



CHALLENGES IN IMPLEMENTING BEST PRACTICES IN INVOLUNTARY RESETTLEMENT

A Case Study in Sri Lanka

Jayantha Perera
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Foreword

In 1986, the Asian Development Bank (ADB) issued the *Staff Instructions on Socio-cultural Impacts of Bank Projects*, where “resettlement” was identified as one of the socioeconomic and cultural issues that affects the success of a development project, and that staff should help identify these sociocultural issues and possible mitigation measures. In 1994, ADB issued the *Staff Instructions on Involuntary Resettlement* to outline a broad approach to involuntary resettlement and “ensure that the people displaced by a project receive benefits from it and they should be at least as well-off as and possibly better-off than they would have been without the project.” Based on this key premise, in 1995 ADB introduced its Involuntary Resettlement Policy which emphasized the importance of avoiding displacement and land acquisition—wherever feasible—and ensuring that those displaced will at least be as well-off as they would have been in the absence of the project.

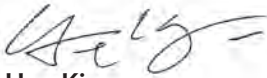
One of the earliest projects where the 1995 Involuntary Resettlement Policy was applied was the Southern Transport Development Project in Sri Lanka. ADB supported the implementing agency in resettlement planning, implementation and reviewing the progress of land acquisition, resettlement, and income restoration. The project not only provided a challenging environment to apply several involuntary resettlement best practices, but it was also a learning forum to test their suitability and applicability.

This book documents the relationships between and among ADB, the project implementing agency, and affected persons. The analysis of complex relationships reveals the inherent risks in applying international resettlement best practices to a complex infrastructure development project and specific strategies needed to overcome them.

I thank the authors for not only addressing the outcomes of land acquisition and resettlement, but also for providing insights on how the development process could better accommodate the needs and aspirations of affected persons and communities. The authors’ participation in the

project over a decade during planning, implementation, and monitoring allows them to explain the strengths and weaknesses of the social safeguard application of the project, and the success or failure of its attempts at introducing international best practices in involuntary resettlement.

This timely and important knowledge product of ADB's South Asia Department will provide useful insights into resettlement planning, implementation, and monitoring for policy makers, development practitioners, resettlement specialists, and researchers on social and institutional development.



Hun Kim

Director General
South Asia Department

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Sri Widowati

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Abbreviations

ADB	-	Asian Development Bank
AP	-	affected person
CCG	-	community consultative group
CEA	-	Central Environmental Authority
CEPA	-	Centre for Poverty Analysis
CRP	-	Compliance Review Panel
CT	-	Combined Trace
EIA	-	environmental impact assessment
EIAR	-	environmental impact assessment report
EIRR	-	economic internal rate of return
ESD	-	Environmental and Social Division
FT	-	Final Trace
GRC	-	grievance redress committee
GRM	-	grievance redress mechanism
GSS	-	Gama Surakeeme Sanvidanaya
IOL	-	inventory of losses
IRP	-	income restoration program
JBIC	-	Japan Bank for International Cooperation
LAA	-	Land Acquisition Act
LAR	-	land acquisition and resettlement
LARC	-	land acquisition and resettlement committee
LARD	-	Land Acquisition and Resettlement Division
LRC	-	local resettlement committee
MIS	-	management information system
NDF	-	Nordic Development Fund
NEA	-	National Environmental Act
NGO	-	nongovernment organization
NIRP	-	National Involuntary Resettlement Policy
OPL	-	official poverty line
ORT	-	Original RDA Trace
OSPF	-	Office of the Special Project Facilitator
PCC	-	project coordination committee
PCRMC	-	public complaints resolution and monitoring committee

PMU	-	project management unit
RA	-	resettlement assistant
RDA	-	Road Development Authority
RDC	-	Resources Development Consultants
RIP	-	resettlement implementation plan
RO	-	resettlement officer
RP	-	resettlement plan
RRP	-	report and recommendation of the President
SEEDS	-	Sarvodaya Economic Enterprise Development Services
SIA	-	social impact assessment
SLRs	-	Sri Lanka rupees
STDP	-	Southern Transport Development Project
TA	-	technical assistance
WSA	-	Wilbur Smith Associates

Introduction

The social safeguard policies of multilateral development institutions fall within the broad framework of good governance which is premised on international law and international humanitarian law. As best practices of governance and development, these policies lead borrowers as well as clients to review and update their own development policies and legal frameworks to redefine and update entitlements of persons, households, and communities who lose their land and other types of property to public development projects. A best practice in governance and development is a principle that, through research and application, has proven to realistically lead to a desired result. A commitment to using a best practice is a commitment to using the knowledge and other resources to ensure success.

Generally, the state uses its “eminent domain” power to acquire private and communal land for development projects. Justification for using this power is derived from the role of the state in developing infrastructure facilities for public welfare. Accordingly, land needed for a “public purpose” is acquired after compensating the losses borne by the landowners and land users. The common public purposes for which private property is acquired under the eminent domain power are highways, irrigation systems, and power generation projects.

Parallel to the eminent domain power of the state and its development obligations to the citizens, international good governance practices present a “person-focused” development framework to safeguard the citizens’ interests, rights and entitlements. Many countries have progressively embraced internationally recognized best practices in development activities by paying equal respect to the state’s rights as well as the citizens’ rights, thereby creating an environment where good governance practices could be further developed and applied to a wide range of development endeavors.

