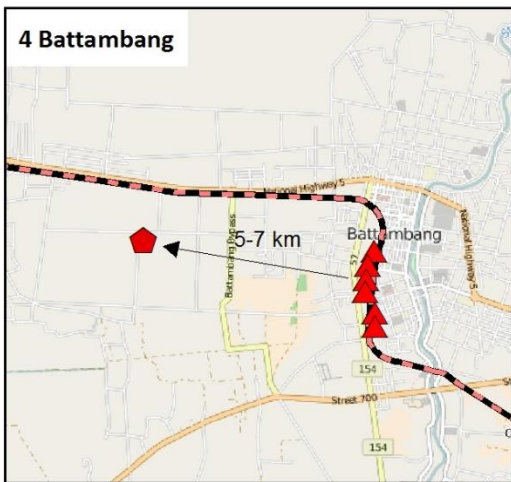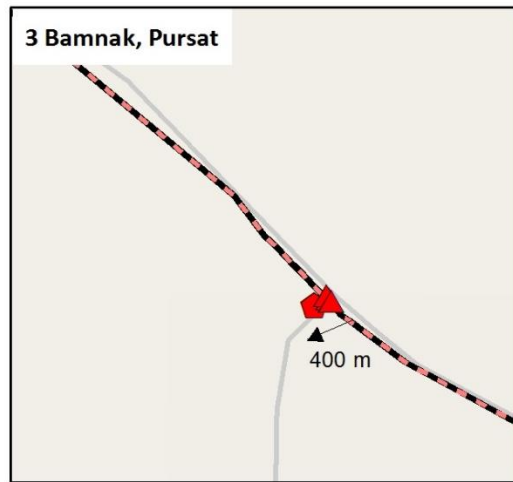 households earning less than USD 200 a month.[876] An average household is considered to be 4.7 people by the ADB in Cambodia.[877] In the interviews for this research, people explained how they had lived along the railway for many years, some up to 20-30 years, especially those that had settled there immediately after the Khmer Rouge period ended. Most had moved into the railway right of way after the railway fell into disrepair. Generally, people explained that they had chosen to settle along the railway in town centres because they had nowhere else to go and also because it was available, centrally-located land where

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[874] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 23). The Resettlement Plan was prepared in 2006 and released early in 2007.
[875] The poverty line varies by region in Cambodia: In 2005 it was USD 0.59 per person per day in Phnom Penh, USD 0.49 per person per day in other urban centres, and USD 0.45 per person per day in rural areas. See: Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 22); The poverty line was revised by the Ministry of Planning in 2013 to USD 1.53 per day in Phnom Penh, USD 1.05 in other urban areas and USD 0.84 in rural areas: Asian Development Bank (2014b, p. 5). Confusingly, ADB documents sometimes describe the poverty line as USD 15 per person per month and at other times refer to USD 30 per person, per month, compare p. 22 and p. 12 of: Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007).
[876] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 22). Note that ADB documents refer both to individual and household income and it is not always clear how calculations have been made.
[877] This household size has been calculated using demographic data, see: Asian Development Bank (2014b, p. 1). The average urban household (4.8 members) is slightly larger than the average rural household (4.6 members). Note that in the Updated Resettlement Plan for Samrong in 2009, the average household size used was 5.56, but no rationale for the change was provided, see: Ministry of Public Works and Transport (2009, p. ix).

they could not be evicted by other residents. Houses built along the railway were typically made from wood, corrugated iron, thatch and in some places they were made from concrete, although this was unusual. The basic features of each of the five locations are set out below with an accompanying map indicating how far communities moved from their previous locations.

7.2.1   Phnom Penh

Phnom Penh is the capital of Cambodia with a population of more than 1.69 million.[878] The city has grown particularly quickly over the past decade resulting in new tensions and uncertainties involved in urban residence.[879] Intense conflicts over high-value land have been frequent, exacerbated by increasing real estate prices and rising inflation.[880] The spatial dynamics of these conflicts have already been analysed in Chapters 3 and 4, drawing particularly on Dwyer's discussion of the formalisation fix and Biddulph's geographies of evasion thesis.[881] Phnom Penh has also become a popular tourist destination internationally, increasing competition over well-positioned land in the inner city.[882] The ADB railway project initially planned to rehabilitate the railway line in central Phnom Penh, but as plans progressed an additional railway freight facility and cargo facility were also proposed nearby in the communes of Kakab and Samrong. As explained in Chapter 5, these plans were eventually abandoned in 2014, but this was after some people were cleared from these areas.

The precise number of people considered to be affected by the railway project in Phnom Penh has changed many times, due to adjustments in the project's scope, and different assessments of the impacts being carried out over time by different consultants. This process has been very confusing for the communities involved and for those who might be potentially affected. It has also been confusing for researchers and organisations working with the communities, and by all accounts also for ADB staff and the Inter-Ministerial Resettlement Committee (IRC) working on resettlement.

In the 2010 Updated Resettlement Plan for Phnom Penh, there were a number of different community groups that were considered affected. The first group was 1,289 households who

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[878] Asian Development Bank (2014b, p. 1).
[879] Simone (2008); Sidaway, Paasche, Woon & Keo (2014); Cf. Jessie Connell & Connell (2014).
[880] There is limited high quality analysis of these issues, however it is explored indirectly in Grimsditch, Kol & Sherchan (2012); Sahmakum Teang Tnaut (2012).
[881] Dwyer (2015); Biddulph (2010; 2014). See Sections 3.5, 4.3 and 4.7.
[882] See generally: Knight-Frank (2015).

lived along the dilapidated railway (approximately 6,058 people based on an average household size of 4.7 people per household). There were 127 affected households that were considered to belong to "vulnerable groups", in that they were very poor, female-headed or elderly or had other circumstances meaning that they might "suffer disproportionately" from the project's impacts.[883] The Resettlement Plan anticipated that a total of 774 households would either lose their houses entirely or partially. 169 households were entirely affected and required to move. 161 were considered landless and were eligible for relocation to the resettlement site, while eight others opted to self-relocate in the residual area of the right of way in an adjoining village. Residents who owned land elsewhere were not eligible for relocation to the resettlement site.[884] The other 605 affected households were considered able to re-organize their partially affected houses and stalls behind the corridor of impact in the residual right of way. Another 502 households were affected by the total or partial loss of secondary structures and/or trees, while 13 "renters" who were renting from families with affected structures, were required to "find a new place to stay". [885]

Following revisions to the original railway project proposal, more people were identified for relocation due to the additional freight and cargo facility proposed, referred to as the "Samrong facility" or "Samrong railway estate". This involved repossessing land previously owned by the Royal Railway of Cambodia in the 1950s, although it resulted in a complex legal battle in relation to ownership of the land.[886] Although the plans to build the freight and cargo facility were eventually abandoned, the Updated Resettlement Plan for Phnom Penh identified an additional 248 families that were fully affected by the development and required resettlement. Of these, 105 families chose to move to the resettlement site, whilst others were apparently discouraged by the distance from the resettlement site to the city where their sources of livelihoods were located and went elsewhere.[887]

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[883] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. i).
[884] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 1).
[885] It is not clear what the circumstances of these additional "renters" were and there is very little information available in the Updated Resettlement Plan for Phnom Penh, however there is some suggestion in the plan that they would be assisted to find accommodation, see: Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, pp. i, 6 and 9).
[886] Asian Development Bank (2014f, p. 11).
[887] Asian Development Bank (2014f, p. 6). Only 79 of the 105 households who were due to move in the second wave had actually relocated to the site as at October 2013.

Resettlement in Phnom Penh happened in stages. The fieldwork for the current research took place in early 2012 after most of the first wave of residents had moved (people who lived along the railway), but before the next phase of residents from Samrong had been relocated. The resettled households interviewed for this research were people who had relocated from the railway line in Russey Keo District (Kilomet 6 and Tuol Sangkae Communes) and in Prampir Meakkara District (Mittakpheap Commune). The research also involved interviews with people who still remained living along the railway in Russey Keo District (Kilomet 6 and Tuol Sangkae Communes) and in Prampir Meakkara District (Mittakpheap Commune). These communes are relatively close to the centre of town near the "Riverside", which is a popular, tourist area of the city (see the map in Figure 14 below).[888]

Initially, when the project was first proposed, communities were to be relocated no more than 3-5km from their previous residences.[889] The Updated Resettlement Plan for Phnom Penh, prepared by Nippon Koei and Jarts consultants and approved by the ADB, explains that this was not possible because the cost of land in Phnom Penh was too high. The Updated Plan also explains that it is standard practice of the Phnom Penh municipality to relocate communities at least 15 km from the city. It states:

> …[I]t was found than [sic] no large land (2.5 ha) was available around the affected area and that price of land in Phnom Penh urban area was too high (150 USD/m2) around the affected areas and not affordable. Therefore, the [Resettlement Site] has to be located in the outskirts of the City. We should note that most of the relocation site built by Phnom Penh municipality is located at least 15 km from the center of the City.[890]

A resettlement site was then chosen which was located 15-20 km from the communities' previous residences, in Samrong Krom commune, in Dangkor District, next to the community of Trapeang Anhchanh.[891] The Phnom Penh resettlement site that was eventually selected is in an isolated, sparsely populated peri-urban setting with few livelihood

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[888] Also see the administrative map of Phnom Penh, available at:
http://www.stat.go.jp/info/meetings/cambodia/pdf/12com_mp.pdf.
[889] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, pp. i-v.).
[890] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 14).
[891] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 15).

opportunities available locally. The Resettlement Plan describes the location as near to an area "which *will be* an axis of industrial development in the future" [emphasis added].[892]

Travel from the previous residences at the railway to the resettlement site takes approximately 1-1.25 hours in a tuk, depending on traffic.[893] Closer to the resettlement site, as the land becomes more agricultural and the roads are no longer paved, the terrain is difficult for tuk tuks or motor bikes, which is how most residents travel to and from the site. The terrain in the last couple of kilometres is more appropriate for four-wheel drive vehicles. These access conditions were similar in a number of the resettlement sites at the time of fieldwork.

The Phnom Penh resettlement site is located next to Trapeang Anhchanh community, which is comprised of households who were resettled there many years earlier, after being evicted from Sambok Chap in the centre of Phnom Penh. This was viewed as a positive factor in terms of integration. The Resettlement Plan explains:

> We should note that the nearby village, Trapeang Anhchanh…is occupied by 500 families evicted from Sambok Chap in Phnom Penh Center. The population of this village is similar to the 161 [households] to be relocated by the railway project. Therefore, the integration with this community should not be a problem.[894]

The land at Samrong Kron, where the resettlement site is located, was previously agricultural land and was purchased by the Government from land owners who were described in the Resettlement Plan as "land speculators" who "live in Phnom Penh City".[895] The approximate locations of these communities are depicted at Figure 14.

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[892] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 15).
[893] As measured by the author.
[894] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 15)
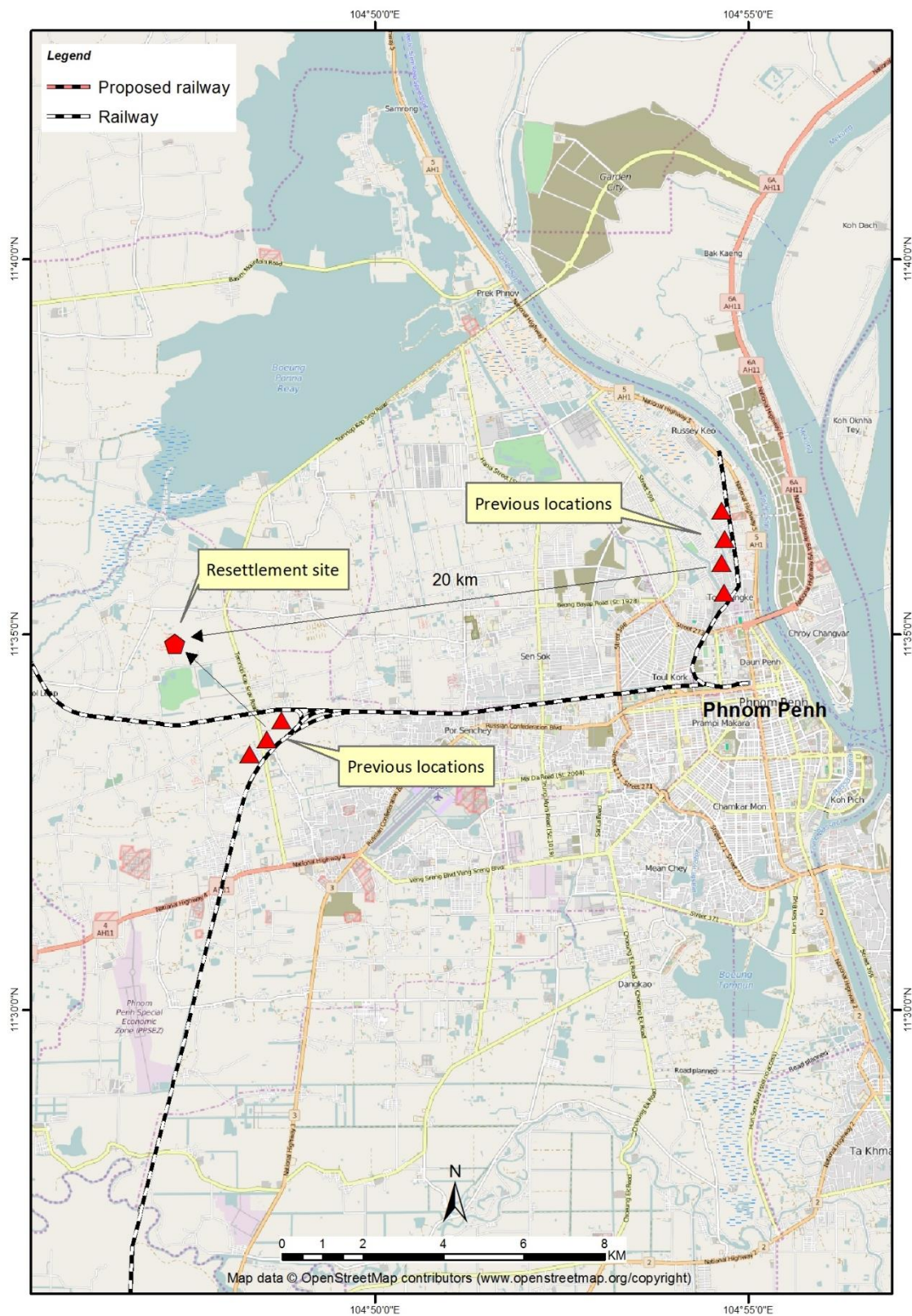[895] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 15).

Figure 14: Map indicating previous locations and resettlement site in Phnom Penh[896]

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[896] Note that most people relocated from the areas approximately 20km away.

7.2.2   Sihanoukville

Sihanoukville or "Kompong Som" is a coastal town located south-west of Phnom Penh with a population of approximately 100,000 people.[897] Sihanoukville city is the capital of Sihanoukville province and has become a popular beachside tourist destination in recent years. A total of 206 households or 892 persons were expected to be affected by the Southern Line, which stretched from Phnom Penh to Sihanoukville Port. Of these, 46 households were considered to belong to vulnerable groups.[898] Initially, 52 households were "fully affected" and were going to be relocated to the Sihanoukville resettlement site. This later was reduced to 42 in an addendum to the Resettlement Plan due to re-assessments and slight changes in project plans over time.[899] Eventually this became 33 households, of which only 6-7 households had relocated in 2012, with another five households planning to move in 2013. According to the ADB documentation, another 13 of the 33 families who were designated for relocation had sold their plot of land in the resettlement site (using the documentation that could eventually be used to gain full land title) and moved back and rented near their original locations closer to the sources of their livelihoods.[900] This was generally confirmed during the interviews with people in Sihanoukville resettlement site.

Most of the households affected by the railway project in Sihanoukville previously lived near the coast in Sangkat I, Khan Mittapheap. One household lived in Sangkat Samrong Khan Prey Nop.[901] Sangkat I, Khan Mittapheap is adjacent to the harbour. People in this area live along the harbour separated from the coast by a busy road. Many people in these communities derived their livelihoods from fishing or from the fishing sector more generally.[902] The railway in this area had already been repaired in 2012 when the fieldwork took place, and trains were running through the remaining community.

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[897] Census population data is available by province and urban centre, which provides an approximate population for the main cities in each province in 2008, see: National Institute of Statistics (2008, p. 8); Growth rates in each province were estimated in 2013, see: National Institute of Statistics (2013, p. 18)

[898] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co Ltd in association with JARTS (2009, p. v).

[899] Inter-Ministerial Resettlement Committee Cambodia & Asian Development Bank (2007, p. 31).

[900] Asian Development Bank (2014f, p. 6).

[901] Inter-Ministerial Resettlement Committee Cambodia & Asian Development Bank (2007, p. 12). Also see the Administrative map of Sihanoukville, available at: http://www.stat.go.jp/info/meetings/cambodia/pdf/18com_mp.pdf. Administrative maps are not available for all of the resettlement site areas.

[902] Asian Development Bank (2014f, p. 5).

Originally, a resettlement site was selected 2 km away from the coast where people were living,[903] however this was later changed to a site in Phum Mouy, Sangkat Mouy, Krong Preah Sihanouk, Preah Sihanouk province. One of the Environmental Monitoring Reports described the location as 6 km from Sihanoukville town and 1.5 km from the National Highway No. 4,[904] however the site is approximately 10 km by road from where most households were living previously as they lived to the north of the town near the port, depicted at Figure 15.

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[903] Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co Ltd in association with JARTS (2009, p. 9).
[904] Redecam Group & Inter-Ministerial Resettlement Committee Cambodia (2013, p. 8).

Figure 15: Map indicating previous locations and resettlement site in Sihanoukville

7.2.3 Battambang

Battambang city is the capital of Battambang Province and is situated to the north-west of Phnom Penh. Battambang city has a population of around 250,000.[905] Households that relocated to the Battambang resettlement site came from Battambang city near the railway station in the centre of town. These households were included in the Resettlement Plan for the "Northern Line and Missing Link". A total of 1,165 households were considered affected by the Northern Line and Missing Link, which is a stretch of 338 km from Tbaeng Khpos in Kampong Chhnang Province to Sisophon and the Missing Link which meets the town of Poipet near the Cambodian-Thai border.[906]

Of the 1,165 households affected by the Northern Line and Missing Link, 134 households were considered vulnerable households (earning less than USD 15 per month, landless, poor female-headed households, disabled or elderly with limited and/or no means of support.)[907] The DMS assessment identified households along 17 km of the railway line that would be impacted in clusters.[908] Most households were "partially affected" and did not require relocation.[909] However, around Battambang Railway Station in Battambang city, 51 households were "fully affected" and were required to relocate. This was later reduced to 48 households.[910]

The Resettlement Site selected is approximately 5-7 km from Battambang Railway Station where the households lived previously.[911] The Battambang Resettlement site is particularly significant as it is the location where two children died shortly after moving to the site in May 2010, reportedly whilst searching for clean water.[912] A map is included at Figure 16, indicating the area of Battambang Railway Station where the households lived previously

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[905] Various population estimates are available. Google city data estimates Battambang city to have a population of 250,000, see: https://www.google.com.bd/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=battambang+city+population. For the population of Battambang province see: National Institute of Statistics (2008); National Institute of Statistics (2013).

[906] Ministry of Public Works and Transport, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2008, p. 5). A separate Resettlement Plan was prepared for Poipet.

[907] Ministry of Public Works and Transport, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2008, p. iv).

[908] Ministry of Public Works and Transport, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2008, p. iv).

[909] Ministry of Public Works and Transport, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS (2008, p. 10).

[910] Asian Development Bank (2014f, p. 131).

[911] The Resettlement Plans describe the site as being 4 km away, however there was a general consensus in the interviews with ADB and NGOs that the distance, by road, is closer to 5-7km.

[912] Baker & McKenzie (2010).

(described as "previous location" on the map) and the approximate location of the Battambang resettlement site.

Figure 16: Map indicating previous locations and resettlement site in Battambang
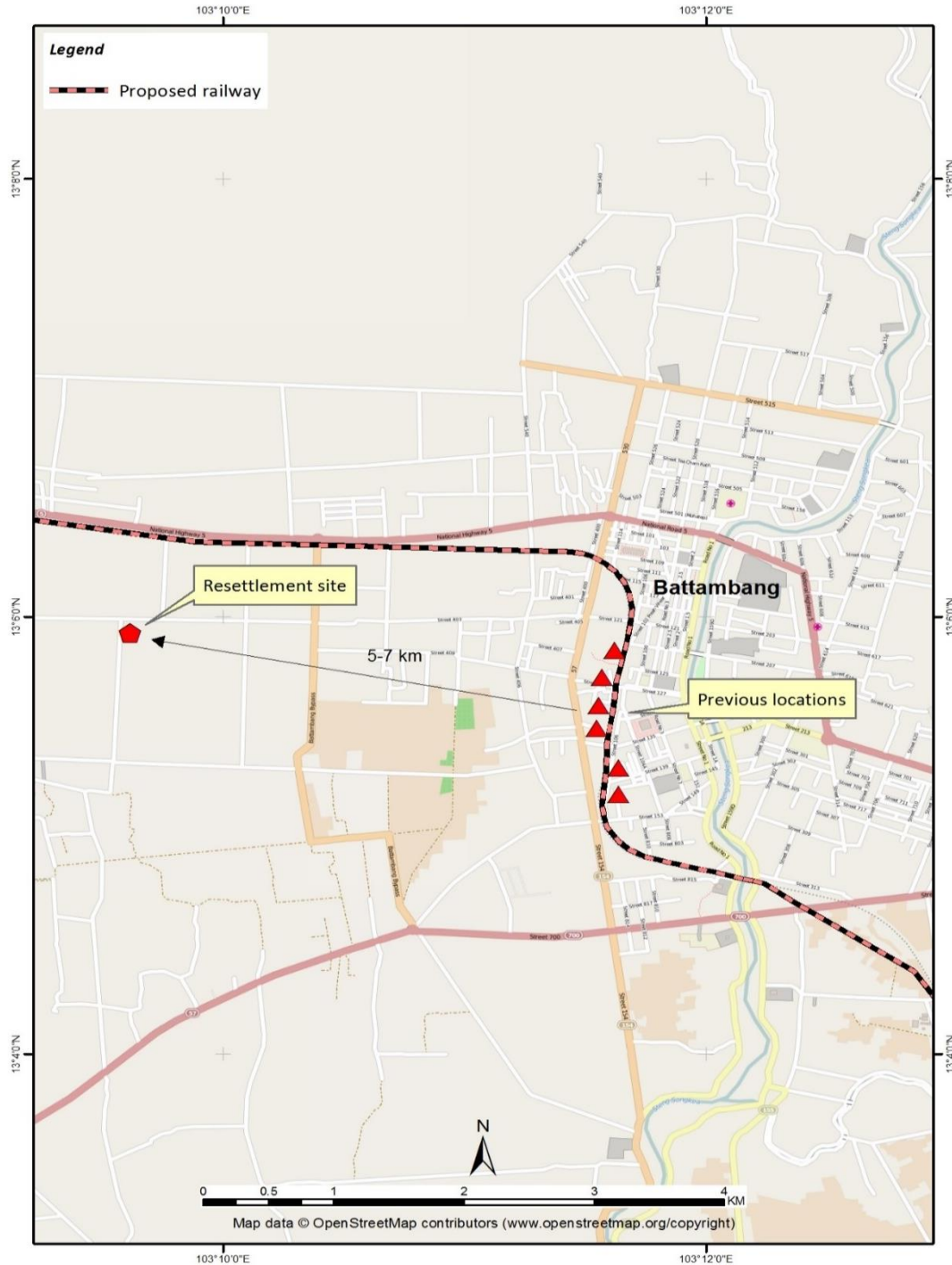
7.2.4   Pursat

Pursat City has a population of around 30,000 people and is the capital of Pursat Province.[913] A total of 227 households were affected in Pursat province, of which 30 households were "fully affected" and required to relocate. People affected in Pursat were included in the Resettlement Plan for the "Northern Line and Missing Link", discussed above.

Almost all of the 30 households that required relocation in Pursat lived near the railway in a cluster in Bamnak village in Krakor District, approximately 45 kms from Pursat city. The Bamnak site is the most remote and difficult to travel to of the five resettlement sites. However the Bamnak/Pursat resettlement site differs from the other sites in that most affected people moved only 400 metres from their original locations, as the resettlement site is located within Bamnak village. There were a few households that were meant to relocate from further away (approximately 10-15 km), however other community members explained during the interviews that these households sold their plots of land in the resettlement site and went elsewhere, some to Bangkok. As explained throughout the chapter, people "sold" their plots of land even though they had not yet lived in the resettlement site for five years and attained formal ownership. Sales were done usually through an informal system through the Village Chief. The proximity of the former residences to the Bamnak/Pursat resettlement site is depicted in Figure 17. The "proposed railway" refers to the existing dilapidated railway that was to be rehabilitated under the project. Of the 33 families selected for relocation, 26 had settled on the site as at October 2013.[914] The map is in a different format to the other maps because google maps data was not available at the required level of detail for the town of Bamnak.

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[913] This is an estimate based on a number of sources, see: National Institute of Statistics (2008); National Institute of Statistics (2013); Also see google city data at: https://www.google.com.bd/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=pursat%20city%20population.

[914] Asian Development Bank (2014f, p. 6).

Figure 17: Map indicating previous locations and resettlement site in Pursat

7.2.5 Poipet

Poipet city is located on the Cambodian-Thai border in the north of Cambodia in Banteay Meanchey Province. Poipet has grown rapidly from a population of 43,000 in 1998 to almost 90,000 in 2008, partly due to a large influx of people migrating to the city from other parts of Cambodia.[915] The Poipet-Aranyaprathet border-crossing is an important border for people travelling from Cambodia to Thailand and for trade in various types of goods. Poipet is also known for gambling in the "special economic zone" inside Cambodian territory. Gambling is illegal in Thailand, making the casinos situated in the economic zone a popular entertainment destination for wealthy Thais.[916] As one of Cambodia's largest towns on the border, migrant workers travel to Poipet from all over the country, using it as a launching pad to enter Thailand.[917]

The Poipet resettlement site is the largest of the resettlement sites. The entire railway line in Poipet went "missing" during the war in the 1980s.[918] A large number of people moved into the areas where the tracks previously existed, especially around Poipet railway station. A total of 1,094 households (4,578 people) were considered to be affected by the rehabilitation of Poipet station, including the 6 km of railway tracks that needed to be re-built. Of these, 211 affected households were considered vulnerable.[919] Of the 1,094 affected, 588 households (2,440 people) were totally affected and were required to relocate.[920] A reassessment included an additional group of families, bringing the number to 601 households who were required to move. As of October 2013, around 378 households had moved to the resettlement site.[921] ADB documentation suggests that 91 households informally sold their plots of land in the resettlement sites and went elsewhere.[922] The Poipet Resettlement site is located in Kilolek Boun village,[923] approximately 4-5 km from the area where most of the people previously lived.

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[915] Yagura (2013, p. 116). Also see generally: National Institute of Statistics (2008); National Institute of Statistics (2013).
[916] Yagura (2013, p. 121).
[917] Barron & Chhay (2014).
[918] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. iii).
[919] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 5).
[920] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 5).
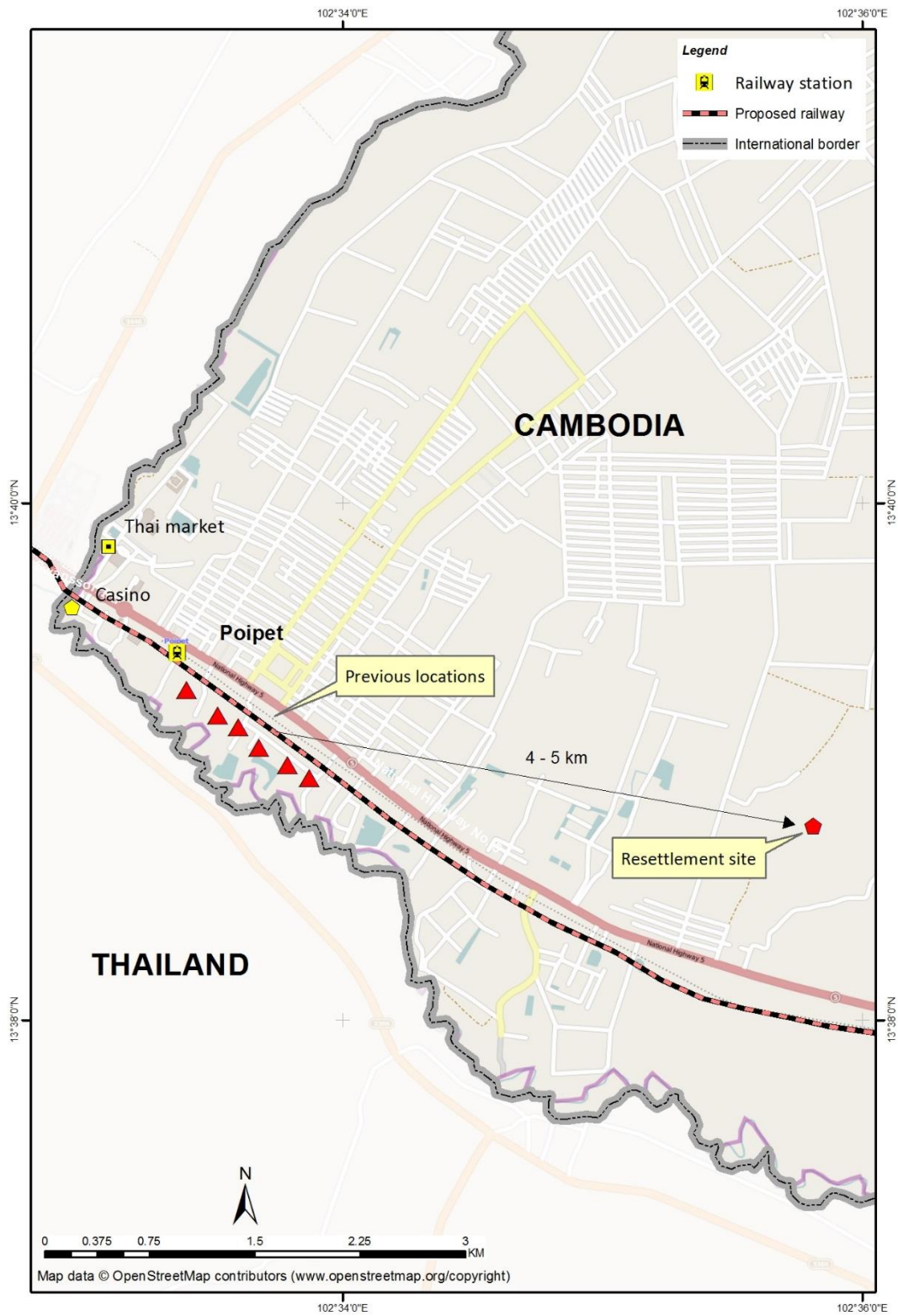[921] Asian Development Bank (2014f, p. 7).
[922] Asian Development Bank (2014f, p. 7).
[923] Ministry of Public Works and Transport Cambodia & Nippon Koei Co. Ltd. in association with JARTS (2010, p. 5).

Figure 18: Map indicating previous locations and resettlement site in Poipet

7.3 Experiences of resettlement

The initial relocation process was handled in 2010-2011 by the Inter-Ministerial Resettlement Committee (IRC). Minimal infrastructure was provided in the resettlement sites in the early stages. Toilets had been built in the resettlement sites and plots of land for people to re-build their houses had been allocated. Water and electricity services had not been connected prior to the first movement of people. In all locations people had received extremely small amounts of compensation. Most people interviewed received well under USD 1,000 in the initial compensation process, generally not enough to build adequate housing in the resettlement sites.[924] It was common for people to have spent most of their compensation money on transport during the moving and re-building process. Some people, including elderly people, had lived in these conditions for months. Reports of intimidation from government officials were common, and usually involved threats to demolish houses along the railway without compensation if people refused to move. Similarly, there were accounts of compensation entitlements being systematically reduced, i.e. some people were initially only compensated for one level of their house or people's ages were incorrectly recorded so as to avoid paying the additional allowance required for older people.[925] As one woman in the Phnom Penh resettlement site explained:

> I can grow mangos but I don't have enough to eat. I still have to buy food. I am disappointed about the way that compensation was decided…one whole floor of my house was not compensated for. I don't want to complain again. I cannot read or see clearly. They just tell me to thumbprint, so I thumbprint. They said I had signed for USD 300.[926]

The relocation phase was also badly timed so that people were without shelter during the rainy season. Many people, including older people and children, had slept under plastic tarpaulins during the rainy season while they re-built their homes. An older woman aged 66

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[924] The 2013 ADB Compliance Review Panel also confirmed this was the case during their investigation. They found that the average compensation amounts provided by the IRC in Phnom Penh were USD 947.50, Poipet USD 874.63, Battambang USD 862.23, Sihanoukville USD 558.46 and Pursat USD 512.03:Asian Development Bank (2014f, p. 56).
[925] These accounts were also confirmed in ADB's own investigation by the Compliance Review Panel, see: Asian Development Bank (2014f, p. 55 and 71).
[926] Interview with woman in Phnom Penh resettlement site, aged 57 years, 21 February 2013 (Participant 14A).

years who lived in the Phnom Penh resettlement site described how she stayed on her own sleeping under a plastic cover in the rainy season:

> I used a plastic cover between the two toilets…I stayed here about for about one month. During this time I didn't have very much food. I also had to get water from the rice field because at that time there was no drinking water here....[927]

Another family of five, including three young children who also lived in the Phnom Penh resettlement site, explained how there was nowhere for them to sleep when they first moved: "We slept on the floor in a tent…for three months…it was rainy season."[928]

The impacts of relocation were most extreme in the Phnom Penh site, which is located around 20 kms from the previous residences of the households that were relocated. In the interviews, people described how relocation resulted in family separations (as men left the resettlement sites to find work), high levels of unmanageable debt and a general inability to re-establish pre-relocation incomes. Where people were able to maintain their incomes or stayed working in their previous jobs, they spent most of their incomes on travelling to and from the resettlement sites. The situation in the Phnom Penh site, in particular, was consistent with patterns of impoverishment identified by writers such as Cernea, who has argued that compensation-centred responses rarely enable the re-establishment of livelihoods following displacement.[929] A photo of the Phnom Penh resettlement site is included in Figure 19. The photo in Figure 19 was taken by the author in late 2012. This photo is taken of the plots of land that had recently been prepared for the second wave of residents to move in 2013. The small white and blue concrete structures are toilets built by the ADB. The households that had already relocated were living adjacent to this section of the resettlement site. [930] This photo represents what people would have seen when they first moved to the resettlement site.

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[927] Interview with woman in Phnom Penh resettlement site, aged 66 years, 18 February 2013 (Participant 8A).
[928] Interview with family in Phnom Penh resettlement site, 21 February 2015 (Participants 10A and 11A).
[929] Cernea (2003).
[930] The ADB has uploaded more recent photos on its website, depicting a new community centre that has been built in the Phnom Penh resettlement site. See: The Cambodian Railway Tracker at http://www.adb.org/news/photo-essays/moving-better-lives-cambodia.

Figure 19: Plots of land, Phnom Penh resettlement, prior to second wave of movement

Similar, but less severe impacts occurred in Battambang and Sihanoukville, where the resettlement sites were a considerable distance outside the city centre beyond most local income-generating opportunities. One couple interviewed in Battambang described how difficult it was to earn money in the resettlement sites:

> Everyone has problems like living away from the market. There are
> some elderly people who cannot do anything. Before in the family
> almost everyone earned, but when we came here only one person
> could earn.[931]

In Battambang, many people had not moved to the resettlement sites but had gone elsewhere. A similar situation existed in Sihanoukville.

7.4 Debt-levels post-relocation

When the research was conducted in 2013, almost all people interviewed who had moved to the new resettlement sites were in debt as a result of the relocation process. The Phnom Penh community was the most affected, especially because they had moved far from their

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[931] Interview with older couple in Battambang resettlement site, 6 March 2015. (Participants 91A and 92A). These comments were made by the woman in the couple. Quotation paraphrased.

previous homes. The plots of land provided were around 7m x 15m in size and not large enough to grow agricultural produce on any scale, which may have provided a means of subsistence for families or a way of supplementing income. The photo below at Figure 20 depicts the farmland that surrounds the Phnom Penh resettlement site, but is not available for use by resettled residents. It conveys how far out of the city the resettlement site is and helps to explain why resettled residents have had difficulty re-establishing their urban-based livelihoods in this setting.

Figure 20: Photo of agricultural area near Phnom Penh resettlement site

While some of the debt that people had incurred enabled them to build better houses, debt in the Phnom Penh resettlement site was usually to private lenders and was unmanageably high, often between USD 1,000-2,000. One person reported being USD 7,000 in debt. In the Phnom Penh site the interest rates were around 7-10 percent, whereas in the other sites it was much lower, around 1-2.5 percent. People in all of the sites were using their land

documentation as collateral for loans, though they had not yet secured formal land title.[932] As they were having difficulty re-paying loans they were at risk of losing possession of their land documentation, and consequently their right to claim title to the land when the mandatory five-year residence period ended. As one woman said:

> I am afraid the money lender will come and take my house. That's why I'm afraid I haven't got the official land title yet, because my land title is with the private lender.[933]

Those interviewed in the Phnom Penh resettlement site described their post-relocation income levels to be between USD 1-5 per person, per day.[934] People in this situation were visibly in distress about how to make repayments. All those interviewed stated that they were not in debt prior to the relocation. People interviewed in all sites, especially in Phnom Penh, described how their incomes had been severely affected by loss of access to small-scale networks and livelihood options.

