

**International Development Association
East Asia and Pacific Region
Human Development Sector Unit**

**Cambodia: Second Health Sector Support Project (HSSP2)
Framework for Land Acquisition Policy and Procedures
for the Second Additional Financing**

June 9, 2014

Introduction

1. The HSSP2's objective is to support the Royal Government of Cambodia's Health Strategic Plan to improve access to, and utilization of effective, efficient and quality health services to improve the health status of the Cambodian population by (a) strengthening primary health care and essential referral services, (b) strengthening health financing and social protection mechanisms for the poor, and (c) strengthening human resources and institutional capacity in the Ministry of Health (MOH).

2. The Second Additional Financing (AF2) for the Second Health Sector Support Project (HSSP2) is prepared to reflect the receipt into the Multi Donor Trust Fund (MDTF) for the total amount of US\$ 12.70 million, raising the total MDTF envelop to US\$ 112.23 million. The AF consists of AUD 9.5 million (equivalent to US\$ 8.86 million) from the Australian Government and US\$ 4.5 million from Korean International Cooperation Agency (KOICA). The above additional funds of US\$12.70 million exclude US\$ 0.66 million allocated for management and supervision costs administered by the Bank. The AF2 will allow continuation of Health Equity Funds (HEFs) and Service Delivery Grants (SDGs) during the second half of 2014, and partially for 2015. The AF2 will not support new civil works, however, civil works planned under the original project will be implemented during the implementation of the AF2.

3. During the implementation of the original project and the First Additional Financing (AF1), the MoH conducted a review of land acquisition for the construction of 114 health centers (HCs) under the project support on a sample basis. It found that 108 HCs were built on the state lands, and six (6) were built on private lands which were acquired either through donations, land for land exchange or payment of compensation. Many land owners agreed to voluntarily donate land because they directly benefit from having HCs within their communities. The review also found that only less than 5% of the total productive lands owned by owners were acquired either through voluntary donation, or land-for-land exchange of against compensation. No physical relocation was observed.

4. As part of the preparation of this AF2, the Framework for Land Acquisition Policy and Procedures (hereafter called "the Framework") developed for the original project was updated, taking into account the review of land acquisition mentioned above and the lessons learnt during the implementation of the original project and AF1. The Framework defines policies and procedures and provides guidance for voluntary and involuntary acquisition of land or other assets (including restrictions on asset use), and establishes principles and procedures to be followed to ensure equitable treatment for, and rehabilitation of, any persons adversely affected.

Key Definitions

5. Land Acquisition: A process by which any person is compelled to relinquish ownership, possession, control or use of all or part of their land, structures, or other assets. This includes land or assets for which the possessor or user enjoys customary or uncontested access but lacks legal title.
6. Project-Affected Person: Any person who, on account of the execution of the Project, or any of its components would have their:
- (a) right, title or interest in any house, land (including residential, agricultural and grazing land) or any other fixed or movable asset acquired or possessed, in full or in part, permanently or temporarily; or
 - (b) business, occupation, work, place of residence or habitat adversely affected; or
 - (c) standard of living adversely affected.
7. Replacement Cost: The principle of valuation used to determine appropriate compensation for lost land or other assets. Replacement cost refers to the amount necessary for actual replacement of the lost asset. To achieve replacement cost, assets cannot be depreciated for age or prior use. Replacement cost also is net of taxes, fees, or any other deductions for any other purpose.
8. Voluntary Contribution: A process by which an individual owner or user agrees to provide land (and attached assets) for provision of public goods without compensation in cash or in kind. Voluntary contribution is an act of informed consent; voluntary contributions are made with the prior knowledge that other options are available, and are obtained without coercion or duress. For the purposes of HSSP2, only minor contributions will be sought and accepted; voluntary contributions will not be sought or accepted where they would significantly harm incomes or living standards of individual owners or users. Voluntary donations are allowed only if the affected people are direct beneficiaries of the investments that lead to the acquisition of land in question.

Scope of HSSP2 AF Health Infrastructure

9. The AF2 will not finance new construction, however, some civil works planned to be supported under the original project to fill the gaps in the Health Coverage Plan (HCP) have not been completed and will be conducted during the implementation of AF2. They include: the construction of 2 health centers (HCs), 53 additional delivery rooms, clean rooms for the national laboratory for drug quality control, upgrading of 15 delivery rooms to be comprehensive emergency obstetric care rooms, and upgrading of water sanitation and electricity systems in 280 health centers.
10. As the HSP2 proposes to update the HCP, the original project has committed to support activities necessary to estimate the costs of infrastructure development and medical equipment provision. This includes: reviewing and updating hospital and health centre designs, ensuring cost effective planning approaches, finalizing the Health Infrastructure Investment and Maintenance Plan and developing maintenance infrastructure and capabilities to protect investments over time, establishing a database for standard costs for works and goods, and strengthening capacity for asset management. The health infrastructure investment plan thus developed has been included in the 3YRPs and the financing to implement it provided through the Annual Operating Plans (AOPs). This component also supports specific investment needs in service delivery infrastructure stemming from the emergency medical services strategy.
11. All infrastructure subprojects that involve new physical works or changes in the siting of existing infrastructure may cause land acquisition. Infrastructure screening measures will ensure that no major land acquisition or resettlement-related impacts occur. Specifically, screening will exclude the following:

- (a) Infrastructure Subprojects requiring relocation of residences or commercial enterprises;
- (b) Infrastructure adversely affecting more than 200 persons in total;
- (c) Infrastructure for which sources of necessary compensation have not been established; and
- (d) Infrastructure requiring destruction of significant numbers (e.g., more than 10) trees.

12. Those infrastructures which require acquisition of land or other assets but whose impacts do not exceed the threshold described above are allowed for financing under the project, provided that mitigation measures are provided in line with this framework.

Policy Principles

13. The fundamental principle incorporated in this Framework is that all necessary measures will be undertaken to improve, or at least restore, incomes and living standards of all persons adversely affected as a result of land acquisition. The Framework further incorporates the major guiding principles espoused in the World Bank OP/BP 4.12, and relevant laws of the Royal Government of Cambodia.

A. Key Principles for Implementation:

Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For these reasons the general principles and objectives of World Bank OP 4.12 are as follows:

- (i) Acquisition of land and other assets should be avoided when feasible and otherwise minimized;
- (ii) If any persons are to be adversely affected, mitigation measures must provide them with sufficient opportunities to improve, or at least restore, incomes and living standards;
- (iii) Lost assets should be replaced in kind, or compensated at replacement cost;
- (iv) Compensation should be paid in full, net of taxes, fees or any other deductions for any purpose;
- (v) If any persons are required to relocate, transfer costs and subsistence allowances will be paid in addition to compensation at replacement cost for lost structures and other assets;
- (vi) Absence of legal title to land or other affected assets will not be a barrier to compensation or other suitable forms of assistance; and
- (vii) Adversely affected persons will be provided information relating to impacts and entitlements, will be consulted as to their preferences regarding implementation arrangements, and will be informed regarding methods and procedures for pursuing grievances.

B. Relevant Laws of the Kingdom of Cambodia:

- (a) The 2001 Land Law states that no person shall be “deprived of his or her ownership unless this action is for the public interest”. The law recognizes that deprivation of ownership opens right to fair compensation in advance. Specifically, Article 44 of the Constitution states that “The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance.”
- (b) Although individual rights to ownership and compensation are protected by present laws, there are no clearly defined specific provisions or a mechanism for land acquisition by the State through expropriation. The expropriation of immovable properties is based on

decisions of government staff and implementation in an ad-hoc manner varying from one project to another.

- (c) Traditional private land ownership was abolished during the Khmer Rouge period (1975-1979) and was not re-introduced until the late 1980s. Determining ownership and obtaining documentation to prove ownership is a cumbersome and time consuming process which many landholders have not utilized. The 2001 Land Law has drawn a clear line between those who opened land for residential or farming purposes before August 30th, 2001, and those who did so after this date. In the first case, occupants may be recognized as legal occupants of State land in the future when land is registered as State private land. In the second case, occupants are illegal. Article 18 of the Land Law provides strong tools for evicting encroachers. They do not “have the right to claim compensation or reimbursement for expenses paid for the maintenance or management of immovable property that was illegally acquired” (Article 19).
- (e) *A Sub Decree on Land and Property Acquisition and Addressing Socio-Economic Impact caused by State Development Project* is currently being drafted. It is expected that the draft decree will be passed during the second half of calendar year 2008. Once the above mentioned sub decree has been finalized and passed, the Government of Cambodia will assess whether there are any significant differences and/or information gaps between the *Sub Decree* and the *Framework for Land Acquisition Policy and Procedures*; if there are significant differences between the framework and the Sub Decree, the Government will alert the World Bank.

C. Resolving Inconsistencies:

In the event of conflict or inconsistency between Cambodian law and Bank principles as established in this framework, the RGC will waive Cambodian law to the extent necessary for effective implementation of this project. The Bank will reserve the right not to finance project activities if they, after all efforts to bridge the gap, still do not comply with the Bank safeguard policies.