Since the Declaration of the United Nations Conference on the Human Environment in 1972, a gradual shift from a “state-centric” approach to development to a “people-centric” one has gathered momentum. Clause No. 8 in this declaration states that economic and social development is

essential to ensure a favorable environment for living and working and for creating conditions on earth necessary for the improvement of the quality of life. One of the seminal issues that emerged from the conference is the recognition of poverty alleviation as a tool for protecting the environment. International development institutions, such as the World Bank and the Asian Development Bank, have since then taken “fighting poverty” or “eliminating poverty” as their mission and programmed their operational policies to focus on this key issue. Under this, land acquisition and resettlement safeguard policies have been developed as a subset of operational policies focusing on combating the impoverishment of the people caused by the land acquisition and relocation of the people under development projects.

Parallel to the emphasis on poverty alleviation, infrastructure development to meet basic needs of populations such as transport, water and drainage, and electricity has also been accelerated. Such development programs necessitate acquisition of large areas of land from persons and communities and restriction of access to customary land. These two parallel development processes pose a challenge to the state in balancing infrastructure development with the improvement of the quality of life of those who are adversely affected by the relevant development programs.

The above parallel developments have generated some incongruence between national development goals and the individuals’ right to a decent livelihood, shelter, and social safety networks. The development literature in the 1980s and 1990s highlighted this incongruence and demanded a better strategy to ensure national development while safeguarding individual and community rights and welfare. For example, in the 1990s, numerous writings on the Sardar Sarovar Irrigation Project in India exposed the inadequacy of the local regulatory framework and safeguard policy frameworks of international development institutions to protect the project-affected peoples’ interests and rights, and to ensure their welfare. It also demonstrated the incongruence between national development goals and individuals’ interests, rights, and entitlements. This incongruence could be seen in the manner in which the Supreme Court of India upheld the state’s decision to construct the project for the benefit of the nation, despite its potential adverse project impacts, especially on displaced and vulnerable households. The Supreme Court made the following observation:

[t]he benefits of the project are so large that they substantially outweigh the costs of the immediate human and environmental disruption. Without the dam, the long-term costs for people would be much greater, and the lack of income sources for future generations would put increasing pressure on the environment. The project has the potential to feed as many as 20 million people, provide domestic and industrial water for about 30 million, employ about 1 million, and provide valuable peak electric power in an area with high unmet power demand....¹

This judgment summarizes the prevailing development model from the state's point of view—that is, when the state has to balance the need for development for a larger public interest and the human rights of affected persons of such development, the former prevails over the latter. But the state has to minimize adverse development impacts on individuals and provide for regaining their affected life chances.² In fact, the project displaced 40,000 households in the three states of Gujarat, Maharashtra, and Madhya Pradesh. Of them, 56% were poor and vulnerable tribal households. “The land that is given to them is uncultivable or waterlogged in hundreds of cases. Many more have not been given sufficient land. Many others have been given fragmented or encumbered land. Most sites do not have adequate drinking water or sanitation or health facilities. None of the sites have grazing land, fodder, or firewood” (Himanshu 1999:1). Nongovernment organizations (NGOs) such as Narmada Bachao Andolan agitated on behalf of the affected people demanding the Government of Gujarat and the World Bank to review their respective approaches to mega irrigation development projects and to formulate better safeguard policy and regulatory frameworks to protect the project-affected peoples' interests and rights. The World Bank responded positively to this demand from the project-affected persons (APs) and communities for the improvement of international safeguard policies. When formulating its own involuntary resettlement policy in 1995, ADB took into account the issues that arose in the project and the improvements introduced by the World Bank to its involuntary resettlement safeguard policy.

¹ *Narmada Bachao Andolan v. Union of India and Others*, Judgment delivered by the Supreme Court on 18 October 2000.

² A similar court decision was delivered in the case of the STDP in 2002 by the Court of Appeal of Sri Lanka. It stated that “while development activity is necessary and inevitable for the sustainable development of a nation, unfortunately it impacts and affects the rights of private individuals, but such is inevitable and sad sacrifice that to be made for the progress of a nation.” Court of Appeal Writ Application No. 1322/2002, page 38.

Involuntary Resettlement Safeguard Policies

Involuntary resettlement safeguard policies of multilateral development institutions such as the World Bank and ADB and bilateral development institutions such as the Japan International Cooperation Agency aim to minimize incongruence, if any, between national development goals and impoverishment risks of the APs arising from development projects. They try to do so by laying down key best practices in land acquisition and involuntary resettlement as safeguard policy principles, and providing detailed procedures on how to apply them in development projects.

In supporting infrastructure development projects, multilateral and bilateral development institutions recognize and accept the inevitability of physical and economic displacement of households and communities. Therefore, they emphasize the key involuntary resettlement safeguard policy principle: avoid involuntary resettlement, wherever possible, in their transactions with borrowers. Involuntary resettlement includes land acquisition, relocation, and rehabilitation of sources of income and livelihoods. Thus, the key message of the involuntary resettlement safeguard policies is that land acquisition and involuntary resettlement cause impoverishment, unless carefully planned mitigation measures are in place to combat them.

ADB approved a set of staff instructions on involuntary resettlement in 1986 and 1994. In 1995, ADB formulated its policy on involuntary resettlement. In 2009, it updated its involuntary resettlement policy, indigenous peoples policy (1998), and environment policy (2002) and combined them into an integrated Safeguard Policy Statement (2009). The involuntary resettlement component of the Safeguard Policy Statement focuses on land acquisition and resettlement aspects of development projects. It summarizes resettlement best practices such as the payment of replacement cost for the land and the other types of property acquired, rehabilitation of income sources and livelihoods of the APs, and the payment of compensation to nontitled land users to recover the value of the development activities carried out and structures built on such land.

By applying the involuntary resettlement policy principles to development projects that it funds in the developing member countries, ADB encourages and assists them in adopting key international involuntary resettlement best practices into country safeguard systems. The laws, regulations, and guidelines pertaining to land acquisition and resettlement in each developing member country in South Asia show that a significant

number of international best practices are already embedded in country safeguard systems, although the application of some of them has still not reached the expected standards.