7.5 Aspirations for resettlement

An important aspect of this study is that interviews were conducted both with people who were relocated to the resettlement sites and with people who were not relocated and instead remained living along the railway right of way. A critical feature of the project not captured in the media reports of the project were the differences that had emerged between the Phnom Penh communities and the remote communities, particularly Poipet and Pursat in the north. While people in Phnom Penh had relocated 20 km outside the city, people in Poipet had relocated 4-5 kms and in Pursat people mostly moved only 400 metres. Partly as a consequence of these different circumstances, many people in the more remote resettlement sites described either wanting to stay in the resettlement sites, or if they had not been relocated, they described wanting to move. Figure 21 below sets out the preferences expressed by people in both the resettlement sites and the railway locations.

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[932] ADB records also support this conclusion. In 2013, in the Phnom Penh site, as many as two-thirds of all households were indebted, see: Asian Development Bank (2014f, p. 6).

[933] Interview with woman aged around 30 years in Phnom Penh Resettlement site, 16 February 2013, (Participant 5A).

[934] Note the previous discussion surrounding the difficulty of assessing incomes in Chapter 6, Section 6.6.

Figure 21: Preferences of people by location and settlement type in 2013 (n=141)

Location	Prefer original location	Not sure / not recorded / NA	Prefer new place
Railway sites (n=68)	16%	9%	75%
Resettlement site (n=73)	26%	19%	55%
Battambang (n=14)	21%	21%	57%
Phnom Penh (n=25)	84%	12%	4%
Poipet (n=41)	2%	5%	93%
Pursat (n=36)		11%	89%
Sihanoukville (n=25)	20%	32%	48%
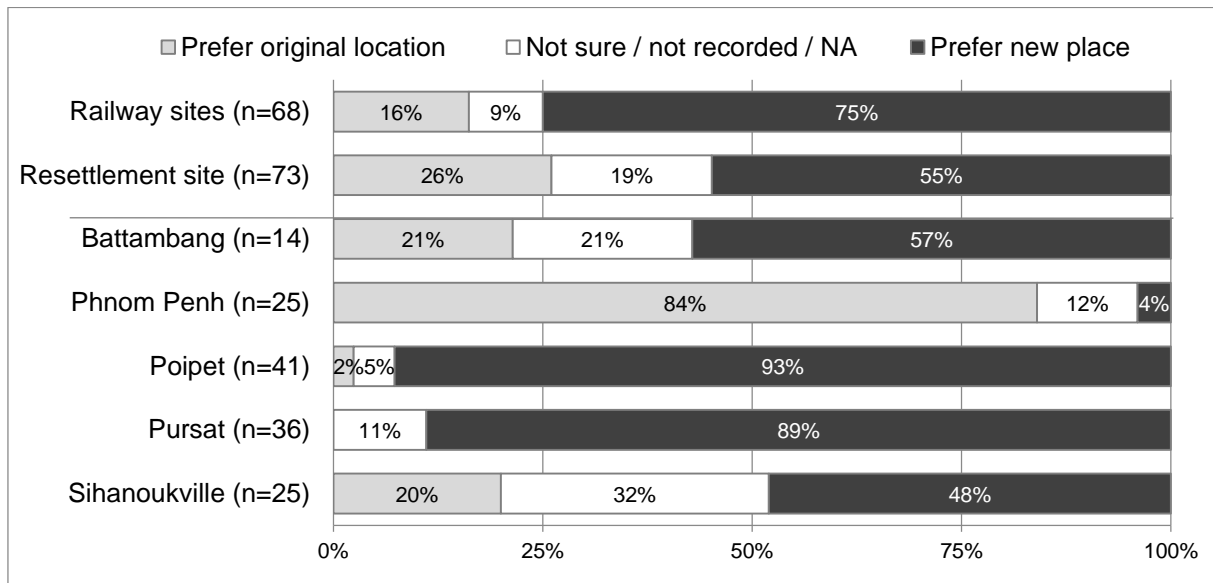
The importance of securing land was central to both people in the resettlement sites and those people interviewed who remained living along the railway. Of the 141[935] people interviewed (at both railway and resettlement sites), 92 people expressed a preference for living or moving to the resettlement sites (65 percent). These percentages were much higher in Poipet, with 38 of 41 people (93 percent) stating a preference for the resettlement sites. Similarly in Pursat, 32 of 36 people (88 percent) either wanted to stay in the resettlement sites or if they were still living near the railway, they wanted to relocate. Of the 68 people interviewed who remained living along the railway in all locations, 51 people (75 percent) stated that they wanted to move to the resettlement sites. Yet, in Phnom Penh, only one of 25 people interviewed (from both the railway and resettlement site) expressed a preference for the resettlement site, three others were not sure.

The preferences expressed by interviewees need to be interpreted bearing in mind that by the time the interviews were conducted, the railway project had received considerable media attention and community members (at least in Phnom Penh) had been visited regularly by NGOs, which may have begun to influence how people framed their needs to outsiders entering the community. Thus, the testimonies of those interviewed may or may not have been altered or adjusted to suit the politics of the situation, i.e. of course some people may have perceived there to be some benefit from expressing dissatisfaction with the sites, others

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[935] Note that 3 of the 144 people interviewed were categorised as "other" in the charts included in the methodology at Figure 8 (Chapter 6). These people were removed from the calculations when assessing their preferences under the project.

may have felt that there was something to be gained by expressing a desire to move to the sites. It was explained to the interviewees by my interpreters that I had no connection to the project, and had no bearing on its outcomes. Overall, when observing the conditions and locations of each site respectively, the preferences expressed by community members for relocation or for staying in initial locations made sense and seemed to be based on a very pragmatic consideration of the pros and cons of each resettlement site in each location.

The main reasons people wanted to move to the resettlement sites were for reasons of land security and the prospect of better services in resettlement sites, which had gradually begun to improve as additional money and support was provided to the people in the resettlement sites. In this respect, the experiences of people who had relocated to the Phnom Penh resettlement site in the peri-urban outskirts of the city, (which was the focus of many of the media and NGO reports), did not reflect how the railway project was being experienced in other areas of Cambodia.[936] The timing of the interviews was also significant, as numerous improvements had been made to the resettlement sites since people had first moved in 2010-2011.

An additional consideration was that many people who still resided along the railway line were living in a state of uncertainty about what would happen to them when the train started operating. They also described how access to land title would improve their prospects by providing them the tenure security they needed to upgrade their houses and access credit. Answers to questions about preferences were often qualified. For example, many people who lived along the railway stated that they would only move if they were given land and similar compensation amounts as their former neighbours (who had already moved).

It needs to be conveyed that people in the resettlement sites did not say that relocation had been easy or that they had been treated well or fairly in the relocation process. The families, especially in Poipet, expressed how difficult the process was, but that they wanted to secure land at almost any cost. Whilst maintaining livelihoods was vital, finding somewhere to live without an immediate threat of eviction had also been a long-standing concern. People were going to extreme lengths to make life in the resettlement sites work and to manage their debt levels. Many households had left the sites entirely and some had sent family members to

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[936] See for example: AidWatch (2012); Sahmakum Teang Tnaut (2011); Sahmakum Teang Tnaut (2013a); Bugalski & Medallo (2012).

work in in other provinces or in Thailand so they could send remittances home, as discussed further below.[937]

The situation in Poipet contrasted most acutely with Phnom Penh. The Poipet resettlement site is the largest of the sites, supporting at least 378 relocated households. During the interviews with people in the Poipet resettlement site, people still described experiencing financial stress, but the degree of debt burden and manageability of the debt was not as extreme as the other sites. Many people who moved to the Poipet site had upgraded their homes and built large cement houses in the resettlement sites, encouraged by their newly found tenure security. A number of factors seemed to have assisted people in the relocation process in Poipet, including closer proximity of the resettlement site to markets and the households' former locations, a critical mass of people moved together to the Poipet site (at least 378 households), and a greater range of livelihood options, in part due to the proximity of Poipet to the Thai border.

Residents who were not relocated in Poipet and who remained living at the railway without tenure security, described wanting to move to the resettlement site. Visits were made to the area immediately south of Poipet railway station during the fieldwork, where approximately 30 households remain who were not been given the option of relocation. Conditions in this area along the railway for the remaining residents were very poor at the time of fieldwork, and there were limited options for the community to adapt *in situ*. Most of the houses along the railway corridor were dilapidated and built right up to the area of the railway corridor of impact. The Poipet railway corridor in this area was the narrowest of any of the railway areas visited, hedged in on either side by a concrete wall and pond. In Poipet, the corridor where the railway was to be rehabilitated is also the access road for water and electricity services for the community. At the time the interviews were conducted, the access road was the only means of delivering water and maintaining electricity to these households. In the interviews, people asked what would happen to them once the railway was built and how they would access water. A sketch of the Poipet railway area in proximity to the resettlement site is presented at Figure 29, later in this chapter in Section 7.9.

There was also a lot of confusion among Poipet railway residents about why their community had been "split", with some families moving to the resettlement sites and some

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[937] Cf. Jessie Connell & Connell (2014).

staying behind. As one woman said about all of the families living along the railway line, "we should all receive the same compensation together."[938] Numerous Poipet railway residents explained that they had initially been told several years ago, in 2006, that they would also be moved to the resettlement sites, but when relocation occurred they were left behind. People were initially given yellow cards to indicate that they were affected. One man explained what had occurred in 2006:

> First IRC and some foreign people come. They give everyone yellow cards. The first time they said everyone was affected, then the second time they tried to make sure as few people as possible were affected. In 2006, when they first measured, they said that every house here was affected. Then they come back. Even myself and others thought we would get land. Then later they said that they would give me only USD 200 and no land.[939]

The community leader who had moved to the Poipet resettlement site explained how everyone from the railway wanted to move there. He said: "Here is better. They really want to move here and always ask me".[940] It was common for Poipet railway residents to visit their old neighbours at the resettlement site, and they could list the various entitlements received by those who were resettled. One man in Poipet described going to the resettlement sites daily. Another woman's daughter and grandchildren had been relocated while she was not, which had separated the family.

Poipet railway residents also described regular visits from government officials who accused them of "encroaching" on the railway corridor. Accusations of encroachment meant that people living in these areas did not want to reinforce their household structures to prepare for the rainy season. There were also reports from some residents about how they had initially been refused relocation and then eventually managed to get a plot of land in the resettlement site. One woman who had recently moved to the Poipet resettlement site had initially been ordered to move back from the railway as her house had extended onto the railway corridor of impact by one metre for which she was initially offered USD 75

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[938] Woman interviewed at Poipet railway, 5 March 2013 (Participant 130A), aged around 45 years.
[939] Second interview with man aged around 45 years at Poipet railway who was in the process of moving to the resettlement site, 5 March 2013 (Participant 128A).
[940] Interview with community leader in Poipet resettlement site, 3 March 2013 (Participant 103A).

compensation. She had been supported by the NGO Equitable Cambodia to challenge the decision through an ADB complaint and had received a plot of land in the resettlement site. As a result of the complaint she also received an additional USD 726 for the loss of her house. While the compensation money had not been enough to re-build a house on the new site, she was visibly upset during the interview when she described how she had received a chance to move while the others were forced to stay behind. According to her estimates there were at least 40-50 families who were still living along the Poipet railway corridor who also wanted to move. "Everyone wants to move here... but they already thumb-printed,"[941] she stated. Thumb-printing is how Cambodian villagers typically sign official Government documents. She said that some people along the Poipet railway had accepted compensation amounts as low as USD 10 to move their houses back from the railway making it difficult to make another complaint at a later date. Families who moved their houses back from the railway were not provided security of tenure in the railway right of way, however they were guaranteed that they would not be evicted for at least five years. This woman was staying with her sister in the resettlement site until she was able to save enough money to build a house on the new plot of land.

The photos at Figure 22 and 23 below depict houses in the Poipet resettlement site. These houses are some of the better houses in the site, and not all houses in the site were made from concrete, however the photos convey the different living conditions between those in the resettlement site and those who remain along the railway right of way in Poipet.

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[941] Interview with woman aged around 35 years in Poipet resettlement site, 3 March 2013 (Participant 112A).

Figure 22: House in Poipet resettlement site

Figure 23: Poipet resettlement site

Figure 24 and 25 below depict the Poipet railway corridor of impact. The photo at Figure 24 shows the narrow corrridor between the brick wall and the wooden houses where the railway line was going to be built. Figure 25 is a photo of women who were interviewed at the Poipet railway corridor of impact while they mended clothes for sale in Thailand. These women, along with many others in this area, want to move the resettlement site.

Figure 24: Corridor of impact, Poipet railway

Figure 25: Women mending clothes for sale in Thailand at Poipet railway

A similar situation existed in Pursat, where affected people were moved only 400 metres away from their previous residences. Those who remained living along the railway described the process of watching their neighbours move and they could name the precise amounts of money that certain vulnerable groups, such as older people and women who were pregnant, received as compensation or assistance. Those who wanted to move in Pursat were explicit about only moving if they received the same support as those who had already relocated. Below is a sketch of the resettlement site at Bamnak village in Pursat, depicting how close the resettlement site is to the railway line.

Figure 26: Sketch of Bamnak village, Pursat resettlement site
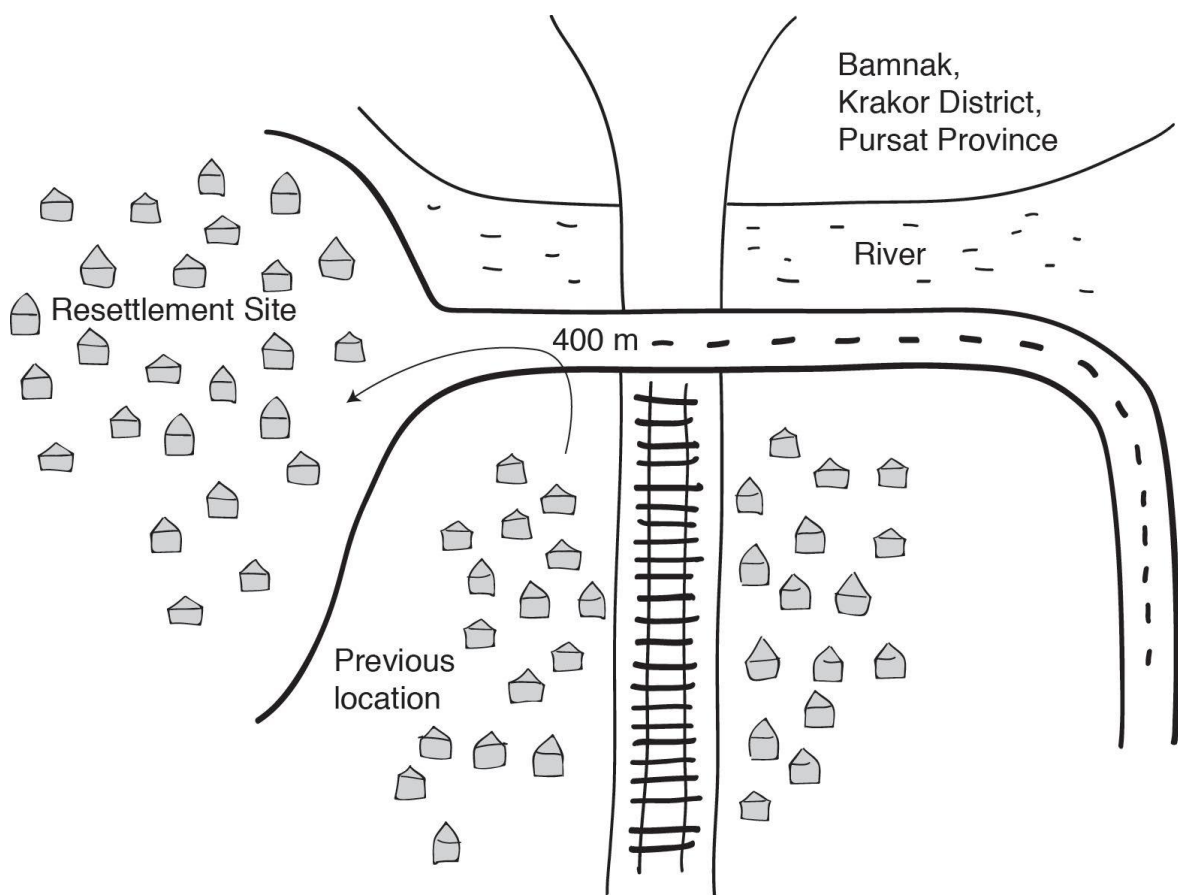
Source: Author's sketch [942]

[942] Drawing not to scale

In Sihanoukville, where the resettlement site is approximately 10 kms away from previous residences, most of the people along the railway also wanted to move (6 of 9 people interviewed). When combining the preferences of the railway and resettlement residents, around half of all people (or 12 of 25 people) either wanted to move to or stay in the resettlement sites. Some of the women who remained living along the railway in Sihanoukville were the most adamant about wanting to leave. In Sihanoukville, the railway had been fully restored and the train had already started passing through the community. The women who were interviewed as a group were very clear about wanting to move away from the railway line to the resettlement site, as indicated by the quotes from the different women below:

> Why not me? I want to have my own land. I want a safe place for my children to play. If school is a bit far then I can get a moto-taxi. [943]

> Living here, I am afraid my children will face danger from the train.[944]

> I want to move too because there are a lot of children as well. Because it is dangerous here for the children. Living here is very difficult because [it's] even [hard getting] water. There is no infrastructure in this village. There is rubbish.[945]

> If anyone gives me land to live I will go. I don't want to live here, it is dangerous. I would feel very happy if I got my own land. I just try very hard to work. [946]

An older woman who was the grandmother of one of the women quoted above said that:

> If my daughter wants to move then I also want to move. I am a widow. They are telling me that they have a strong feeling that they want to go to the new place. It's ok if we have difficulties there – we have no choice, we have to fight it. We know it.[947]

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[943] Woman interviewed at Sihanoukville railway, 25 February 2013 (Participant 39A) aged around 25 years.
[944] Woman interviewed at Sihanoukville railway, 25 February 2013 (Participant 40A) aged around 30 years.
[945] Woman interviewed at Sihanoukville railway, 25 February 2013 (Participant 41A), aged around 25 years.
[946] Woman interviewed at Sihanoukville railway, 25 February 2013 (Participant 42A), aged around 25 years.
[947] Woman interviewed at Sihanoukville railway, 25 February 2013 (Participant 38A), aged 56 years.

Not everyone along the railway in Sihanoukville wanted to move. The community leader wanted to stay living near the railway, although she acknowledged most of the other residents wanted to move. Some of the men interviewed along the Sihanoukville railway were more ambivalent about moving, as they were concerned about how they would earn money if they lived in the resettlement site. As one man explained:

> I want to stay here because it is close to my work place. I heard some information about people who have to move. But it's not for me. If it is, then they will tell me…I don't think that those people will be better. I heard some information that they [are] struggling…I'm a fisherman so I want to be close to the sea.[948]

Another man worried about both his children's safety and his income:

> Sometimes it is very difficult but I have no choice. I worry about my children near the railway. It is dangerous by the railway. This problem is that I have to consider my income.[949]

In Sihanoukville resettlement site, one woman explained the significance of receiving land title. She expected to receive land title after she resided on the land for five years, as required by the resettlement scheme. These comments were indicative of how many people felt about land tenure and the types of sacrifices they needed to make to enable it:

> When I moved I was very nervous. I didn't know what to do…I didn't have land title then. I felt very happy that I would get land title in the near future. But I had to sell my boat to get money to build this house – so I lost my job. Mostly my husband goes to fish.[950]

The comments also reveal the conflicting demands people were experiencing between trying to balance the need to earn an income (livelihoods) with the desire and need to secure assets (in the form of land).

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[948] Man interviewed at Sihanoukville railway, 25 February 2013 (Participant 44A), aged 56 years.
[949] Man interviewed at Sihanoukville railway, 25 February 2013 (Participant 45A), aged 23 years.
[950] Woman interviewed in Sihanoukville resettlement site, 24 February 2013 (Participant 36A), aged 42 years.

In Battambang, (where only a small number of people who were still living along the railway were interviewed), people were evenly divided about whether they wanted to move.[951] The resettlement site was further away from the railway (approximately 6 km) than in Poipet and Pursat. People living along the Battambang railway were also not yet experiencing any of the immediate amenity impacts that were affecting people along other parts of the railway, especially as the trains had not started operating yet. One older woman living along the Battambang railway said she would "die" if she had to move, as she had built a large house and business and had lived along the railway since 1979.[952] Her comments illustrate the different responses of community members to the idea of resettlement, as well as the possible relevance of life-stage in contemplating prospects for the future. Her son, who was present during the interview, stated that he was interested in moving to the resettlement site as the improved tenure security of the relocation site offered greater opportunities for his family's future.[953]

Strong preferences for resettlement in the more remote areas were diametrically opposed to the situation in the capital, Phnom Penh. Phnom Penh residents in the resettlement sites were experiencing hardships that would most likely take many years to overcome, notwithstanding the additional support being offered post-2012. Residents of the Phnom Penh resettlement site also explained how they experienced hostility from the host community that had been living in the area prior to 2010. These earlier residents had also been relocated from Phnom Penh many years earlier, but apparently under even worse circumstances.[954] As one woman explained:

> It is very difficult living here. We don't have enough food. There is
> nothing we prefer about the new site. The children's education is bad.
> No healthcare. We don't have jobs here. We cannot do business here.

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[951] In Battambang, interviews were conducted with four people from different households who still remained living along the railway, and ten people in the resettlement site. It was more difficult to find and identify relevant remaining railway households in Battambang, than it was in other locations (e.g. Sihanoukville), as many people were not home at the time of the visit. As explained in the method, the railway interviews were additional to the interviews in the resettlement sites as planned in the original field work methodology (see the discussion in the method in Section 6).

[952] Older woman interviewed at Battambang railway stated that "If we move we will die", 6 March 2013 (Participant 99A), aged 72 years.

[953] Interview with the son of Participant 99A at Battambang railway, 6 March 2013 (Participant 100A).

[954] This relocation was described in the original resettlement documents, see Section 7.2.1 above in this chapter.

The local authorities discriminate here. The village chief doesn't care about our situation because we are new.[955]

According to the newly relocated residents, they felt that the host community and Village Chief resented them because they received higher amounts of compensation and had better facilities built for them than the community that had been relocated from Phnom Penh many years earlier.[956]

7.6 Significance of using the ADB accountability mechanism

The field work took place after affected households had been relocated, after many had received the second round of compensation and after the problems in the resettlement sites had begun to be addressed by the ADB and Cambodian Government. Immediately before the fieldwork, certain households had been assessed by the ADB's Office of the Special Project Facilitator (OSPF) and given a small amount of additional compensation. Of the people interviewed, 39 households had made a complaint to the ADB and 18 had received additional compensation. In some circumstances the additional compensation was much more than the original amount they had received. See Table 12 which compares the first and second round payments of the interview participants, but only includes interviewed households who made a complaint and received additional compensation in the second round of payments. Many people did not receive any additional payments in the second round, but may receive another payment from the third round of compensation from the additional USD 3-4 million compensation scheme agreed to in late 2014.[957]

Table 12: Compensation amounts in USD first and second round payments

Household	Compensation 1st round 2010-11	Additional compensation 2nd round 2012-13	Difference increase as % of original amount
1	$ 1300	$ 2000	150 %
2	$ 600	$ 1000	160 %
3	$ 570	$ 1300	230 %
4	$ 500	$ 954	190 %
5	$ 815	$ 1670	205 %
6	$ 697	$ 900	130 %
7	$ 470	$ 770	163 %
8	$ 870	$ 300	34 %

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[955] Interview with woman aged around 30 years in Phnom Penh Resettlement site, 16 February 2013, (Participant 5A).
[956] These residents had being evicted from Sambok Chap in central Phnom Penh years earlier, see Section 7.2.1 above.
[957] The status of the third round of payments is unclear, as it is currently being negotiated between the ADB and Cambodian Government. See the Afterword included at the end of the thesis.

9	$ 700	$ 100	14 %
10	$ 700	$ 100	14 %
11	$ 500	$ 1000	200 %
12	$ 650	$ 1000	150 %
13	$ 2158	$ 660	30 %
14	$ 446	$ 84	20 %
15	$ 89	$ 461	520 %
16	$ 75	$ 726	986 %
17	$ 200	$ 500	250 %
18	$ 150	$ 500	33 %

While most people interviewed in this group felt that they still had not received enough compensation, the opportunity to make a complaint had been important. For some people the experience of "being heard", albeit on a small-scale, appeared to improve how they viewed their new circumstances. One man in Poipet described in detail the experience of making a complaint, explaining how in the beginning other community members thought he was strange for dressing up to go to Phnom Penh to visit the complaints office, but how now people in the village viewed him differently and were impressed. He stated:

> It was really difficult. I am poor and sometimes I get embarrassed. They [the community] say to "hi" to me and ask why I dress-up in a different way. People tell me not to go [to Phnom Penh to complain] because they didn't go, and because they didn't believe that they will get anything. [It cost] USD 10-15 to go all the way to Phnom Penh. Inside it's really painful, but I had to do it. Now, they [other community members] are happy for me. They feel guilty. I went there to share information. They regret that they were not like me. I complain for them. After I was educated by Bridges [NGO] I feel more confident. I help people…no corruption.[958]

Not everyone could recall their experiences with NGOs, as sometimes in the remote areas this contact had been brief. However, there were many who could describe their encounters. These people were either neutral about their experience or very positive about being assisted by the NGOs. With the exception of one household, there were no complaints about working with the NGOs. As the man quoted above in Poipet said about the NGO, Bridges Across

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[958] First interview with man who was aged around 45 years who was in the process of moving to the Poipet resettlement site, 3 March 2013 (Participant 128A).

Borders: "Bridges is helpful and is independent and working to help the people." [959] One woman in the Phnom Penh resettlement site talked about working with Equitable Cambodia, (formerly Bridges Across Borders South East Asia or BABSEA), stating that:

> BABSEA is a very good organisation. [They] did a lots of useful activities for the village…BABSEA taught us how to be brave, not to be afraid and to be aware of our rights.[960]

There was one woman who was unhappy about working with the NGOs during the complaints process, however once the detail of this story emerged, it became clear that she was mostly unhappy with the community leader and indirectly with the NGOs. She felt that she had been excluded from making a complaint because the community leader made the decision with the NGOs about who should complain without consulting all of the households. Her claims cannot be verified easily, but regardless of whether this information is accurate, her comments reveal insights about the politics of the complaints process at a micro-level. This woman said:

> I didn't have the information about how to make a complaint. The people who got additional money they had to keep it a secret. There are more than 10 families relocated here, only 3 got compensation so [it is] not fair. It is a type of corruption because it was unfair and they kept it secret – they did not share the information. All [these families are] the same, no one worse than the other. I don't have any information about how to complain.[961]

Another woman from the same resettlement site said that:

> Only the community leader was invited to the meeting. Maybe those people who got extra money they went to the meeting, but usually the community leader went.[962]

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[959] Second interview with man who was aged around 45 years at Poipet railway who was in the process of moving to the Poipet resettlement site, 5 March 2013 (Participant 128A).

[960] Interview with woman aged around 30 years in Phnom Penh Resettlement site, 16 February 2013, (Participant 5A).

[961] Interview with woman aged 42 years, February 2013. Details of the resettlement site are not included here as they may identify the participant and community leader.

[962] Interview with woman aged 25 years, February 2013. Details not included here, as above.

By all accounts, the ADB complaints process was a long and complicated process. One woman in the Phnom Penh site explained how the complaint took a long time and that she experienced threats from local authorities during this time:

> I was told not to tell anyone. I forget when this was. After I made the complaint it took more than one year for the result…people came and told us not to complain…people from the local authorities…Those who work in the IRC were involved in some kind of corruption and they tried to resist the process of the complaint. The complaint to ADB took one year because of resistance from those people who were involved in corruption.[963]

As reflected in these comments, people were not shy about directly identifying corruption in the resettlement process. One man in Poipet explained how there was so much money been spent on the railway project, yet so little of it went to "the people". He said:

> What this project does is that it pushes people down. Makes people worse and worse – it is going against the policy. The donor expects the [money to go to the people] but only 15 percent goes to the people and 80 percent goes to corrupt people… The power belongs to the Government.[964]

Some people could not distinguish between the ADB and the NGOs, presumably because ADB representatives had recently visited the resettlement sites, and it was clear to the community that these trips had resulted in additional compensation and other improvements. However, people clearly distinguished between the Cambodian Government on the one hand, and the ADB, international donor and NGO community on the other. One woman in Phnom Penh who was involved in making complaints via other human rights organisations and NGOs about the railway process explained how she felt protected by the international donor community. She stated:

> When we file a complaint to the UN I want to go straight to Thailand, not the UN in Cambodia. At that time, the Thai UN OHCHR [Office

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[963] Interview with woman aged around 30 years in Phnom Penh Resettlement site, 16 February 2013, (Participant 5A).
[964] Second interview with man aged around 45 years at Poipet railway who was in the process of moving to the Poipet resettlement site, 5 March 2013 (Participant 128A).

of the High Commissioner for Human Rights] put some pressure on. The UN works very slowly. The donors did something to protect us. Most of the donors have money in ADB. Eighteen countries – they put donor pressure on the Cambodian government to protect the community…[965]

Another man in Poipet also explained how the training they had received from both the ADB and NGOs had given them confidence and a greater sense of protection:

Before when we didn't have land, we felt scared, we couldn't get land. But after the ADB came and worked with us, we got the house. We had training which made us able to speak like this.[966]

A different person in Sihanoukville made similar comments, stating that:

I think the Bridges organisation is a very good organisation…they made me feel comfortable to make the complaint…OSPF [from the ADB] also came to interview us. OSPF is also a good organisation. They came to explain to us about the compensation. They asked, "Is it enough for you or not?"[967]

These kinds of comments were not uncommon. Some people had tried to complain to Village Chiefs, the IRC and local authorities in the beginning before the ADB complaints process was activated, but most people considered this to be a fruitless exercise compared to the ADB OSPF complaints process, which had resulted in a number of changes. One woman in the Phnom Penh resettlement site had complained about losing her land documentation to private lenders who took the documents as collateral for her loans. She said:

The first time I made the complaint I didn't want anything. I didn't expect anything. I didn't expect land title. I wanted the title back from the private lender. I got it back.[968]

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[965] Interview with a woman who was assisting the community in the Phnom Penh resettlement site to make complaints, 16 February 2013 (Participant 2A).
[966] Man interviewed in Poipet resettlement site, 3 March 2013 (Participant 115A).
[967] Man interviewed in Sihanoukville resettlement site, 24 February 2013 (Participant 33A).
[968] Interview with woman aged around 30 years in Phnom Penh Resettlement site, 16 February 2013, (Participant 5A).

A significant feature of the interviews was how little people expected from the Cambodian Government. People explained how they had low or no expectations. One woman in Battambang resettlement site explained how, despite the ordeal she was enduring, she already felt that so much had been done for her. She explained: "I can't complain anymore because they [ADB and IRC] already do so much."[969]

Another critical issue that emerged during the interviews was the time-bound or temporal nature of the assistance people were receiving from the ADB. People interviewed were aware that once the ADB project finished and the agreed contract period ended, then there may be no further assistance and that there was no clear way of holding the Cambodian Government to account after this point. People asked about this issue in the interviews. A man in Poipet asked: "Who will I complain to once project ends?" [970] Another woman in Battambang site stated that: "The IRC say that they are only responsible for 5 years. We can complain during the 5 years. After that I don't know who I will complain to." [971] It is still unclear how, or for how long, affected households can enforce the ADB policy once the ADB contract ends. One reason this is significant is that most residents of the resettlement sites will need to apply for formal ownership of their land and land title after the mandatory residence period of five years ends, which is after the ADB project has finished.

As illustrated in a number of the quotes above, people in Poipet, Battambang and Pursat, spoke about learning more about their "rights" under the project from NGOs, especially Bridges. In Pursat the language used by community members was different. In Pursat, where people had moved only 400m, there were still a number of problems experienced during the relocation process. The community had been involved in a conflict with the IRC about supplying water to the resettlement site and because the IRC had tried to reduce the number of people who could move to the resettlement site, by suggesting people move back into the right of way next to the railway instead. One woman who talked about this experience in detail said that "NGO forum helped us from behind".[972] When asked what she meant, the interpreter explained that NGO Forum had negotiated "behind the scenes" to get more assistance from the IRC to connect the water. The comment from the woman indicates the different strategies used by the NGOs to assist communities. In some places, assistance was

[969] Interview with woman aged 32 years in Battambang resettlement site, 6 March 2013 (Participant 95A).
[970] Interview with community leader in Poipet resettlement site, 3 March 2013 (Participant 103A).
[971] Interview with woman aged 32 years in Battambang resettlement site, 6 March 2013 (Participant 95A).
[972] Woman speaking during group interview in Pursat resettlement site, 7 March 2013 (Participant 54A).

framed in a language of rights and the complaints process played out in the media.[973] In others, such as in Pursat, assistance took the form of more informal, negotiated support. The same woman described a meeting of all community members and the IRC in which she stood up and complained to the deputy of the IRC:

> The first time I was told that I just had to move back [from the railway] and not get any land. I did not complain – but on the day when they [the IRC and NGO Forum] came to the meeting about compensation, in front of a lot of people – I accused the deputy – then I explained that my house was more affected [than they had assessed]. I complained to the IRC. [974]

The woman said that she would not have complained if it were not for the NGOs, explaining that:

> If there were no NGOs, I would just live on it because I had signed. I would not complain. I would just live. We have no confidence because we are just normal citizens. [975]

A feature of the interviews was that people carefully kept all kinds of written documentation that they received, even where they were not able to read the documents because they were in English or they were not literate. During the interviews people could produce all sorts of immaculately maintained pamphlets and receipts they had received from the ADB and local authorities many years earlier. There appeared to be a widespread appreciation for documentation and a growing awareness of the power of documents in negotiations about land and compensation.

These experiences of using the ADB Accountability Mechanism to make complaints and resolve grievances relating to compensation are significant in terms of the legal geography of resettlement, especially in relation to legal pluralism. As explored in Chapter 3, certain legal geography approaches focus attention on how global or international legal principles or processes are translated into local conditions. Legal pluralism, in this context, is taken to mean that more than one legal system (whether formal, informal, local, national or

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[973] Such as in Battambang resettlement site, see: Baker & McKenzie (2010).
[974] Woman speaking during group interview in Pursat resettlement site, 7 March 2013 (Participant 54A).
[975] Woman speaking during group interview in Pursat resettlement site, 7 March 2013 (Participant 54A).

international) is in operation over a defined area at once.[976] People who were being resettled for the railway were subject to multiple legal regimes and practices. As the ADB was the financier of the railway project, people could appeal to its quasi-judicial grievance processes and have their claims assessed. This would not have been possible had the ADB not been involved. At the same time, it was a highly exclusive right; it was only available to "project-affected people" who fell within the railway area bounded by the project, both physically and possibly temporally, as discussed above. It is not a right available ordinarily to Cambodian citizens displaced by other means.

7.7 Land titles or livelihoods: the dilemma of relocation

While many people wanted land in the resettlement sites, the prospect of relocation created an almost impossible dilemma for many families. Moving to the resettlement sites offered the potential for land ownership, a long sought after asset that enables access to credit. It also reduces the chances of being repeatedly displaced, or at least provides more certainty of compensation if displacement occurs again. Despite the serious financial stress of resettlement experienced in all the sites, people emphasised how access to land title (enabled by resettlement) could improve their prospects by providing them with the tenure security needed to upgrade their houses and access credit. However, as many families had taken out loans secured against their land that they were incapable of repaying, resettled people faced a predicament; they needed to occupy their land in the resettlement sites (so they could receive full land title after the five year period ended), whilst also needing to earn an income, most easily found elsewhere. Moreover, the cost of building houses in resettlement sites had increased the need for additional income. This was especially so for those who wanted to build cement homes, which are more comfortable and provide better protection from flood than wooden structures.

This predicament, or variations of it, was experienced by almost all of the people interviewed who lived in the resettlement sites (73 people). People had to navigate these competing demands in the absence of information from the Government or ADB about what was required to receive land title, consequently piecing together fragments of information shared locally through rumours, guesswork and informal assurances from community leaders and

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[976] See Chapter 3, Sections 3.2 and 3.5.

Village Chiefs. In these new environments, mobility – being able to travel in search of work – became an means of balancing these conflicting demands.

7.8 Coping mechanisms: mobility, migration and networks in resettlement sites

The fieldwork revealed the importance of livelihood strategies tied to multiple locations. These patterns broadly mirrored coping strategies used by people in Southeast Asia, identified by writers such as Rigg.[977] Migration, involving different types of mobility, was being used in all five resettlement sites to increase household incomes and secure land-based assets.[978] While some resettled households remained at the resettlement sites, trying to establish income sources nearby, such as opening small stores, growing vegetables and raising livestock, many households benefited from additional income received from elsewhere. A range of mobility strategies were being used, including returning daily to the previous locations to continue work (at great expense), travelling to other provinces or to Thailand (with or without passports) while "renting out" the plot of land back at the resettlement site, or splitting up the household so that family members were living between two locations. Thus some family members were earning income from renting back in the in the railway area and working, whilst others moved to the resettlement sites to claim and occupy the plots of land. The types of work people engaged in when they travelled elsewhere predominantly involved construction work, moto-taxi driving, garment factory work or continuing with small retail businesses established near their old residential locations.