Avoidance and Minimization of Adverse Impacts

14. All civil works planned to be executed under the project are located on the public lands within the compound of health centers or referral hospitals. However, there is a possibility that the new construction of health facilities on private land is newly proposed to be conducted with the financing from the original project, requiring land acquisition. If the land required does not exceed 5% of the affected individual's total productive land holding, land may be acquired through local level participatory processes. The local authorities, who are responsible for providing land to Provincial Health Departments (PHDs) for construction of health facilities, may determine the willingness of individual owners or users to voluntarily contribute land. Where land is acquired through voluntary land donations based on the transparent negotiations and informed consent by land owners, the result shall be publicly disclosed and documented in voluntary donation report (see para 15 below) for review by the Bank.

15. If an informed consent of land owners to donate land or assets cannot be obtained, or if more than 5% of productive assets are to be affected, local governments should prepare a Land Acquisition Report (LAR) for review by the provincial governor (or his designee). The review and approval of the LAR must take place prior to MoH's adoption of the budget which includes the proposed infrastructure activity project. In other words, land acquisition issues must be resolved in the planning year before the implementation of the project.

Planning and Reporting Requirements

16. The experience under the original project indicates that, as the number of HSSP2 health infrastructure to be built on privately owned sites is expected to be very small, and even where they are built on privately owned sites, only relatively small pieces of land need to be acquired to house health infrastructure. The number of persons to be adversely affected by land acquisition is likely to be very small. Accordingly, planning and reporting requirements are kept as simple as possible.

A. No private land is affected or all private land will be acquired through voluntary donation: No Land Acquisition Report Required:

For all HSSP2 investments for which no significant acquisition is necessary, the relevant PHDs will provide to MOH the following information:

EITHER a statement, signed by the local authorities that the investment will be implemented entirely on public land which is not under private cultivation;

OR a voluntary donation report indicating the following information:

- (i) The amount of land (and other assets) to be utilized, and field measurement results indicating that no more than 5% of total land holdings are needed from any individual;
- (ii) A description of methods used to inform potentially affected individuals regarding the proposed investment, and their rights and options regarding land or other assets required, and confirmation that individuals have been informed that they have the option of refusing land contribution;
- (iii) Signed Statements of Voluntary Contribution from each individual voluntarily contributing land (and any attached assets), indicating their informed consent;
- (iv) A report of the meeting at which the land acquisition arrangements (including siting maps) have been disclosed to, and validated by, affected individuals.

B. Private land will be acquired through land swap or against compensation: Land Acquisition Report Required:

In cases where more than 5% of any holding of productive land will be acquired, or where buildings or other fixed assets worth more than \$100 will be affected, or when affected people refuse to donate land, a Land Acquisition Report must be prepared, including the following elements:

- (i) Description of the investment necessitating land acquisition;
- (ii) Basic data identifying impacts and persons to be affected by them;
- (iii) Arrangements for in-kind replacement of land, or cash compensation at replacement value including signed statements by all affected landowners confirming that these arrangements are satisfactory;
- (iv) Arrangements to ensure adequate performance by contractors relating to compensation for temporary impacts;
- (v) A schedule of assets (other than land), which will require to be replaced as part of the construction contract, and signed statements by the affected owners confirming that these arrangements are satisfactory;

- (vi) An implementation schedule indicating that replacement land or compensation in replacement value will have been provided before implementation of the project begins;
- (vii) A siting map and field measurements validated by villagers, showing land to be acquired and replacement land to be provided, sufficiently detailed to allow verification; and
- (viii) Arrangements for disclosure of information, consultations, and procedures for pursuing grievances.

The planning report is to be prepared as part of feasibility studies and will be reviewed as part of the technical assessment process prior to approval of the plans by MoH. Following MoH approval, provision of in-kind or cash asset replacement, other than that to be included in the project implementation contract, will be completed before the contract for project implementation is signed.

Entitlements Relating to Specific Categories of Impact

17. If substantial acquisition of land or other assets is necessary, as are defined below, the following provisions will be followed in development of mitigation measures:

- (a) Loss of agricultural land: Any persons losing a significant proportion (i.e., more than 5%) of their agricultural land must be provided an opportunity for in-kind replacement, obtaining access to land of equal productive value. Such persons also may be offered optional cash compensation at full replacement cost, if so preferred. Those whose land holdings are not significantly affected can be compensated at full replacement cost.
- (b) Loss of productive assets: Landowners contributing land upon which seasonal crops are standing have the right to insist that project implementation is delayed until the crops are harvested, or to be compensated at the market value of the crop. Those losing perennial fruit or pulp trees should be compensated in cash at net present value by local government.
- (c) Temporary loss of land: No land may be taken temporarily during construction except by voluntary arrangement between the landowner and the contractor. Contractors should be informed before bidding of any case where use of private land or damage to private property, including crops, is likely to be necessary, in order that compensation or restoration costs can be included in the bid price.
- (d) Loss of structures: Project funds may not be used to fund activities which will require demolition or relocation of permanent dwelling or private business premises. For ancillary structures that may be affected, compensation will be paid at replacement cost. .
- (e) Loss of other assets: Where fixed assets other than land (such as fencing) will be lost, replacement of these should be negotiated with the owner and should then form part of the contract for construction of the project.