In reconciling a country safeguard system with international resettlement best practices, several key actions are considered critical: (i) land acquisition and resettlement programs are to be planned and implemented in consultation with the APs paying attention to their needs, aspirations, and recommendations; (ii) the affected nonpoor should not become poor, and the affected poor should not become poorer as a result of a development intervention; (iii) an income restoration program should be implemented to assist all APs at least to restore their livelihoods, and the poor and vulnerable APs to improve their life chances; (iv) replacement cost of the land acquired should be paid as compensation for the land and structures acquired to facilitate (ii) and (iii); and (v) the physically displaced APs should be assisted in relocating with dignity, without breaking their social networks, and providing basic infrastructure facilities and employment opportunities.

It is difficult for any project to achieve fully all the above key requirements. One reason for this is that the land acquisition and resettlement policy as well as the regulatory framework of a country are premised in the national development policy and the legal system. As a result, a weakness in the national development policy or the legal system can directly affect the performance of the land acquisition and resettlement regulatory framework in its entirety. Another reason is poor financial and time management in land acquisition, compensation payment, resettlement, and economic and social rehabilitation. Unanticipated difficulties and obstacles emerge in the project cycle forcing project authorities to resolve them by using resources already allocated to land acquisition and resettlement programs. The third reason is the lack of institutional capacity at project agencies to plan and implement land acquisition and resettlement programs. In most cases, it is a learning experience for the project authorities rather than an opportunity to apply their expert knowledge and experience to a development project.

Objectives and Scope

This book is a comprehensive case study of land acquisition, resettlement, and rehabilitation aspects of the Southern Transport Development Project (STDP)—a large-scale infrastructure development project in Sri Lanka. It was the first expressway built in Sri Lanka. It was also the first large-scale

infrastructure project in Sri Lanka in which international best practices in resettlement in combination with country safeguards were applied in project planning, implementation, and monitoring. It thus combined local and international best practices in resettlement. The processes of applying resettlement best practices and country safeguards to development projects, and the anticipated and unanticipated results of such processes are a rich arena where the possibility and desirability of combining local and international best practices in resettlement can be examined. This is the scope of the book.

The book discusses in detail how the Road Development Authority (RDA),³ the project implementing agency, established a social safeguard arena with an institutional framework and new policies with the support from ADB to plan and implement the STDP. It also discusses how the RDA implemented the project despite a number of challenges from the APs and financial difficulties. It further examines the contribution of the STDP in improving the country resettlement safeguard framework by introducing several resettlement best practices.

The book highlights the importance of meaningful consultations with the APs throughout the project cycle, and timely allocation of sufficient human and financial resources for land acquisition and resettlement programs that are to be formulated based on comprehensive socioeconomic surveys, inventory of losses surveys, and census of the APs. Thus, the book aims to enhance the knowledge of policy makers, legislators, development practitioners, APs, NGOs, and students of resettlement on best practices in land acquisition, resettlement and rehabilitation which, in turn, contribute to good governance and poverty alleviation.

Southern Transport Development Project

The STDP is considered a milestone in Sri Lanka's development history. From a land acquisition and involuntary resettlement safeguard policy perspective too, it is an important milestone, as it has provided several innovative resettlement planning and implementing tools for safeguard planning, implementation, and monitoring. The project was the first-ever event in Sri Lanka where (i) the APs were compensated at the replacement cost for their property losses, (ii) the land acquisition and resettlement committees (LARCs) together with the APs determined the replacement

³ The RDA is a central government agency responsible for constructing, operating, and maintaining expressways and national roads in Sri Lanka.

cost of the acquired property, (iii) a robust grievance redress mechanism was established to help the APs resolve their resettlement problems and grievances, and (iv) a long-term income restoration and improvement program was implemented.

At the policy level, the project triggered the formulation of the National Involuntary Resettlement Policy (2001), the approval of the memoranda by the Cabinet of Ministers (2001) on a comprehensive land acquisition and resettlement framework, and the endorsement of the Land Acquisition Regulations of 2008, all of which improved the scope of entitlements of the APs and elevated the local land acquisition and resettlement regulatory framework to the level of international best practices.

At the institutional level, the project was instrumental in establishing the innovative LARC and grievance redress mechanism, the Environmental and Social Division (ESD) of the RDA, paving the way for better implementation of infrastructure development projects that have complex and sensitive safeguard issues. At the project monitoring level, it established a robust external independent resettlement monitoring program.

The project was premised on best practices adopted from the involuntary resettlement safeguard policy of ADB and country-level resettlement experience. Its resettlement implementation plan (RIP) proposed sound implementation arrangements and provided an adequate budget. The memoranda approved by the Cabinet of Ministers reduced the time period of land acquisition from 72 weeks to 18 weeks, and provided special assistance to the nontitled land users at the resettlement sites and for those who opted for self-relocation.

Despite these innovative approaches and sound resettlement planning, the STDP encountered objections from a few APs, which culminated in a protest movement against the project which, in turn, led to protracted court cases, delays in land surveying, and complaints to ADB's Accountability Mechanism—the Office of the Special Project Facilitator (OSPF) and the Compliance Review Panel (CRP). These protests and complaints delayed land acquisition, payment of the compensation, relocation of the physically displaced, and completion of the project. The Government of Sri Lanka, ADB, the APs, the OSPF, the CRP, NGOs, superior courts, and committees that had got involved in the project have had different perspectives on planning and implementing the project. The book outlines these perspectives and how they have affected the project and the APs.