The use of mobility as a coping strategy was also documented by a local NGO, Sahmakum Teang Tnaut (STT), which completed a study with people resettled to the Phnom Penh resettlement site. Of the 143 households who moved to the Phnom Penh resettlement site, STT identified only 68 households who were regularly resident at the site (resident for at least 4 nights a week). Twenty-eight were considered "irregular" residents, in that they had constructed a small structure on the land and continued to work in Phnom Penh or elsewhere, and were therefore renting and/or working close to their previous residential locations in Phnom Penh.[979] Figure 27 below is a photo taken in 2013 of a small structure built by one

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[977] Rigg (2006).
[978] Cf. Jessie Connell & Connell (2014).
[979] Sahmakum Teang Tnaut (2013a, p. 12).

of the families to claim the land in the Phnom Penh resettlement site, whilst they travelled and worked elsewhere.

Figure 27: Photo of small structure in Phnom Penh resettlement site

The degree to which people were able to use mobility in an adaptive or empowering way to take advantage of the resettlement process varied greatly. Figure 28 below indicates the different types of mobility being used by 36 participants who were directly interviewed. The interviews suggested that the number of people dependent on mobility was much higher, as evident in the discussion that follows.

Figure 28: Main type of mobility across all resettlement sites (n=36 participants whose livelihood was dependent on mobility)
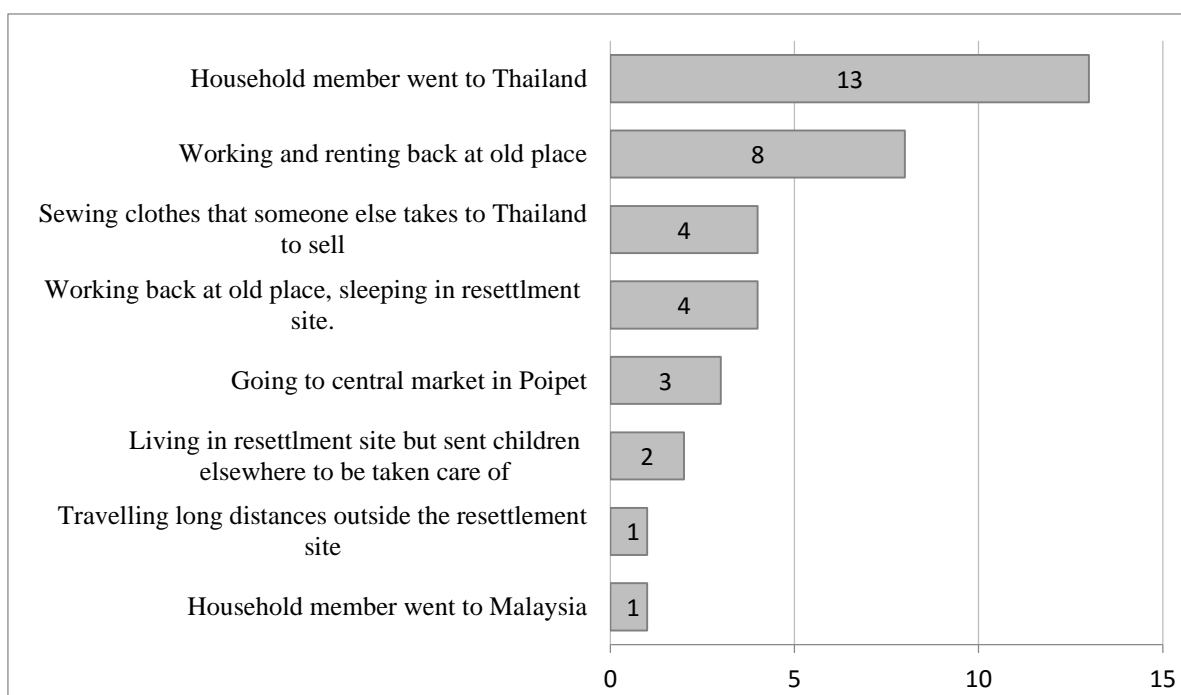
Nine households who were highly dependent on mobility were selected as examples and are profiled in Table 13 below. The table describes the key features of the households to help convey the various ways people used mobility strategies, including international migration. In all but one case, those who migrated to Thailand stressed the "push" factor of resettlement, rather than any other factor, as their motivation for migration. While this does not necessarily mean that broad conclusions can be drawn about the impact of development-induced displacement on triggering migration per se, it does indicate interesting dynamics that would be worth investigating on a larger scale.

Table 13: Mobility in resettlement sites

No.	Partic.	Location	Destination	Reason for migration
1.	Male, 28 years	Sihanoukville resettlement Site	Nakhon Pathom City (West of Bangkok), Thailand	Husband and wife. Both working in Thailand because they needed to find money to pay for his mother-in-law's debt, incurred while building a house in resettlement site.
2.	Female, 48 years	Sihanoukville resettlement Site	Bangkok, Thailand	Debt in resettlement site from borrowing USD 2,500 to feed animals. Sold house in resettlement site because could not pay back debt.
3.	Female, 31 years	Sihanoukville resettlement Site	Bangkok, Thailand	Spending too much money on travel to resettlement site. Husband lost job as moto-taxi driver. In debt USD 2,000. Sold house in resettlement site because could not pay back debt. She sends money back to sister-in-law who takes care of her two children.
4.	Female	Sihanoukville resettlement Site	Renting back near old location at Sihanoukville railway	She is renting her house in resettlement site to a relative. She rents back near the railway because she is a "fisher person" and needs to be near the sea.
5.	Female, 32 years	Sihanoukville resettlement Site	Thailand	Her mother is living back in resettlement site. She had difficulty in the new community because she could not work.
6.	Male, 19 years	Battambang resettlement site	Thailand. He has been there for 2 years	The land in the resettlement site belongs to his mother. He sends money back to his mother through his employer in Thailand. Family separation pre-dated resettlement, although resettlement was described as exacerbating the poverty experienced by the family.
7.	Family	Phnom Penh resettlement site	Phnom Penh railway (Russeo Keo District)	Sister takes care of house in the resettlement site "because someone needs to take care of it for 5 years". The land is in their mother's name. Mother is sick with diabetes so wants to stay back at railway because it is closer to the city. Resettlement site not developed yet so they leave the sister to take care of it. Do not have money to send their kids to school in resettlement site.
8.	Female, 40 years and male, 39 years.	Battambang resettlement site	Chon Buri, Thailand	No business in resettlement site.
9.	Male	Poipet resettlement site	Daughter in Thailand	Upgrading the house in resettlement site cost USD 20,000. He is in debt USD 4,000. Daughter sends money back from Thailand.

As these examples indicate, resettlement stress and inadequate incomes led people to engage in diverse, innovative and sometimes risky strategies to earn enough income to support their families and repay their loans. While some families were able to use the income earned in other places to increase the quality of their housing in the resettlement sites, others were being exposed to additional risks, had not been able to hold onto their land assets, and had no option but to sell. When people "sold" their land in the resettlement sites, they were doing it informally through the Village Chief, as they had not yet attained full land ownership. People used their temporary land documentation to sell their allocated plots of land. Informal land transfers or "sales" at the village level are common in Cambodia. There are low rates of so-called "subsequent registration" of land transfers with District Chiefs and Commune Councils, especially in more rural areas outside the main cities. There have been attempts to change these local practices to formalise Cambodia's land management system, but village-level land transfer practices remain widespread.[980] Thus, people in the resettlement sites managed to sell their land using local village level channels, even though they had not yet attained full ownership or land title. These dynamics are another illustration of the legally plural and legally ambiguous landscape in which resettlement for the railway was taking place, within which both informal and formal legal systems operated. The land transfer practices described by community members resonate with the work of other authors in Cambodia, particularly Gillespie, whose legal geography work examined how local residents of Angkor are subjected to regulations that are largely out of sync with their ordinary land usages and practices.[981]

Discussions with community members in the Battambang resettlement site gave insights into the mobility coping strategies of the households. One interviewee estimated that at least one family member from almost all the households living in Battambang resettlement site (around 38 households), including himself, returned to their previous residences to work each day, only travelling to the resettlement site to sleep at night. A number of families were renting homes and sleeping at their previous locations for work and to enable their children to study. As a community member stated, "We rent a house at the old place because our kids need to study and here is far. We don't have any transportation."[982] Of the 48 households given the option of relocating to the Battambang resettlement site, only 38 moved there, of

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[980] For a detailed discussion of these practices, see: Grimsditch, Kol & Sherchan (2012, pp. 92-93).
[981] Gillespie (2011, p. 19).
[982] Interview with woman at Battambang resettlement site, 6 March 2013 (Participant 93A).

which approximately 8-10 households built structures on the land, but then chose to reside elsewhere. Even though only a small number of people were interviewed in Battambang, at least two examples were given of families who had built structures in the resettlement sites and then moved to Thailand, returning only a few times each year. As one interviewee stated, "They build houses here, but they can't earn incomes so they go to Poipet or Thailand."[983]

Informal agreements with relatives, neighbours and community leaders to look after land while people went elsewhere were common. When asked whether the people who left felt confident about their land being kept for them, he stated:

> The people who go to Poipet and Thailand know the land will be theirs. They come back every 3-4 months. Some come back only once a year.[984]

Similar arrangements existed in other resettlement sites. In Sihanoukville, 33 families were required to leave the railway, yet only six moved to the resettlement site, while five others were in the process of building their houses there.[985] The remaining households, including 13 households who sold their land, had chosen to rent accommodation closer to their old locations and sources of livelihood.[986] The interviews also revealed that at least four of the 33 households designated for relocation in Sihanoukville had either moved to Thailand or sent family members to work there.

One woman with a plot of land in Sihanoukville resettlement site who was renting a house close to the coast where she lived previously, described her husband and herself as "fisher people". [987] They could not stay in the resettlement site because they needed to fish to earn an income. She therefore had a relative staying in her house at the site who was paying rent and looking after her land. She intended to keep the land for when she was old, because she wanted a "proper place to live", unlike most of the houses along the railway in Sihanoukville which she thought were unsuitable, as they were small wooden structures. As this woman felt confident about her future tenure security in the resettlement site (partly because she had a relative minding it for her) she had built a much larger concrete house there. Her situation

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[983] Interview with woman aged 50 years in Battambang resettlement site, 6 March 2013 (Participant 89A).

[984] Interview with man aged 55 years in Battambang resettlement site, 6 March 2013 (Participant 90A).

[985] Asian Development Bank (2014f, p. 6).

[986] Asian Development Bank (2014f).

[987] Interview with woman in Sihanoukville resettlement site, July 2013 (Participant 50A).

revealed the importance of being able to rent one's property in the resettlement site to others as a way of generating income. Not being able to rent one's land to others contributed to the need to sell it. Those buying vacant land in the resettlement sites were said to be doing so speculatively, believing it would eventually increase in value. Thus, land in the resettlement sites had a future value for those with enough capital to invest or hold on to the land, but limited immediate value as an asset unless it could be sold, since being able to rent out houses in the resettlement sites to generate income was rare.[988]

Being mobile had a number of practical disadvantages. For those people who had built small structures on their land but worked and resided in other places, it was difficult to participate in community meetings at the resettlement sites. They were also absent when utilities service workers came during the daytime, making it difficult to get water and electricity connected, and to be involved in a savings program set up by the ADB and the Australian Government, specifically for people in the resettlement sites.[989]

7.9 Borderland coping strategies in Poipet-Aranyaprathet

The Poipet resettlement dynamics warrant further discussion. The photos presented earlier at Figures 22 and 23, depict how people upgraded their houses once they moved to the resettlement site in Poipet. The fieldwork suggested that short-range mobility and the proximity of the nearby border with Thailand were particularly significant for the livelihoods of people resettled in Poipet. Like many parts of Cambodia, people living in Poipet face severe pressures from poverty, land shortages, poor urban planning and very limited support from local, provincial or national governments. Yet, the city has grown rapidly in recent years. The Poipet-Aranyaprathet border-crossing is a source of jobs for people living in Poipet and for Cambodian trade with Thailand. Forty-five percent of Cambodia's imports from Thailand pass through this border-crossing and 14 percent of exports to Thailand.[990] The cross-border checkpoint is open from 7.00 am to 8.00 pm each day. Within the zone between the Cambodian checkpoint and the Thai checkpoint there are numerous casinos that can be visited from Thailand without formally entering into Cambodian territory, generating employment for an estimated 10,000 people and attracting around 1.2 million Thai

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[988] During the fieldwork one family was renting a plot of land in Poipet resettlement site to engage in construction work near the site. They had built a temporary shelter from wood and corrugated iron on the land.
[989] This was called the Expanded Income Restoration Program (EIRP).
[990] Yagura (2013, p. 118).

customers per year.[991] A large market, Rong Kluea Market, is also situated within the special economic zone selling many non-food essential items, such as clothes. Residents of Poipet can obtain a border pass for around USD 5 for seven days to enter Thailand in the areas immediately beyond the border (Sa Kaeo and Phrachin Buri Provinces). Cambodian nationals from any province can visit the Rong Kluea Market within the border zone.[992]

Interviews with people living in the resettlement sites and back along the railway revealed the significance of the nearby "special economic zone" that existed along the border in central Poipet. Figure 29 below depicts the location of the Poipet resettlement site and its proximity to the Thai border.

Figure 29: Sketch of Poipet resettlement site indicating proximity to Thailand
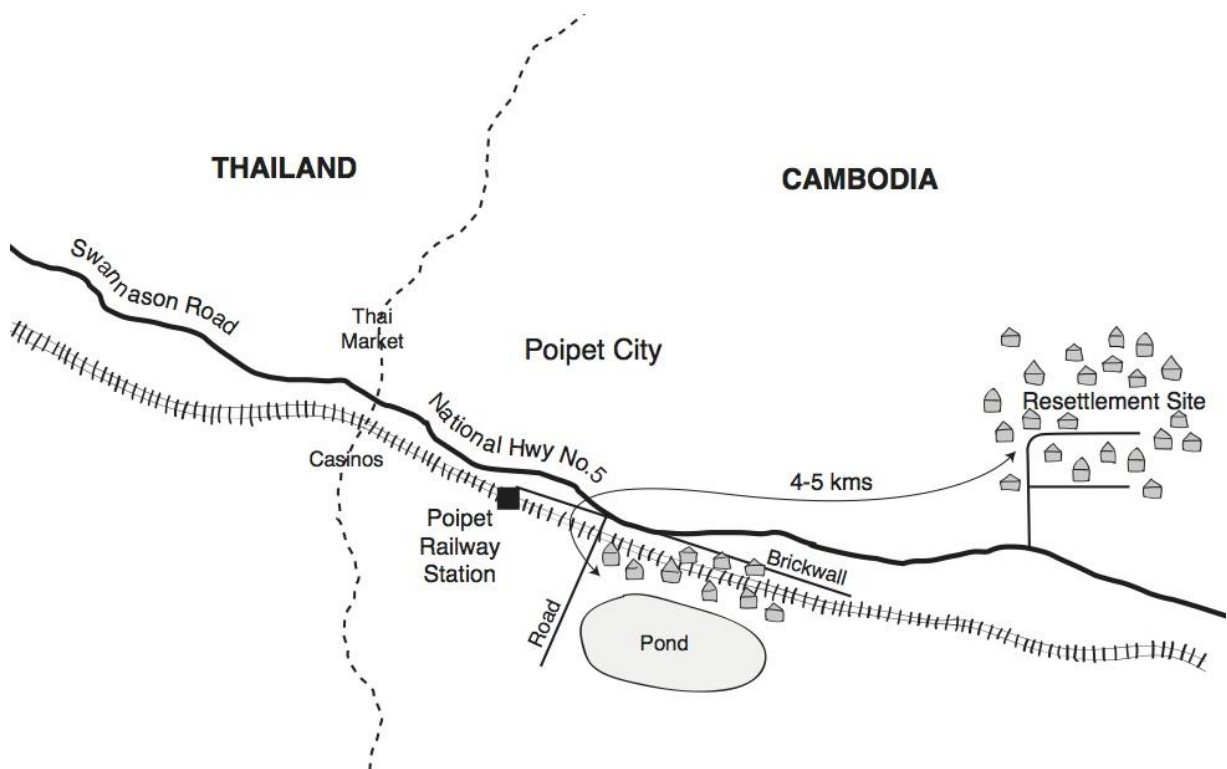
Source: Author's sketch[993]

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[991] Yagura (2013, p. 121).
[992] Yagura (2013, p. 120).
[993] Drawing not to scale.

Access to higher incomes and livelihood options enabled by proximity to the borderlands area appeared to increase the appeal of resettlement. Greater confidence about income sources meant that families in Poipet were able to take advantage of the land offered in the resettlement sites in ways that were not possible in other parts of the country. People were still highly indebted and some had resorted to selling their land, however many others had upgraded their homes and built large cement houses in the resettlement sites. Since the Poipet site is close to the Cambodian-Thai border, most people engaged in some sort of small scale trade or business that benefited from being near the border. Making daily trips across the border to neighbouring Thailand, a few kilometres away, to sell items in the market, or purchase items that could be sold back in Cambodia, was a relatively low-risk way of earning money. Even small-scale mobility from the site enabled settlers to earn incomes, made possible by the strong social and financial networks that exist around the border, and are typical of trade across international borders in Southeast Asia.[994] This trade had enabled people to significantly upgrade their houses in the Poipet resettlement site as they already had access to reliable income sources and felt re-assured by the improved tenure security of their new land. Thus, often, this short-range movement was a continuation of pre-existing livelihood strategies in this area, and was not new or necessarily a consequence of resettlement.[995] Although households in Poipet were still in debt, most could service their debts. Relocated families in Poipet were thus able to leverage their existing resources and mobility networks to mitigate the effects of relocation to a much greater extent than those in resettlement sites further from the international border. The community leader of the Poipet resettlement site explained how many people did not sleep in the resettlement sites but were residing elsewhere, yet finding ways to hold onto the land. He estimated that:

> 300 out of 400 families are not sleeping [in the resettlement sites]…some of them sell the lands and some stay at the old place… and 50 families rent the place near Kbal Spean near the head of the bridge…They earn money near the border and in Thailand….They wash shoes at the Thai market, [drive] motor taxi[s] in Poipet, or are hired by Thai sellers to sell fruit in the market and transfer luggage,

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[994] Phadungkiati & Connell (2014)

[995] Note, people using this short-range strategy are not the people who were profiled in the case studies in Table 13 above.

fruit or vegetables at the border from Thailand to Cambodia and vice versa.[996]

There were also people travelling further into Thailand to work and earn money to send back to families building houses in the resettlement sites. One older man explained how his daughter had gone to Thailand to work, which had enabled him to build a large cement house in the resettlement which cost around USD 20,000.[997] As the community leader also explained: "Some of them are travelling to Thailand…They are in Rong Kleua market and Krung Teb [Bangkok] as construction workers and [as] other workers."[998]

People in the Poipet resettlement site were often continuing their previous occupations - regularly travelling to the border area to engage in small-scale trade, currency exchange, or sewing clothes that could be sold in Thailand. Construction work was also more readily available to people in Poipet, as the city is expanding and the resettlement site is close to where this activity is taking place.

7.10   Family separation resulting from resettlement and migration

Whilst mobility was being used adaptively by some households to increase incomes, there were many examples of mobility also causing family fragmentation and separation. Family fragmentation, including separation from young children, was both temporary and more long term, especially when parents went to work in Thailand. One woman in Sihanoukville was minding the very young baby of her sister, who had left to work in Thailand two months earlier and was sending money home.[999] Another woman in Sihanoukville had also left her two children (aged 5 and 12 years) with her sister-in-law while she went to Thailand to earn money following financial difficulties in the resettlement site. She described wanting to come home to take care of her youngest son because he was often sick.[1000] A similar situation existed in Battambang, with one family in the resettlement site minding two young children of another family, while their parents worked in Thailand. The husband explained that:

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[996] Interview with community leader in Poipet resettlement site, 3 March 2013 (Participant 103A).
[997] Interview with man in Poipet resettlement site, July 2013 (Participant 117A).
[998] Interview with community leader in Poipet resettlement site, 3 March 2013 (Participant 103A).
[999] Interview with woman aged 25 years in Sihanoukville resettlement site, 23 February 2013 (Participant 32A).
[1000] Phone interview with woman in Thailand who had left family in Sihanoukville resettlement site, July 2013 (Participant 52A).

"They leave the kids with my wife…The parents send home USD 50 per month for their kids."[1001]

Married couples were also sometimes separated. In one instance, a woman who had been in Bangkok for two months had left her husband in Sihanoukville.[1002] She described debt as her reason for going to Thailand, after her attempts at animal husbandry in the resettlement site had not generated enough income. She sent around 7,000 Thai Baht (USD 216) home to her husband each month, but eventually sold the plot of land in the resettlement site because she had not been able to cover the debt. Her daughter, who had been allocated separate land in the resettlement site, had also sold her land for the same reasons and migrated to Thailand in search of work. They used the money from the sale to pay back their debts and buy passports.

A range of other family agreements had been made, with migration arrangements embedded in existing social and familial relationships, rather than through formally organised schemes. One woman in Sihanoukville had organised with her daughter and son-in-law that they would go and work in Thailand and send home money so that she could build a house in the resettlement site.[1003] Another woman in Battambang had sent her two older sons to Thailand to work so that she could pay various costs, including for the house in the resettlement site.[1004] The older son was 19 years old at the time, and had already lived in Thailand for at least two years, having travelled illegally and without a passport across the border with 20 other people. In Thailand he was allowed only limited movement in certain areas as part of an agreement with his employer. These households are included in Table 13 above. Figure 30 below indicates the number of people who were interviewed who were experiencing some kind of family fragmentation as a result of engaging in livelihoods dependent on mobility.

[1001] Interview with man aged 55 years in Battambang resettlement site, 6 March 2013 (Participant 90A).

[1002] Phone interview with woman living in Bangkok who sent money to husband in Sihanoukville resettlement site, July 2013, (Participant 46A).

[1003] Phone interview with man aged 28 years living in Nakhon Pathom City in Thailand who sent home money to Sihanoukville resettlement site, July 2013 (Participant 49A).

[1004] Phone interview with 19 year old man in Thailand who sent money back to Battambang resettlement site, July 2013 (Participant 97A).

Figure 30: Family separation due to mobility dependence (n=36 participants whose livelihoods were dependent on mobility)
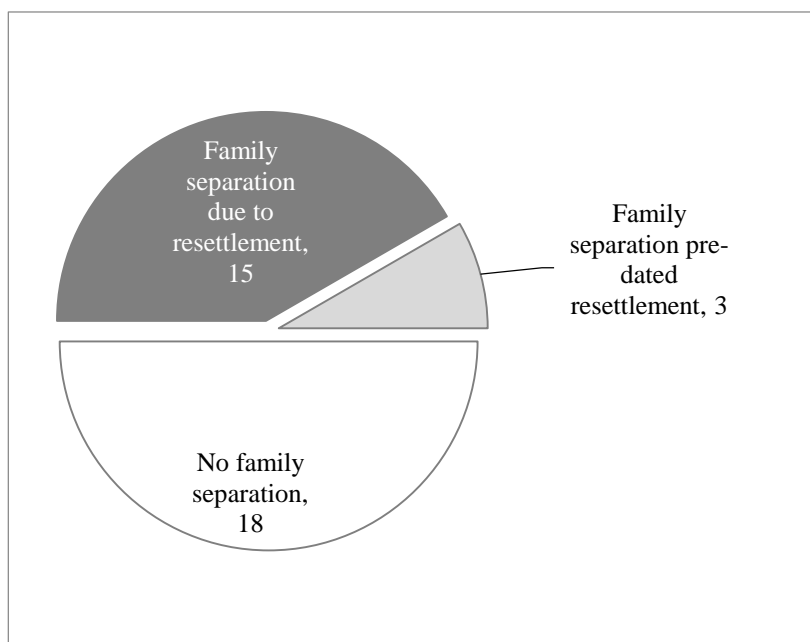
The experience of those travelling to Thailand without passports differed from those who had passports. For illegal workers the early months in Thailand were particularly stressful; migrants did not speak Thai, had no bargaining power when choosing employment and, years later, were still having to pay Thai police around 500 baht per month (USD 15) to reside there. Those with passports had easier experiences, were treated comparatively well by employers and able to earn more money than those without documentation. Workers in Thailand were in regular contact with their families back in the resettlement sites, keeping in contact at least weekly by mobile phone, but only returning home annually for special celebrations, such as Cambodian New Year or Pchum Ben, an important holiday of ancestral worship. People who were interviewed by phone or skype while they were in Thailand were particularly keen to be interviewed, as no one had previously contacted them to ask about their experiences of the resettlement. [1005]

[1005] Eight participants were contacted by phone or skype. Multiple calls were made over a number of weeks to clarify family details and connections.

7.11   Impacts on children

Children appeared to disproportionality experience the negative effects of resettlement and livelihoods dependent on travel. This is consistent with early anthropological studies on resettlement by authors, including Colson[1006] and Scudder.[1007] There were many stories of schooling being highly disrupted by the move. The Resettlement Plans described how the new resettlement sites were close to schools, however it appears there were no attempts to assess the capacity of those schools to absorb higher numbers of children into their classrooms. In Phnom Penh many households explained how there was no room in the local school for their children. Stories of discrimination against new children were common. Parents also said that they were being asked to pay additional payments or "bribes" to receive school handouts. Some children were simply not going to school or had taken a break of many months while the family relocated.

In the resettlement sites, parents were leaving children as young as six months old alone with very young siblings for up to twelve hours per day to travel and work in factories. During one of the interviews in Phnom Penh resettlement site, a young baby aged 1 year old sat on the road crying. The interview paused as it became clear there was no one who could come to assist the child. When the interview participant was asked about the situation she said:

> The child who was crying was 1 year old. There are four siblings in
> total. The oldest is 11 years old. The parents go to work at 6am-7pm.
> The children cook by themselves. [1008]

When she was asked how many people leave their children while they go to work each day, she estimated that around 100 families leave their children to be looked after by other children. The woman also explained that "lots of husbands have left their wives and families here" suggesting that there had been a number of family separations following relocation.

[1006] Colson (1960; 1971).
[1007] Scudder (1993).
[1008] Interview with woman in Phnom Penh resettlement site, 16 February 2013, (Participant 6A).

7.12   Uneven impacts and the constraints of distance

The micro-geography of each site was critical in shaping experiences of resettlement. The distance of the resettlement sites from previous residences was an indicator of whether people wanted to move to the resettlement sites and whether they were able to adapt during the transition. It was not the only consideration, but it was a strong determinant as it related to the potential for livelihood restoration. People in the Phnom Penh site were particularly disadvantaged by distance, with many having effectively abandoned it as a place for livelihood generation or even residence, since so few livelihood activities were available so far from the city centre. Relocation to the new site meant that small businesses previously operated out of people's homes were no longer viable. For those who worked in factories, most of their wages were now spent on transportation. Being away from the sites made it hard to access support services that had been set up for relocated households. By contrast, people in Poipet who had moved a relatively short distance were able to access border trading opportunities and relatively easy access to Thailand. In Pursat, the community was impacted less by resettlement because they were relocated nearby, however they were still experiencing high levels of debt because of the costs of relocation and because they were now able to use their land-based assets as collateral for loans. As mentioned above, people were using their new land as collateral for loans, even though they had not yet lived in the sites for five years and received full land ownership. The other two sites were intermediate, although those resettled from Sihanoukville were disadvantaged in having to give up, or move away from, coastal livelihood activities.[1009]

In every site income generation was more difficult than it had been in the original high-density railway settlements. There were even examples in Pursat of people finding it more difficult to walk to the market and sell goods, although they had moved only 400 metres. Debts and financial stress had increased and some people and even whole families had engaged in new long-distance migration to elsewhere in Cambodia or to Thailand. At various scales new forms of mobility had emerged, as people sought out the "urban" jobs that had characterised their original railway settlements and employment.

Paradoxically, although people were experiencing much greater mobility on a daily or long-term basis, one of the aims of the resettlement policy was to encourage families to stay in

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[1009] Cf. Jessie Connell & Connell (2014).

the resettlement sites for five years,[1010] to develop the sites, promote an attachment to place, and re-establish livelihoods by having a critical mass of people in or near the resettlement sites. At the end of that period, it was intended that they could obtain land titles if they could demonstrate continuous residency, however many people had simply built a structure on the land and left it for others to mind.[1011] Also paradoxically, when people were asked whether it was fair to require people to stay in the sites for five years to receive land title, almost all said that it was. As one explained, "If they give them land title straight away the people will sell it and go back to living like before."[1012] Requiring people to stay in the resettlement sites was also intended to prevent them returning to squat on land they had previously occupied. Demonstrably permanent resettlement had not happened, nor were the other objectives achieved. Mobility had become the key coping strategy.

The community experiences of resettlement presented in this chapter resonate with the work of legal geography theorists presented in Chapter 3,[1013] and with writings of other authors in Cambodia, especially those who have written about the asymmetry of land titling and land formalisation schemes.[1014] The anguish experienced by community members when making decisions about how to survive in resettlement sites and about leaving former neighbours behind, is not unlike the painful deliberations described by Milne,[1015] taking place in villages in response to Order 01 which provided the opportunity for individual land title on state land previously occupied communally.

Biddulph's[1016] theory of the geography of evasion also seems to apply in this case, as it would seem that the right of way along the railway – an area of high value land yet of ambiguous legal status – was not being included in the adjudication area of existing land titling schemes. While this may be simply because the right of way is designated state public land and thus a decision has been made that it cannot be individually titled, the ambiguity of the future of long-term residents living on this land has not been resolved. In this case, the ADB safeguards policy has also evaded addressing the tenure security or futures of the families living within the right of way, drawing on a rationale formulated at another scale

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[1010] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, pp. i-v.).
[1011] This process was explained in Chapter 5, Section 5.7. Also see Section 7.8 above.
[1012] Interview with woman aged 50 years in Battambang resettlement site, 6 March 2013 (Participant 89A).
[1013] Especially Gillespie (2012); Hirsch (2001);
[1014] See: Dwyer (2015); Milne (2013); Biddulph (2010; 2014).
[1015] Milne (2013).
[1016] Biddulph (2010;2014).

and space (the minimizing resettlement principle originating from World Bank safeguards frameworks formulated in Washington D.C. and adopted by ADB headquarters in Manila). The product of this "unstable mixing"[1017] of different policies and rules formulated at different scales seems to confirm the link drawn by Unruh & Williams,[1018] between legal ambiguity and tenure insecurity. The resulting impact of the ADB resettlement policy is that it seems to have created spaces – like the leopard's spots, also like pockets or islands of land where ADB resettlement standards apply – notwithstanding the shared circumstances and tenure concerns of people living in the right of way and of those previously living in the corridor of impact. The notion that the resettlement sites of multilateral bank projects are "islands of governance" was a theme in the interviews with policy-makers and resettlement experts and is developed in the next Chapter. It also builds on the work of Ong,[1019] who has analysed places of exception created in Southeast Asia, as spaces that are carved out to comply with foreign demands, practices and expectations.

7.13   Chapter review

It appears that as additional compensation was provided and services and infrastructure improved in the sites, so did the appeal of resettlement for community members who were left behind. This research was conducted before the third round of compensation from the additional USD 3-4 million scheme began in January 2015, even though other activities of the ADB project relating to the railway had ceased. It can be reasonably inferred that the dynamics between people left behind along the railway, and those who were resettled would only intensify after another round of compensation was paid to people in the resettlement sites, especially in Poipet and Pursat.

The legal geography of the resettlement scheme critically influenced people's experiences and determined the rights and benefits available to them under the project. The precise location of a household prior to resettlement, i.e. proximity to the centreline of the proposed railway and corridor of impact, determined a wide range of benefits provided under the project, including a household's right to complain and have grievances re-assessed by the ADB Accountability Mechanism. Those who lived within the 7 metre corridor of impact received land, and those who lived outside its bounds did not. While many did not want to

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[1017] See, Braverman, Blomley, Delaney & Kedar (2014, p. 3) Also see: de Sousa Santos (1987).
[1018] Unruh & Williams (2013).
[1019] Ong (2006).

leave their homes along the railway, especially in Phnom Penh, many others felt the process for allocating land and compensation was arbitrary. This can be understood as a localisation of laws[1020] process, as manifested by the local application of the ADB resettlement policy, which resulted in arbitrary decisions about how relocation was determined, guided by the strict 3.5 metre corridor of impact. Other administrative decisions also seemed to have enormous significance for the communities affected, such as the decision to move the Phnom Penh resettlement site from a nearby location to a site located much further away outside the city well after the community consultation process had finished; a switch in policy that was to have profound ramifications for the lives of affected residents.

Many challenges were experienced by those who relocated in all of the resettlement sites, even those who relocated only short distances. High levels of household debt quickly emerged as people used their newly acquired land-based assets as collateral for loans to cover the costs of relocation and in some cases to upgrade the quality of their housing. In the new environments of the resettlement sites, mobility – being able to travel in search of work – became a critical adaptation strategy. New types of mobility also had disadvantages: the fragmentation of families, separation from young children, difficulty retaining reliable and sustainable jobs, disruptive and costly travel, safety and other social issues, especially when family members left to work in Thailand. Mobile residents also tended to not be present in the resettlement sites to access support and social assistance as it gradually increased, and had less involvement in local community issues. Increased mobility also had advantages with some people able to continue their previous occupations and new incomes being generated from remittances. Thus, for some mobility was an adaptive strategy, whereas it increased the vulnerability of others. Land title in the resettlement sites was a major attraction, hence even the most mobile remained connected to the resettlement sites through relatives and social networks wherever possible. They were sending home remittances and returned home regularly. Those who were not able to manage their newly acquired debts and sold their plots of land, did so reluctantly as the future potential of the land value was seen as a desirable and for some it was their only financial asset.

The ADB resettlement policy and the advocacy strategies used by NGOs and the media aligned and misaligned with affected peoples' concerns in various ways. Once advocates

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[1020] Gillespie (2012).

drew attention to the project's negative impacts and the ADB responded by improving the resettlement sites and providing additional compensation, the dynamics between relocated households and those who were not provided with land began to change. This was not necessarily the case in Phnom Penh or Battambang where residents who remained near the railway still did not want to move to the resettlement sites because they were too far away. However, it was often the case for residents left behind in Poipet and Pursat, as the resettlement sites were close enough for them to envisage how they may make the difficult transition given the incentive of land tenure security and the social supports in place after 2012-13. Consequently, the blanket principle of minimising displacement was no longer sensible or equitable in these local contexts, especially in Poipet or Pursat, where the communities living along the railway had been split arbitrarily by the corridor of impact determined for the project. The conditions became highly inequitable between those living with tenure insecurity along the railway in Poipet and their former neighbours who had been relocated. This was especially the case in Poipet, as the large majority of community members had relocated. Upon returning from fieldwork for this study, these issues were communicated informally to representatives of the ADB and Australian Government, however it was made clear that additional money from donors was only to be allocated to the resettlement sites. If the remaining railway residents are relocated at a later date, the agreement between the ADB and the Cambodian Government requires that they receive the same compensation and supports as those relocated earlier, however ADB monitoring of these standards will not continue indefinitely.[1021] It is currently unclear what resettlement standards will apply to the remaining residents if they are relocated at a later date. The ambiguity of the law in this legally plural setting contributes directly to the tenure insecurity of the residents who remain in the railway right of way.[1022]

For many individuals, the railway project was the first time they had been exposed to or involved in advocacy with NGOs. The support offered by NGOs was a significant experience for the community members interviewed for the research. However, while advocacy was grievance-driven, the ways that NGOs could represent people were often shaped or constrained by ADB's safeguards policy and the grievance redress mechanisms available. Effective advocacy was more difficult for grievances which did not fit or align

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[1021] Asian Development Bank (2006, p. 14).
[1022] See: Unruh & Williams (2013).

with policy commitments or undertakings made previously by the ADB. Local avenues for dispute resolution, i.e. making complaints to the Village Chief, local government or IRC, were not fruitful in most cases and many people felt that this option was not open to them. These processes could be understood as a type of forum-shopping[1023] as community members and advocates tried to use different forums to resolve disputes.

The research also revealed how households used their own networks and resources to overcome the difficulties experienced during resettlement. The resettlement policy set up a difficult dilemma for affected households who wanted to demonstrate continuous residence to ensure they could formalise their land ownership at the end of the mandatory five year period. The need to remain in place or at least have some connection to the resettlement site, had to be balanced with the need to travel in search of work. Different types of mobility had become essential to many household coping strategies. The significance of mobility in people's adaptation strategies was most pronounced in Poipet resettlement site, however in Poipet this type of mobility was consistent with pre-relocation livelihood patterns and was mostly short-range.

The research suggests a number of local factors which may enable certain households to cope with the impacts of resettlement schemes. Households with pre-existing assets – savings, diversified livelihoods, larger household size and physical proximity to strong economic and social networks – may be able to take advantage of a resettlement package which includes land title. This was not established in the research, but there was some anecdotal evidence indicating that these households may have more resources available to endure the financial stress of resettlement and cover repayments on loans secured against their land. Larger families may also have the capacity for greater mobility. There were many examples of family members leaving the resettlement sites and sending back remittances to family members who remained to take care of the land. These household factors require further investigation in future studies.