Consultations and Information Disclosure

18. As stated above, obtaining land or other assets through voluntary contribution and negotiated agreement requires that individuals potentially affected are informed about their rights and options. Prior to such negotiations, and prior to any land acquisition proceedings, the PHD must provide affected people information about key provisions of this Framework. Potentially affected individuals must be informed that they are not obligated to voluntarily contribute land for subproject purposes, that involuntary acquisition of

land without appropriate compensation is not permitted, and that lodging of a valid objection by an affected landowner will be sufficient cause for subproject approval to be delayed or withheld. Additional information to be disclosed will include: entitlement to replacement in kind or compensation at replacement cost; methods to be used in establishing compensation rates; and procedures for pursuing grievances, including contact information. Information should be presented in a language and medium accessible to those potentially involved or affected.

Grievance Procedures

19. Each Commune Council will have an opportunity to comment on annual commune reviews of project implementation performance. Any grievances may be addressed as part of the review process. If project-affected persons are not satisfied with proposed entitlements or implementation arrangements, or are dissatisfied with actual implementation, they also can seek satisfaction through the PHDs or its designated officials. If this does not result in resolution of issues, project-affected persons can also make grievance verbally or in written form to district-level officials responsible for project facilitation and information dissemination. If this does not result in resolution of issues, project-affected persons can make grievance verbally or in written form to the provincial governor and ultimately to the national-level MOH. At each level, specified authorities should record receipt of grievances and reply to the project-affected person or persons within ten days after receiving the grievances. Project-affected persons will be exempted from any administrative or legal charges associated with pursuing grievances.

Organization Roles and Financial Responsibilities

20. To achieve the objectives of this Framework, the operational manual for the original project has been updated to reflect the policy on land acquisition and, the following roles and responsibilities.

A. Provincial Health Departments: As the local authority and implementing body, the PHDs have the primary responsibility to ensure that the rules and procedures set out under this Framework are adhered to. Specifically, the PHDs or their designated officials will:

- (i) Ensure that potentially affected residents are informed regarding proposed investments, and their rights and options relating to land or other assets that may be affected;
- (ii) Ensure that provincial representatives are informed about their responsibilities under this Framework;
- (iii) Closely monitor and assist the representatives in all matters relating to land acquisition, and attend and monitor public meetings to discuss land acquisition issues with potentially affected individuals;
- (iv) Review and approve PHD reports (as outlined above) as part of project feasibility study, prior to appraisal for any investment activities requiring access to privately owned or utilized land or other assets;
- (v) Ensure timely provision of compensation in cash or in kind, as required;
- (vi) Review contractor performance to ensure that any required payments to individuals for materials or temporary use of land are made, and to ensure that any temporarily utilized land is adequately restored, and;
- (vii) Respond to any grievances submitted by adversely affected persons.

B. Commune Council: The Commune Council will assist the PHD in all matters concerning information, communication, discussion and negotiation with landowners, or with the villagers collectively, about land acquisition matters, including:

- (i) Scheduling open meetings to ensure that potentially involved village residents are informed regarding proposed investments, and their rights and options relating to land or other assets that may be involved;
- (ii) Identification of impacts on land and assets, individuals potentially involved, and the amounts and types of land and other assets sought from each individual;
- (iii) Scheduling open meetings for public validation of field measurements and maps relating to siting of proposed activities, and public disclosure and validation of any land-related agreements;
- (iv) Seeking voluntary contributions or negotiated agreements;
- (v) Preparing required reports on matters relating to land acquisition; and
- (vi) Ensure compensation in kind and exemptions from local contributions in relation to land acquisition; and
- (vii) Conducting consultations with potentially involved village residents to confirm the boundaries of the land.

C. Provincial Governor: At the provincial level, the governor (or designated officials acting on behalf of the governor) will be responsible for:

- (i) Approving or rejecting any LARs submitted in support of proposed provincial level investments;
- (ii) Ensuring that the local authorities have sufficient funds or other resources to pay necessary compensation or meet other obligations associated with acquisition of land or other assets;
- (iii) Monitoring implementation of any approved LARs and ensuring that any inadequate implementation is corrected; and
- (iv) Responding to any grievances submitted by adversely-affected persons.

World Bank Supervision Arrangements

21. The World Bank will undertake periodic project supervision in all the project provinces to assess compliance with Framework requirements, and to recommend any corrective measures that may be necessary to resolve implementation problems or inadequacies. To facilitate Bank supervision, all approved LARs will be available for Bank review. And all village-level land use reports, including Statements of Voluntary Contribution and Statements of Negotiated Agreement, will be available for Bank review at the commune level.