Methodology

Each author of this book has more than 10 years of firsthand experience in the project as ADB staff or as a consultant. They participated in numerous project planning, project implementation, and evaluation exercises and contributed to the establishment of the LARC as an innovative institutional instrument in deciding compensation. They attended numerous project steering committee meetings, project evaluation meetings, and compliance review meetings. They wrote reports; read records of project activities; and consulted the APs, vulnerable households, those who had grievances against the project, and project authorities. They conducted several socioeconomic surveys in the project area. Such firsthand knowledge places them in a good stead to grasp the main currents of the project progress in its planning, implementation, and monitoring activities. They have attempted in this book to cast an impartial glance at the project documents and their own observations and experiences of the project activities to record the events and to provide sufficient information and data to the readers to arrive at their independent conclusions. The book therefore does not attempt to praise or criticize the project; instead, it analytically reviews and outlines the key policies, the legal framework within which it was planned and implemented, the institutions that supported the project, and the results of various project activities that have shaped it over the past 20 years.

The project generated a large volume of data and information over a period of 20 years between 1992 and 2012. It comprises published and unpublished project documents on the socioeconomic conditions of the project area, resettlement planning instruments, and implementation plans, and monitoring framework, monitoring reports and various survey results. The published documents on the project are few, and they are listed in the References. Among the unpublished documents are the judgments of the Court of Appeal and the Supreme Court as well as reports of the Human Rights Commission and mediation committees. Several other stakeholders also produced a large number of documents, minutes, and reports. Among these stakeholders were the APs who sought court intervention in deciding their entitlements, the NGOs which supported the aggrieved APs, the project executing and implementing agencies, the external monitors of the project, the consultants engaged to prepare social and resettlement impact assessment reports and resettlement monitoring plans, as well as the project approving agencies such as the Central Environmental Authority, ADB's Sri Lanka Resident Mission, and ADB's South Asia Department in Manila.

The authors, during the project planning and implementation, have conducted several surveys among the APs to understand their views, complaints, and aspirations for the project. In addition, ADB hired several researchers to conduct independent studies on topics such as income restoration and regional economic development. The findings of such surveys and frequent unstructured interviews with resettlers, government officials, and project personnel provided the broad canvas that enabled the discussion on the application of key best practices and their degree of success. This broad perspective also enabled the authors to identify why some best practices were not successful in becoming part of the project processes despite the efforts of the RDA and ADB.

The project has a long history of complaints from some APs especially after the changing of the original road alignment of the project to avoid several environmental concerns. As part of dealing with such complaints, between 2000 and 2006, some special project planning documents were prepared by the project authorities outlining the entitlements of the APs, the procedures followed in the approval and implementation of such entitlements, and the mechanisms adopted in safeguard compliance strategies. These project documents have direct relevance to specific project events and indicate specific activities in the project cycle. For example, the CRP's annual monitoring reports from 2006 to 2010 and the independent external monitoring reports prepared by the Centre for Poverty Analysis from 2006 to 2010 provide a continuous and comprehensive narration of land acquisition and resettlement implementation and their performance status. These documents refer to specific project events and milestones in progress.

The ADB missions conducted during project planning (fact-finding, appraisal, and approval) and project implementation (inception, midterm, and completion) also provided firsthand information about land acquisition and resettlement aspects of the project and challenges at various phases of the project implementation, and how they had been resolved or overcome then and there. ADB conducted special resettlement training programs for the benefit of the project authorities and discussed the stage-specific issues and problems in the project cycle. The records of such programs provide firsthand information on how the project has evolved over a decade in a changing political context and in encountering various legal and administrative challenges.

Resettlement consultants of the project have produced several important documents on behalf of the RDA. They conducted several studies and surveys during the project feasibility study stage in 1999–2002 to assess social impacts and to prepare resettlement plans for the approved Combined Trace of the expressway, as recommended by the project feasibility study. Among them were the initial social impact assessment (March 1999), regional social impact study (August 1999), and social impact assessment (March 1999). Before the approval of the project by ADB, the RDA prepared a resettlement plan (1999) with the help of an international resettlement specialist which presented detailed socioeconomic information about the project-affected areas and the APs. After determining the final road alignment in 2000, an RIP was prepared for the ADB-funded section of the expressway. This was substituted in 2002 by a new RIP that covered both sections of the expressway—that funded by ADB and that funded by the Japan Bank for International Cooperation (JBIC). The RIP has two volumes presenting the latest data and information about the project, APs, and affected communities. During project implementation, an additional social impact assessment report and a resettlement due diligence report were prepared for the supplementary loan for the ADB-funded section of the expressway.⁴ An addendum to the project’s RIP was prepared in 2007. In 2008, the RDA prepared a progress report on the RIP implementation. Apart from a few documents such as the environmental impact assessment (1999), RIP (2002), updated RIP (2007), the CRP annual monitoring reports (2006–2010), and project completion report (2014), most of the project documents are in the project files without being uploaded to the RDA or ADB websites for public information. The authors carefully examined them to distill information and data in writing the book.

The approach in writing the book is informed by the methodology called “process documentation” which records and supports the process itself. The authors as “participants” of the project recorded many important project events, and helped resolve challenges and problems when the project was planned and implemented. As a result, this book is not an outcome of a study done by an outsider, but a careful record and analysis of the facts and the internal dynamics of the project observed and experienced by the authors as participants in the project process. In this regard, they also attempted to capture the perceptions of different stakeholders and how such perceptions changed over time directly impacting project implementation. In this sense, the book is an outcome of

⁴ The expressway was divided into two parts based on the source of funding: the ADB-funded section and the JBIC-funded section.

a cooperative effort between the project team, stakeholders, and outsiders, which helped to reflect and analyze project events and process in a given period of history in Sri Lanka. During the writing of the book, the authors frequently discussed their own perceptions and interpretation of facts with each other in order to ascertain the accuracy of such facts and their interpretation.