At the same time, aspects of the research suggest features of resettlement planning which may expose people to increased impoverishment and vulnerability. Families without these pre-existing assets and support tended to be driven further into impoverishment, revealing how the process of relocation can exacerbate inequalities. Although some households were

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[1023] See: Unruh & Williams (2013); Meinzen-Dick (2009, p. 3).

able to use mobility to enhance their options and secure land-based assets, others were not able to hold onto land-based assets and were forced to sell their land. In addition, the risks of increased mobility include family fragmentation, separation of children and parents, increased travel costs and vulnerabilities to exploitation, especially when travelling without a passport. Absence from resettlement sites also made it difficult for some households to participate in community meetings and other programs designed to support people in the resettlement sites.

The uneven impacts of the resettlement policy demonstrates how laws and policies drew new lines of social organisation among the railway communities. As with Order 01, the leopard skin policy, which painfully re-organised indigenous communities, as described by Milne, [1024] the resettlement policy also had a patchwork effect. The end of the chapter described this effect in terms of creating "islands of governance", where the resettlement sites have been carved out as exceptional spaces where ADB safeguards apply; an argument that is developed in the next chapter.

The community-based fieldwork highlights the heterogeneous nature of community interests in resettlement and the ways in which international policies are brought to bear in local contexts. The next chapter explores the major themes and questions which emerged from the community-based fieldwork. It draws on interviews with project financiers, NGOs and other stakeholders to explore these tensions further.

[1024] Milne (2013).

Chapter 8

Resettlement safeguards and "islands of governance": Perspectives from financiers, policy makers and NGOs

If I stick to the rule book, and I do everything by the rules, then I should be safe.[1025]

I think we got ourselves into a terrible bind when we adopted these safeguards because what we needed to do was to say, "right, are we really sure, how practical is this? Where is the capacity within the countries? Where is the capacity within the banks? Where is the money? Can we actually do this? And I think often the case is "no".[1026]

We are advocates after all, not sociologists trying to establish a comprehensive record of the overall resettlement process. However, our advocacy has been firmly grounded in evidence of negative social and human rights impacts, and it is those experiencing negative impacts whom we have worked to support...[1027]

[1025] Former senior ADB official speaking in a personal capacity, describing safeguard approaches within ADB, November 2014 (Participant 4B).
[1026] Former AusAID senior staff member speaking in a personal capacity, talking about the railway, 19 December 2014 (Participant 12B).
[1027] International NGO representative discussing advocacy in Cambodia, correspondence after interview via email 25 June 2013 (Participant 8B).

8.1 Overview

The previous chapter explored the experience of resettlement and resettlement safeguards from the perspective of the different communities affected by the Cambodian railway project. This chapter turns its focus to how the resettlement safeguards are perceived, experienced and managed by critical actors at other scales. It draws on interviews with senior policymakers, consultants, safeguards and resettlement specialists within the ADB, World Bank and Australian Government, as well as interviews with NGOs and community advocates (see Appendix C). It also draws on experiences in Washington D.C. during the Spring Meetings in April 2013, when the World Bank held a series of consultations with civil society groups about reforming its social and environmental safeguards policy.[1028] Many of the contributions from interview participants are reported anonymously given the sensitivity of the topics discussed.

Using the best information available, the chapter presents insights from these stakeholders about relationships between bilateral and multilateral donors, the process of financing infrastructure projects overseas and the effectiveness of resettlement safeguards. The chapter also explores debates about the nature and role of advocacy in shaping and changing the direction of policy. In particular, the interviews reveal the challenges of encouraging local country "ownership" of resettlement processes on the one hand, and international standards and requirements for "accountability" on the other. As the chapter argues, this tension often manifests itself in so-called "islands of governance", especially where there is a significant disparity between national government standards and international project-specific resettlement policies, as was the case in the railway. This argument builds on the ideas of Ong,[1029] who has explored the idea of exceptionalism in the context of Southeast Asia, regarding how Governments make exceptions to their usual practices of governance so as to position themselves favourably towards foreign investors and trade partners. As explored in Chapters 3,4 and 7, it also resonates with the uneven geographies of land interventions in Cambodia described by Milne, Biddulph and Dwyer.[1030]

[1028] I was based in Washington D.C. for 2 months in early 2013 and attended the Civil Society Stream of the Spring Meetings, and the consultations with civil society on the safeguards review. During this time I also interviewed a number of social safeguards specialists working on the review and members of the World Bank Inspection Panel. For details of the Spring Meetings, see: http://www.imf.org/external/spring/2013/. For details of the World Bank safeguards review, see: https://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies).

[1029] Ong (2006). See Chapter 4, 4.6. Also see Johns (2015).

[1030] Milne (2013), Dwyer (2015), Biddulph (2010;2014). See the analysis in Sections 3.5, 4.3 and 7.12.

The aim of the chapter is to articulate the major tensions shaping contemporary resettlement safeguards and policy at a number of scales. It addresses the third research question guiding the study:

- What are the implications of using international safeguards and accountability mechanisms to influence resettlement processes in a country in which domestic legal systems are not well established?

The chapter is shaped around four major themes or issues which emerged during the research and deals with each of them in turn. The first is the debate about "islands of governance". The second is the importance of formal grievance mechanisms and independent advocacy, which are separate from the internal monitoring systems in place at a project level. The third is the tension between inflexible resettlement principles and divergent community needs and aspirations. The fourth is the issue of commercial interests and the "public interest" test, focusing on how the Cambodian railway project unfolded. The chapter draws particularly on interviews with senior decision-makers within the ADB and Australian Government to explore the factors they considered when deciding to finance the railway project in 2009, as well as reflections from these stakeholders about the project as it encountered serious challenges from 2010 onwards.

8.2 Safeguards and "islands of governance"

The safeguards model relied on by the ADB and the Australian Government was introduced in Chapter 2, and described in further detail in Chapter 5. When the ADB is involved in a project, an assessment of social, environmental and financial risks is required prior to the project being approved.[1031] Based on this assessment, a decision is made whether to approve the project. If approved, certain measures are often put in place to mitigate the potentially negative impacts that could be created by the project. Adverse impacts stemming from resettlement are one of the aspects that need to be considered in this assessment. These safeguards are supported by formal grievance mechanisms which can be used by affected communities to seek redress from multilateral banks, including the ADB and World Bank, when they have suffered harm from a poorly implemented project that has not complied with the relevant safeguards framework.

[1031] See Chapter 5 for a detailed explanation of this process in relation to the railway.

When the Australian Government is involved in a project with a multilateral development bank, it devolves responsibility for assessment of social and environmental risks, and responsibility for mitigating those risks, to the banks. It also uses the safeguard standards developed by the banks as its benchmark for assessing and mitigating risks. Thus, in the Cambodian railway project, as with other co-financed projects, AusAID delegated responsibility to the ADB for assessing Cambodia's capacity and willingness to comply with ADB's safeguards framework.[1032] These arrangements are essential background for understanding the logistics of how safeguards assessments occur, and how risk is devolved when bilateral and multilateral partners work together on large multi-donor projects. To reiterate how this process works, included below is a table extracted from the Australian Government's website explaining the respective responsibilities and roles of the Australian Government and multilateral banks when co-financing investments.

Table 14: Roles and responsibilities in co-financed investments[1033]

Roles and Responsibilities in co-financed investments	
Multilateral Development Bank	Where DFAT co-finances an investment designed and led by a multilateral development bank, such as the World Bank or the Asian Development Bank, their respective safeguard policies are applied. It's the Bank's responsibility to ensure compliance with these policies. Activity managers need to be aware that Bank staff can seek waivers from safeguard requirements.
	Assess partner government capacity (including policies, laws, regulations and partner country commitment) and ensure buy-in.
	Where the above assessment identifies gaps, the Bank must support design assessment and capacity-building of government to undertake resettlement planning and implementation. This may include national, provincial and local government, as well as civil society engagement.
DFAT	DFAT's policy requirements must be met throughout the investment.
	Understand, agree and support safeguards arrangements including any supplementary activities with the bank. This may require specialist engagement and/or external advice to give confidence that the Banks' processes match their own policies as well as ours. DFAT should not continue to fund implementing agencies or sectors that have a record of non-compliance.
	Ensure participatory and transparent safeguard implementation and effective monitoring and supervision; including independent monitoring where appropriate. This includes monitoring the Banks' compliance with their own safeguards.

[1032] These arrangements were explained in Chapter 2 at Section 2.6 and Chapter 5.
[1033] Following the change of Government in Australia in 2013 and the merging of AusAID with the Department of Foreign Affairs and Trade (DFAT), the terminology was updated, and references to "AusAID" were replaced with "DFAT". This table is no longer available on the website, but slightly rephrased resettlement guidelines were released again in 2015, available on the DFAT website, see: Australian Department of Foreign Affairs and Trade (2015a).

As evidenced by the Cambodian railway project, the safeguards model and risk assessment process in place was ineffective in the early stages of the project. However, once advocates drew attention to how resettlement was occurring, gradually the ADB and Australian Government responded by improving the resettlement sites and providing additional compensation. Yet, as illustrated in Chapter 7, this support was provided primarily to the people in the resettlement sites. People who remained living along the railway tracks, who had not been formally resettled, were largely excluded from this support. The resettlement sites could thus be considered "islands of governance" in that they had become demarcated or separated, physically and institutionally, from broader Cambodian resettlement practices by the ADB resettlement site boundaries. A range of different types of assistance were being provided to people in the resettlement sites, such as health services and health insurance, financial literacy training and savings programs. These types of services and assistance were being organised with the support of the ADB and AusAID and were not being provided to all people across Cambodia who were being resettled, only those who were resettled under the ADB project.

The "islands of good governance" issue was a central theme emerging in the interviews for the research. Numerous interview participants perceived the tension between safeguards approaches which resulted in so-called "islands" of influence and approaches directed at enabling broader programmatic reform within the host nation government and society. Participants were deeply divided about whether these "islands" had a positive trickle-down effect on broader policies or whether they simply became places of exception.[1034] This tension was seen to emerge particularly in settings, such as Cambodia, where there is a significant disparity between national government standards and international project-specific resettlement policies. It stemmed from the competing objectives of trying to foster local ownership of projects and programs at the same time as experiencing pressure both from within the banks, and especially from outside the bank (from bilateral partners NGOs, advocates and the public), to ensure high levels of social and environmental accountability are maintained.

[1034] See Ong (2006); Johns (2015).

An important interview with a former, senior AusAID government official, speaking in a personal capacity, revealed the how the safeguards created what he perceived to be an unachievable standard for bilateral development partners, such as Australia, to be held accountable. This particular official is quoted extensively throughout the chapter because his seniority and position at the time meant he was able to offer a unique inside perspective on the decision-making processes that took place. As he explained:

> I think everybody had an interest to, sort of, pretend that these incredibly [complex safeguards] would be met within existing resources, I don't mean just for this project, I mean across the board. I think we got ourselves into a terrible bind when we adopted these safeguards because what we needed to do was to say, "right, are we really sure, how practical is this? Where is the capacity within the countries? Where is the capacity within the banks? Where is the money? Can we actually do this?" And I think often the case is "no". [1035]

At face value the economic rationale for supporting the railway project was clear to decision-makers when they read the early scoping studies, but at the same time, there was a type of collective willingness not to fully acknowledge the extent of complexity involved in successfully completing a project of this type. This kind of wilful blindness is reminiscent of Biddulph's analysis of the LMAP conflict where the objectives of donors and the Cambodian Government appeared to align in the planning and approval phase, but dissolved upon implementation as the inherent complexities of the project and the wider political economy context in which it was situated became clear.[1036] As the following quotes from the same former AusAID official illustrate:

> There seemed to be an enormous momentum to go ahead with the project, and there were lots of desirable outcomes that could come from it, at the same time as a sort of subliminal recognition that it

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[1035] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1036] Biddulph (2014).

was impossible to pull it off perfectly, but still a desire to go ahead…[1037]

It was quite clear that Cambodia lacked basic infrastructure, so [the railway was going to be] absolutely fundamental if it was going to start shifting a significant amount of produce, particularly agricultural produce ... It was hard to argue that Cambodia didn't need trunk-line railways, and at least some of the economic benefit that was postulated was quite significant, but obviously needed to be tested very closely. So from the beginning there was a strong economic case…[1038]

The project posed a number of different types of challenges, quite separate from the resettlement issues potentially involved. As he recalled: "I remember reading [the concept paper] document, and thinking, wow, if you can pull this off then fabulous, but wow this is huge…". Rehabilitating the railway was not simply a matter of repairing the tracks, but of re-building the whole system, including processes for managing and operating the railway network and staff. The complexity of the proposal is captured in the interview excerpt below:

From the outset this looked like a really ambitious project…we weren't talking about adding a few bits to an existing network, we were talking about completely re-building the network, completely replacing, starting again with the management of the railway entity…The interesting thing was, whoever put it together realized that to get value out of the railway, it couldn't just be laying new track and getting new rolling stock, they realized that the whole railway system needed to be completely changed... The old railway company owned a lot of land and it owned lines that were not being used. It had a lot of people, I think on the books, who were not necessarily "ghost workers", but workers from a long time ago who

[1037] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1038] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

were not actually working. If the railways were going to fulfil their economic potential they… had to be very very well managed...[1039]

ADB was looking for support, both financial and technical, from Australia and other donors. Australia was one of the logical member countries that the ADB could turn to in search of additional technical assistance financial support. This interview participant explained that at least from AusAID's perspective, being involved in the railway was about providing technical support to the project that would otherwise not be provisioned. He also explained that, although resettlement issues were discussed, they were not the primary focus during the initial deliberations about whether to go ahead with the project. As he recalled:

> Resettlement was certainly flagged, as you would expect it to be with any significant infrastructure development program, [but] on all sides this was highly complex, potentially big pay-offs, but I think for me a fundamental [question] was do you have the resources, both financial and skills, to carry this off?

Like many borrowers, Cambodia, was reluctant to borrow money from the ADB that would go towards the "softer" more social, environmental and governance-related aspects of such a project. He explained how this is a typical dynamic when dealing with a number of borrowing countries:

> The critical thing here is that a loan will embody some technical assistance but client countries are often very reluctant to borrow more than the absolute minimum. They'll borrow [for building the infrastructure] because they see a return on that, a direct monetary return that can finance the loan, [but] they tend to be very reluctant to borrow for anything that they think is either unnecessary or overdone or just even on the social side that they might think is valuable, but, because it doesn't in and of itself generate an income flow, they tend to say "we will not have that in the loan". Then the World Bank or ADB is in a dilemma because it can look at something and say, "look you really need these other components to deliver this

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1039 Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

adequately, but the client won't borrow for those things", so it then has to find money from elsewhere. The risk of course is that it under-provisions those things or it cannot finance them adequately, so they can't get properly done.[1040]

Grants, rather than loans, are one way of provisioning for greater "technical" expertise, which may include a range of specialisations, including social, environmental, fiduciary assistance relating to design and construction, as was the case in the railway. Another senior AusAID staff member, now working at the Department of Foreign Affairs and Trade (DFAT), also explained the role of grants in complementing multilateral loans and thus requiring borrower countries to commit contractually to implement projects in a certain way:

> Grant money helps the banks and the government do things that they would not do otherwise. It's as simple as that.[1041]

Thus the grant money provided by Australia to Cambodia, via the ADB, was a way of trying to ensure the project included adequate technical expertise. Providing grants or additional finance to support "softer" more technical aspects of a project essentially enables lenders to have more leverage over the standards that could be expected to be met for a given project. Yet, the DFAT official explained the complexity of how these standards often worked in practice:

> The approach that the Bank has is essentially to get the countries to reiterate that they will abide by ADB policy, and then to do some relatively light monitoring of that, on the [basis that] the Government has said that it will honour that. And you just need to essentially just keep an eye on that…that works reasonably well in middle income countries that have a reasonable capacity to do that, they're at a higher level of development, and the ADB policy and the World Bank policy, is much closer to the national policy and there isn't a big discrepancy.[1042]

[1040] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1041] AusAID senior staff member speaking in a personal capacity, 24 July 2014 (Participant 13B).
[1042] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

But in a country where capacity is incredibly weak…there is an enormous discrepancy between the national policy and the international policy, so the Government is saying "we can only afford to do a fraction of this in our own resettlement work, so you are forcing us to adopt a standard that we just cannot meet across the board", they tend to be fairly resentful of that. Then they have a relatively small capacity, technical capacity, I don't think you need to be a genius to work out that you would need a different approach in that sort of country… and yet historically they really haven't differentiated enough, and I think we are all a bit culpable on that. We should have all realized a long time back, that if we [AusAID] wanted them [the Bank] the institution to lift the standard, then they had to put a lot more effort into this. Then, quite frankly I think we all looked the other way and pretended that it wouldn't, that somehow miraculously this wouldn't happen…[1043]

As this participant suggests, there is a tendency for two extremes to emerge in countries where the national country standards for social and environmental accountability are significantly different to the safeguard policy of the multilateral banks. He describes how projects are often under-monitored in the beginning when projects are first approved and implemented, on the basis that the borrower country has formally committed to comply. After problems emerge or are drawn attention to by NGOs, there is an intensive focus on the specific project in question. The involvement of an international development partner with a safeguards framework in place (such as the ADB or World Bank) or with a high-level of reputational risk, such as AusAID, also makes it easier to generate a strong policy or reactionary response. As the senior former AusAID Government official stated,

We were the "soft underbelly" of this…The advocates knew this and used it, I think a little bit too mercilessly at times. We ended up being the ones most held to account for a lot of things that were not directly under our control.[1044]

[1043] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1044] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

Yet, the capacity to influence projects was also the justification given by this participant as the reason for Australia's involvement in the Cambodian railway project. As this former AusAID official explained when reflecting on the decision to go ahead with the project:

> I'm pretty sure that from the beginning we sort of said, "of course, the resettlement stuff is going to be complicated". It was there from the outset. It was one of the reasons we came in and why we thought that being part of the project would make it better than it otherwise would be…[1045]

The issue of how to finance and influence the outcome of infrastructure projects in countries with significantly different social and environmental standards was also a major issue at the World Bank Spring Meetings in 2013. Here, the debate took a number of forms. Representatives of the Bank who were engaging with Civil Society Organisation (CSO) representatives in the "civil society stream" were openly acknowledging the shortfalls of the World Bank, particularly in relation to resettlement. A draft of a major review of World Bank projects requiring resettlement was released around the same time and it was widely acknowledged that the World Bank had a mixed history in terms of its resettlement track record.[1046] The World Bank had also publicly stated that its new safeguards policy would be reoriented towards a positive obligation to "do good" rather than simply a negative obligation to "do no harm",[1047] yet there was clearly not a consensus within the Bank in support of this new direction. One of the central disagreements that characterised the meetings over the course of a number of weeks, surrounded the most effective response to this dilemma.[1048] A number of these meetings were held under "Chatham House Rules" and so the participants cannot be quoted. During this time, the CSOs put forth a joint submission for a human rights framework to be included into all World Bank project assessments and operations.[1049] As the jointly supported CSO submission from Inclusive Development International, the Bank Information Center, Housing and Land Rights Network Habitat International Coalition and the International Accountability Project stated:

[1045] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

[1046] See: World Bank (2012a).

[1047] See: World Bank (2012b, p. 2).

[1048] The meetings took place in April 2013 in Washington D.C at both the World Bank building and at CSO offices, including the World Resources Institute.

[1049] See: Inclusive Development International, Bank Information Center, Housing and Land Rights Network Habitat International Coalition & International Accountability Project (2013).

Given the unusually high risk of human rights violations during involuntary resettlement, and conversely, the opportunities for advancing the enjoyment of a range of human rights through a well planned and executed resettlement project, the revised policy should require human rights impact assessments be conducted during project preparation. Undertaking human rights impact assessments is a precondition for ensuring that the Bank is not complicit in human rights violations as a result of displacement caused by its projects. It is also an essential foundation for designing Resettlement Plans and Process Frameworks that effectively achieve policy objectives, including conceiving and executing resettlement as a sustainable development program and improving the livelihoods and standards of living of those resettled.[1050]

The human rights framework submission was met with varying responses from World Bank staff. On the one hand, it was evident that the CSOs were being "managed" by creating a separate civil society stream for the discussions, so that these organisations would be "included" but also contained, so the CSOs would not disrupt the substantive and more formal Spring Meetings taking place in the World Bank building, which involved dignitaries and other international visitors. On the other hand, there was also a genuine interest from some World Bank staff members about the value of a human rights framework. Indeed, the International Finance Corporation (IFC) had taken the step in 2009 of recognising the explicit policy objective of avoiding forced eviction, using language that was consistent with UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.[1051] Also, the IFC had recently revised its Guidance Notes for the Assessment and Management of Environmental and Social Risks and Impacts, in which it explicitly acknowledged that:

Business should respect human rights, which means to avoid infringing on the human rights of others and address adverse human rights impacts business may cause or contribute to. Each of the

[1050] Inclusive Development International, Bank Information Center, Housing and Land Rights Network Habitat International Coalition & International Accountability Project (2013, p. 22).
[1051] See: Inclusive Development International, Bank Information Center, Housing and Land Rights Network Habitat International Coalition & International Accountability Project (2013, p. 13); International Finance Corporation (2012b).

> Performance Standards has elements related to human rights dimensions that a project may face in the course of its operations. Due diligence against these Performance Standards will enable the client to address many relevant human rights issues in its project.[1052]

These developments were mentioned many times by CSOs in their attempts to persuade the Bank to adopt a similar, if not more detailed, model. The reasoning behind trying to get references to human rights principles into the wording of the World Bank safeguards was that it would increase the advocacy options for the CSOs when engaging with the Bank. It would enable them to draw on other broader human rights commentary in their advocacy in relation to certain projects.[1053] Yet, CSO representatives also acknowledged that it was because of this potential for increased responsibility that the Bank did not want to reference human rights principles or use the language of rights, as it would open the door and require them to engage with a much larger suite of protections embodied in the human rights framework. A number of World Bank staff during the private meetings made it clear they would be open to including equivalent standards, but would not be able to do so in "human rights" language. [1054]

Thus, the debates were polarised in the sense that CSOs clearly preferenced the human rights framework and World Bank staff were reluctant to adopt this language, but at the same time the views of individuals were plural. World Bank staff were motivated to attend a separate and additional in-depth meeting with CSOs at the World Resources Institute.[1055] During the discussions, some staff explained that they felt the human rights framework had much to offer but could not see how the framework could be "operationalised" or translated into clear and realistic standards and guidelines at a project level. Others felt that the framework would make project implementation too rigid, and some also felt it would make the Bank's clients completely uninterested in taking loans from the World Bank when they could get finance from elsewhere, especially from emerging lenders, such as China. These internal debates and discussions are reminiscent of Bebbington et al.'s exploration of how the World Bank

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[1052] International Finance Corporation (2012a, p. 1).
[1053] Conversations
[1054] These sections are based on informal conversations during the meetings with CSO participants and World Bank staff.
[1055] The meeting took place on 22 April 2013 at the World Resources Institute (WRI) in Washington D.C. and focused specifically on involuntary resettlement. Participants included the Bank Information Center (BIC), Center for International and Environmental law (CEIL), Inclusive Development International and a number of World Bank representatives from the Social Development and Safeguards sections of the Bank.

adopted social capital values in the 1980s, which he perceived as a "battlefield of knowledge", in which social capital values were championed by some while others acquiesced, others resisted and some were simply too busy to engage, conveying the reality of how large institutions work, and debunking the idea that these organisations always work according to centrally-organised, monolithic or rationale principles.[1056]

Indeed, while these consultations with community advocates about how to align safeguards with human rights were occurring in the World Bank building and nearby organisations, such as WRI, very different meetings were also taking place. Simultaneously, within the Bank were ongoing discussions at the Spring Meetings about how the World Bank could compete with countries such as China, and whether adopting the new "Country Systems" approach would offer a way of reducing the burden of compliance placed on borrowers. A "Country Systems" approach was approved by the World Bank in 2005 as a pilot project, signalling a move away from the traditional safeguards system. Instead of using the World Bank's parallel safeguard system, it relies on the country's own social, environmental and fiduciary structures and focuses on strengthening those overarching structures across all government expenditures, rather than simply in relation to a specific World Bank project.[1057] Following the World Bank's lead, other banks, including the ADB, are also trialling similar approaches.[1058] The Country Systems framework is also described on the World Bank's website, where it says:

> To ensure appropriate use of the resources it provides, the World Bank - like most other development institutions - has specific and detailed operational requirements for the projects it supports. This has generally meant the creation of special units outside existing government structures solely to implement Bank-funded projects. But isolating projects from the government systems of the client country limits institutional strengthening and capacity building and thus the impact of development assistance…Further, the parallelism with existing structures has often increased the transaction costs of working with the World Bank…Experience,

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[1056] Bebbington, Guggenheim, Olson & Woolcock (2004).
[1057] World Bank (2015a).
[1058] See: Asian Development Bank (2015d).

independent evaluation, and operational research tell us that the impact of development assistance can be increased if development agencies support efforts to strengthen the institutions and systems that countries already have in place and work more directly with them since external development assistance accounts for only about 1 percent of annual development spending by developing countries. Using country systems also enhances country ownership and thus the sustainability of development programs. In addition, using country systems can lower transaction costs and increase aid effectiveness by providing a natural focal point for donor efforts to harmonize their processes.[1059] *[Emphasis added]*.

The parallel systems of islands of governance tension is evident throughout this excerpt. It is given as one rationale for advancing a "Country Systems" approach – which is perceived to reduce the creation of islands and instead contribute to broader country reform and capacity building of the borrower. Yet, many within the CSOs perceived the country systems approach to be a weakening of the safeguards in place and regressive when compared to the more traditional safeguards system,[1060] which established clear safeguards standards and expectations. As a submission from BIC to the World Bank Group explained:

The goal of increased country ownership of development programs and projects is a widely shared objective. We support this goal, but emphasize that country ownership should not be narrowly defined as the purview of one or two government ministries, but should be understood as involving a broad range of national stakeholders. Civil society organizations in potential pilot countries should be actively involved in pilot selection, assessment of safeguard equivalency, and design of country systems pilots… The Bank appears to be on a fast-track in adopting this framework despite serious instances of safeguard policy weakening. We recommend that the Bank take a more iterative approach and not move to formal approval until

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[1059] World Bank (2015a).

[1060] The "traditional" safeguards system was used in the ADB co-financed railway project in Cambodia.

further clarification and engagement with stakeholders. More time is
required on this sensitive proposal.[1061]

Interestingly, the Bank Information Center's proposal sought to broaden understandings of "country systems" to include the civil society organisations of the borrower countries; a conceptual leap from how country systems were being framed by World Bank documents.[1062]

The tension between strengthening country systems and ensuring that the safeguards standards remained high was also a major issue in the fieldwork for a separate piece of consultancy work carried out by the author for BIC in 2014.[1063] Here too the discussion about "islands of governance" versus broader programmatic reform emerged. This time it was in the context of another World Bank pilot of a new financing modality known as Program-for-Results or "PforR". The PforR lending mechanism is not subject to the World Bank's usual safeguards system, but instead relies primarily on the borrower's systems to implement programs and manage social, environmental and fiduciary risks. It uses a streamlined safeguards approach and requires that the borrower gradually comply over a period of time. PforR cannot be used for "Category A" projects, which have been deemed to have very high social and environmental risks. World Bank representatives interviewed for the consultancy research explained how the approach enabled them to work more closely with the borrower government, rather than creating a parallel World Bank governance system. The CSOs engaged in advocacy surrounding PforR perceived the streamlined safeguards system, in which the obligations and requirements expected were far less clear, to be highly risky. As explained in a Summary of Concerns on PforR prepared by the Bank Information Center:

> P4R's vague and somewhat discretionary approach to assessing and
> using a borrower's [environmental and social] systems to address
> potential operational impacts offers unclear leverage over wider
> programmatic adoption of higher standards. This approach will

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[1061] Bank Information Center (2005, pp. 1-2).
[1062] The World Bank's approach is summarised here: World Bank (2015a).
[1063] I travelled to Vietnam in April 2014 to undertake a small consultancy for BIC on the new lending modality known as "Program-for-Results" or "P4R". See: Jessie Connell & Grimsditch (2014, p. 49).

expose communities in areas where programs are implemented to higher levels of risk.[1064]

A streamlined system which used a country systems approach was generally appealing to stakeholders interviewed from the Australian Government, ADB and World Bank. As one interview participant commented, when discussing the New Development Bank or "BRICS Bank" (formed by Brazil, Russia, India, China and South Africa), which does not yet have a formal safeguards framework in place comparable to the World Bank:

> It does raise the issue…if you keep a lot of these extras which are laden onto the Bank, at what stage do the borrowers say, this is just not worth it really. And there is an expectation that the New Bank – [BRICS Bank] – will be easier to work with. It's an issue, and I think the banks are conscious of it. Where do you get a balance?[1065]

For many interview participants, this tension could be reduced to a type of "Catch 22" scenario: Safeguards were required to maintain high levels of social and environmental accountability. Yet, maintaining high standards made bank loans less competitive with other emerging lenders who had less stringent requirements.[1066] Thus, the logic continued, that in this new era of alternative sources of finance, multilateral banks need to evolve and streamline their safeguards requirements to maintain their lending portfolios. The Catch-22 emerges because projects still need to comply with the agreed basic social and environmental standards of the respective bank, otherwise a community complaint made to the World Bank Inspection Panel or ADB Accountability Mechanism might result in cancellation of the project due to non-compliance.

Of course, in the same way that "islands" are not completely isolated from other territories, and have meaningful, albeit restricted connections with actors and processes outside their physical regions, it is also useful to think of the islands of governance that have evolved in Cambodia in a *relational* way. These islands or pockets where resettlement is governed by the resettlement policies and laws of donor countries on a project-by-project basis, are still physical, political and social domains that are fundamentally embedded within, linked and

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[1064] Bank Information Center (2014).
[1065] AusAID senior staff member speaking in a personal capacity, 24 July 2014 (Participant 13B).
[1066] See the discussion in: Moore (2015).

defined in relation to their surroundings. They are also temporally limited by the contractual timeframes of the relevant international project, but even these temporal limitations are not absolute. There are influences that remain long after a project has been completed.[1067]

Interestingly, one participant provided an example where he felt that the stereotype of emerging lenders had been negated. He recalled being in high level negotiations in China when the Chinese Government was seeking a loan from the World Bank. It eventuated that the World Bank loan was requested not because the financial support was needed, but because financing the project would activate the World bank's safeguards and technical assistance operations. He explained:

> I've seen very interesting examples of this in China and to a lesser extent Vietnam, and these are sophisticated countries, who want good advice from the banks. They don't just want money. China doesn't even need the money. A good example is recently, about 4 years ago, they borrowed just 200-300 million, for their North-South railway in China, which is going to be a multi-billion dollar activity. And when that came to the [World Bank] Board, some Board members were saying 'well this is a waste of the Banks resources, if they can fund 20 billion dollars, 200 million is peanuts. Why are we bothering?' And the answer was that the Chinese Government wanted the Provincial Governments, and big poorer provinces like Yunnan, to begin to understand how to address safeguard issues. They wanted to use the Bank…they knew if we put in as little as 200 million the Bank safeguards applied to the whole project. They were actually dragging the Bank in and saying 'you come and teach our people how to consult, how to reach out, how to set up all of the systems.' The exact opposite of what people have been saying. [1068]

> People just say China is going to do whatever it wants to do, but remember the central Government in Beijing is concerned about the

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[1067] For details of these arrangements, see Chapter 4, Section 4.6, especially the quote from ADB regarding "externally-financed projects" (Asian Development Bank, Ministry of Water Resources and Meteorology, Ministry of Public Works and Transport & Ministry of Rural Development (2014, p. 6).
[1068] AusAID senior staff member speaking in a personal capacity, 24 July 2014 (Participant 13B).

Provincial Government's capacity. How is the Provincial Government going to learn about how to treat the local populace? It will drag the central Government in, people will complain, it will get into the press in Beijing...that these poor peasants in this province have been bulldozed flat, and there is corruption going on…they get upset by that. [1069]

He also explained his hypothesis on this emerging area of inquiry. As he stated:

When it comes to bilateral donors co-financing with the MDBs, my hypothesis would be that a well-designed grant/loan activity should lead to a better developmental outcome for the recipient. And to some extent, Cambodia is a good example. I think our involvement, and our pouring a lot of grant money into [the railway], should lead to a better developmental outcome for people in Cambodia. Even if it is just that main line from Phnom Penh to Sihanoukville, and it works well and people have been looked after and provides an economic boost to the country. [1070]

There were also examples given in the context of the Cambodian railway project where people working closely with Government felt their counterparts had learnt from the experience of the railway, especially in relation to what was expected in terms of "good" resettlement, even though these standards had been largely isolated from broader resettlement policies and practices. As one Cambodian Government official also explained:

I think it is changing a little bit. I think the Government is taking care of people, need to provide more services to them. At the same time, the Government doesn't have checks and balances mechanisms. The Government talks about policy and then expects the firm or company to do it. There [may be] an intention to manipulate this policy by not doing a proper infrastructure project in a new area where the new residents move in then they can save a lot of money. And then there might be a corrupt officer behind this position and then the central

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[1069] AusAID senior staff member speaking in a personal capacity, 24 July 2014 (Participant 13B).
[1070] AusAID senior staff member speaking in a personal capacity, 24 July 2014 (Participant 13B).

government does not have capacity to monitor the issue and that makes the people angry. That is the kind of issue. I think the Government has good intentions to provide good services to people because they have enough, I would say, they have enough experience with people being against them…So the Government is learning about this and they are trying to introduce a policy where better compensation, services, financial support [are provided] to them. But I think the problem is that there are some corrupt officials too involved in this by taking sides with the project developer. They ignore all the plans and discussions about the plans and infrastructure developments for those people. So I think that Government should consider the [possibility of] setting up a kind of independent monitoring agency. By doing this, I don't think Government has the capacity or resources to do it by themselves. They should hire an independent body to do it.[1071]

As the former AusAID official also remarked about ADB's approach in the beginning of the railway project:

…I think that potentially from the beginning, if they had pulled back and said "well, look, this is highly complicated, the environment is not particularly conducive to very efficient roll out of something this complex"… then they might have better resourced the whole thing…[1072]

Another interview participant who had previously worked in Cambodia for a development agency during the Boeung Kak Lake conflict, provided a different perspective. In this case, the World Bank was financing a land titling scheme in Cambodia (LMAP). The involuntary resettlement policy of the Bank was triggered because families living on high-value land in Phnom Penh were excluded from receiving land title due to competing commercial interests. The result was a major public relations disaster for the Bank.[1073] Reflecting on this time, the interview participant described how he felt that there was something inherently and

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[1071] Senior Cambodian Government official speaking in a personal capacity, 18 July 2013 (Participant 18B).
[1072] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1073] The Boeung Kak Lake was explained in Chapter 4, Section 4.7.

deliberately chaotic about how the World Bank and ADB dealt with problem projects. His view was that it was not simply a matter of "good policy implemented badly", but rather there was a type of unacknowledged, but widespread understanding that projects might be initially under-resourced to deal with emerging social or land-related conflicts, but that until problems occurred, a rationale for increasing the resources and financial support to deal with them could not be garnered. Thus, rather than seeking clarity about the risks of a project before implementation, instead projects are under-resourced initially with implicit acceptance that additional resources would follow if problems were encountered or exposed.[1074] Indeed, these insights are consistent with how the Cambodian railway project was handled, and also with the findings of the World Bank Review, which identified 10 major World Bank projects between 1990 and 2010, where resettlement costs increased by almost 40 percent at project completion stage compared to the cost identified at the appraisal stage.[1075]

This same interview participant explained that one of the pre-conditions for projects involving resettlement was certainty about land. In the Boeung Kak Lake example, he felt the World Bank and the Cambodian Government had "unreconciled expectations" about resettlement and land in that project. As problems were encountered, the challenge for the World Bank was "how to re-craft the narrative about its own involvement."[1076] During the interview, this participant referred to the well-known article by David Mosse, "Is Good Policy Unimplementable: Reflections on the Ethnography of Aid and Practice", in which Mosse argued that the relationship between policy and practice could not be simply explained by an "unintended gap" between good theory and poor implementation in practice, which could be addressed by simply improving policy and implementing it more effectively. Mosse suggested that the driving force behind the actions of development actors was a desire to maintain coherent public representations of their behaviour, decisions and events. This interview participant argued that Mosse's perspective resonated with him when he reflected

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[1074] Former employee of a development agency who was working in Phnom Penh during the Boeung Kak lake conflict relating to LMAP, 29 May 2013 (Participant 21B).

[1075] World Bank (2012a, p. ix).

[1076] Former employee of a development agency who was working in Phnom Penh during the Boeung Kak lake conflict relating to LMAP, speaking in a personal capacity, 29 May 2013 (Participant 21B).

on how the World Bank reacted to the NGOs and public controversy as the land titling scheme financed by the Bank in Cambodia spiralled out of control.[1077]

8.3 Formal grievance mechanisms and independent advocacy

Had it not been for the presence of active, vocal NGOs in Cambodia, it is possible that the impacts of the Cambodian railway resettlement would not have come to light, that additional investment and compensation would not have been provided, and that debates about ADB and Australia's responsibility may not have taken place to the extent that they did, both publically and within the relevant organisations. The way that the events unfolded has drawn attention to the increasing reach and influence of advocacy NGOs, and the new ways in which they are working, especially in Cambodia. This is particularly the case as the railway project is one of a series of displacement conflicts in Cambodia that have featured in the local and international media in the past decade. As explored earlier in the thesis, Keck and Sikkink, in their influential work on advocacy networks, categorise the tactics that advocates use globally into four types of "politics":

1. information politics, or the ability to move politically usable information quickly and credibly to where it will have the most impact;

2. symbolic politics, or the ability to call upon symbols, actions or stories that make sense of a situation or claim for an audience that is frequently far away…;

3. leverage politics, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and

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[1077] Former employee of a development agency who was working in Phnom Penh during the Boeung Kak lake conflict relating to LMAP, speaking in a personal capacity, 29 May 2013 (Participant 21B); Mosse (2004).

4. accountability politics, or the effort to oblige more powerful actors to act on vaguer policies or principles they have formally endorsed.[1078]

The advocacy surrounding the Cambodian railway project has involved combinations of each of these "politics" or approaches in various ways. Much of the advocacy surrounding the railway took the form of "accountability politics" or accountability advocacy, in which efforts were made to oblige the Cambodian government, ADB and AusAID to act on laws and policies that they have previously endorsed. Symbolism, leverage and information politics were also used. This advocacy was multi-pronged. NGOs worked concurrently at a local project-level in Cambodia, on cases such as the railway project, and also at a regional and international level. These sites and scales of international advocacy and influence were multiple and included Washington D.C., Manila, and other places and points of influence in Australia and Europe.[1079] In the case of the railway, advocates accompanied community representatives to visit the ADB in Manila so that project-affected people had a more direct voice at the regional level. In the interviews with former ADB and AusAID staff these visits were memorable. Staff recall these meetings with community representatives in Manila as having a significant personal impact on them. Oxfam was one organisation working in partnership with Inclusive Development International at the time. As one interview participant recalled:

> I think, I dealt mainly with Oxfam Australia here in Australia. I had a lot of respect for them. Their ADB person would bring some of the Cambodian villagers to our annual meeting in Manila and we would meet with them.[1080]

These efforts had powerful symbolism and increased the credibility of the NGOs as agents of the communities. It also made it easier to convey information and stories about the communities that were otherwise very distant from decision-makers in Canberra and Manila. In this way, credibility generated through access to community information was an effective aspect of the campaign. Blogs and online newspapers also provided timely and easy ways

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[1078] Keck & Sikkink (1999, p. 95).
[1079] As an example, see the website of Inclusive Development International for the range of campaigns still underway: http://www.inclusivedevelopment.net/.
[1080] AusAID senior staff member speaking in a personal capacity, 24 July 2014 (Participant 13B).

to distribute updates about the project, primarily through the Cambodian Trainspotter blog, updated mostly anonymously as developments in the railway project took place.[1081] The blogs were also translated into Khmer and distributed widely via email and other social media websites.[1082] Deeper, more comprehensive research also assisted the information politics of the advocacy campaign. Increasingly, this approach is being referred to among advocates as "evidence-based advocacy" and is an effective way of appealing and communicating to policy audiences within and outside Cambodia.[1083] In the case of the railway, a series of in-depth research reports were compiled and distributed to the public, the Cambodian Government AusAID, the ADB and other parties over the eight years of the project. Most notably, these were *Derailed*, released in 2012 by BABC, based on field research with the affected communities,[1084] and influential reports by STT in 2011 and 2013.[1085] In the interviews with consultants and former staff of ADB and AusAID, these reports were mentioned many times. As one interview participant explained, referring to one of the reports:

> Let's start with positive. [Their] data is very positive. I think the thoroughness and comprehensiveness with which STT conducted their study is so informative for us. It has helped us already and it will help us in the future. We have adapted their way of data collection to ensure that the things that they have raised are covered. There are some things that we figured we're not collecting as well as they did…and they were very transparent. But we will not collect all data at the level that they did, because that would be too intensive. That's not the way we do monitoring, because you would have respondent exhaustion.[1086]

While this type of "evidence-based" advocacy was considered helpful, the use of the media to draw attention to the project was often perceived as having the reverse effect on the capacity of the ADB to influence the Government. As one participant explained:

[1081] The Cambodian Trainspotter blog is available at: https://cambodiatrainspotter.wordpress.com/2010/10/25/cambodia-trainspotter/.
[1082] The Khmer version of Cambodian Trainspotter blog is available at: https://cambodiatrainspotter.wordpress.com/.
[1083] See: Inclusive Development International (2015b).
[1084] Bugalski & Medallo (2012); The reports are discussed in Chapter 2, Section 2.9 and in Chapter 5.
[1085] Sahmakum Teang Tnaut (2011, 2013a, 2013b).
[1086] ADB staff member speaking in a personal capacity, 17 July 2013 (Participant 1B).

[T]he media has not been very positive…The resettlement plan is implemented by the Government. Whenever the Government closes up, it is a problem. And I don't really care who causes it to close up, everything that causes them to close up creates a problem in implementation. It is always a negative. Any reason that causes the Government to be receptive to things is always good . And I think the NGOs can do that, although they have not. I think they have scope to do that.[1087]

Leverage politics were also used in the railway campaign and had various impacts, many of which are difficult to judge. As Keck and Sikkink argue, leverage politics are the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence. In 2012, the ADB agreed to engage Michael Cernea, one of the world's most experienced involuntary resettlement experts, as a consultant on the railway project. This was largely considered a success by the coalition of NGOs working on railway advocacy at the time. The NGOs had suggested during their regular meetings with the ADB on the railway that Cernea should visit Cambodia as an independent and impartial expert, given his background working for the World Bank. Cernea was considered to be a neutral and impartial observer acceptable to the ADB, the NGOs and the Cambodian Government. The ADB eventually agreed and organised Cernea's visit.[1088] However, this leverage strategy also had unintended ramifications in the tense environment of Phnom Penh. Informal conversations with people working in the relevant organisations suggested the final consultant report was critical of the railway resettlement process and these criticisms were received very poorly by the Cambodian Government. Once the report was finalised and submitted to the Cambodian Government, negotiations broke down between the ADB and NGOs around whether the report would be released publicly and whether the recommendations would be addressed. Eventually a compromise was made and a summary of the report's recommendations were released, but not the full report.[1089] This was described as a "cover-up" and an attempt to "smother" the report by Equitable Cambodia, other NGOs and the media.[1090] News of the debacle made it into international advocacy networks, such

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[1087] ADB staff member speaking in a personal capacity, 17 July 2013 (Participant 1B).
[1088] Inclusive Development International (2014).
[1089] Cernea (2013).
[1090] Cambodia Trainspotter (2013).

as that of the International Network for Displacement and Resettlement, a network of researchers, advocates and professionals working on resettlement, which also circulated a media release titled "Cambodia Resettlement Debacle Cover Up: ADB Conceals Critical Expert Report". [1091]

While the media attention surrounding the release of the report surely increased its international profile at a critical point in time, (shortly before the ADB Compliance Review Panel visited Cambodia to investigate the project in 2013), there were also other implications stemming from this aspect of the campaign. Off-the-record conversations during this time suggested that these events resulted in the "closing down" of conversations between ADB and the Government as they had been embarrassed over the incident. For a period of time following the report, ADB staff members described having decreased leverage or capacity to encourage implementation of any of Cernea's recommendations as the public shaming of the Government, in this particular instance, had back-fired. Of course, this is a contested perspective on the series of events that unfolded. The dynamics were explained by an ADB staff member in detail:

> I think the problem [was] that there is just so much history. But if that report had come out for a different project that has no history…I think the Government would have been more positive to a report like that…Initially they agreed and were willing to consider [recommendations from a report]…they were positive, but now they are not. If you start quoting Michael Cernea, the likely response is, "we haven't endorsed that report." The NGOs asked for it to be released and the Government said "It is a working document." The NGOs have a purpose in clamouring for disclosure but I hope they know and they see that this is the drawback, the fallout of so much lobbying to disclose that report…NGO criticisms where no solutions are identified or where proposals are not practical, do not help. It causes more damage than improves things. What the Government doesn't want to do is to sign up for something that the NGOs will report as a scorecard… I feel that they are okay with criticism when

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[1091] Inclusive Development International (2013).

it's not being advertised . They are okay with it and they are willing

to do improvements that they think are suitable and that they think

can be resourced. And when ADB and AusAID think that the

recommendation is important and IRC agrees, but they say, sorry we

have no resources, then we step in with support. That's how this

Michael Cernea [report] could have been used very well. But we

were never given that chance unfortunately.[1092]

These comments reflect the fine line that advocates tread in terms of drawing attention to a project, which may result in improvements to the way the project is managed, and advocacy which results in humiliation, which can lead to the Government "closing up" and refusing to negotiate. One advocate described this dichotomy as "hot" and "cold" advocacy,[1093] and another explained that it was often difficult to know how "hot" you should get.[1094] As the same advocate also explained, "The question is not whether hard advocacy is needed, [but]…knowing when to go hard and when to go soft is important."[1095]

Not all people within the ADB and AusAID felt that this type of "hot" advocacy was always detrimental. It was mentioned numerous times throughout a number of interviews that the ADB and AusAID would not have responded in the way that they did if the advocacy had been softer. This way of conceptualising advocacy was presented to one ADB staff member during an interview. Speaking in a personal capacity this participant stated:

If the advocacy wasn't as "hot" as it was, then nobody would have

paid attention. It made us reflect.[1096]

One observer with detailed knowledge of the Boeung Kak Lake conflict in Cambodia, also described the NGO strategies during this time as akin to "guerrilla warfare". When asked to clarify further, this person explained that it was not so much the element of surprise that had characterised the experience, but the asymmetry of the relationship. He explained the analogy further by describing how "one party [the World Bank] is large, structured and

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[1092] ADB staff member speaking in a personal capacity, 17 July 2013 (Participant 1B).
[1093] International NGO representative, 5 February 2015 (Participant 10B).
[1094] International NGO representative, 21 July 2013 (Participant 16B).
[1095] International NGO representative, 21 July 2013 (Participant 16B).
[1096] ADB staff member speaking in a personal capacity, 20 February 2013 (Participant 2B).

institutional, while the other [the NGOs] are small and nimble."[1097] He felt that the NGOs had made a critique of the World Bank's land titling project (LMAP), during the Boeung Kak lake conflict, that the project had not been able to tolerate, withstand or adjust to, and so it had been shut down.

Discussions with former and current AusAID/DFAT staff members revealed their experiences of the NGO advocacy, especially when the railway first started encountering serious difficulties from mid-2010 onwards. It was a very personal experience for some. As the former AusAID official explained, referring to the publicity surrounding the children's deaths in Battambang resettlement site:

> I've been on the front page of [the paper], basically being told I've
> got blood on my hands. It was a little bit too strained. It wasn't the
> best…The whole thing spiralled out of control politically when there
> were representations made and then I think what happened was that,
> one of the groups wrote to us, and we had already been in
> correspondence, one of them wrote to us and attached an ultimatum
> regarding a response. I think I was travelling…and then they went
> straight into press, essentially saying "The Government was not
> responding and was washing its hands", and that became the story,
> and it was very hard to manage it…[1098]

He continued further to explain his perspective on the nature of the advocacy:

> On the one hand they did a good job of alerting people to the
> difficulties. And I don't think the Bank in particular was sufficiently
> receptive at the beginning. But I think as it went on we ought to have
> been able to find cleverer ways of genuinely engaging…because it
> seemed to me that the sole thrust of making progress was adversarial.
> I think…there could have been other ways. I think that's the
> challenge for NGOs in Cambodia more broadly – how to find ways
> of positively influencing government, not just bludgeoning them,

[1097] Former employee of a development agency who was working in Phnom Penh during the Boeung Kak lake conflict relating to LMAP, speaking in a personal capacity, 29 May 2013 (Participant 21B).
[1098] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

which means the groups become enemies, you know, mutual suspicion, it doesn't have to be like that. [1099]

A number of people within AusAID acknowledged that the ADB and AusAID were not pro-active enough early in the project. As one DFAT staff member explained:

> I think the ADB held back for as long as they could, thinking "Oh Jesus, this is just such a mess. It's too hard. We'll leave it to the Cambodian Government." Then the messages would get back that the Cambodian Government is just not abiding by the Agreement at all, [and the ADB would say] "oh well, we'll talk to them about that…look you're not abiding by the Agreement at all"…[and the Government would respond by saying] "what, aren't we, sorry about that." Then six months later it was getting worse.[1100]

While there were many different views about how far NGOs should go to communicate their message, there were two consistent themes that emerged in terms of why the advocacy had been particularly effective in the case of the railway and other recent displacement conflicts in Cambodia. The first was because the NGOs in question were considered wholly independent from the ADB and Australian Government. They were not reliant on them for financial or political support and were not being contracted by the financiers to monitor the project. Equitable Cambodia, IDI, STT and others, were not in a formal contractual relationship with the ADB and were not receiving funding directly from the Australian Government.

An interview with a former World Bank Inspection Panel member in Washington D.C. explained why the nature of these relationships was so decisive. This participant explained that when NGOs are paid by the Bank, "they do not challenge the Bank." He also referred back to a much earlier experience in his career in Cambodia. In this earlier context, a network of NGOs had been engaged by the World Bank to monitor a World Bank project, but they were also paid by the Bank and bound by a confidentiality agreement. When they went public with their concerns they breached the agreement. As he explained:

[1099] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B) .
[1100] AusAID senior staff member speaking in a personal capacity, 24 July 2014 (Participant 13B).

the Bank had to let them go because the shared data handled by the Forestry Department, which shows the dilemma the NGOs are in….they need funds to do the work they are doing, but this creates secondary problems…nothing happens if NGOs don't push.[1101]

The second broad reason that interview participants perceived the advocacy to be effective in the railway case was that the NGOs had been able to utilise the formal accountability mechanisms of the ADB. In explaining this focus, one IDI staff member stated, "We tried for many years to work with Government." [1102] He went on to explain that now the focus was on international organisations and financiers, especially those with formal, quasi-judicial grievance mechanisms that could be activated by community members. When asked about whether the NGOs were hoping international financiers, such as the ADB, would withdraw from Cambodia he answered:

> Our goal is not to push them [the international financiers] out. But they get the benefit, they have a responsibility to respond to affected people…They need to learn that they cannot just give money.[1103]

A question that emerged during the interviews was whether NGOs in Cambodia should use their resources to more actively assist displaced communities in terms of developing livelihood programs and other interventions aimed at recovery. As part of these discussions some queried whether focusing on empowerment and rights was an effective way of assisting communities, when their more basic needs were not being met. A representative from IDI referred to a previous resettlement experience, which had been a catalyst for local organisations to stop providing basic services and support to communities, and instead focus on awareness raising, rights and empowerment. In the quote below, the representative is referring to the work of the local NGO, Bridges Across Borders Cambodia (BABC), which later became Equitable Cambodia and works closely with IDI.

> [We] had a quite a big community development program that it has since phased out, because we are now focused more on trying to achieve structural change in the country…I remember at one point,

[1101] Former World Bank Inspection Panel Member speaking in a personal capacity, 24 May 2013, (Participant 19B).
[1102] Local NGO representative, 11 March 2013 (Participant 7B).
[1103] Local NGO representative, 11 March 2013 (Participant 7B).

a Government official saying to the HIV families after the eviction at Borei Kela: "Don't worry you'll be fed with a silver spoon after the eviction because of the NGOs." It's very difficult [for us] because certainly people are in dire humanitarian situations and it's very difficult to just abandon people after they've lost that struggle....Now [we] have made the decision to phase out that aspect of the work…change it actually to community organizing. The Community development program is now a community organising program. It is working with communities that are tenure insecure, but not under the immediate threat of eviction, with the aim of building strong communities that will be able to have a fighting chance of resisting eviction when it happens and networking with other communities to build an urban poor movement in Phnom Penh.[1104]

These remarks reveal how IDI has shifted from more traditional community-development based work, to a "rights-based" approach. Where previously these NGOs may have provided food and other material support to resettled communities, their intention now is on community organising and rights-based empowerment. Interesting comments were made on this issue by the Inspection Panel member interviewed in Washington D.C. who explained, "Every NGO wants to be a development NGO, but there have to be a few NGOs that just do advocacy, otherwise it doesn't work."[1105]

Another member of the Compliance Review Panel of the Inter-American Bank also based in Washington D.C. had similar remarks to make about the role of NGOs in holding banks to account.

NGOs have a significant role to play….people need help getting access to information and even translating information into local languages. I believe affected people also have a right to compliance. It is important to make this known.[1106]

[1104] International NGO representative, 17 April 2013 (Participant 9B).
[1105] Former World Bank Inspection Panel Member speaking in a personal capacity, 24 May 2013, (Participant 19B).
[1106] World Bank Inspection Panel Member speaking in a personal capacity, 28 May 2013 (Participant 22B).

This interview participant also explained how some "strange alliances" would emerge between the NGOs, but that these misaligned partnerships were not always problematic. He stated: "The NGO agenda may not necessarily be fully aligned with the people's agenda, [but] their case can be used to further the debate."[1107]

8.4 Inflexible resettlement principles and divergent community contexts

One of the positive aspects of having strict resettlement standards embodied in the safeguards framework and supported by formal grievance mechanisms is that they can be used by communities and NGOs to place pressure on the banks to comply with laws and policies that they have previously endorsed. This has been described throughout the thesis as accountability advocacy. As illustrated in the previous section, there is enormous pressure at an international level to formulate clear resettlement standards and guidelines to reduce the negative impacts often created by resettlement. Yet, it is also clear that a fundamental tension emerges when universal principles and standards are developed at a centralised or international level and then applied to very different local settings.

Chapter 7 of this thesis explored community perspectives of the railway project and revealed how the ADB safeguards framework eventually provided a powerful avenue to improve the quality of resettlement, which had a real and tangible impact on the lives of those living within the bounds of the resettlement sites. At the same time, the dynamics of the communities who remained living along the railway, especially in Poipet and Pursat, were significantly altered by the way the households were divided up, with some households entitled to relocation and a package of assistance while others were left without tenure security and certainty about their future. The dynamics which emerged from the fieldwork were explained to some of the interview participants during the discussions. One ADB official speaking in a personal capacity explained the principle of minimising displacement as it was applied in the Cambodian railway project:

> The right of way is very big. So this was a resettlement minimisation methodology to minimise resettlement. Basically they define a corridor of impact…I would want the narrowest possible corridor of impact. And why is that? Because that is consistent with the policy.

[1107] World Bank Inspection Panel Member speaking in a personal capacity, 28 May 2013 (Participant 22B).

You first try to avoid [displacement]. The policy actually requires you to avoid [displacement]. …that's the first thing you try to do. And in instances where you cannot avoid then you minimise and ensure the impacts are addressed. So as a resettlement specialist, when we are sitting at the table in the team, I will say, give me a corridor of impact that is the smallest possible. That's always my mandate because that will affect less people [and have less] livelihood impacts. That's the first thing you want to do. Now, the engineer or the designer will be the one to determine the corridor of impact based on safety and the possibility of construction. It cannot be too narrow that you cannot bring in your equipment, obviously, because that defeats the purpose. You physically need to be able to construct it…[1108]

These comments reveal the overarching influence that the safeguards principles have in shaping the decisions made on "the ground" about resettlement. Yet, they also reveal how difficult it is to tailor or adjust these principles to the particularities of local communities, not just at a project-level but also at a sub-project level, as needs and circumstances vary from place to place. Another former ADB official was also asked about how unintended and perverse results can be avoided when applying safeguards principles. He described how challenging it was to incorporate a dimension of flexibility into the implementation culture of the ADB. He stated:

…they [the ADB] would be absolute slaves to the rule book. It's a very conservative institution. So if somebody said "yeah, but, we could get better outcomes, more consistent with the policy if we just did this…" nobody would back that internally. They would just say "'but what does the rulebook say? Oh the rule book says X so X is what we do." "We don't do X-plus, we do X". [1109]

This participant continued to explain the predicament that emerges when relying predominantly on a compliance-based approach to resettlement, such as that which is

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[1108] ADB staff member speaking in a personal capacity, 17 July 2013 (Participant 1B).
[1109] Former senior ADB official speaking in a personal capacity, talking about safeguard approaches within the ADB, November 2014 (Participant 4B).

promoted within the ADB. Referring to the community dynamics that emerged in the Cambodian railway project, he explained:

> To me that is an interesting little case study… if you are just going by the book, and this is the problem with the book…the book then gets very thick and you have got to comply. And of course, in the Bank, where the accountability is around policy compliance [there is a view that] "If I stick to the rule book, and I do everything by the rule, then I should be safe." So there is an incentive to comply with that, as long as the internal systems facilitate and encourage that. But the drawback of having the detailed rule book is, you know, you can be a slave to that, and only that. But what we presumably want people to do, is exercise good judgment. The rules essentially should be saying, "these are the minimum standards and requirements, but if the greater good is facilitated by capturing those…[additional households]… and giving them the same benefits and access to sites, then, you know, do that. It should actually allow that and encourage that. [1110]

In response to the issue of minimising displacement, one advocate explained that displacement had not so much been minimised, but delayed, revealing the temporal limits to the influence that financiers, such as ADB and AusAID, had over the resettlement site. He is referring to the possibility that those who remain living along the railway will be relocated at a later date, once the ADB obligations on the Cambodian Government have ceased.

> [T]he way I look at it, displacement of these households was not minimized at all, but rather postponed, without the protections of ADB's safeguard policies and accountability mechanism (not to mention the resources). I believe that actually constitutes non-compliance with the resettlement policy, but we'll see how the CRP looks at this if the families decide to proceed with such a

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[1110] Former senior ADB official speaking in a personal capacity, talking about safeguard approaches within the ADB, November 2014 (Participant 4B).

complaint. If such families are excluded from the scope of the resettlement policy, this is a strong argument for the need for a different set of safeguards on land tenure..."[1111]

Another former ADB staff member commenting on the railway acknowledged that the generic principles of the ADB safeguards had been applied in an unfortunately strict way in this case, asking "is it the principles themselves or the way they were interpreted?" [1112] This person also suggested that if the original Detailed Measurement Survey of the communities and ongoing consultation had been done better, then these kinds of unintended impacts may not have arisen:

> I suspect that…done well, the ADB policy would have allowed for a wider range of income and housing options according to AP's [affected persons'] expressed need than appears here...the socio-economic survey and census work plus consultation is supposed to identify options – it sounds like this did not happen?[1113]

Yet, the original Resettlement Plan prepared in 2006 did identify that people along the railway in Poipet were more positively predisposed to the idea of moving that then other groups. These observations were not highlighted in the report, instead they were buried on pg. 48, where it stated:

> In Poipet, majority of the participants who attended the FGDs [focus group discussions] preferred off-site [relocation] to have more security of tenure if the distance from present site is not too far.[1114]

Yet, the same resettlement plan also states that:

> The area required for reconstructing the Poipet station has been reduced from 6 hectares to 3 hectares to minimize displacement.[1115]

[1111] International NGO representative discussing advocacy in Cambodia, correspondence after interview via email 6 May 2015 (Participant 8B).

[1112] Former ADB safeguards consultant corresponding by email. A formal interview was not carried out and so a Participant no. was not allocated.

[1113] Former ADB safeguards staff member corresponding by email. A formal interview was not carried out and so a Participant no. was not allocated.

[1114] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007, p. 48).

[1115] Ministry of Public Works and Transport Cambodia & Asian Development Bank (2007) (Annex 2).

These different preferences which seem to have partially existed prior to the project beginning and which intensified over the course of the project, did not result in a different approach to resettlement in Poipet. The option of resettlement was only given to people within the narrow corridor of impact, although this resulted in highly inequitable treatment for the minority of people within the community who were left behind. Instead a critical mass of people and most of the community members moved to the resettlement site. As explored in Chapter 7, this was socially divisive for people in the community who were left behind. Upon returning from fieldwork for this study to Phnom Penh, the circumstances of the Poipet community were communicated informally to staff members of the ADB and Australian Government. However it was made clear during these informal conversations that additional money from donors was only to be allocated to the resettlement sites and that further resettlement would be avoided, given the negative publicity it had so far generated.

Thus, it appears that divergent community interests and aspirations, which inevitably characterise resettlement, are inherently difficult to incorporate into resettlement plans and to communicate to donors and other development partners at different scales, such as those located in Manila or in Washington D.C. Complex community tensions of this sort do not fit easily into clear policy messages to financiers of projects requiring resettlement, especially those with reputational risks who are susceptible to embarrassment if non-compliance is established.

In the interviews with NGOs, community advocates also explained that they also found it very difficult to develop advocacy campaigns that adequately reflected the different positions and needs of the communities they were trying to represent. Although there have been moves towards a type of "evidence-based" advocacy, as explored earlier, advocates explained how they face many dilemmas during their community-based work.

One of the most difficult challenges faced by advocates was staying connected to community perspectives when the grievances being experienced were essentially like a "moveable feast". As already explored throughout the thesis, an feature of the research with the communities was the evolving nature of their views, perceptions and aspirations in relation to the resettlement process. Perceptions of loss, or of what would be lost, as well as aspirations for the future, fluctuated as conditions changed and as new information became available about opportunities or risks in the resettlement sites and communities of origin.

The aspirations and fears of those left behind also changed as remaining residents watched their neighbours adapt to resettlement conditions or be adversely affected by them. As compensation for resettled households increased over the course of the project – largely in response to complaints from NGOs – the appeal of resettlement also increased, especially for those who were not given resettlement as an option. Thus, even though the advocacy that surrounded the railway project was highly effective, this also had repercussions for how easy it was for NGOs to "stay in touch" or stay connected with communities about their changing needs. The households who moved to the resettlement site outside Phnom Penh, which experienced the worst impacts from resettlement, were also the closest in proximity to where the NGOs were based. Naturally this resettlement site became the focus of advocacy energy over time.[1116]

When these issues were posed to NGOs during the interviews for the study, there was general acknowledgement that these tensions are inherent in doing international advocacy work. As one representative said:

> We are advocates after all, not sociologists trying to establish a comprehensive record of the overall resettlement process. However, our advocacy has been firmly grounded in evidence of negative social and human rights impacts, and it is those experiencing negative those negative impacts whom we have worked to support...[1117]

The same advocate also reiterated that the advocacy strategy has tried to encompass people who were partially affected by the project, and who remain living along the railway:

> Most of those with immediate grievances were the people who being relocated into poverty, but the accountability mechanism complaints and advocacy campaign also included the grievances of people who were "partially affected" and moved back into the right of way and were left with an inadequate amount of living space and a lack of tenure security. There is a group of households along the tracks in

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[1116] Initially advocacy focused on the Battambang resettlement site.
[1117] International NGO representative discussing advocacy in Cambodia, correspondence after interview via email 25 June 2013 (Participant 8B).

Phnom Penh and Poipet who are consistently represented in meetings with ADB and whose concerns have always been raised in advocacy.[1118]

Another advocate responded that "there is only so much that NGOs can do."[1119] Another acknowledged the dilemma that campaigns risked being "quick and dirty", but in such an environment "what are the alternatives?"[1120]. A different NGO representative said the issue of *who* NGOs represent was an ongoing question they struggled with, as sometimes communities have conflicting interests:

"I came from a legal background where you can only work in the interests of your client...so you can't have all of these divergent interests, but that's the nature of work in the community."[1121]

This person also described how decisions about which interests to prioritise were often made by NGOs. For example, if there was a new type of accountability mechanism, there would be more interest in representing communities whose grievances aligned. This advocate explained that while it was always the community's decision to complain, it was often very difficult to provide enough time for communities to make informed decisions about whether they wanted to make complaints about certain projects. Sometimes one community group would be ready to complain while others had not decided yet, but the complaint would go ahead. This advocate also described how it can get "messy in the middle".[1122] Whilst raising awareness among communities about their rights can be straight-forward, the specifics about what a community or individual wants as an outcome quickly becomes complicated. Reflecting on this issue, this person explained that "it's one of the hardest things trying to work out who you can represent and to what extent, and dealing with those conflicts."[1123] An important comment was made by one advocate reflecting on how difficult it was to represent communities and be involved in policy making at a global scale, for example in

[1118] International NGO representative discussing advocacy in Cambodia, correspondence after interview via email 6 May 2015 (Participant 8B).
[1119] International NGO representative, 5 June 2013 (Participant 17B)
[1120] International NGO representative, 11 March 2013 (Participant 11B).
[1121] International NGO representative, 5 June 2013 (Participant 17B).
[1122] International NGO representative, 5 June 2013 (Participant 17B).
[1123] International NGO representative, 5 June 2013 (Participant 17B).

Washington D.C. and still stay in touch with the communities they were purporting to represent. As this advocate explained:

> "You get out of touch with the communities so quickly, even in a matter of weeks."[1124]

A number of advocates who were interviewed referred back to past experiences in Cambodia during the Highway One case and the Boeung Kak lake conflict.[1125] The same advocate who felt it was easy to lose touch with the communities unless continual engagement was possible, reflected on his experiences during Boeung Kak Lake. He explained that the relationships between the NGOs working with the communities had been pressured. This interview participant also explained that when the complaint to the World Bank Inspection Panel was made in relation to Boeung Kak Lake, there was widespread dissatisfaction among the NGOs involved. Given the implications of the World Bank's suspension of funds throughout the country, the feeling from some NGOs was that the decision to make the complaint was rushed and there should have been much broader consultation and discussion about civil society strategies before the World Bank was asked to suspend its loans. He explained how there was a strong perception from local NGOs that the Boeung Kak Lake conflict had become confrontational and "internationalised" and had alienated elements of local civil society, limiting the potential for locally appropriate opportunities to emerge to resolve the conflict.[1126] Although the Boeung Kak Lake situation has improved over time, this divided view about how the original complaint had been made to the World Bank Inspection was confirmed in an interview with the local NGO in question.[1127]

Another interview participant recalled how in Highway One, those communities that became embroiled in long-standing ongoing conflicts about resettlement with NGOs, took longer to recover from the trauma of relocation. The interview participant felt that being involved in protests could have long-term implications for social harmony. The issue was significant enough in the context of both Highway One and Boeung Kak Lake to make its way into the

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[1124] International NGO representative working in Phnom Penh during the Boeung Kak Lake conflict relating to LMAP, 5 February 2013 (Participant 10B).
[1125] See Chapter 4, Section 4.7.
[1126] International NGO representative working in Phnom Penh during the Boeung Kak Lake conflict relating to LMAP, 5 February 2013 (Participant 10B).
[1127] Interview with local NGO representative in Phnom Penh, 26 June 2013 (Participant 15B).

media and project reports. An example of the community conflict emerging in the media in Boeung Kak Lake can be found in the article at Figure 31 below.

Figure 31: Cambodia Daily Boeung Kak Lake petitions[1128]

New Boeng Kak Group Petitions World Bank

BY KAING MENGHUN
THE CAMBODIA DAILY

About 30 former residents of the Boeng Kak community submitted a petition on Friday morning to the World Bank office and several embassies in Phnom Penh, calling for a halt to all funding for long-time anti-eviction protesters from the Boeng Kak area.

The Boeng Kak counter-protesters accused Tep Vanny, the well-known spokeswoman of the Boeng Kak anti-eviction activists, of fomenting incitement, and accused several NGOs of supporting her work.

"Tep Vanny has incited people—both young and old, to stand up in order to benefit herself by protest-

ing in public," the counter-protesters said in their letter, adding that "some NGOs have helped her plans to cause public disorder."

The counter-protesters' statement, which bore the signatures of 67 people, also said that the Boeng Kak community has not been affected by land concessions and accused Ms. Vanny of twisting reality.

Speaking in front of the European Union mission office on Norodom Boulevard, 49-year-old Vong Sok Heng, one of the counter-protester representatives, said that NGOs are the driving force behind the Boeng Kak anti-eviction protests.

"NGOs like the Housing Rights Task Force, Samakum Theang

Tnaut and Bridges for Peace have been supporting the people and inciting them to protest," Ms. Sok Heng said.

Housing Rights Task Force secretariat director Sia Phirium confirmed that his NGO has provided legal consultation and aid to the Boeng Kak anti-eviction activists.

Eang Vuthy, executive director of Equitable Cambodia, which is a local organization supported by Bridges for Peace, said that it is civil society's responsibility to work for human rights and democracy in Cambodia.

"We've helped to protect human rights and have given legal education [to the Boeng Kak anti-eviction protesters]," he said.

It is possible to see how advocacy becomes bound up in the evolving experience of affected communities. An awareness of how advocacy campaigns can also affect community relations is an integral aspect of working well with communities as an advocate. It is also possible to identify how as effective advocacy campaigns generate publicity, financiers and policy-makers in the target organisations begin to shift their responses to align with or address advocates' messages to avoid or minimise the damage of the advocacy campaign. These shifts in resources, which may be in the form of additional compensation or extra provision of resources in resettlement sites, has an impact on community dynamics, perceptions and aspirations in relation to the project in question. Advocates need to work hard to maintain their alignment with communities as circumstances change. This process is depicted in Figure 32 below titled "The advocacy effect", which aims to capture the cyclical and continually evolving nature of advocacy campaigns, community grievances and the role advocates play as intermediaries in these settings. At the same time, community awareness and engagement also grows as these campaigns develop.

Figure 32: The advocacy effect

[1128] Cambodia Daily (2013).

1. Community grievances emerge

2. Advocacy campaign targets donors, government, financiers

3. Advocacy campaign results in re-direction of funds and resources

4. Community dynamics change and new tensions emerge, as resources are re-allocated

5. Advocacy misaligned unless continuous, multi-faceted engagement is possible

The most piercing critiques of how international NGOs worked with local communities, came from advocates within the NGOs themselves. A number of advocates argued that there needed to be a stronger code of conduct regarding community engagement and that grappling with these sorts of issues was a fundamental challenge that needed to be addressed to ensure the sustainability of community advocacy movements. In the international development arena – where clients are communities rather than individuals – there are few rules or sources of guidance. Advocates also explained that with such minimal financial resources at their disposal, once a campaign ends there are also few reasons to revisit communities to assess the impacts and relevance of advocacy over time. As Fisher has argued elsewhere, these processes make NGOs working in with affected communities intimately "tied up with contested notions of what it means to 'do good'…the process of deciding what it is and how to pursue it."[1129] These insights also point to the empowering potential of advocacy NGOs and the complexity of their intermediary functions.

None of the advocates interviewed suggested that the work they were doing with the communities should be reduced, rather they were looking for guidance and frameworks to

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[1129] Fisher (1997, p. 439).

conceptualise their relationship with the communities and understand how they could fulfil their self-appointed roles. This issue was being taken seriously within Oxfam in Cambodia, and it launched a project in partnership with Monash University investigating community-driven accountability mechanisms aimed at improving the inclusiveness of advocacy strategies.[1130]

8.5 Commercial drivers, public interest and the power of documents

An additional complicating factor in the Cambodian railway project was the involvement of Australian commercial interests. Woven throughout the interviews were continual references to broader problems relating to the technical and commercial aspects of the railway rehabilitation, quite separate from the resettlement and safeguards debates taking place. The decision to cancel the project before completion, leaving the Cambodian Government with a debt of around US 81.1 million, plus interest, has contributed to speculation over the project's management. These separate discussions about the governance of the project and the viability of the railway itself go to the question of the "public interest" value of the investment used to justify the displacement and resettlement of affected households.