In doing fieldwork to gather data and information, language is always an important factor, and its significance as a tool to (i) understand and interpret raw data and information, and (ii) reflect on the reality distilled from such information and data cannot be overemphasized. All three authors in different phases of the project, as mentioned earlier, interviewed many APs, conducted surveys, studied the worries and expectations of APs and field officials, and sympathetically listened to them. The fact that the authors are native speakers of the language predominant in the project area and their training in “going native” enhanced the quality of information that they collected and the manner in which they interpreted that information.

Structure of the Book

The book has an introduction, eight detailed chapters, and a concluding chapter. Chapter 1 provides the historical background of the project, highlighting key milestones of the project from 1991 to 2013. It is a concise and holistic view of the project to help the reader steer through its various legal, administrative, and institutional arrangements and their changes. The Annex meticulously records the important project events with details of their progress through the planning and implementation phases.

Chapter 2 has two parts. Part 1 outlines the socioeconomic conditions of the affected communities prior to the project approval. It summarizes the main findings of numerous studies conducted on socioeconomic conditions and poverty mapping in the project area in order to provide a socioeconomic setting to the rapidly changed socioeconomic scenarios of the project area. Part 2 outlines the legal framework within which the project was premised and operated. It describes the regulatory framework pertaining to land acquisition and resettlement and its significant improvement during the project period. It also outlines some of the key best practices that helped to bring the project’s safeguard policy framework to the level of international best practices.

Chapter 3 presents an outline of the resettlement planning and implementation processes of the project; highlights the challenges, obstacles, and delays faced during the planning and implementation phases; and reveals how most of them had been resolved through further studies, institutional improvements, and consultations with the APs.

Chapters 4–8 are the core chapters that address specific key components of the project such as land acquisition, compensation, consultation, resettlement, and income restoration and improvement. Chapter 4 focuses on institutional arrangements of the project and capacity building in resettlement planning and implementation. It describes several improvements that had been introduced to strengthen the project's institutional framework. Such institutional improvements were required to deal with special issues that arose from land acquisition and resettlement. It points out several best practices that have been applied in the project, and identifies some best practices that have emerged from the project with a view to applying them in future projects.

Chapter 5 covers the entire process followed in paying compensation in terms of the replacement cost for the respective acquired properties. Special policy documents such as Cabinet memoranda, the detailed entitlement matrix of the APs' entitlements, and reports from the innovative agencies such as the LARC and the grievance redress mechanism are discussed in light of their strengths and weaknesses. The chapter also outlines the best practices applied and their applicability in the context of the society and legal system of Sri Lanka.

Chapter 6 details the relocation and resettlement assistance provided under the project with the emphasis on the physically displaced households that either moved to the RDA resettlement sites or self-relocated with additional assistance from the project. The chapter explains the selection process of the resettlement sites; the consultations held with the physically displaced households on the allocation of land for the resettlement sites; and the assistance provided to them inclusive of living and shifting allowances, in order to build their houses, develop their homesteads, and transfer their belongings to their new homes.

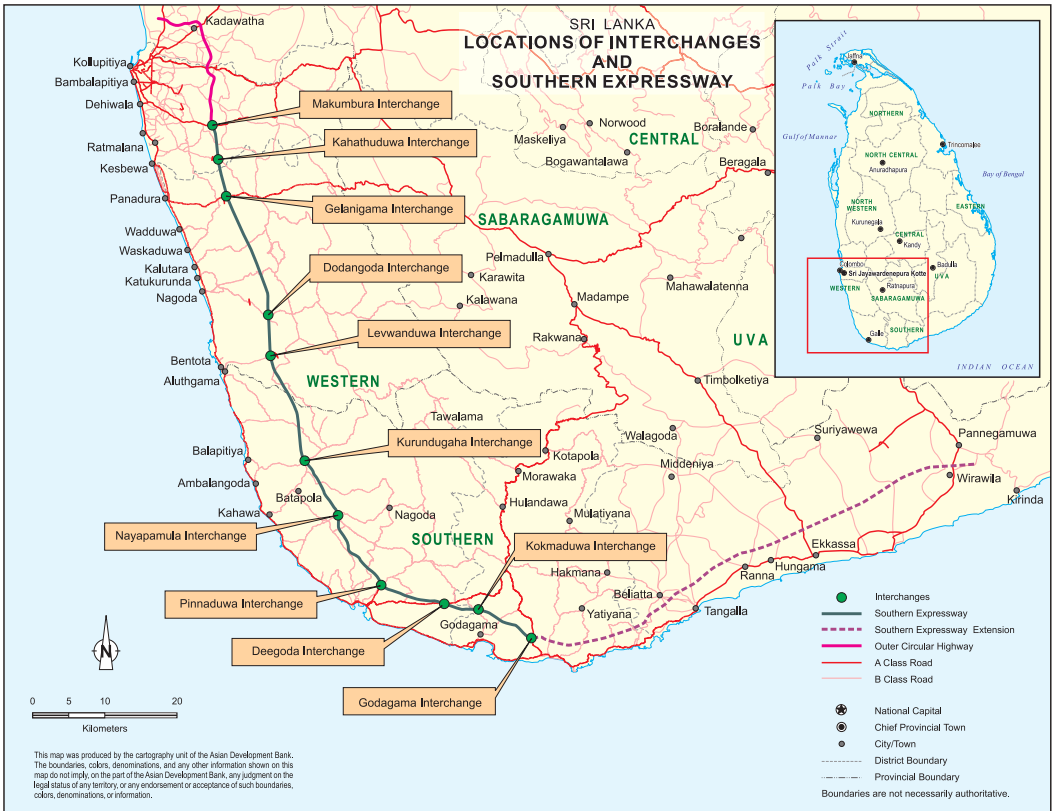
Chapter 7 describes various consultation and communication programs organized by the project to inform the APs about the project, their entitlements, and project benefits. It points out that the multitude of consultations with the APs would not necessarily bring the expected results unless the consultations are planned so as to reach different categories

of project stakeholders. The Supreme Court, the Court of Appeal, and the ADB Accountability Mechanism have highlighted that the project had sometimes failed to consult with the APs in a satisfactory manner although millions of rupees were spent on consultations. The changes to the expressway's alignment introduced in order to avoid project impacts on wetlands at two project locations generated protracted opposition to the project triggering a series of legal action against the project authorities. In addition, a few APs approached the ADB Accountability Mechanism to stop or at least to suspend the project. The chapter stresses that the sensitivity and complexity of such issues cannot be handled fully by the consultation framework provided by the RIP; instead, they require a robust communication strategy built upon the preliminary consultation programs.

Chapter 8 outlines the programs on the restoration and improvement of the income and livelihoods of the affected households. In Sri Lanka, the STDP was the first project where this key aspect of resettlement planning was introduced. As a result, the RDA did not have much experience in income restoration and improvement programs associated with physical relocation of large numbers of households. On the other hand, critical actions such as consultations with the APs, compensation payments made in terms of the replacement cost for the respective acquired properties, resettlement planning, and implementation took most of the resources and institutional capacity of the project during the initial phase of the project. As a result, a well-planned income restoration program supported by a dedicated personnel and a realistic budget was not in place until 2006. This lacuna in resettlement implementation caused impoverishment and vulnerability among many affected households.

Conclusions summarize the land acquisition and resettlement best practices that were applied to the project, and assesses how well they were applied in the context of changing the scope of the project. Finally, the chapter offers a simple framework distilled from the planning, implementation, and monitoring experiences of the STDP that could be applied to any ongoing and future infrastructure projects to ensure that the projects meet international best practices in land acquisition and resettlement.

Map 1: Locations of Interchanges and Southern Expressway



CHAPTER 1

Key Milestones in Project Planning and Implementation

This chapter outlines the key milestones of the Southern Transport Development Project (STDP).⁵ It reflects first on the key planning activities from 1991 to 2003 and then on the implementation programs between 2003 and 2013. It also examines whether project plans were implemented as planned and whether any unforeseen factors intervened to make project implementation better or different. This overview intends to prepare the reader to understand the detailed analysis of key resettlement best practices in the subsequent chapters.

The Genesis of the Project: Local Planning Initiatives

The Road Development Authority (RDA) in 1991 engaged Resources Development Consultants (RDC), a local consultant company, to conduct a pre-feasibility study to identify the most suitable “road trace” to construct a highway from Colombo to Matara.⁶ The RDC investigated four alternative road traces and each one was within 25 kilometers (km) of the A2 Colombo–Galle Highway. Some sections of traces overlapped with each other. Topographic maps of the scale of 1:50,000 were used to define the road traces. The RDC recommended trace B (see Map 2) as the best trace. It estimated that the construction cost was lower than that of trace A, and its potential economic internal rate was 22%. It had the best potential for a four-lane highway with the design speed of 80–110 km per hour, and for an expansion into a six-lane expressway, if a 60-meter band of land were acquired (Government of Sri Lanka 1993). Later, it became known as

⁵ A chronological summary of the project social safeguard implementation is given in Tables A1–A5 in the Annex.

⁶ In the STDP planning process, the alignment of the expressway has been referred to as “road trace” or “trace.”

the Original RDA Trace (ORT).⁷ In 1994, the RDA marked the center line of the highway, and commissioned a topographic survey in a 120-meter-wide land band and a land survey from Bandaragama to Godagama along the trace.

Map 2: Alternative Expressway Traces Studied During the Pre-Feasibility Study of the Project



⁷ The Original RDA Trace, or Trace B, starts from Mattegoda on the proposed Outer Circular Road (control point 0) and ends at Hitteliya on Matara-Akuressa Road in Matara District.

In 1994, an economic feasibility study on the ORT, the railways, and the widening of the A2 Colombo–Galle Highway confirmed that all three options were economically feasible, but the ORT was the most feasible alternative. The study tentatively estimated that the RDA would have to acquire about 640 hectares of land, which would affect 637 houses and 17 other structures (Government of Sri Lanka 1996). The estimated total project cost was SLRs17,236 million. The estimated land acquisition and resettlement cost was SLRs2,459 million, which was about 14% of the total project cost. The economic feasibility study concluded that without regional development benefits, ORT's economic internal rate of return (EIRR) would be about 20% for a four-lane divided expressway, and estimated that its construction would take about 4–5 years.

In 1995, the Japan Bank for International Cooperation (JBIC) prepared a master plan outlining how to develop the Southern Region of Sri Lanka.⁸ It identified potential development projects including the construction of a highway between the Western Province and Southern Province. The rationale for a new highway was to establish an efficient transport system between the two provinces that would catalyze rapid economic growth in the region. The Presidential Task Force for Southern Area Development was formed in 1995 to supervise the development activities. In 1996, the Southern Development Authority was established to attract local and foreign investment for the region.

In 1996, the RDA conducted an environmental impact assessment (EIA) on the ORT estimated that about 973 houses in a 60-meter-wide land band (30meters on both sides of the marked center line) for a trace of 113.4km from Bandaragama to Godagama would be displaced.⁹ While the Central Environmental Authority (CEA) reviewed the EIA report, the RDA acquired land for about 10km section of the highway, and started constructing service roads of the proposed highway in the Godagama area, assuming that the CEA would approve the EIA. But the CEA did not approve the EIA Report for the ORT, and as a result, such construction works were discontinued in 1997.