As explained above, the grant money provided by Australia to Cambodia, via the ADB, was a way of ensuring the project included adequate technical expertise, in relation to resettlement but also in relation to the technical aspects of building and managing the railway. Yet, this was not how some external observers perceived the drivers of Australia's participation at the time the decision was made to go ahead. The partnership between Australian company, Toll Holdings and the Cambodian Royal Group significantly contributed to the controversy surrounding the project. On 12 June 2009, Toll Holdings and Royal Group signed a 30 year concession agreement to operate the railways in Cambodia and related freight logistics.[1131] Toll Holdings was the majority partner with a 55 per cent share in the investment. Royal Group committed to a 45 per cent stake. The agreement was contingent on support from the Australian Government, essentially finance that would later

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[1130] When it emerged that this research overlapped with the Oxfam-Monash project goals, initially there were plans for me to join the research, however the complexity of combining the fieldwork with the Monash project eventually made it too difficult to combine. For details of the partnership, see: Monash University (2015).
[1131] Toll Holdings Limited (2009).

come from the ADB and from AusAID. As Paul Little, the Managing Director of Toll Group, stated on 12 June 2009 in a Press Release announcing the partnership:

> The agreement is conditional upon final confirmation of investment by the international community of circa USD 145 million. These funds will be used to upgrade the rail network to a modern inter-modal facility on 98 hectares in Phnom Penh. Principal funding has been agreed by the Asian Development Bank.[1132]

In 2012, organisations such as AidWatch claimed that the financial arrangements surrounding the railway were enabling Australian companies to benefit from public money intended for aid, stating that:

> While Australian companies have benefited from generous public subsidies in order to renovate the railways, many of those in desperate need of aid dollars have missed out.[1133]

Recalling the early stages, the former AusAID official explained:

> I don't know at what point they came into the mix, but of course there was Toll Holdings link…They were very interested in [the railway]. I think they could see from the outset, potentially if they could come in, essentially as the manager of the system, because there were engineering companies who had to come in and do line work, but Toll's interest was in managing the system. Now we were always cognisant of that interest, but I don't believe we had any, not in Canberra, I don't think we were ever approached directly, or had any face-to-face meetings. Now I would have been happy to have talked to Toll…but I don't believe they sort meetings with us. In retrospect, it might have been better if we had.[1134]

He explained how he was aware that external observers have speculated that the decision to support the railway was driven by Australia's commercial interests. He reflected:

[1132] Toll Holdings Limited (2009)
[1133] AidWatch (2012, p. 1).
[1134] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

There was a supposition amongst many that, essentially, our decision-making was not driven by Toll, but at least very strongly influenced. This is not true in the AusAID case.[1135]

His recollection was that while AusAID was assessing the risks and merits of the proposal, other discussions and agreements were taking place between Toll, the ADB and influential Australian counterparts. Essentially, it seems that a political commitment was made to the railway project before AusAID had made a full assessment. As he explained:

…[S]ome interesting things did happen. … I do know we were put in a very awkward position……we were holding our options open and…then I think I guess all I can say is there were a series of other conversations that we were not party to, which meant that we were presented almost with a fait accompli at one point… Put it this way…there were conversations going on….that we were not party to, that seemed to imply a level of support that we had not taken a decision on. Because we weren't party to that, I can't tell who spoke to whom and when and all of that [occurred]… [1136]

In his view, AusAID did not simply relinquish its due diligence responsibilities even though it began to seem increasingly inevitable that AusAID would be involved in the project in some way. Moore stated:

…we had to make a decision, "do we just acquiesce and accept this?", we decided "no what we are going to do is to continue to do our due diligence and we would go to the Minister with a recommendation…do we go in…do we not go in…". We did that…[1137]

He described how it was AusAID's role was to weigh up the potential economic benefits of the railway to Cambodia's economy with the potential risks, provide this advice to the Minister, and let then Minister make a judgement call:

[1135] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1136] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1137] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

> I just said to [our representatives in Phnom Penh], look we just punch
> the numbers and we make a judgment, and if we think this is a bad
> investment, or if we think it's fundamentally flawed or it's too
> ambitious…then we go back to the Minister and we say that and the
> Minister makes a decision. If the trade people want to say, "we
> should do it", well they can say that, and then the Minister can make
> a decision, not a problem.[1138]

The decision to approve the project was clearly made in a pressured environment, but it was supported by AusAID and those reviewing the project's merits. As he stated:

> There was a bit of heat on, but we didn't cook the books. And
> when…the team looked at it, they came back fairly strongly, sort of
> saying, look we do think this work does need to be done, and if it's
> not done then the whole transport system isn't going to work
> properly and this is really going to curtail Cambodia's future growth
> and development. [1139]

During the interviews and informal conversations, it was stated numerous times that a vast amount of AusAID's resources from 2011 onwards were diverted to dealing with the Cambodian railway crisis. As the former AusAID official explained:

> Oh, boy, it was so difficult. More than once we got the point, I mean
> amongst ourselves, me, my staff, and I say that distinct from the
> leadership of AusAID and/or the Minister, of asking the question,
> "[if we had known] the grief that this was going to bring, if we had
> known that at the beginning, would we have recommended against
> it, and more broadly, given this, should we be shying against this sort
> of work in the future.?" And there were definitely different views on
> that…So people would say, well look, given the politics of all of this,
> and the fact that governments in Australia get very sensitive, they
> don't like anything that is too risky, despite what they say, they are
> not going to be prepared to get out and argue the case, then when you

[1138] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1139] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).

juxtapose that with the fact that we're the ones who will end up copping a lot of the criticism, does it make sense to be doing this stuff?[1140]

I think most people came to the view that no, that would be the wrong decision. And yet there were other pragmatists who would say "look, it's not just the risk of criticism and reputational damage, it's the amount of management effort that needs to go into this, that will divert you from other things. So if you sign up from that, you are kidding yourself, you probably won't make it much better, you'll buy a lot of grief, and most importantly you won't be able to do other things where you could get a whole lot of better outcomes." I think the evidence on that is very hard to distil. Those are both very valid propositions and it's really hard to decide. Very, very hard. People changed their minds on that during the course of events, but by and large, I think the development people kept coming back to the [development outcomes]. Otherwise why bother. [1141]

In a separate, significant interview, this enduring rationale that rehabilitating the railway would contribute to Cambodia's economic development was challenged by a senior railway consultant.[1142] This interview participant suggested that the feasibility studies completed for the railway were overly optimistic from the outset about the amount of cargo that could be transported by the railway. As this participant stated:

I am very critical of the ADB [which] I consider [to have] badly mismanaged the Railway Rehabilitation project…One of the things I do not like about this process is that the ADB are trying to make a silk purse out of a sow's ear, as the saying goes.[1143]

The story told by this participant was consistent with the problems explained in the Major Change in Project document released by ADB on September 2014.[1144] The document

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[1140] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1141] Former AusAID senior staff member speaking in a personal capacity, 19 December 2014 (Participant 12B).
[1142] Senior railway consultant speaking in a personal capacity, 4 March 2015 (Participant 3B).
[1143] Senior railway consultant speaking in a personal capacity, 4 March 2015 (Participant 3B).
[1144] See the discussion in Chapter 4 of this thesis. Asian Development Bank (2014h).

explained how Toll Royal Railway refused to take over the operations of the Southern Line on the basis of "insufficient technical performance". [1145] The Cambodian Government requested the contractor, TSO-AS and Nawarat, to rectify defects however the contractor had stopped works. The document also explained how the problems stemmed from inaccurate feasibility studies and assessments conducted prior to the beginning of the project, stating that the "extent and nature of repair and rehabilitation works was significantly different from what had been assumed at appraisal."[1146]

The railway consultant interviewed claimed that the ADB had been warned about these problems many times by consultants working on the project, even as far back as 2005. This interview participant was outraged that it was only in 2013 that the problems finally were expressed in an official, publically available ADB document. His view was that rehabilitation of the railway was most likely not a commercially viable transport option for Cambodia, for reasons that were apparent from the outset, but not properly accounted for in the early feasibility studies. In his view, the project should not have been financed in the form that was proposed in 2007.

It is worth returning to Wyatt's discussion of "risk" explored in Chapter 2. Wyatt investigated risk in the context of large infrastructure projects supported by private-public partnerships in a transitional economy context, a scenario very similar to the ADB financed railway project in Cambodia. In these settings, Wyatt argued that the inherent complexity of these projects, the number of actors involved, combined with the inexperience of borrowing countries in dealing with international capital, essentially renders risk "invisible".[1147] As quoted earlier, he explains that:

> In the interplay between due diligence, the private incentive of profit
> and risk management, risks are rendered invisible, are shifted from
> powerful actors to actors with less power, and constructed by those
> able to control the definition of risks and their management.[1148]

In the case of the railway, an ADB driven project with the promise of improving Cambodia's economic development, it is possible to see how the risks of the project were hidden in the

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[1145] Asian Development Bank (2014h, p. 3).
[1146] Asian Development Bank (2014h, p. 4).
[1147] Wyatt (2004, p. 3).
[1148] Wyatt (2004, p. 3).

myriad of trans-national contractual arrangements with consultants, engineers and other experts commissioned to undertake different aspects of the work. Despite the enormous emphasis placed on risk assessments and mitigation in the ADB documents (see Chapter 5), in reality the risks were concealed or "made rational", when in reality, the financial and social risks were very significant and there was, from the start, very little control that ADB could exercise over implementation. The formalities of the risk assessment process provided a façade, which conveyed to the reader assessing the project elsewhere (in Canberra or Manila) that the risks were knowable and could be controlled or mitigated through "technical assistance". Ultimately, the impacts of the project have been and will continue to be borne by Cambodians – both at a national level in terms of the debts that must be re-paid to the ADB, but also at a community level, by the people whose lives have been fundamentally re-aligned by the project.

The question of whether lessons from the experience were internalised by either the ADB or the Australian Government is not clear. However, it would seem that the change in Australian Government in 2013, and merger of AusAID with the Department of Foreign Affairs (DFAT), has largely dwarfed internalisation of the experience. While the reputational damage to AusAID was felt very keenly in 2013 (as made clear in the interviews), as AusAID was incorporated into DFAT and lost its distinct identity, people were faced with the new challenge of integration and the narrative around the embarrassment shifted or at least dissipated in the confusion around the transition.[1149] A new agenda was introduced by the incoming conservative Government, which emphasised "aid-for-trade" and greater alignment of diplomatic and aid priorities.[1150] The new Government renewed its commitment to financing infrastructure in the Asia-Pacific region through multilateral banks, such as the ADB. In June 2015, the Australian Government joined the new Asian Infrastructure Investment Bank (AIIB), and will contribute around USD 695 million upfront capital over the next five years.[1151] As the sixth largest shareholder in the AIIB, Australia will work with the other members of the new bank, led by China, to invest in major infrastructure, such as roads, railways, and bridges, aimed at improving economic

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[1149] SBS News (2013); Tran (2013).
[1150] Australian Department of Foreign Affairs and Trade (2015b).
[1151] The Guardian (2015).

connectivity in the region. After some debate domestically about whether Australia should join, the then Australian treasurer, Joe Hockey, announced that:

> We are absolutely satisfied that the governance arrangements now in place will ensure there is appropriate transparency and accountability in the bank.[1152]

Throughout these discussions, the ADB and the World Bank continue to be held up as having "gold-standard" safeguards assessment frameworks.[1153] Notwithstanding its recent experiences in Cambodia, in 2014, the Australian Government also signed a memorandum of understanding with the Cambodian Government to enable Australia to send asylum seekers who seek protection in Australia, to be resettled in Cambodia.[1154] The first refugees arrived from Australia to Cambodia on the 4th of June 2015.[1155] This move was surprising for people who have been observing how the Cambodian railway resettlement unfolded.[1156]

8.6 Chapter review

Building on the knowledge already available about resettlement, this chapter has drawn on interviews with people at different scales to explore four major themes. These themes relate to: (1) safeguarding resettlement and the potential for "islands of governance" to emerge which are ring-fenced from broader governmental programs and standards; (2) the importance of formal independent grievance mechanisms and enabling independent advocacy interventions in resettlement processes; (3) the limitations of generic best practice resettlement principles given the diversity of affected communities' needs and aspirations, and; (4) the difficulty of assessing the public interest value of infrastructure projects requiring resettlement.

The interviews reveal that there were processes in place to assess risks in relation to the Cambodian railway project, however they were in competition with other political and commercial drivers. Resettlement risks were considered, but they were not prioritised in the early phases of the project. From the Australian Government perspective, deferment to ADB's safeguards system to manage financial, social and environmental concerns was

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[1152] The Guardian (2015).
[1153] Moore (2015).
[1154] Crothers & Doherty (2014)
[1155] Crothers & Doherty (2014).
[1156] R. Davies (2014).

considered adequate. Given the intensity of reflection that some AusAID/DFAT staff members expressed in the interviews, it would seem many lessons were learned by these experiences on a personal level. However, there is minimal evidence to suggest that these experiences have been internalised into ADB or DFAT's institutional knowledge and resulted in any significant change in policy or direction. The railway experience seems to provide another example of host nation and donor objectives aligning in the optimism of planning and project inception, but unravelling upon implementation, as was the case for LMAP.[1157]

The chapter has explored how international principles of "good resettlement policy" were used by NGOs as leverage to draw attention to the resettlement sites of the railway which resulted in certain improvements over time. At the same time, other principles were translated into the local context of the communities in ways that had negative impacts. These specific examples of how well-intended, seemingly sensible basic resettlement principles are subverted during local application has implications for how resettlement safeguard policies are developed at an international or regional level. But as the chapter has shown, there are few avenues for the aspirations and preferences of affected community members to be communicated to those designing and implementing large-scale infrastructure projects, especially over time as projects evolve.

The chapter builds on the localisation of laws literature, articulated by Gillespie[1158] in her examination of the regulatory and spatial implications of World Heritage designation. In her analysis, the everyday land uses of the local residents of Angkor Archaeological Park, often misaligned with the objectives of heritage protection. In the case of the railway, it is also possible to see how regulation has restricted and manipulated how railway residents interact with their lived environment.[1159] The findings also support Boer et al.'s observation that the "hardness" of soft law – such as the safeguards – tends to be underestimated.[1160] Much like parts of Angkor Archaeological Park which became governed by international heritage protection law, as described in Gillespie's study, the resettlement sites of the railway project

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[1157] See, Biddulph (2014).
[1158] Gillespie (2010).
[1159] Gillespie (2010, p. 18).
[1160] Boer, Hirsch, Johns, Saul & Scurrah (2016 forthcoming, page numbers undetermined).

became spatially bounded and re-configured through the application of the ADB safeguards policy.

Chapter 9

Conclusion

9.1 Overview

The original motivation underlying this research was to understand contemporary resettlement practices and their implications in Cambodia, situated within a global context of increasing displacement and population movement. The study was driven by the value position that resettlement safeguards models and approaches, as well as the advocacy campaigns designed to influence them, need to align with or reflect the diverse local needs and aspirations of people affected by relocation. The research was carried out with an appreciation of the rich, pre-existing literature on resettlement, but also with the view that the contexts or arrangements influencing how resettlement occurs are changing, as are the ways advocates are working with resettled people and the accountability structures and safeguards on which they rely.

The study investigated these concerns through a close field-based examination of how people experienced resettlement for the ADB-financed Cambodian railway project, at a local community and sub-project level in five locations in Cambodia, and at national, international and institutional levels. Three research questions guided the study:

- How did the actions and responses of the parties involved in resettlement processes for the railway (financiers, governments and NGOs) align with project-affected people's aspirations and concerns?

- Has the experience of involuntary resettlement faced by displaced communities been mitigated by NGO advocacy, and in what ways?

- What are the implications of using international safeguards and accountability mechanisms to influence resettlement processes in a country in which domestic legal systems are not well established?

This concluding chapter first outlines the key findings of the thesis, identifying the ways in which the research makes a contribution to knowledge about the nuances of resettlement and resettlement governance. It then considers the implications of the study, acknowledges its limitations and identifies avenues for further research.

9.2 Findings and contribution

A conceptual framework was built iteratively throughout the early chapters of the thesis (Chapters 2-3), through which the analysis and findings need to be understood. A detailed literature review of resettlement studies situated the study. It argued that two dominant approaches shape the existing resettlement literature: The first is a socio-anthropological approach, which concentrates on understanding the experience of resettlement and articulating its differentiated impacts on communities. A second, more recent, rights-based literature focuses more on conceptualising the rights and protections available to people at risk of displacement and assessing compliance with resettlement safeguards, international human rights law and domestic laws. The early parts of the thesis argued that these approaches, especially the rights-based literature, tend to obscure the complexity of community resistance and the changing resettlement dynamics in communities as they exercise the rights and options available to them through involvement in international advocacy campaigns. The chapter also drew on tangential studies relating to civil society movements, risk and accountability, which offer creative ways of understanding the dynamics at play.

The theoretical lens of the thesis was developed further by explaining perspectives from critical human geography and legal geography, especially concepts of scale. Legal geography approaches help to understand the "legally plural" environment of Cambodia, identifying the multiple legal regimes operating in the areas where resettlement for the railway occurred and the kinds of "multi-scalar" conflicts which can occur in these circumstances. The "localisation of laws" approach was introduced, focusing attention on how international law, legal principles or processes are translated into local conditions, and how they shape the lives of communities in different places. These approaches were used to explain and re-state the core desire of the study, which is to understand how international laws, policies and norms, developed at a global or "headquarter level", (in this case resettlement policies and safeguards), are understood, re-interpreted and made sense of by

both policy-implementers "on the ground" and communities in their local, heterogeneous contexts. It also highlighted the arguments of Unruh & Williams[1161] that legally plural environments often create the foundations for tenure insecurity, especially following conflict.

This conceptual analysis laid the foundations to introduce the context and setting of the study itself (Chapters 4 and 5). Cambodia's modern history and development trajectory were explored, outlining the patterns of displacement and land conflicts already documented. These sections examined the influx of private and foreign investment post-1993, including the recent shift towards concessional lending, rather than development assistance or "aid" being provided in the Asia-Pacific by multilateral banks for infrastructure building. These sections argued that there are weak institutional and legal mechanisms in place in Cambodia to regulate different foreign and private investors, or to protect people from arbitrary and poorly planned displacement and relocation. They also examined how the safeguards of multilateral banks provide rights and options to affected people that differ from those ordinarily afforded to landless Cambodian citizens. The chapter drew on the arguments of Dwyer[1162], Milne[1163] and Biddulph[1164], to highlight the uneven geographies of Cambodia's land reform interventions, creating spots and places of exception on the landscape in ways that are analogous to the islands of governance concept developed throughout the thesis in relation to resettlement.

Chapter 5 involved an explanation of the technical background required to understand the Cambodian railway project, including the parties to the loans, and the multiple financiers (including ADB and the Australian Government), contractors and consultants involved, as well as the different resettlement plans developed and the locations where resettlement took place. It explained the original vision of the railway project and examined the publicly available information to understand why the project was cancelled in 2014, with major cost over-runs and more than 300 km of railway tracks yet to be repaired, leaving the Cambodian Government to repay around USD 81.1 million with interest to the ADB. The advocacy surrounding the project is also explored in these sections, including the various NGOs

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[1161] Unruh & Williams (2013).
[1162] Dwyer (2015).
[1163] Milne (2013).
[1164] Biddulph (2010, 2014).

involved and the types of strategies and innovative techniques used to expose the negative impacts of resettlement on affected communities.

Together these early sections of the thesis (Chapters 2-5) convey the conceptual, historical and technical detail needed to situate and inform the field-based study. Cambodia, and the railway project in particular, are presented as an intriguing and iconic case study, through which recent resettlement approaches and safeguards dynamics can be explored. They provide a window through which to investigate how international financiers and donors support large infrastructure projects in a developing country context, how advocates are currently working to represent the rights of affected people and how risks are understood and rationalised by the different parties involved (financiers, NGOs and communities).

Based on extensive fieldwork at different scales, primarily in Cambodia and Washington D.C., throughout 2012-2013 (explained in Chapter 6), the remainder of the thesis presented the findings, drawing on conceptual insights from earlier chapters to understand the tensions and dynamics revealed during interviews with communities, financiers and NGOs.

Cumulatively, the original contribution of the thesis is that it presents an analysis of the nexus between development and resettlement in Cambodia, explaining the different, inter-related components or dimensions of this relationship and the tensions it produces at different scales. In this context, development is intended in the plain-language sense, relating to economic, environmental and social change over time. In the case of Cambodia, it refers to the rapid financial investment and commercial transformation of the post-1993 period, but it also includes transformations within institutions and civil society groups (local and international), as well as the accountability architecture of investors (e.g. safeguards frameworks and accountability mechanisms, or lack thereof). Resettlement is understood to be the planned displacement and relocation of people, but also includes processes which have a displacing effect on livelihoods and sources of income or cultural and social identity, even where people are not physically displaced.

The core findings and arguments of the research are summarised below, in terms of how they speak to each of the research questions in turn.

- How did the actions and responses of the parties involved in resettlement processes for the railway (financiers, Government and NGOs) align with project-affected people's aspirations and concerns?

Analysing how the actions of financiers, governments, and NGOs aligned and misaligned with community needs and aspirations first involved examining the "texts" (reports, media releases, resettlement plans, strategies, advocacy reports) of key actors (financiers and NGOs), before going to the communities to discuss their views, experiences and perspectives on the resettlement process already underway. This was followed by a series of formal and informal interviews where preliminary findings or insights about community views were explored or re-stated to stakeholders, especially within the ADB, Australian Government and NGOs. This iterative process enabled an understanding of how events unfolded over a number of years. It made it possible to comprehend the dimensions of the resettlement process (the compensation component, the experience of making complaints to the ADB, the process of physically moving and trying to re-establish livelihoods, and efforts to respond to problems) from multiple perspectives over time, and as triangulated between the communities, ADB/Cambodian and Australian Government and the NGOs.

The fieldwork with communities revealed diverse needs and preferences among people who had moved to the resettlement sites and those who continued to live along the railway (who were not given the option of relocation). However, there were shared aspirations among community members for land ownership (made possible through resettlement). This scenario contrasts with the circumstances described in Laos by Baird relating to internal resettlement, as in the case of Laos almost all people resettled previously owned land or had the right to lawfully reside on land.[1165] In the context of the Cambodian railway, the desire for land-based assets in the resettlement sites was often in tension with the need to sustain secure livelihoods, especially when the resettlement sites were situated long distances from their previous homes, as was the case in Phnom Penh. This predicament was experienced by almost all people interviewed in the resettlement sites. It was also a concern for people still living along the railway who were contemplating whether they would accept relocation, if it was offered. People were negotiating these competing stresses in the absence of clear information from the Government or ADB about what might happen to them in the future

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[1165] Baird & Shoemaker (2007).

and what was required to receive land title. Instead, they pieced together whatever information they could find or deduce from sporadic leaflets and visits from the Government, from neighbours and from informal assurances from community leaders and Village Chiefs.

Mobility was a key coping strategy for resettled people in all of the sites as they balanced new pressures. These strategies mimicked increasing trends towards migration as a way of diversifying livelihood options in Cambodia and Southeast Asia, as identified by writers such as Rigg.[1166] In Poipet, people in the resettlement sites were often continuing their previous occupations, which relied on frequent, short-range movement across the nearby border with Thailand. Yet, in each example of longer-range migration in this study, except one, households described resettlement as the catalyst for their new household arrangements. A range of different strategies emerged, including building small structures to "claim the land", while travelling and renting back at their old locations, migrating elsewhere for work in Cambodia and even to Thailand to earn money to send back to family in the resettlement sites. Family fragmentation tended to result from increased mobility, particularly the separation of children and parents.

As might be expected, but is under-acknowledged in resettlement studies, project-affected people's views on displacement and resettlement were constantly evolving. Community members affected by the project were engaged in an intensive experience of assessing and re-assessing their circumstances and options as the project progressed, as they received new information, and as they saw conditions slowly improve in the resettlement sites in response to advocacy from community leaders and NGOs.

A defining feature of the railway project was that the impacts of resettlement were highly uneven in the five locations where resettlement took place (Poipet, Pursat, Battambang, Sihanoukville and Phnom Penh). These variations revealed the asymmetrical effects of the resettlement scheme and its spatial manifestations at a sub-project, township level. While in Pursat people were relocated only 400 metres from their previous homes, in Phnom Penh people were relocated 20 km from their previous locations to a peri-urban, semi-rural setting in which they were not given farming land and there were very few local employment opportunities. On the other hand, people who resettled in Poipet, near the Cambodian-Thai

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[1166] Rigg (2006).

border around 4-5 km from their previous homes, seemed to benefit from the proximity of the resettlement site to borderland markets and nearby special economic zone. By all accounts, all five communities experienced tremendous stress during the initial stages and many families were in debt. Yet, after conditions began to improve (in response to intensive, targeted advocacy), and a series of additional compensation payments were made, the dynamics of resettlement in the communities began to change, especially in the more remote and rural areas.

In this context, the "micro-geography" of each resettlement site was central. Where the resettlement sites were relatively close to previous locations (especially in Pursat and Poipet), and people began to see improvements in resettlement conditions, the appeal of resettlement (which came with land ownership) increased for those who still lived without tenure security along the railway. Many residents felt their exclusion from relocation was inequitable, given they had previously lived together in close proximity. The legal geography of the resettlement scheme meant that neighbourhoods were "split" in two by the resettlement plans. The safeguards policy of the ADB had the effect of law in this circumstance, as it was enforceable through threats of eviction, which would eventually be enforced with violence or physical removal if compliance did not occur. The precise location of a household prior to resettlement, i.e. proximity to the centreline of the railway and corridor of impact, determined whether a household would receive land and a wide range of other benefits provided under the project. Those who lived within the 7 metre corridor of impact received land, and those who lived outside its bounds did not. While many did not want to leave their homes along the railway, especially in Phnom Penh, many others in Pursat and Poipet felt the process for allocating land and compensation was arbitrary. In this way, the Phnom Penh resettlement site, which had been the focus of media attention and had come to represent the negative impacts of the project when they were described in the media and at national and trans-national forums (including in Manila and Australia), did not reflect how the railway project was being experienced in other areas of Cambodia. Additional rounds of compensation paid to people in the resettlement sites exacerbated these dynamics, and may intensify further after another round of compensation is expected in 2015-16, following the ADB Compliance Panel Review (CRP) recommendations.

These subtle, shifting community dynamics were not shaping the Cambodian Government's response, nor that of the ADB. To an extent, they were also not the focus or primary concern

of the media or advocacy campaigns surrounding the project, although the resource limitations of the NGOs need to be acknowledged (See Chapter 8, Section 8.4). The Cambodian Government was responsible for implementing the resettlement components of the project, with assistance from ADB, and was required to comply with the ADB's resettlement safeguards policy. Despite the shared circumstances of the communities at a sub-project level (in terms of tenure insecurity), the principle of minimising displacement required by the ADB resettlement policy was maintained throughout the project. The compliance-oriented approach of the ADB (explored in Chapter 8) guided implementation, and while it assisted advocates who used the resettlement policy as leverage, it did not result in a more tailored or locally appropriate resettlement response. The existing boundaries of communities in each location were not followed. Instead new lines of social organisation were drawn. A "one-size-fits all" method for determining who would be relocated underpinned the resettlement scheme, rather than a strong alignment with specific community circumstances, needs or aspirations.

The focus of advocacy activities surrounding the project was to draw attention to the negative impacts of the ADB-guided scheme, and advocates were clearly driven by community grievances. They were able to provide stronger representation to people who were relocated, than those who were not, as these people fell more clearly into the categories set up by the ADB resettlement policy. People partially-affected by the project, who were not relocated, were still eligible to complain to the ADB and were supported by NGOs, but their grievances were more difficult to articulate and differentiate from other landless Cambodians who were also not included in the resettlement scheme. As the resettlement policy contained rigid categories of eligibility for assistance, there were many who fell outside its ambit, and thus largely outside the scope of people whom NGOs could meaningfully represent (see Chapters 7 and 8).

Overall, the interviews also revealed the plurality of views that different stakeholders held on the resettlement controversies within each of the stakeholder groups. There was no singular view of what was fair and what should happen next that was maintained by all ADB Cambodian and Australian Government staff, and there were many different, often conflicting views on the best advocacy approaches among NGO staff.

- Has the experience of involuntary resettlement faced by displaced communities been mitigated by NGO advocacy, and in what ways?

As conveyed above and throughout the thesis, the actions of advocates working to represent communities affected by resettlement had an impact on the quality of the resettlement sites and on the trajectory of the project. While it may, in part, have also contributed to its eventual cancellation and the reluctance of donor countries, such as Australia, to contribute further to the investment, its impact on the specific communities displaced was considerable. Interviews with community members who participated in human rights training with the NGOs, and who had learnt about how to complain to the ADB using its accountability mechanism, reveal how little people expected from the Cambodian Government and how important it was to them that they received external assistance. Many of these people had not previously had contact with NGOs before the project. By the time fieldwork took place for this study, a number of community members had a sophisticated understanding of the resettlement policy affecting them, the rights and benefits they could receive under the project, as well the process involved in seeking redress. Some community members had even been propelled on to an international stage by accompanying advocates on trips to Manila to describe the project's impacts to staff working at ADB headquarters. This "scale-jumping" illustrates the types of potentially transformative experiences taking place within the communities, and potentially within the organisations meeting with affected people.

Awareness of rights had been built through contact with NGOs, but also through the gradual engagement of ADB staff in a more intensive way than at the beginning of the project. Community members who had direct contact with the ADB Office of the Special Project Facilitator (OSPF) were impressed by the thoroughness of the review that took place, as each of the complainants' individual circumstances and compensation packages had been re-considered by the Facilitator. Cumulatively, the experiences described throughout Chapters 7 and 8, provide insights about the realities of being embroiled in community-driven accountability processes. This analysis also makes a contribution to legal geography scholarship (explored in Chapter 3) by exploring how project-affected people in Cambodia navigated the safeguards framework and the accountability mechanism of the ADB. It considers how people interpreted and made sense of safeguards policies that were re-shaping their lives in a very material way, yet were developed in other, foreign locations (primarily Manila, Canberra and Washington D.C. – see Chapters 2, 3, 4, 5, 7 and 8). It has built on the

work of Biddulph,[1167] Milne,[1168] Dwyer,[1169] and Gillespie,[1170] through exploring another context in which regulatory and legal processes have re-shaped the physical and social landscape in Southeast Asia. In this context, resettlement for the railway exacerbated inequalities through arbitrarily providing benefits to some and not to others through processes of spatial re-organisation determined by policies and principles formulated outside Cambodia at other scales.

Advocates employed a range of different strategies to draw attention to the project, including accountability advocacy, leverage politics and symbolism (as discussed in Chapter 8). The advocacy dynamics surrounding the railway project are an important dimension of the development-resettlement nexus, especially as it takes form in Cambodia where NGOs are vocal, resourceful and influential in the land and development sector. Those subjected or targeted by the campaigns within the ADB and Australian Government appreciated what NGOs were trying to achieve, but had mixed views about the value of so-called "hot advocacy" in which the Cambodian Government and others were shamed and embarrassed publicly for their actions.

Notwithstanding the effectiveness of the campaigns, advocates still conveyed in the interviews that they found it difficult to "stay in touch" with community needs as they were changing throughout the project. This dynamic or challenge was described in Chapter 8 as the "advocacy effect". It is a cyclical process in which advocates work to represent people based on certain grievances, yet the consequent improvements or adjustments to the project flowing from the advocacy tend to re-shape or re-align the community grievances being represented, and so forth. These evolving views and preferences of communities are inherently difficult to include within trans-national advocacy campaigns.

- What are the implications of using international safeguards and accountability mechanisms to influence resettlement processes in a country in which domestic legal systems are not well established?

[1167] Biddulph (2010).
[1168] Milne (2013).
[1169] Dwyer (2015).
[1170] Gillespie (2010).

How to influence, mitigate or limit the negative social and environmental impacts of large investments and projects has been the source of decades of conflict between civil society groups and multilateral banks, especially the World Bank. As Chapter 2 conveyed, the World Bank, and others such as the ADB, have slowly adopted safeguards and accountability frameworks that aim to minimise negative impacts and enable project-affected people to make complaints. Some authors have suggested that banks, like the ADB, mimicked the World Bank in adopting these standards, as a result of "institutional isomorphism" or because they felt coerced to do so, rather than because there was genuine institutional support for such frameworks.[1171] Nonetheless, these safeguards and standards now apply to bank projects, although there are continual re-evaluations of the safeguards, pilots of different safeguard models, and ongoing debates about how better to work with borrowing countries who resist the safeguards requirements (see Chapter 8). Traditional multilateral banks are also under pressure to find ways to work with borrowing countries in these contexts, in response to competition from emerging lenders that do not necessarily have these accountability frameworks in place. The Cambodian railway project provided many insights relevant to this debate.

The experience of the Cambodian railway project provides a number of learnings for those seeking to understand resettlement processes in settings where political will to assist affected communities is lacking. It is clear that compliance with safeguards is particularly difficult to achieve where the implementing government is not committed to broad-based social protection or equality outside the project in question. Thus, resettlement is acutely challenging in circumstances where the gaps between national government and project-specific/multilateral bank resettlement policies are significant. The thesis argued that these gaps cannot be overcome only through internal monitoring and supervision, or through contracting independent consultants to oversee resettlement sites.

In the case of the railway, resettlement challenges were not addressed because there were strict resettlement standards in place or through monitoring and supervision arrangements and oversight. At least 37 social and environmental and monitoring reports were prepared by ADB consultants prior to April 2015, not including other progress reports and more informal internal monitoring assessments for the railway (see Chapter 5). They were

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[1171] Park (2014).

mitigated through intensive NGO advocacy, which leveraged the safeguards, and which resulted in major changes to how the project was being managed. Undertakings to improve standards occurred following NGO advocacy, not before, and even then, remedial actions were narrowly confined to the "rulebook" by a compliance-based approach (see Chapter 8). The ADB's CRP report confirmed that ADB staff waited until NGOs drew attention to resettlement problems before engaging at the required level of intensity. Consequently, the combination of internal ADB safeguards, monitoring and resources (which could be redirected as needs were identified) combined with independent advocacy which articulated community needs, was the catalyst for change in the railway resettlement scheme. Yet, improvements in resettlement standards occurred well after people had been relocated and, even then, they were directed almost entirely at supporting people who were relocated, not those who stayed behind.

The thesis also argued that as NGOs and communities complained and conditions improved, the resettlement sites became increasingly demarcated, physically and institutionally, from their surrounding locations. In this way, some of the resettlement sites became what could be called "islands of good governance", or at least "islands of governance". The resettlement sites were not completely isolated from the land and people that surrounded them. They were still legally, socially and institutionally enmeshed within Cambodian society. However, within the bounds of the resettlement sites, ADB project standards, safeguards and expectations provided the benchmark and took precedence over local laws and processes. They became exceptional spaces where international safeguards standards applied, which were markedly different from broader Cambodian resettlement practices (see Chapters 4 and 7).[1172] Improvements in the sites, additional compensation and benefits increased the appeal of resettlement for many people, except in Phnom Penh. Residents in the Phnom Penh resettlement site were still experiencing hardships that would most likely take many years to overcome, notwithstanding the additional support.

The interviews revealed how debates about the "right" way to address these problems were occurring within the ADB and Australian Government, and were evidently controversial among staff members and consultants. There were many disagreements behind the scenes about the adequacy of the processes in place, due diligence and accountability (see Chapter

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[1172] See Ong (2006); Gillespie (2010).

8). From the information available, it also appears there were diverse views about resettlement and social obligations within the Cambodian Government. It seems the railway project was a learning experience about the complexity of resettlement for some in the Cambodian government, but for others it was a cautionary experience making them reluctant to commit to co-financing arrangements which came with stringent safeguards (see Chapter 8). Whether internationally-financed projects or so-called "islands of governance", such as this one, have broader positive programmatic impact on government practices, or serve as a disincentive to borrow from lenders such as the ADB, is not clear and is a topic requiring further investigation.

9.3 Implications of the study

How communities recover from displacement is a topic of growing importance as conflict, environmental events, infrastructure and development projects continue to displace millions of people each year in many countries. The research did not explicitly set out to develop policy answers to the challenges posed by resettlement. As a first priority it tried to understand the underlying forces shaping resettlement and resettlement advocacy, without trying to over-simplify community, financier or NGO dynamics in ways that might make them amenable to policy recommendations. Yet, the study has a number of conceptual and practical implications for policy-makers and researchers.

The research supports a move away from simple approaches to resettlement premised on the notion that it is possible to mitigate negative social and environmental impacts of infrastructure projects only through the establishment of safeguards and monitoring systems. The research suggests these safeguards systems only function to protect communities where civil society actors are independently monitoring the project. It would seem that, in theory, adopting some version of the country systems approach could lead to less exceptionalism and create an environment for a more even implementation of policies and protections. However any country systems approach would need similar levels of independent monitoring and scrutiny to offer comparable protections. Understandings of country systems (the domestic institutions, legal systems, policies of a borrowing government) should also include the local civil society actors and international advocacy NGOs that comprise this sector (see the "conceptual leap" described in Chapter 8, section 8.2). In strengthening country systems and institutionalising good resettlement practices and policies in borrowing

governments, stronger support and engagement with the broader civil society landscape is also necessary.

There is also a far greater need to adequately resource projects requiring resettlement from the outset. Failure to resource resettlement projects adequately seems to come from an almost deliberate decision to ignore or to be wilfully blind to the risks inherent in infrastructure and development projects. As Mosse would argue, there is an inherent tendency for policy to gloss over these types of conflicts, as the tendency for policy makers to focus intensely on the future, and on "new beginnings", is often not moderated by a genuine analysis of past problems and failings.[1173] The different actors involved in the railway project conceived of the risks of the project and weighted these risks in different ways. From the financiers' perspective, this thesis identified a pattern in Cambodia and elsewhere, of under-resourcing resettlement, and waiting until problems arise or are drawn attention to by external advocates, and then responding in a crisis-driven, piece-meal way (see Chapter 8, section 8.2). The risks of the project were multiple and included social, financial, commercial, logistical and legal risks, given the context and country in which it was being implemented. These risks were known and many were identified at the outset, yet were rationalised in carefully constructed project documents. As Wyatt argued in relation to infrastructure investments in Laos, risks were made "invisible" through overlapping contractual and risk mitigation arrangements at the expense of the state or the host nation in which the projects are taking place.[1174] In the case of Australia, learnings from the railway project may have occurred at a personal level among the staff involved, but at an institutional level they were largely dwarfed by the change in Government which occurred after the 2013 Federal Election. In the context of the ADB in Cambodia, it is unclear whether learnings were internalised as there is a history of non-compliance with resettlement safeguards in past projects that are similar to the current project (see Chapter 4).

As illustrated in the previous section, there is enormous pressure at an international level (within multilateral banks and other forums) to formulate clear resettlement standards and guidelines to reduce the negative impacts often created by displacement. Yet, it is also clear that a fundamental tension emerges when universal principles and standards are developed at a centralised or international level and then applied to very different local settings. Well-

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[1173] Mosse (2004, p. 640).
[1174] Wyatt (2004).

intended, yet generic or "best practice" resettlement principles contained in the ADB safeguards policy, which guided the resettlement process (such as the requirement to minimise displacement), can result in uneven and inequitable impacts. International principles need to be tested and tailored through genuine participatory approaches in each local setting more intensively than is typically the case, not through cursory consultations which narrowly apply standards or policies developed at a headquarter-level or which circumscribe eligibility for assistance using broad-brushed geographic or social criteria.