⁸ The Southern Development Region includes the districts of Galle, Matara, and Hambantota in the Southern Province; Monaragala District in Uva Province; and Ratnapura District in Sabaragamuwa Province.

⁹ The Kottawa to Bandaragama section is the first section of the expressway from Colombo. This section of the trace was not studied because of the uncertainty over its selection as part of the trace of the expressway.

Map 3: Deviations from the Original RDA Trace to the Combined Trace of the Expressway



ADB = Asian Development Bank, JBIC = Japan Bank for International Cooperation, RDA = Road Development Authority.

Some nongovernment organizations (NGOs) pointed out that the improvement of local roads and the expansion of railways could provide the required additional transport capacity for regional economic growth without constructing a new highway. They also remarked that a new highway would have harmful environmental and social impacts. The RDA responded that the displacement of people and the acquisition of private property are inevitable in constructing a new highway and that the Government of Sri Lanka would avoid, or at least minimize, negative environmental and resettlement impacts of the proposed highway project through comprehensive resettlement and environmental planning. It further pointed out that enhanced project management capacity, provision of adequate compensation and resettlement facilities, allocation of lands for squatters and encroachers, and introduction of income restoration programs would minimize the harmful impacts of the project on persons and communities and, in fact, would generate employment opportunities for them to improve their socioeconomic conditions. It also revealed its plans to conduct comprehensive social and environmental impact assessments to identify the potential social and environmental harm of the proposed project, if any, and to apply appropriate and adequate mitigation measures to address them.

Planning of the Project: ADB Planning Initiatives

The involvement of the Asian Development Bank (ADB) in the project began in May 1996 with the advertisement in ADB's "Business Opportunities" for technical assistance (TA) support in the Southern Transport Corridor Project.¹⁰ An ADB mission visited Sri Lanka from 29 November to 10 December 1996 to hold discussions with the government on the objectives, costs, and financing arrangements of a project to enhance the road transport capacity in the Southern Province. In the second follow-up mission in December 1996, ADB and the government signed a memorandum of understanding to collaborate further on the project. The mission informed the government of the need for additional environmental and social impact studies to satisfy ADB's involuntary resettlement safeguard policy (1995) requirements and its environmental impact assessment guidelines (1993). To meet these requirements, the RDA conducted several fresh studies with ADB's TA support.

¹⁰ This referred to the proposal to construct an expressway between Colombo and Matara.

Project Feasibility Study

In October 1997, ADB approved a project preparatory TA to conduct a project feasibility study on the four alternative expressway traces.¹¹ ADB engaged Wilbur Smith Associates (WSA), an international engineering firm, and RDC to conduct the project feasibility study. In the inception report of the study, WSA stated that it was difficult to determine the most suitable trace of the expressway without doing topographic surveys in the section from Bandaragama to Kottawa on the ORT. The report highlighted that it is necessary to conduct vigorous route selection procedures before selecting the final trace. It also pointed out that the ORT cannot be endorsed as the best alternative without knowing the different traffic volumes of proposed traces, their linkages with the A2 highway, and their potential social and economic benefits (Government of Sri Lanka 1998b).

In the final project feasibility study report, WSA discussed the engineering, economic, environmental, and social feasibility of the four alternative traces. It recommended the Combined Trace (CT) as the best alternative which overlapped about 60% with the ORT (see Map 2). The CT deviated from the ORT at two locations: one close to Kottawa (location A) and the other close to Galle (locations B, C, and D on the map). The report identified the following as the benefits of the CT: (i) it is much closer to Galle than the ORT, thereby providing better access to Galle; (ii) it avoids the Gin Ganga floodplains; (iii) it attracts more traffic from coastal areas than the ORT does; and (iv) it minimizes resettlement impacts by using abandoned paddy land and marshy lands for the expressway (Government of Sri Lanka 1999b).

The feasibility study also examined the alternative of upgrading the A2 highway with bypasses at the main urban centers. This was rejected on the grounds that it required road widening to construct four lanes, which would affect about 4,500 properties, and widening of the existing bridges, which was prohibitively expensive. Even if the road was widened, the traffic flow would be disrupted by slow-moving traffic due to the interruptions from the access roads. The alternative of improving railway transport was also considered. The feasibility study found that the railways carried a small volume of the total passenger and freight traffic in the project area, and that the Department of Railways would continue to maintain its share of 25% of passenger traffic without further planning and improving the railway system.

¹¹ The project preparatory technical assistance for the Southern Expressway Project was a \$1 million grant.

The feasibility study did not conduct any field survey to count the number of houses that would be affected on the sections of the CT deviating from the ORT. Instead, the project impact on housing in these sections was estimated by using 1:50,000 scale topographic maps, aerial photographs, and satellite images. To compensate for any errors that this method might generate, WSA recommended improved mapping of a 3–4 km corridor of the CT expressway alignment. WSA prepared maps of population densities in Grama Niladhari divisions¹² through which the alignment went. These maps showed that about 2,920 persons in 622 households would be affected by the project. This estimate was lower than the estimate of the ORT, which was 673 houses (Government of Sri Lanka 1998b).

The economic appraisal in the feasibility study focused on the reduction of construction costs and increased economic benefits. The economic analysis revealed that none of the alternatives would succeed in achieving an EIRR of 12%. It estimated that an EIRR of 12% could be obtained if the construction of the expressway was delayed and opened for traffic in 2007 with two lanes and then broadened to four lanes by 2010. The best EIRR for a two-lane expressway on the CT was calculated at 9.5%. These calculations contradicted the results of the economic analysis of the pre-feasibility study of 1993 and the economic feasibility study of 1996 for the ORT. Both these studies estimated an EIRR of the expressway at 20%, excluding its regional economic benefits. This significant gap between the two sets of estimates of the project EIRR necessitated a fresh review of the economic appraisal.