Internal monitoring arrangements and safeguards frameworks alone are not sufficient, although they provide points of leverage for external advocates. The strategies shown to be most effective in this setting included the use of the ADB grievance mechanism, which resulted in formal and independent review by the ADB (through the OSPF and CRP). This was possible because advocates worked with communities to draw attention to the project's impacts. Oversight of this nature is only possible when civil society organisations are autonomous and able to work with communities without fear.

From a practical, methodological sense, premising any resettlement policy or study on the understanding that community views are evolving, heterogeneous, and not "fixed" in time, is fundamental from a policy and planning perspective. Emerging understandings of how people use mobility as an adaptation strategy following resettlement could also improve how resettlement policies support mobile residents who are not always present in resettlement sites to access services and assistance.

9.4 Limitations and further research

Certain community and stakeholder groups were not as well reached or represented as they could have been in the study. If there was an opportunity to plan the fieldwork again, greater "unstructured" research time would be set aside to reach community members in obscure settings or circumstances through a type of snowballing technique. For example, the bamboo operators (mentioned in Chapters 5 and 6) who worked all along the railway line and whose livelihoods were dependent on transporting people and goods via bamboo trains, were not interviewed for the research. Their whereabouts was not known at the time of field work and the priority was to locate and interview people in the resettlement sites. There were also many migrant workers who were employed to work on repairing the lines who were sleeping

and living along the tracks while doing repairs, who may have offered unusual insights into the different contractors working on the project.

While people who remained living along the railway were interviewed, to an extent, this was an "add-on" or late-stage methodological decision; one that entirely re-directed the focus of the study and, without which, would have led to very different conclusions. The use of skype and mobile phones to reach residents who had left the sites and gone to Thailand was also a fruitful research method, but it was also discovered or utilised late in the research. Its full potential was not realised in terms of locating and capturing the perspectives of hard-to-access groups in a systematic way. Greater use of methodologies, including different types of communications and mapping technologies, that might capture the views of mobile, hard-to-access community members, would have enhanced the present study and would do so for any future resettlement research.

Other stakeholders, such as Toll Holdings (the railway concessionaire), were approached during the research but declined to be interviewed. There was also limited research carried out with representatives of the Cambodian Government, in an informal and formal sense. Greater persistence in this domain may have assisted and any future research could make more use of in-country networks to reach these people. During the current study, I was hesitant to contact Cambodian Government staff due to a concern that they might hinder or disapprove of the research, and also with a knowledge that the relationship between the NGOs and the Government had deteriorated, and there was significant mistrust of anyone inquiring further and writing about the beleaguered railway project.[1175] The study also presented the views of stakeholders anonymously. While this enabled more direct quotation and scope to reveal sensitive details, it meant that the specifics of who was expressing certain views were tempered.

The thesis has explored the relationship between development and resettlement in Cambodia, explaining its different, inter-related components as they took shape in the context of one project in Cambodia. It has contextualised this project extensively in the early stages of the thesis, and made comparisons with other similar projects and advocacy

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[1175] The distrust that has developed between NGOs and the Cambodian Government is illustrated by the recent passing of the Law on Associations and Non-Governmental Organizations (LANGO) in Cambodia in August 2015, which requires "political neutrality" from all NGOs and Associations working in Cambodia. See: International Center for Not-for-Profit Law (2015).

campaigns. Investigation of these broader implications in interviews with stakeholders is reflected in the analysis throughout. It has not tried to present findings that are representative of all displacement and resettlement in Cambodia, Southeast Asia or of all "developing country" contexts. As Chapter 4 explained, it is more of an iconic study reflecting tensions and pressures that are brought to bear in contexts where domestic legal protections and institutions are not well established, and where international financiers with safeguards and accountability frameworks employ a strict compliance-based approach. It conveys both the extent of influence that international financiers can have within the bounds of a given project, as well as the limits of this influence on other aspects of governance external to the project.

If anything, the research emphasises the exceptional nature of such projects and arrangements, and begs for further research to understand the processes shaping more "ordinary" types of displacement involving the Cambodian Government, and other private and foreign investors, without the same types of accountability structures. It also draws attention to the growing need for research to understand how displacement and resettlement is occurring (and will occur) under the schemes of emerging lenders, such as the Asian Infrastructure Investment Bank (AIIB) (discussed in Chapter 4). This type of investigation would require considerably more persistence at the networking stage to establish connections which would facilitate the same type of ethnography at various scales (e.g. in Beijing and Delhi, and at various other headquarter levels), but it would also glean information about an obscure aspect of infrastructure lending and resettlement politics of major contemporary significance.

The study has relied on an in-depth case study approach, which would undoubtedly benefit from a more comparative perspective, i.e. a comparative investigation or analysis of different types of projects and lenders. However, if there is one single message that can be conveyed by this research, it is that without "going deep" and investigating projects or resettlement events in depth, at an intensive, sub-project level, where many different types of community members are included in the research over an extended period of time (especially those who are excluded from a specific project's benefits), it is not possible to be confident that project dynamics or multi-faceted community perspectives have been captured. Studies which rely on financiers' reports and datasets to make sweeping comparisons, or on NGO descriptions of community needs or impacts, unless rigorously

tested and validated through community-based field work at multiple scales, cannot be used as a reliable indication of resettlement impacts, especially from a socio-anthropological perspective (as described in Chapter 2). This is stated with the knowledge that even the dynamics described in detail in this thesis are not fixed, they are subject to change. Scudder[1176] has already argued for a type of longitudinal approach to resettlement research, in his defining study of resettlement for the Kariba dam spanning four decades. The present study would be enriched by return field visits over the years that come, after this thesis is submitted, to consider change and continuity in the communities relocated for the railway and those who remain behind.

[1176] Scudder (1993).

Afterword

Payments under the additional compensation deficit scheme began in 2015. Of the total 3,573 "registered" affected households, 3,333 households were able to be contacted by the Government's Inter-Ministerial Resettlement Committee (IRC).[1177] As at 31 July 2015, 3,089 households received additional compensation, while 90 were yet to collect their compensation. The recent quarterly progress report states that a "typical reason for not yet collecting the payment is that they live in distant locations and need to arrange a convenient time."[1178]

For the affected households who could not be contacted, the progress report explains that the IRC approached family members, friends, Village Chiefs and Commune Chiefs, and published public announcements in local newspapers, asking households to make contact with the IRC within a month. 37 households responded, but 240 households are still unreachable.

On 11 September 2015, a second request for compliance was also submitted to the ADB's Compliance Review Panel (CRP) by representatives of 22 families who lived along the railway line in Phnom Penh and one family in Poipet.[1179] The families' complaints fell into two categories. Some households complained on the basis that they should have been considered fully affected because the land remaining for them to reside on was less than 30m$^{2.}$, the minimum size allowed. Any smaller and households were required to relocate. They argued that on this basis they should have been considered wholly affected and provided with resettlement and compensation. They also claimed that they do not have security of tenure and cannot live with dignity in the remaining conditions along the railway. The second category were households living along the railway in Phnom Penh, who were considered fully affected, but argued that they should not be required to move to the Phnom Penh resettlement site because it caused the impoverishment of the households who have already moved there and it is too far away.

[1177] This number of affected households is less than accounted for in the original resettlement plans, partially because of the eventual decision not to relocate 240 households in Samrong Estate in Phnom Penh who are still living in limbo as to whether they will be required to move, See: (De Carteret 2014).
[1178] Asian Development Bank (2015g).
[1179] Asian Development Bank (2015f).

On 20 November 2015, the CRP's decision was released. It found that the new complaint did not warrant a new investigation by the CRP, but that the grievances were "real and persistent" and should be dealt with under the existing remedial action plan, approved by the ADB after the first CRP complaint decision in January 2014. It remains to be seen how the ADB Board will respond, and whether ADB Management in Cambodia are able to work with the Cambodian Government to implement the recommendations of the CRP.

A recent progress report on the remedial plans in place explains that a study trip by IRC staff to Thailand was undertaken in February 2015 to learn about resettlement practices and policies. Two groups of IRC staff undertook a one week course on public engagement and conflict resolution in May and June 2015.[1180]

The future of the other remaining railway residents, especially in Poipet, still remains uncertain, as these people have either not formally complained or were not able to complain on the basis of any technicality (e.g. the 30m^2 rule mentioned above).

[1180] Asian Development Bank (2015g).

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Appendix A – Ethics approval

5 November 2012

Professor Philip Hirsch
School of Geoscience
Madsen Building – F09
The University of Sydney
Philip.hirsch@sydney.edu.au

Dear Professor Hirsch

Thank you for your correspondence dated 30 October 2012 addressing comments made to you by the Human Research Ethics Committee (HREC).

On 2 November 2012 the Chair of the HREC considered this information and approved your protocol entitled "**Community relocations in Cambodia: A case study of the role of accountability mechanisms and civil society in resettlement negotiations**".

Details of the approval are as follows:

Protocol No.:　　　　15276

Approval Date:　　　　**2 November 2012**

First Annual Report Due:　30 November 2013

Authorised Personnel:　**Professor Philip Hirsch**
　　　　　　　　　　　　Ms Jessie Connell

Documents Approved:

Document	Version Number	Date
Discussion guide for relocated communities	1	14/8/2012
Participant Information Statement	1	30/8/2012
Participant Consent Form	1	30/8/2012
Sample discussion questions	n/a	Submitted 18/9/2012

HREC approval is valid for four (4) years from the approval date stated in this letter and is granted pending the following conditions being met:

Special Condition of Approval

Please provide certified translations of the Participant Information Statement, Participant Consent Form and Discussion Guide prior to research commencing.

Condition/s of Approval

* Continuing compliance with the National Statement on Ethical Conduct in Research Involving Humans.

THE UNIVERSITY OF
SYDNEY

- Provision of an annual report on this research to the Human Research Ethics Committee from the approval date and at the completion of the study. Failure to submit reports will result in withdrawal of ethics approval for the project.

- All serious and unexpected adverse events should be reported to the HREC within 72 hours.

- All unforeseen events that might affect continued ethical acceptability of the project should be reported to the HREC as soon as possible.

- Any changes to the protocol including changes to research personnel must be approved by the HREC by submitting a Modification Form before the research project can proceed.

Chief Investigator / Supervisor's responsibilities:

1. You must retain copies of all signed Consent Forms (if applicable) and provide these to the HREC on request.

2. It is your responsibility to provide a copy of this letter to any internal/external granting agencies if requested.

Please do not hesitate to contact Research Integrity (Human Ethics) should you require further information or clarification.

Yours sincerely

Professor Glen Davis
Chair
Human Research Ethics Committee

Jessie Connell   jessieconnell@sydney.edu.au

This HREC is constituted and operates in accordance with the National Health and Medical Research Council's (NHMRC) National Statement on Ethical Conduct in Human Research (2007), NHMRC and Universities Australia Australian Code for the Responsible Conduct of Research (2007) and the CPMP/ICH Note for Guidance on Good Clinical Practice.

Appendix B – List of community members interviewed

Participant no.	Household no.	Location - City	Location - Resettlement site/Railway/Other	Sex (where recorded)	Age (where recorded)	ADB Complaint	Date
1A	1	Phnom Penh	Other	Male		N/A	18-Feb-13
2A	2	Phnom Penh	Other	Female		N/A	1-Jul-12 and 16-Feb-13
3A	3	Phnom Penh	Resettlement Site	Female		No	15-Feb-13
4A	3	Phnom Penh	Resettlement Site	Female		No	15-Feb-13
5A	4	Phnom Penh	Resettlement Site	Female		Yes	16-Feb-13
6A	5	Phnom Penh	Resettlement Site	Female		Yes	16-Feb-13
7A	6	Phnom Penh	Resettlement Site	Female		Yes	16-Feb-13
8A	7	Phnom Penh	Resettlement Site	Female	66	Yes	18-Feb-13 and 26-Jul-13
9A	8	Phnom Penh	Resettlement Site	Female		Yes	18-Feb-13
10A	9	Phnom Penh	Resettlement Site	Female		Yes	21-Feb-13 and 26-Jul-13
11A	9	Phnom Penh	Resettlement Site	Male	26	Yes	21-Feb-13
12A	10	Phnom Penh	Resettlement Site	Female	32	Yes	21-Feb-13
13A	11	Phnom Penh	Resettlement Site	Female		Yes	21-Feb-13
14A	12	Phnom Penh	Resettlement Site	Female	57	Yes	21-Feb-13
15A	13	Phnom Penh	Resettlement Site	Female		Yes	Jul-13
16A	13	Phnom Penh	Resettlement Site	Male		Yes	Jul-13
17A	14	Phnom Penh	Resettlement Site	Female		Yes	Jul-13
18A	15	Phnom Penh	Resettlement Site	Male		Yes	24-Jul-13
19A	16	Phnom Penh	Resettlement Site	Male		No	26-Jul-13
20A	17	Phnom Penh	Resettlement Site	Male		Yes	Jul-13

21A	18	Phnom Penh	Railway	Female		No	26-Jul-13
22A	19	Phnom Penh	Resettlement Site	Female		No	Jul-13
23A	20	Phnom Penh	Resettlement Site	Female		No	Jul-13
24A	21	Phnom Penh	Railway	Female		No	26-Jul-13
25A	22	Phnom Penh	Railway	Male		No	26-Jul-13
26A	23	Phnom Penh	Railway	Male		No	24-Jul-13
27A	23	Phnom Penh	Railway	Female		No	24-Jul-13
28A	24	Sihanoukville	Resettlement Site	Male	66	Yes	23-Feb-13 and 21-Jul-13
29A	24	Sihanoukville	Resettlement Site	Male	66	Yes	23-Feb-13
30A	25	Sihanoukville	Resettlement Site	Female	50	No	23-Feb-13
31A	26	Sihanoukville	Resettlement Site	Female	24	No	23-Feb-13
32A	27	Sihanoukville	Resettlement Site	Female	25	No	23-Feb-13
33A	28	Sihanoukville	Resettlement Site	Male		Yes	24-Feb-13
34A	29	Sihanoukville	Resettlement Site	Male		Yes	24-Feb-13
35A	30	Sihanoukville	Resettlement Site	Female		Yes	24-Feb-13
36A	31	Sihanoukville	Railway	Female	42	No	24-Feb-13
37A	32	Sihanoukville	Railway	Female	56	No	25-Feb-13
38A	33	Sihanoukville	Railway	Female		No	25-Feb-13
39A	34	Sihanoukville	Railway	Female		No	25-Feb-13
40A	35	Sihanoukville	Railway	Female		No	25-Feb-13
41A	36	Sihanoukville	Railway	Female		No	25-Feb-13
42A	37	Sihanoukville	Railway	Female		No	25-Feb-13
43A	38	Sihanoukville	Railway	Female	60	No	25-Feb-13
44A	39	Sihanoukville	Railway	Male	56	No	25-Feb-13
45A	40	Sihanoukville	Railway	Male	23	No	25-Feb-13

46A	41	Sihanoukville	Resettlement Site (Working in Thailand)	Female	48	No	Jul-13
47A	42	Sihanoukville	Resettlement Site (Working in Thailand)	Female	31	No	Jul-13
48A	43	Sihanoukville	Resettlement Site	Female		No	Jul-13
49A	43	Sihanoukville	Resettlement Site (Working in Thailand)	Male	28	No	Jul-13
50A	44	Sihanoukville	Resettlement Site	Female		No	Jul-13
51A	45	Sihanoukville	Resettlement Site	Female		No	Jul-13
52A	46	Sihanoukville	Resettlement Site (Working in Thailand)	Female	32	No	Jul-13
53A	47	Pursat	Resettlement site	Male		Yes	7-Mar-13
54A*	48	Pursat	Resettlement site			Yes	7-Mar-13
55A*	49	Pursat	Resettlement site			No	7-Mar-13
56A*	50	Pursat	Resettlement site			No	7-Mar-13
57A*	51	Pursat	Resettlement site			No	7-Mar-13
58A*	52	Pursat	Resettlement site			No	7-Mar-13
59A*	53	Pursat	Resettlement site			No	7-Mar-13
60A*	54	Pursat	Resettlement site			No	7-Mar-13
61A*	55	Pursat	Resettlement site			No	7-Mar-13
62A	56	Pursat	Resettlement site	Female		No	7-Mar-13
63A	57	Pursat	Resettlement site	Female		No	7-Mar-13
64A	57	Pursat	Resettlement site	Male		No	7-Mar-13
65A	58	Pursat	Resettlement site	Female		No	7-Mar-13
66A*	59	Pursat	Railway	Female		No	7-Mar-13
67A*	59	Pursat	Railway	Female		No	7-Mar-13
68A*	59	Pursat	Railway	Male		No	7-Mar-13
69A*	59	Pursat	Railway	Male		No	7-Mar-13
70A*	59	Pursat	Railway	Female		No	7-Mar-13

71A*	60	Pursat	Railway	Female		No	7-Mar-13
72A*	61	Pursat	Railway	Male		No	7-Mar-13
73A*	62	Pursat	Railway			No	7-Mar-13
74A*	63	Pursat	Railway			No	7-Mar-13
75A*	64	Pursat	Railway			No	7-Mar-13
76A*	65	Pursat	Railway			No	7-Mar-13
77A*	66	Pursat	Railway			No	7-Mar-13
78A*	67	Pursat	Railway			No	7-Mar-13
79A*	68	Pursat	Railway			No	7-Mar-13
80A*	69	Pursat	Railway			No	7-Mar-13
81A*	70	Pursat	Railway			No	7-Mar-13
82A*	71	Pursat	Railway			No	7-Mar-13
83A*	72	Pursat	Railway			No	7-Mar-13
84A*	73	Pursat	Railway			No	7-Mar-13
85A	74	Pursat	Railway	Male		No	7-Mar-13
86A	75	Pursat	Railway	Male		No	7-Mar-13
87A	76	Pursat	Railway	Female		No	7-Mar-13
88A	77	Pursat	Railway	Female		No	7-Mar-13
89A	78	Battambang	Resettlement site	Female	50	No	6-Mar-13
90A	78	Battambang	Resettlement site	Male	55	No	6-Mar-13
91A	79	Battambang	Resettlement site	Male		Yes	6-Mar-13
92A	79	Battambang	Resettlement site	Male		Yes	6-Mar-13
93A	80	Battambang	Resettlement site	Female		Yes	6-Mar-13
94A	80	Battambang	Resettlement site	Female		Yes	6-Mar-13
95A	81	Battambang	Resettlement site	Female	32	No	6-Mar-13
96A	82	Battambang	Resettlement site (Working in Thailand)	Female	40	No	6-Mar-13

97A	83	Battambang	Resettlement site	Male	19	No	Jul-13
98A	83	Battambang	Resettlement site (Working in Thailand)	Female	47	No	6-Mar-13
99A	84	Battambang	Railway	Female	72	No	6-Mar-13
100A	84	Battambang	Railway	Male		No	6-Mar-13
101A	85	Battambang	Railway	Female		No	6-Mar-13
102A	86	Battambang	Railway	Female		No	6-Mar-13
103A	87	Poipet	Resettlement Site	Male		Yes	3-Mar-13
104A	88	Poipet	Other	Female		N/A	3-Mar-13
105A	88	Poipet	Resettlement Site	Male		N/A	3-Mar-13
106A	89	Poipet	Resettlement Site	Female		No	3-Mar-13
107A	90	Poipet	Resettlement Site	Female		No	3-Mar-13
108A	91	Poipet	Resettlement Site	Female		Yes	3-Mar-13
109A	92	Poipet	Resettlement Site	Female	36	No	3-Mar-13
110A	92	Poipet	Resettlement Site	Male	36	No	3-Mar-13
111A	93	Poipet	Resettlement Site	Male		Yes	3-Mar-13
112A	94	Poipet	Resettlement Site	Female		Yes	3-Mar-13
113A	94	Poipet	Resettlement Site	Male		Yes	3-Mar-13
114A	95	Poipet	Resettlement Site	Female	61	Yes	3-Mar-13
115A	96	Poipet	Resettlement Site	Male		Yes	3-Mar-13
116A	97	Poipet	Resettlement Site	Male		Yes	Jul-13
117A	98	Poipet	Resettlement Site	Male		Yes	Jul-13
118A	99	Poipet	Railway	Female	62	No	4-Mar-13
119A	100	Poipet	Railway	Female	58	No	4-Mar-13
120A	101	Poipet	Railway	Female	58	No	4-Mar-13
121A	102	Poipet	Railway	Female	63	No	4-Mar-13
122A	103	Poipet	Railway	Male	53	No	4-Mar-13

123A	103	Poipet	Railway	Female	43	No	4-Mar-13
124A	104	Poipet	Railway			No	4-Mar-13
125A	104	Poipet	Railway			No	4-Mar-13
126A	105	Poipet	Railway			No	4-Mar-13
127A	105	Poipet	Railway			No	4-Mar-13
128A	95	Poipet	Resettlement Site	Male		Yes	3-Mar-13 and 5-Mar-13
129A	96	Poipet	Railway	Female	33	No	5-Mar-13
130A	97	Poipet	Railway	Female		No	5-Mar-13
131A	98	Poipet	Railway	Female		No	5-Mar-13
132A	99	Poipet	Railway	Female		No	5-Mar-13
133A	100	Poipet	Railway	Female		No	5-Mar-13
134A	101	Poipet	Railway	Female		No	5-Mar-13
135A	102	Poipet	Railway	Female	66	No	5-Mar-13
136A	102	Poipet	Railway	Female		No	5-Mar-13
137A	102	Poipet	Railway	Male	46	No	5-Mar-13
138A	102	Poipet	Railway	Male		No	5-Mar-13
139A	103	Poipet	Railway	Male		No	5-Mar-13
140A	103	Poipet	Railway	Female		No	5-Mar-13
141A	103	Poipet	Railway	Female		No	5-Mar-13
142A	104	Poipet	Railway	Female		Yes	4-Mar-13
143A	104	Poipet	Railway	Male		Yes	4-Mar-13
144A	104	Poipet	Railway	Male		Yes	4-Mar-13

*Note: In Pursat, individual interviews turned into informal focus groups as participants joined the discussion. Participants 73A-84A, 66A-72A, and 54A-61A, were interviewed respectively in three separate groups.

Appendix C – List of other interview participants*

* The list below indicates the interview participants who took part in a formal interview and does not include those who were consulted informally over the course of the research. Some participants have since left or changed their positions. Others worked for more than one of the organisations listed over a period of time. To protect the identity of interview participants, stakeholders are grouped according to their affiliation at the time the railway project was being implemented. The broad category of "local and international NGOs" is also used to conceal the identity of participants. See Chapter 6: Methodology for a list of the NGOs included in the research as well as a list of those who were approached but declined to be interviewed. All participants were being interviewed in a personal capacity, especially those who worked for the Australian Government, ADB and the World Bank Group.[1181]

Participant No.	Stakeholder group	Date
1B	ADB	17 July 2013
2B	ADB	20 February 2013
3B	ADB	4 March 2015
4B	ADB	November 2014
5B	Local or international NGO	22 July 2013
6B	Local or international NGO	18 July 2012
7B	Local or international NGO	11 March 2013
8B	Local or international NGO	17 April 2013
9B	Local or international NGO	17 April 2013
10B	Local or international NGO	5 February 2012
11B	Local or international NGO	11 March 2013
12B	Australian Government	19 December 2014
13B	Australian Government	24 July 2014
14B	Local or international NGO	16 February 2015

[1181] To preserve the identity of one of the participants they are counted twice in the table, as they worked for more than one of the organisations during the project.

15B	Local or international NGO	26 June 2012
16B	Local or international NGO	21 July 2013
17B	Local or international NGO	5 June 2013
18B	Cambodian Government	18 July 2013
19B	World Bank/IFC/IBRD	24 May 2013
20B	World Bank/IFC/IBRD	29 May 2013
21B	Development agency	29 May 2013
22B	World Bank/IFC/IBRD	28 May 2013
23B	World Bank/IFC/IBRD	5 June 2013

Appendix D – Letter to ADB

Jessie Connell
PhD Candidate,
Human Geography,
School of Geosciences,
University of Sydney
jessieconnell@gmail.com
Supervisor: Professor Philip Hirsch

22 August 2015

Asian Development Bank
Cambodia Resident Mission

To whom it may concern,

Re: Request for information Rehabilitation of the Railway in Cambodia Project

I am writing to clarify the details of the financial and consultant arrangements relating to the Rehabilitation of the Railway in Cambodia Project. I am also seeking to clarify the ownership/borrowing structure of the project. The information will be used in my PhD thesis. I would be grateful if the Cambodia Resident Mission could assist me. The specific questions are as follows:

1. Did Toll Holdings make a financial contribution towards the project? How much was this contribution and in what form? Is there any documentation available which explains these arrangements?

2. Was any money ever paid or loaned to Toll Holdings by the ADB or MPWT (Cambodian Government) to rehabilitate the railway or in relation to this project in any way?

The project documentation explains that a 30 year concession to manage and upgrade Royal Cambodian Railways was awarded to the joint venture Toll Holdings, Australia (55 percent share) and the Royal Group (45 percent share). Revenues were to be shared between the government and Toll when the railway became profitable. Toll was to be "responsible for upgrading and extending the network."[1]

Can you explain the details of these financial arrangements? Were ADB loans and grants to the Cambodian Government used to cover the costs of "upgrading and extending the network"? Was this money paid to Toll Holdings to manage the contracts to "upgrade and extend" the network? If not, can you please clarify what type of responsibility, financial input and/or risk was borne by Toll Holdings?

3. Can you explain what is meant by "Design-build contract", mentioned in footnote 2, in the Analysis of Cost Increase Document?[2]

The project does not seem to be set up as a Build-Own-Operate and Transfer (BOOT) project, as it seems Toll Holdings and Royal Group did not finance the rehabilitation of the railway. How do the arrangements for the railway differ from the BOOT model?

---

[1] Overview on Transport Infrastructure Sectors in the Kingdom of Cambodia, http://www.mpwt.gov.kh/wp-content/uploads/2012/04/2010-Overview-on-Transport-Infrastructure-Sectors-in-Kingdom-of-Cambodia.pdf, p. 19.
[2] ADB, (2014), Analysis of cost increase – Major Change Document, p. 2.

3. Can you please explain who has covered the cost over-runs of the project?

There are a number of cost-over runs reported for the project. Which entity covered these cost over-runs? Were they simply taken from the overarching ADB or MPWT project budget for the project?

4. Did the ADB manage all of the contributions to the project from the Australian Government, Malaysian Government and OFID (OPEC fund for international Development)?

5. What is the relationship between MPWT and Toll Royal Railways in terms of tax/royalties?

6. The Major Change documents on the ADB website refer to various contractors as being responsible for key aspects of the work. Can you confirm which contractors the Major Change document is referring to? For example, what is the name of the Project Preparatory Technical Assistance (PPTA) consultants referred to in this section:

> *The PPTA consultants assumed that most bridges only required repair of the superstructure and no provisions were made for substructure works except for a few cases where the substructure clearly was missing. The preliminary design also assumed that no new culverts were required. In reality about 46 new culverts had to be built on Southern Line alone. Eventually, it turned out that the PPTA consultants had never reviewed the residual carrying capacity of the bridges on the two lines, i.e. whether they were indeed capable of carrying the line design axle load (15 or 20 tons) at the design speed (average of 50 km/h) or not.[3]*

The Major Change document mentions that the civil works contractors were involved in the design at the PPTA stage.[4] Are these civil works contractors TSO-AS and Nawarat?[5] Or are they the construction supervision consultant, Nippon Koei?[6] The Major Change Document does not explicitly state which contractors are the PPTA consultants. When I go back to the earlier documents, there are numerous different contractors mentioned, but it is still not clear precisely which contractor would be the PPTA consultants.

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[3] ADB, (2014), Analysis of cost increase – Major Change Document, p. 3.
[4] ADB, (2014), Analysis of cost increase – Major Change Document, p. 2. (footnote 2).
[5] See: Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS. (2014). *Environmental Monitoring Report No. 32, GMS: Rehabilitation of Railway in Cambodia, May 2014, Loan No. 2288-CAM [SF], ADB Loan No. 2602.* p. 2.
[6] See: Ministry of Public Works and Transport Cambodia, Asian Development Bank & Nippon Koei Co. Ltd. in association with JARTS. (2014). *Environmental Monitoring Report No. 32, GMS: Rehabilitation of Railway in Cambodia, May 2014, Loan No. 2288-CAM [SF], ADB Loan No. 2602.* p. 2.

7. Can you also please confirm who the "Contractor", "Engineer" and "Employer" are in the sections of the report re-produced below? It has been difficult to identify these parties with any certainty.

The Analysis of Cost Increase, which is supplementary to the Major Change Document, describes "gross negligence" on behalf of the Engineer, stating that:

> The performance security and advance payment security under N-Line contract expired in May 2012. Though it is the <u>Contractor</u>'s responsibility to extend these securities until the works are completed, the <u>Engineer,</u> as representative of the <u>Employer,</u> or the <u>Employer</u> himself, should have ensured that those did not lapse. Due to this gross negligence by the <u>Engineer</u>, the <u>Employer</u> will not be able to recover the $3.9 million that has been paid to the <u>Contractor</u> as advance, and will not be able to encash about $2.5 million under the performance security if the contract eventually is terminated, thus a total loss of about $6.4 million to the <u>Employer</u>.[7]

Thank you in advance for your assistance with these clarifications.

Kind regards,
Jessie Connell

---

[7] ADB, (2014), Analysis of cost increase – Major Change Document, p. 5.

Appendix E – Response from ADB

To,

Jessie Connell
PhD Candidate,
Human Geography,
School of Geosciences,
University of Sydney
jessieconnell@gmail.com
Supervisor: Professor Philip Hirsch

Re: Request for information Rehabilitation of the Railway in Cambodia Project

Dear Ms. Connell,

Thank you for your interest in this Project.

1.   Railway rehabilitation in Cambodia, which has been ongoing since around 2005 has the following structure: (i) the Government of Cambodia rehabilitates and partially upgrades the railway infrastructure (public sector component), and (ii) a private sector operator is given by the Government of Cambodia a concession to operate the railway using the rehabilitated railway infrastructure (private sector component).

2.   The financing from the Government of Australia, OPEC Fund for International Development (OFID), the Government of Malaysia, and ADB was only for the public sector component, to finance the following: (i) rehabilitation and partial upgrading of the southern line, the northern line and reconstruction of the missing link, (ii) institutional strengthening of the Railway Department of the Ministry of Public Works and Transport (MPWT), and (iii) expanded income restoration program (EIRP). ADB administered the grant and loan from the Government of Australia and OFID on their behalf. Compensation to and resettlement of the project affected households, which are a part of the public sector component, was financed by the Government of Cambodia. ADB's loans were not used to finance these costs.

3.   Financing from the external funding sources is not used for the private sector component that is implemented through Toll Holdings' concession with the Government of Cambodia. As the infrastructure rehabilitation and upgrading is done by the public sector, Toll Holdings' concession does not follow the BOOT model.

4.   As ADB does not finance Toll Holdings' concession with the Government of Cambodia, ADB has neither access to the details of the concession agreement or the right to disclose them.

5.   The Major Change in Scope was to the ADB-financed public sector component of the project. Likewise, the cost overruns discussed in the Major Change in Scope pertain only to the public sector component.

6.   ADB uses the terms "consultant" and "contractor" distinctively. To develop the overall project structure and conduct feasibility study of the project, ADB provided a grant-financed project preparatory technical assistance (PPTA) to the Government of Cambodia, under which a consulting firm was engaged.

7.   For the public sector component, there were several contractors engaged to carry out different types of works. The main civil works to rehabilitate and partially upgrade the railway tracks of the southern line and the northern line, and to reconstruct the destroyed railway link to Thailand were carried out through two design-build contracts, both awarded to the joint

venture civil works contractor involving TSO. Under a design-build contract, the contractor carries out both the detailed engineering design and construction of the civil works. The PPTA for this project carried out only preliminary design of the civil works, and for the construction work, there was a need to carry out detailed engineering design, which in this case was included in the scope of the civil works contracts.

8.   In the Analysis of Cost Increase, the terms "the Contractor", "the Engineer" and "the Employer" refer to the civil works contractor involving TSO, the construction supervision consultant (Nippon Koei), and the Ministry of Public Works and Transport, respectively. The Contractor is engaged by the Employer to carry out the work, and the construction supervision consultant, also engaged by the Employer, supervises the work of the Contractor, as the Engineer on behalf of the Employer. These are a standard terminology under the FIDIC forms of contract. FIDIC stands for Fédération Internationale Des Ingénieurs-Conseils.

I hope these clarifications are useful.

Kind regards,

Appendix F – Semi-structured verbal questionnaire

Jessie Connell, University of Sydney
DRAFT - Discussion guide for relocated communities August 14 2012

Background

Note: This is the verbal explanation that will be translated for community members. They will also be given a copy of the participant information sheet translated into Khmer which provides more detail about the research and relevant contact information if they wish to ask more questions about the research.

You are invited to participate in a study examining community relocations in Cambodia. The research aims to explore the experiences of communities being relocated in Cambodia to improve knowledge about how these communities can be supported in the future.

The study is being conducted by Jessie Connell who is studying at the University of Sydney. If you consent to taking part in the study we will ask you some questions about your experience of being relocated. At any point in the interview, you can choose not to answer any questions if you do not feel comfortable. Your participation is entirely voluntary.

Everything that is shared with us is **confidential**; no one will be identified by name, or any other information, in the research report. The research is independent and we do not work at any of the organisations involved in the relocation process.

Is it OK for us to record this interview? The recording is only to help us later to remember what we discussed and will not be shared with anyone outside the research team.

⟶ Start recording if consent is given.

Thank you for taking part in the interview.

Do you consent to taking part in this confidential interview?

Begin interview if consent is given.

Preliminary questions

Please note: the interviews are intended to be semi-structured. These questions will not necessarily be asked in this order.

Q1. When did you move here? _____

Q2. Why did you move here?_____

Q3. Where were you living before here? Can you describe what it was like there?_____
_____

Q4. How long did you live at your old place?_____

Q5a. Do you or any of your family members still go back to your old place?
Why?_____

      Q5b. If yes, how often do you return there?
           ☐ Every day
           ☐ Most days
           ☐ Once a week
           ☐ Once a month
           ☐ Other_____

1

Q5c. How long does it take you to travel back to your old place?_____

Q5d. How do you get there?_____
- ☐ Hire moto
- ☐ Your own moto
- ☐ Friend/family moto
- ☐ Tuk tuk
- ☐ Car
- ☐ Other

Q5e. How much does it cost to return back to your old place each time?_____

Conditions at the new site

Q6. What is it like living at the new site? What has your experience been like? _____

Q7. Are you experiencing any difficulties living at the new site?_____
_____

Q8. Are there things you like or prefer about the new site compared to your old site?_____
_____

Q9. Can you tell me more about the conditions here? Do you have access to running water? Where is it?___
_____

Q10. Did you have access to running water at your old place? How far was it from your house?_____

Q11. Do you have access to electricity?_____

Q12. Did you have access to electricity before at your old place?_____

Prompts: How? Was it your own electricity source/shared?

Q13. Do you feel safe at the new site?_____

Q14. Is the safety any different to the old site?_____

Q15. Do you have access to any land to grow food?_____

Q16. Did you have access to land to grow food before?_____

Q17a. Do you have any children?_____

Q17b. If yes, are your children going to school? _____

Prompts: *If not, can you tell us about why are they not going to school?*

If yes, where are they going to school? How much does it cost? How do they get there?

If yes, have there been any difficulties getting your children into the new school?

Were they going to school where you lived before?

2

Q18. How has the move affected you and your family?_____

Q19. Has the move affected your health in any way – positively or negatively?_____

Q20. Thinking about your health and well-being, do you think the new site is:

☐ The same as the old site
☐ Better
☐ Worse

  Prompts: *Why?*

Q21. Do you think your children have been affected by the move? How?_____

Q22. Thinking about your children's health and well-being, do you think the new site is:

☐ The same as the old site for them
☐ Better for them
☐ Worse for them

Q23. What are your major sources of household income? _____

Q24. Who is the main income earner in your family? _____

Q25. Has your income changed since moving to the new site? Why and how?_____

Prompts: *How are you earning money?*

        Where do you go to earn money?

        How do you get there?

        How much does the transport cost?

        Has the situation been the same the whole time you have been here or has it changed?

Q26. What do you think may be other opportunities to earn a living here?_____

Q27. What is needed for you to be able to access these opportunities?_____

Q28. Have any of your living expenses changed since coming to the new site? E.g. food?

        Prompts:

        Why?

        How much has it changed?

Q29. Can you tell me about how you built your new house?_____

Q30. How easy was it to get someone to come and build the house? _____

Q31. Is the structure of your new house better/worse in quality than your old house?_____

Q32. What is your new house made from? What was your old house made from?_____

Prompts:

Did you bring any of the materials from the old house to the new site?

Where did you purchase the new materials?

Q35. How much did you pay to re-build your house on the new site?_____

Q36. Were you given a resettlement allowance or compensation? How much were you given? Who gave it to you? _____

Q37. Do you know who was eligible for the allowance and how it was calculated?_____

Q38. When were you given the resettlement allowance?_____
Prompt: If you were not given your resettlement allowance before you moved, how did you pay for the move?

Q39. Do you plan on staying at the new site?_____

Prompts:

Why/why not?

How long?

Where might you go if you leave?

Q40. Do you think long term your life will be better here than at your old site? Why/why not?_____

_____

Q41. Did you have registered land title at your old place? _____

Q42. Do you have registered land title here at the new place?_____

Q43. Q If yes, who in your family held/holds the title to your land?_____

Q44. Have there been any factors that have helped you to recover or adapt since coming to the new site?_____

Q45 Have there been any things that have made it harder to recover or adapt?_____

Q46. Has the move affected your community? How?_____

Q47. Have there been any people in the community who have been particularly affected by the move? Why? (E.g. older people etc). _____

Q48. Not everybody in your community came to the new site, do you know what happened to the people who did not join you in the move?_____

Prompts:

Where are they now?

4

Do you ever see them or speak to them on the phone?

Were they given the option of coming to the new site?

Do you know why they decided or were not able to move with you?

The relocation process

Q49. When did you first hear that you were required to move?_____

Q50. Who came to tell you about moving?_____

Q51. How was it explained to you?_____

_____

Q52. What was involved in moving your house?_____

Q53. How much time did you have to move after you were told about relocating?_____

Q54. Did your whole family/household move here together from your old place?_____

_____

Q55. Did anyone come to meet with you and talk to you before you moved? What kinds of things did they ask?_____

Q56. Were you given a choice about where you moved to?_____

Q57. Do you recall who or which organisations were involved in telling you about moving and helping you to move? _____

Q58. What did they do during the moving process? Was it helpful/not helpful?_____

Q59. Do you still see any people from those organisations?_____

Q60. Who has assisted you most in the relocation process? You can name anyone or any organisation. E.g. family member, friend, etc. _____

Q61. What was the hardest thing about moving?_____

Q62. What was the easiest or best thing about moving?_____

Q62. Overall, do you feel better off living in the new site or not? (Financially, personally, psychologically)_____

Q63. Has anyone come to talk to you about your rights or human rights? What do you think about this?_____

5

Complaints process

Q64. When there are problems with the relocation process and the new site, is there anyone who you can go to in the community to seek assistance or make a complaint?

_____

Q65. Who would you be most likely to go to?:

☐ Village leader
☐ Commune Chief
☐ NGO _____
☐ Other_____

Q66a. When you moved, was it explained to you that you could make a complaint to the Inter-ministerial Resettlement Committee (IRC) or the Asian Development Bank (ADB) if you were not happy with some aspects of the relocation?_____

Q66b. If yes, who explained this to you? What did they say?_____

Q67. Have you made a complaint to the IRC?_____

Q68. Have you made a complaint to the ADB? _____

Prompts:

_If no, did you consider making a complaint? Why/why not?_____

_If yes, what is it about?_____

Who in your household decided to go ahead with complaint?

What has happened so far?

What date did you file the complaint?

Has IRC and/or the ADB responded to the complaint?

Is any organisation or person helping you?

Can you tell us what was explained to you?

Can you tell us about the process?

Did you consent to making the complaint? How?

What did you think would happen when you made the complaint?

What would you like to happen as a result of making the complaint?

Are you waiting to hear about the complaint before you do anything with your land or work?

Is there anything that you are concerned about in making a complaint?

6

Has the process of making a complaint been what you expected so far?

How have other community members responded to idea of you making a complaint?

Basic information

Note: These questions will be asked if the information has not already been volunteered throughout the interview.

Do you mind if we ask you some basic information about your situation? Please feel free not to answer if you don't feel comfortable.

Q69. How many members are there in your household?_____

Q70. Do you have any members of your extended family living with you?_____

Q71. What level of education have you attained?_____

Q72. Where were you born?_____

Q73. How old are you?_____

Q74. How much are you earning per month?_____

Q75. Do you have any other sources of income? Roughly how much is this? From where? Other family members?_____

Q76. What are your weekly expenses?_____

Q77. Do you have any other assets?_____

Q78a. Do you have any savings?

_____

    Q78b. If yes, how much savings?_____

    Q78c How did you save the money?_____

Q79a. Do you have any debt?_____

    Q79b. If yes, how much debt?_____

    Q79c. Who do you owe the money to?_____

    Q79d. Do you have more than one loan?_____

    Q79e. What interest rate do you pay on your debt? _____

7

Q79f. How and why did you accrue the debt?_____

Q80a. Have you ever had any debt before (prior to relocation)?_____

Q80b. If yes, how much and what was it for?_____

Q81. Has anyone come to talk to you about how to manage your debt or how to save?_____

Prompts:

*If yes who came? What did they say?*_____

*Was this information helpful to you? Did it make sense?*_____

*Are you a member of the Self-Help Group under the Expanded Income Restoration Program?*_____

Have you borrowed from the EIRP or accessed the safety net in emergencies?

Q82. Is there anything that we have not asked you about that you would like to tell us or to talk about that is concerning you?_____

Q83. Do you have any other questions?_____

For the interviewer to observe:

Q84. Is the participant:
☐ Male
☐ Female

FINISH

Thank you very much for taking part in the interview.

8

Appendix G – Participant information sheet (English)

THE UNIVERSITY OF SYDNEY

Department of Geography
School of Geosciences
Faculty of Science

ABN 15 211 513 464

Professor Philip Hirsch

Room 472
Madsen Building F09
The University of Sydney
NSW 2006 AUSTRALIA
Telephone: +61 2 9351 3355
Facsimile: +61 2 9352 3644
Email: philip.hirsch@usyd.edu.au
Web: http://www.sydney.edu.au/

Research topic

Community relocations in Cambodia: A case study of the role of accountability mechanisms and civil society in resettlement negotiations.

PARTICIPANT INFORMATION STATEMENT

(1)   What is the study about?

You are invited to participate in a study examining community relocations in Cambodia. The research aims to explore the use of accountability mechanisms in supporting relocated communities in Cambodia and the role of civil society organisations in representing the needs of communities who are being relocated.

(2)   Who is carrying out the study?

The study is being conducted by Jessie Connell and will form the basis for the degree of Doctor of Philosophy at The University of Sydney under the supervision of Professor Philip Hirsch.

(3)   What does the study involve?

The study aims to understand the development and operation of accountability and complaints mechanisms that are being used to support relocated populations in Cambodia. As part of the study, the research aims to investigate community resettlement processes from a number of angles – from the perspective of communities being relocated, funders of relocation projects, the Cambodian Government and non-government organisations involved in representing the needs of communities.

The research focuses on the Rehabilitation of the Railway in Cambodia (a project jointly financed by the Asian Development Bank and the Australian Government) as a case study. Organisations involved in the project and community members who are being resettled for the project will be invited to participate in an interview or a small group discussion. Ms Connell will take hand-written notes during the interviews and audio recordings of the discussions will be made if the participants agree.

(4)   How much time will the study take?

Most interviews will take around 45 minutes, but some may last up to 1 ½ hours depending on the participant.

(5)   Can I withdraw from the study?

Community relocations in Cambodia

Being involved in this study is completely voluntary - you are not under any obligation to consent and - if you do consent - you can withdraw at any time without affecting your relationship with The University of Sydney.

You may stop the interview at any time if you do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

If you take part in a focus group and wish to withdraw, as this is a group discussion it will not be possible to exclude individual data once the session has commenced.

(6)   **Will anyone else know the results?**

All aspects of the study, including results, will be strictly confidential and only the researchers will have access to information on participants.

A report of the study may be submitted for publication, but individual participants will not be identifiable in such a report.

(7)   **Will the study benefit me?**

By taking part in the study you will help us to understand the problems facing relocated communities and the effectiveness of different approaches to supporting relocated communities. The knowledge gained from the study will be provided back to those organisations involved in planning community relocations in the form of a report and/or a published article.

(8)   **Can I tell other people about the study?**

Yes.

(9)   **What if I require further information about the study or my involvement in it?**

When you have read this information, Ms Jessie Connell will discuss it with you further and answer any questions you may have. If you would like to know more at any stage, please feel free to contact Jessie Connell via email at jessie.connell@sydney.edu.au or mobile on 012896130 in Cambodia, 202 604-4869 in the United States and 0409 153 822 in Australia.

(10)   **What if I have a complaint or any concerns?**

Any person with concerns or complaints about the conduct of a research study can contact The Manager, Human Ethics Administration, University of Sydney on +61 2 8627 8176 (Telephone); +61 2 8627 8177 (Facsimile) or ro.humanethics@sydney.edu.au (Email).

This information sheet is for you to keep

Community relocations in Cambodia

Version 1. 30 August 2012

Appendix H – Participant Information Sheet (Khmer)

Department of Geography
School of Geosciences
Faculty of Science

ABN 15 211 513 464

Professor Philip Hirsch

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ប្រធានបទ: **"ការផ្លាស់ប្ដូរសហគមន៍នៅកម្ពុជា"** ការសិក្សាពីតួនាទីរបស់យន្តការនៃគណនីភាព និងសង្គមស៊ីវិលនៅក្នុងការចរចារពីបញ្ហាផ្លាស់ប្ដូរទីលំនៅថ្មីៗ

ពត៌មានសម្រាប់អ្នកចូលរួម

១. តើការសិក្សានេះ គឺជាការសិក្សាអំពីអ្វី?

លោកអ្នកគឺត្រូវបានអញ្ជើញ ដើម្បីឱ្យចូលរួមនៅក្នុងការសិក្សាស្រាវជ្រាវមួយដែលស្ដីអំពី **ការផ្លាស់ប្ដូរសហគមន៍ថ្មីនៅកម្ពុជា**។ ការស្រាវជ្រាវនេះគឺមានគោលដៅដើម្បីបង្ហាញពី ការប្រើប្រាស់យន្តការនៃគណនីយភាព នៅក្នុងការជួយគាំទ្រដល់សហគមន៍ដែលត្រូវបានគេធ្វើការផ្លាស់ប្ដូរទៅកន្លែងផ្សេងនៅកម្ពុជា ហើយនិងតួនាទីរបស់អង្គការសង្គមស៊ីវិលនៅក្នុងការបង្ហាញនូវសេចក្ដីត្រូវការរបស់សហគមន៍ ដែលត្រូវបានគេកំពុងធ្វើការផ្លាស់ប្ដូរ។

២. តើនរណា ដែលជាអ្នកធ្វើការសិក្សានេះ?

ការសិក្សានេះ គឺត្រូវបាននឹងកំពុងធ្វើឡើងដោយកញ្ញា Jessie Connell ដែលនឹងត្រូវធ្វើឡើងនៅក្នុងកម្រិតមូលដ្ឋាននៃការសិក្សាថ្នាក់បណ្ឌិតរបស់កញ្ញានៅសាកលវិទ្យាល័យស៊ីដនីដែលបិតក្រោមការណែនាំ របស់លោកសាស្ត្រាចារ្យ Philip Hirsch។

៣. តើមានអ្វីខ្លះ ដែលនឹងត្រូវរួមបញ្ចូលនៅក្នុងការសិក្សានេះ?

ការសិក្សានេះ គឺមានគោលបំណងដើម្បីឈានទៅដល់ការយល់ដឹង ពីការអភិវឌ្ឍន៍នឹងដំណើរការនៃ យន្តការនៃគណនីយភាពនិងការតវ៉ា ដែលត្រូវបានប្រើប្រាស់ក្នុងការគាំទ្រដល់ប្រជាជនដែលត្រូវបាន

ធ្វើការផ្ទេរប្ញូរទីលំនៅ នៅកម្ពុជា។ មួយផ្នែកទៀតនៃការសិក្សានេះគឺនឹងផ្តោតទៅ លើការស្រាវជ្រាវ ដើម្បីធ្វើការស្ទើបអង្កេតពីដំណើរការ នៃការផ្ទេរប្ញូរទីលំនៅថ្មី ដែលស្ទេងឡើងនៅក្នុងទិដ្ឋភាពផ្សេងៗ និងស្វ្រនរបស់សហគមន៍ដែលកំពុងត្រូវបានគេធ្វើការផ្ទេរប្ញូរ អ្នកផ្តល់ជំនួយក្នុងគម្រោងនៃការផ្ទេរ ប្ញូរទីលំនៅនោះ និងការចូលរួមរបស់រដ្ឋាភិបាលនិងអង្គការក្រោមរដ្ឋាភិបាលនៅក្នុងការបង្ហាញនូវសេចក្តី ត្រូវការរបស់សហគមន៍ខាងលើ។

ការស្រាវជ្រាវនេះ គឺផ្តោតសំខាន់ទៅលើការធ្វើ និតិសម្បទាផ្សេៗដែកនៅកម្ពុជា (គម្រោងមួយដែលបាន គាំទ្រដោយ ធនាគារអភិវឌ្ឍន៍អាស៊ី និងរដ្ឋាភិបាលអូស្ត្រាលី)។ អង្គការដែលបានចូលរួមក្នុងគម្រោងនោះ ហើយសមាជិកនៃសហគមន៍ដែលកំពុងត្រូវបានធ្វើការផ្ទេរ គឺនឹងត្រូវបានអញ្ជើញដើម្បីឱ្យចូលរួម នៅក្នុងកិច្ចសម្ភាសន៍និងការពិភាក្សាជាក្រុម ហើយការថតសម្លេងនៃការពិភាក្សានោះគឺនឹងត្រូវធ្វើឡើង ប្រសិនបើអ្នកចូលរួមអនុញ្ញាត។

៤. តើការសិក្សានេះ គឺនឹងត្រូវចំណាយពេលប៉ុន្មានដែរ?
ភាគច្រើននៃការធ្វើបទសម្ភាសន៍គឺនឹងត្រូវធ្វើឡើងក្នុងរយៈពេលប្រហែល៤៥នាទី   ប៉ុន្តែការសម្ភាសន៍ ខ្លះគឺនឹងអាចឈានដល់រយៈពេល ១ម៉ោងកន្លះ ដោយផ្នែកទៅលើអ្នកចូលរួម។

៥. តើខ្ញុំអាច ដកខ្លួនចេញពីការសិក្សានេះបានដែរឬទេ?
ការចូលរួមនៅក្នុងការសិក្សានេះ គឺជាការស្ម័គ្រចិត្តទាំងស្រុង។ អ្នកគឺមិនបិតនៅក្រោមកាតព្វកិច្ចណា មួយដើម្បី�យល់ព្រមនោះទេ ហើយប្រសិនបើអ្នកមិនយល់ព្រមគឺអ្នកអាចដកខ្លួនចេញ ពីក្នុងការសិក្សា នេះបានគ្រប់ពេល ដោយគ្មានប៉ះពាល់ដល់ទំនាក់ទំនងរវាងអ្នកនិងសាកលវិទ្យាល័យស៊ីដនីនោះទេ។

អ្នកអាចបញ្ឈប់ការសម្ភាសន៍បានគ្រប់ពេលវេលា ប្រសិនបើអ្នកមិនចង់បន្ត ហើយសម្លេងដែលបានថត រួចនោះគឺនឹងត្រូវលប់ ចំណែកឯពត៌មានដែលបានផ្តល់ហើយនោះគឺមិនត្រូវបញ្ចូលក្នុងការសិក្សាឡើយ។

ប្រសិនបើអ្នកចូលរួមនៅក្នុងក្រុមហើយមានបំណងដើម្បីចាកចេញវិញនោះ   គឺវានឹងមិនអាចទៅរួច នោះទេដែលត្រូវដកចេញនូវពត៌មានផ្តាល់ខ្លួនរបស់អ្នកតែម្នាក់ឯង   នៅពេលដែលការពិភាក្សានោះបាន ចាប់ផ្តើមរួចហើយ។
៦. តើមាននរណាខ្លះដែលដឹងពីលទ្ធផលនៃការសិក្សានោះ?

គ្រប់ផ្នែកនៃការសិក្សាឬក្រុមទាំងឡទាំងឡងដែល គឺនឹងត្រូវបានរក្សាជាការសម្ងាត់បំផុត ហើយមានតែ អ្នកសិក្សានោះទេ ដែលនឹងត្រូវដឹងពីព័ត៌មានរបស់អ្នកចូលរួម។

ព័ត៌មាននៃការសិក្សានោះគឺប្រហែលជាត្រូវបានពិនិត្យក្នុងសណ្ណាការជាការបោះពុម្ព ប៉ុន្តែអ្នកចូលរួម ទាំងអស់គឺនឹងមិនត្រូវបានបង្ហាញអត្តសញ្ញាណនោះទេ។

៧. តើការសិក្សានោះ នឹងមានផលប្រយោជន៍ដល់ខ្ញុំដែរឬទេ?

តាមរយៈការចូលរួម នៅក្នុងការសិក្សាខាងលើអ្នកនឹងជួយយើងខ្ញុំយល់ពីបញ្ហាប្រឈមរបស់សហគម ន៍ដែលត្រូវបានធ្វើការផ្លាស់ប្ដូរ ប្រសិទ្ធភាពនៃមធ្យោបាយផ្សេងៗនៅក្នុងការជួយជ្រោមជ្រែងដល់ សហគមន៍ខាងលើ។ ព័ត៌មានទាំងឡាយដែលបានមកពីការសិក្សា គឺនឹងត្រូវប្រគល់ទៅអង្គការទាំងអស់ ដែលជាអ្នកចូលរួមនៅក្នុងគម្រោងនៃការផ្លាស់ប្ដូរសហគមន៍នោះ ក្នុងសណ្ណាការជាបាយការណ៍ឬក៏ ជាលក្ខណៈអត្ថបទបោះពុម្ព។

៨. តើអ្នកខ្ញុំអាចប្រាប់អ្នកដទៃទៀត អំពីការសិក្សានេះបានដែរឬទេ?

ប្រាកដជាបាន។

៩. ចុះប្រសិនបើ ខ្ញុំត្រូវការព័ត៌មានបន្ថែមអំពីការសិក្សានោះ ឬក៏អំពីការចូលរួមរបស់ខ្ញុំនៅពេល ក្រោយ?

នៅពេលអ្នកបានអានូវព័ត៌មានទាំងអស់នេះ កញ្ញា Jessie Connell នឹងពិភាក្សាជាមួយអ្នកបន្ថែមនិង ឆ្លើយសំនួរផ្សេងៗដែលអ្នកឆ្ងល់។ ហើយប្រសិនបើអ្នកមានបំណងចង់ដឹងព័ត៌មានបន្ថែមពីបញ្ហាខាងលើ អ្នកអាចទំនាក់ទំនងទៅកញ្ញា Jessie Connell បានគ្រប់ពេលដោយតាមរយៈ អ៊ីម៉ែល៖ jessie.connell@sydney.edu.au ឬក៏តាមរយៈទូរស័ព្ទលេខ ០១២៨៩៦១៣០។

១០. ចុះប្រសិនបើខ្ញុំមានការតវ៉ា រ៉ឺក៏បញ្ហាផ្សេងៗនោះ?

បើអ្នកមានបញ្ហាឬ ក៏ចម្ងល់ផ្សេងៗដែលទាក់ទងនឹងការសិក្សានេះ លោកអ្នកអាចទំនាក់ទំនងទៅកាន់ អ្នកគ្រប់គ្រងរដ្ឋបាលក្រមសីលធម៌មនុស្ស នៃសាកលវិទ្យាល័យស៊ីដនីតាមរយៈ លេខទូរស័ព្ទ៖ +61 2 86278176 ឬតាមរយៈ Facsimile +61 2 8627 8177 ឬក៏តាមរយៈអ៊ីម៉ែល៖ ro.humanethics@sydney.edu.au ។

សន្លឹកព័ត៌មាននេះ គឺសម្រាប់អ្នក

Appendix I – Consent form (English)

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Web: http://www.sydney.edu.au/

PARTICIPANT CONSENT FORM

I, ...[PRINT NAME], give consent to my participation in the research project

TITLE: Community relocations in Cambodia: A case study of the role of accountability mechanisms and civil society in resettlement negotiations

In giving my consent I acknowledge that:

1.   The procedures required for the project and the time involved have been explained to me, and any questions I have about the project have been answered to my satisfaction.

2.   I have read the Participant Information Statement and have been given the opportunity to discuss the information and my involvement in the project with the researcher/s.

3.   I understand that being in this study is completely voluntary – I am not under any obligation to consent.

4.   I understand that my involvement is strictly confidential. I understand that any research data gathered from the results of the study may be published however no information about me will be used in any way that is identifiable.

5.   I understand that I can withdraw from the study at any time, without affecting my relationship with the researcher(s) or the University of Sydney now or in the future.

6.   I understand that I can stop the interview at any time if I do not wish to continue, the audio recording will be erased and the information provided will not be included in the study.

I understand that I can stop my participation in the focus group at any time if I do not wish to continue; however as it is a group discussion it will not be possible to exclude individual data to that point.

7.   I consent to:
- Audio-recording   YES ☐   NO ☐
- Receiving Feedback   YES ☐   NO ☐

If you answered YES to the "Receiving Feedback" question, please provide your details i.e. mailing address, email address.

Feedback Option

Address: _____

                      _____

Email: _____

....
Signature

....
Please PRINT name

....
Date

Appendix J – Consent form (Khmer)

Department of Geography
School of Geosciences
Faculty of Science

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លិខិតយល់ព្រមរបស់អ្នកចូលរួម

ខ្ញុំបាទ/នាងខ្ញុំឈ្មោះ...បានយល់ព្រមផ្តល់ការចូលរួមរបស់ខ្ញុំ
ក្នុងគម្រោងនៃការសិក្សាស្រាវជ្រាវខាងក្រោមនេះ។

ប្រធានបទ **"ការផ្តាស់ប្តូរសហគមន៍នៅកម្ពុជា"** ការសិក្សាពីត្តនាទីរបស់យន្តការនៃគណនីភាព
និងសង្គមស៊ីវិលនៅក្នុងការចរចារពីបញ្ញាផ្តាស់ប្តូរទីលំនៅថ្មី។

នៅក្នុងការផ្តល់ការយល់ព្រមនេះ ខ្ញុំសូមទទួលស្គាល់ថា៖

៑. និតិវិធីដែលតម្រូវនៅក្នុងការសិក្សានិងពេលវេលានៃការចូលរួម គឺត្រូវបានពន្យល់ ប្រាប់ខ្ញុំចជាស្រេច
ហើយរាល់ចម្ងល់របស់ខ្ញុំអំពីគម្រោងនេះ គឺត្រូវបានបកស្រាយ
សមស្របនឹងសេចក្តីត្រូវការរបស់ខ្ញុំអស់ហើយ។

២. ខ្ញុំបានអាននូវលិខិតពត៌មានរបស់អ្នកចូលរួម និងបានយល់ព្រមដើម្បីពិភាក្សា អំពីពត៌មានខាងលើ
ហើយនិងផ្តល់ការចូលរួមរបស់ខ្ញុំនៅក្នុងការសិក្សាស្រាវជ្រាវនេះ។

៣. ខ្ញុំបានដឹងថា អំឡុងពេលនៃការចូលរួមនេះ គឺជាការស្ម័គ្រចិត្តទាំងស្រុង គឺថាខ្ញុំមិនបាន
បិតនៅក្រោមកាតព្វកិច្ចណាមួយដែលត្រូវតែយល់ព្រមនោះទេ។

៤. ខ្ញុំបានដឹងថាការចូលរួមរបស់ខ្ញុំនេះ គឺត្រូវបានរក្សាជាការសម្ងាត់បំផុតៗ ខ្ញុំបានដឹងថា ទិន្នន័យដែលបាន ប្រមូលមកពីការសិក្សានេះ គឺប្រហែលជាអាចត្រូវបានបោះពុម្ព តែទោះបីជាយ៉ាងណា គ្មានពត៌មាន ណាមួយរបស់ខ្ញុំដែលនឹងត្រូវបាន ប្រើក្នុងលក្ខណៈដែលអាចសម្គាល់ អត្តសញ្ញាណបាននោះទេៗ

៥. ខ្ញុំបានដឹងថា ខ្ញុំអាចដកការចូលរួមរបស់ខ្ញុំចេញបានគ្រប់ពេលដោយគ្មានការប៉ះពាល់ ដល់ទំនាក់ទំនង របស់ខ្ញុំជាមួយនឹងអ្នកស្រាវជ្រាវ រឺក៏សាកលវិទ្យាល័យស៊ីដនីនោះទេៗ

៦. ខ្ញុំដឹងថា ខ្ញុំអាចបញ្ឈប់ការសម្ភាសន៍នោះបានគ្រប់ពេល ប្រសិនបើខ្ញុំមិនចង់បន្ត ហើយសម្លេងដែល បានថតរួចនោះ គឺនឹងត្រូវបានលប់ចោល ចំណែកឯពត៌មានទាំងឡាយដែលបានប្រមូលបានរួចនោះគឺ នឹងមិនត្រូវបានបញ្ចូល នៅក្នុងការសិក្សានោះទេៗ
   ខ្ញុំដឹងថា ខ្ញុំអាចបញ្ឈប់ការចូលរួមរបស់ខ្ញុំបានគ្រប់ពេលនៅក្នុងក្រុម ប្រសិនបើខ្ញុំ មិនចង់បន្ត តែទោះជាយ៉ាងណា ប្រសិនបើវាជាការពិភាក្សាជាក្រុម នោះវានឹងមិនអាចទៅរួចទេ ក្នុងការដកចេញ ទិន្នផ្ទាល់ខ្លួនរបស់ខ្ញុំតែម្នាក់ឯងចេញនោះៗ

៧. ខ្ញុំយល់ព្រមដើម្បីឱ្យមាន៖
   ការថតសម្លេង   បាន ☐   មិនបាន ☐
   ទទួលការកែតម្រូវ   បាន ☐   មិនបាន ☐

ប្រសិនបើអ្នកឆ្លើយថា "បាន" ចំពោះចំណុច "ទទួលការកែតម្រូវ" សូមអ្នកមេត្តាផ្តល់នូវ អាស័យដ្ឋានច្បាស់លាស់ ប្រអប់សំបុត្រប្រៃសនីយ៍ រឺក៏ អ៊ីម៉ែលជាដើមៗ។

<u>ជម្រើសនៃការទទួលការកែតម្រូវ៖</u>

   អាស័យដ្ឋាន៖...
   អ៊ីម៉ែល៖...

                        ធ្វើនៅ   ថ្ងៃទី   ខែ   ឆ្នាំ២០១៣
                                        ហត្ថលេខា

                                        ឈ្មោះ៖.......................................

Appendix K – ADB Public information booklet

1. QUESTION: What is the Rehabilitation Project of the Railway in Cambodia?

ANSWER: The Royal Government of Cambodia (RGC) proposes to rehabilitate its railway system composed of the Northern and Southern Lines including the re-construction of the "missing link" from Sisophon to the Cambodian-Thai border in Poi Pet. The project will using loan funds from the Asian Development Bank.

2. QUESTION: How will we know if we will be affected by the Project ?

ANSWER: Based on the preliminary design using a 3.5 m from centerline as the corridor-of-impact (total of 7m to be permanently cleared) for whole railway line and reducing the Poipet station from 6 has to 3 hectares to meet the Project's objective to avoid, if not, minimize resettlement impacts, a preliminary census and inventory of losses (IOL) has been conducted to determine the potentially affected persons (APs) and severity of impacts on their properties. However, please note that the list of potential APs and impacts on assets are preliminary only and that once the detailed design will be finalized, a detailed measurement survey (DMS) will be conducted and the final affected households will be identified. The list of APs and IOL results for each household are available in your respective commune office.

3. QUESTION: Do we need to have a land title in order to be compensated and assisted?

ANSWER: All APs found within the Government ROW are considered non-legal users and therefore cannot be compensated for the land. However, lack of formal legal rights to land does not prevent any APs from receiving compensation for "loss of land use within the COI" and for non-land assets (example, houses and trees) and rehabilitation assistance for them to be able to restore or improve their pre-project conditions.

4. QUESTION: Could we stay within the remaining ROW?

ANSWER: All APs will be given an option to move off-site (outside the ROW) for a more secured tenure or on-site (within the remaining ROW). If you opted for on-site relocation, no new permanent structures will be constructed and you have to accept the fact that you may in the future be removed by the government for justifiable cause (for eventual railway expansion). However you will receive a certificate form the Railway company indicating that you will not be forced to move for a period of 5 years.

5. QUESTION: How much will we receive and when will we be paid?

ANSWER: The compensation rate for each asset (land, houses, trees, crops etc.) is available in your commune office. Like the list of APs and IOL results, the rates in your commune office are preliminary estimates only. The final compensation rates will be available after the realization of the DMS. The payment will be done around 6 months after the completion of the DMS.

6. QUESTION: How will we be compensated for our affected assets?

ANSWER: The following table below presents the main entitlement for each type of loss. More information on these entitlements is available at the commune office. You will not be required to move until payment for your losses and necessary assistance are provided to you. An advance evacuation notice will be provided to you prior to relocation.

Type of loss	Entitled APs & Project Entitlements
Permanent Loss of Land Use	- Cash compensation ($0,5 per square meter)
Main house and/or shops partially affected	- Cash compensation at replacement cost. Households/shops will be permitted to remain in remaining ROW with some conditions (no new structures built, HH/shops could be moved again) - Transportation allowance: Cash payment of $20 per market stall; $40 for houses being relocated on same plot; $60 for houses relocated to another plot in same village area; and, $70 for houses relocated to another village or commune
Totally affected house or shop with relocation within the ROW (on-site)	- Cash compensation at replacement cost; - Reorganization in the remaining ROW with some conditions (no new structures built, HH could be moved again) - Transportation allowance of $20 per market stall; $40 for houses being relocated on same plot; - Living Allowance equivalent to 20kg of rice/person for 1 month (small light house) or for 3 months (large strong house – larger than 5m x 12m)

Totally affected house or business with relocation outside the ROW (off-site)	- Cash compensation at replacement cost AND
	  (a) Replacement Land (as a priority). OR
	  (b) Cash Compensation for Loss of Land Use.
	- Landless will be provided land outside the ROW
	- Full title on land
	- Transportation allowance: Cash payment of $20 per market stall; $40 for houses being relocated on same plot; $60 for houses relocated to another plot in same village area; and,

Type of loss	Entitled APs & Project Entitlements
	$70 for houses relocated to another village or commune.
Crops and Trees	- Crops will be compensated based on current market prices - Compensation for trees will be adjusted based on their age
Renters	- Rental Allowance equivalent to 3 months' rent allowance - Transportation allowance: Cash payment of $20 per market stall; $40 for houses being relocated on same plot; $60 for houses relocated to another plot in same village area; and, $70 for houses relocated to another village or commune - Living allowance equivalent to 20kg of rice/pers. for 1 month - Assistance to find alternative, affordable accommodation;
Relocating Businesses Owners/Renters	- Allowance ($50) to unregistered businesses - Compensation according to their daily net income for registered business
Bamboo Railway Train Operator	BRTO losing their main income - Cash compensation: 200$ for lost investment; AND - Cash Compensation for lost income : $75 (equivalent to 3-month living allowance); AND - Project related job opportunities BRTO has other main source of income - Cash compensation: 200$ for lost investment; AND - Cash Compensation for lost income :$25 (equivalent to 1 month subsistence allowance)
Severely APs, HH Vulnerable , women head of HH, poor, elderly without support)	- Allowance equivalent to 20kg of rice per person for 6 months - Entitled to income restoration program

7. QUESTION: When will the detailed measurement survey (DMS) be conducted?

ANSWER: The DMS will be conducted after the final detailed design has been identified and the COI marked on the ground. You will be notified by the Project team on the date of the DMS activities. Please make sure that you or your representatives are present at the time of DMS.

8. QUESTION: If I have questions, disagreements or problems that arise during project implementation such as compensation, technical and general project-related disputes, do I have the right to voice my complaint?

ANSWER: Yes. If you have questions or disagreement on compensation and relocation options, you may present your questions or complaints to your concerned local administrative officials and grievance committees verbally or in writing. If you are still not satisfied with the resolution, you can take your complaint to the project management office (PMO) of MPWT in writing. All attempts will be made to settle the issues at the village level through community consultation. If efforts to resolve disputes at the village level and project level are still left unresolved or unsatisfactory, you have the right to directly contact the Asian Development Bank, Infrastructure Division, Southeast Asia Department (SEID-ADB) through the ADB office in Phnom Penh. If you are still not satisfied with the responses of SEID, they can directly contact the ADB's Office of the Special Project Facilitator (OSPF) of ADB (OSPF-ADB).

9. QUESTION: How will you know if these undertakings are kept and the objectives of this Project are met?

ANSWER: All project activities will be monitored by the Working Group, Provincial Sub-Committee, SEU Ministry of Public Works and Transport, and the PMO. Quarterly Reports will be prepared and submitted to ADB. A post-resettlement impact evaluation will also be undertaken to assess whether impacts of the Project have been mitigated adequately and the pre-project standard of living of APs have been restored as a result of the resettlement and project. The ADB will also monitor these activities in its regular supervision missions during the period of project implementation.

10.QUESTION: Are there any other documents available to know more about the Project and resettlement issues?

ANSWER: The Resettlement Plan prepared during the preliminary study can be obtained from the commune, district and provincial offices. Following detailed design and after the conduct of the DMS, the Resettlement Plan will be updated and finalized and this will be made publicly available again.

If you have further queries and suggestions, please contact us at:
Provincial Department of Public Works, Provincial Resettlement Subcommittee and Royal Railways of Cambodia (RRC) offices in the provinces of: Banteay Meanchey, Battambang, Pursat, Kampong Chhnang, Kampong Spueu, Kampot, Kandal, Takaev, Krong Preah Sihanouk

Appendix L – Senate Estimates Committee excerpt

Australian Senate Estimates 20 October 2011 (emphasis added)

Senator RHIANNON: Thank you. I wanted to move back to Cambodia and the very sad case of the two young children who drowned. Did any representatives of DFAT or AusAID contact the family after these two young people, who had been forcibly resettled as part of the Railway Rehabilitation Project, drowned?

Mr Moore: Yes. In November of last year, an AusAID officer from the post in Phnom Penh visited Battambang and the community affected as part of a wider mission reviewing the project, and as part of that he conveyed the sympathy and condolences of the Australian government. Indeed—unbeknown to me at the time—AusAID and ADB staff collected money from their own resources and helped to pay for funeral costs.

Senator RHIANNON: Thank you very much. Cambodia is ranked by Transparency International as one of the most corrupt countries in the world. It is wonderful to hear what the staff and the workers engaged by the ADB and AusAID provided to the family, but considering where Cambodia is at with regard to the levels of corruption and also the level of forced evictions, which I am sure you are aware of, do DFAT and AusAID accept that they really cannot rely on Cambodian standards, whatever they are, to be fair to people who are faced with eviction because of these projects?

Mr Moore: I will augment my earlier answer by saying that we followed up on that early contact with the family and had a senior officer from Canberra likewise go to Battambang in December last year, and he also met with members of the family and checked firsthand on the circumstances at the site and progress to ensure that essential services were being provided. <u>In answer to your most recent question, this project relies on national execution, as most bank projects do, and indeed many UN projects. I think that has highlighted the flaw in the model—and we have made this case to the Asian Development Bank and indeed to the World Bank in the Mekong—that national execution in countries where there is very weak capacity requires a greater investment of resources and oversight and direct management. Consequently, the Asian Development Bank has now recruited more local consultants to help with the resettlement processes and an international consultant who will be on the case full-time, and there is more intensive work with the government both to assist it directly and to oversight what it is doing. So I think everybody has learnt from this experience.</u>

Senator RHIANNON: Thank you. Just to go to some specifics about the project itself, how does AusAID ensure that the privatisation of developing-country assets, such as the Cambodian railways project, benefit ordinary people and not just the elite? Because there is clearly an elite in this society that you hear do quite well out of these projects. So how do you do that?

Mr Moore: In this case, the railway was benefiting almost nobody.

Senator RHIANNON: Do you mean prior to your project?

Mr Moore: Prior to this refurbishment and modernisation project, the railway was in

almost complete disrepair. It was barely able to transport any goods or passengers. In fact, I think I am right in saying passenger traffic had completely ceased, and it was barely able to carry a small number of goods from the port in Sihanoukville to the capital, Phnom Penh. So the whole aim of restoring the railway is to create a viable alternative to road transport able to take some of the dangerous freight off the roads and able to transport people and goods economically. One of things it will be able to do is help Cambodia get more of its garments onto world markets—and, as you know, the garment industry is a very major employer of women. There are a lot of issues around the regulation of the industry so that it benefits the workforce, but it is a huge employer and, obviously, its ability to compete with other garment manufacturers is very significant for ensuring continued poverty reduction. The whole aim of the modernisation program is to produce an efficient, reliable transport system that gives people, and produces better access to, services and markets.

Senator RHIANNON: The two companies taking the project forward, Toll Holdings and an Australian-Khmercompany, the Royal Group, are Australian, I understand. How influential was it that the prime beneficiaries of the project were these two companies and that they were Australian? <u>What impact did the fact that they were Australian companies have on AusAID making its determination?</u>

Mr Moore: I can be quite categorical about that. Firstly, I would say that the beneficiaries are not the companies. The companies are providing the services for the construction of the railway and then its <u>operation.</u> Toll is the concession holder once the railway is actually in a form that it can be effectively managed, and regrettably we are not at that stage yet. I personally made a decision about recommending this project to the government, and I gave very clear instructions to staff that we had to do our own due diligence: we had to be satisfied that the economic benefits stacked up, that we could value-add to the work of ADB and that, overall, this would be a development project in the interests of the people of Cambodia. That due diligence was done, and that was the basis on which we made the recommendation. We knew, when we went into this, that there would be big problems resettling people who had settled along the railway track. These are people with no legal claims to decent land—otherwise, obviously, they would not have settled right on top of railway line—in many cases, in situations with very poor drainage, in shanties. We know that resettlement is very tough, even when there is a lot of capacity. It was partly because we thought we could help to get better outcomes that we went into this project, but we knew we were buying more than a few headaches along the way.

Senator RHIANNON: Thank you.