Regional Social and Economic Impact Study

In 1999, ADB granted a TA to conduct a study on the proposed project's impact on regional development. The objectives of the study were to quantify the socioeconomic benefits of the project that would accrue to the project-affected population, and how it would contribute to reduce their poverty. A community-based assessment in four sample villages that fell within the influence area of the CT was carried out by Marga Institute,

¹² A cluster of villages administered by a government officer.

a private research institute in Sri Lanka.¹³ The study concluded that the project could improve the standard of living of the people in the project area, and reduce the high incidence of poverty among them mainly by generating employment opportunities in the region (Marga Institute 1999).

Social and Environmental Impact Assessments

The social impact assessment (SIA) of the CT,¹⁴ conducted in March 1999, estimated that 810 houses and 52 commercial establishments would be affected, if an 80-meter-wide land strip was acquired for the expressway. The assessment also highlighted several positive impacts such as improved transport facilities to transfer agricultural produce to towns and Colombo, expanded local business opportunities, reduced travel time between local towns and Colombo, better linkages between rural communities and townships and cities, reduced rate of road accidents and traffic congestion on the A2 highway, and employment opportunities at interchanges of the expressway.

The environmental impact assessment report (EIAR) covering both the ORT and the CT was also completed in March 1999, based on the detailed studies conducted on a corridor of 400 feet (122 meters) marked by the RDA.¹⁵ In the case of the CT, its sections deviating from the ORT were studied separately (Government of Sri Lanka 1999a). The EIAR updated environmental information collected from previous studies on the ORT and the CT, particularly on the CT's sections deviating from the ORT. Public consultations held in 14 divisional secretariat divisions in 1996 to discuss the social impacts of the ORT were also used in preparing the EIAR.

The EIRR of the ORT and the CT was estimated at 19%. But if the adverse project impacts of the CT on paddy lands were considered, its EIRR could have been much less than 19%. Moreover, the SIA's finding that 810 houses and 52 commercial structures would be physically displaced

¹³ The villages were (i) Godagama, located close to the proposed intersection of the expressway and Matara town; (ii) Kabaragala, located close to a semi-urban area of the Koggala industrial estate; (iii) Yaddhimulla, a coastal village on the A2 highway, frequently visited by tourists; and (iv) Paraduwa, an interior village where the lack of transport facilities thwarted its economic development. Businesspeople, owners of tourist hotels, and managers of smallholdings and garment factories participated. The assessment focused on how the project would contribute to the development of industries, agriculture, marketing services, and tourism in the region.

¹⁴ The University of Colombo conducted the SIA.

¹⁵ The University of Moratuwa conducted the EIA.

by the CT was not available to the EIA team. If this information had been used in the sensitivity analysis, there would not have been any significant difference in the social and environmental impacts of the ORT and the CT, except for the higher number of affected households on the ORT.

The Resettlement Plan

Upon completion of the SIA, ADB engaged an international resettlement specialist to prepare a resettlement plan for the ADB-funded section of the CT. The specialist compared the RDA's proposed special compensation packages with ADB's involuntary resettlement safeguard requirements. The RDA compensation package included the payment of compensation at the market value for the land acquired and the replacement cost for structures affected. It prescribed the payment of a resettlement allowance to the displaced households including squatters. A temporary accommodation allowance for each resettled household, a special housing package for squatters at resettlement sites, and relocation support of SLRs25,000 to each resettled household were the other components in the package. The specialist proposed several other entitlements, including selection of resettlement sites in consultation with resettlers and host communities, and provision of basic amenities at resettlement sites before the arrival of resettlers in order to match the RDA compensation package with ADB's involuntary resettlement safeguard policy requirements.

The resettlement plan¹⁶ included all the entitlements proposed in the RDA's compensation package and several institutional arrangements. Among them were (i) the prompt payment of compensation prior to displacement; (ii) the provision of relocation assistance to displaced households through the local resettlement committees (LRCs);¹⁷ (iii) the formation of grievance redress committees (GRCs) to handle the affected peoples' complaints; (iv) the establishment of a management information system (MIS) to facilitate land acquisition and resettlement monitoring; (v) the conducting of an information disclosure program; (vi) the establishment of two resettlement management units at the field level, headed by the project implementation officers who report to the project

¹⁶ A "resettlement plan" is also known as a "resettlement action plan" or "resettlement implementation plan." At ADB, the preferred title is resettlement plan, and in Sri Lanka, the preferred title is resettlement implementation plan. Both are used interchangeably in this book, as found in many project documents.

¹⁷ Comprising community leaders, the LRC was mandated to verify landownership claims, select resettlement sites, and conduct relocation activities.

director; and (vii) the recruitment of field staff, including a gender specialist to work with LRCs. A summary of the resettlement plan was a component of the report and recommendation of the President (RRP) of the loan that was submitted to the ADB Board of Directors for project approval in 1999 (ADB 1999d).

The Resettlement Implementation Plan 1

In preparing a resettlement implementation plan (RIP), based on the resettlement plan and a social assessment conducted on the CT in the ADB-funded section of the expressway, WSA found that the SIA had failed to identify many affected households. This was mainly due to the lack of information on proposed changes from the ORT to the CT. Therefore, in 2000, WSA and RDC conducted a sample social survey to update the SIA.¹⁸ WSA could not get the required information for 4 km of the alignment in the Akmeemana area, as some potentially affected households protested against the project and did not participate in the land survey (Government of Sri Lanka 2000a). The poor progress in preparing the inventory of losses¹⁹ also delayed the completion of the sample social survey. In fact, when WSA formulated the RIP, a full inventory of losses was available only for a 5 km subsection out of 68 km of the expressway alignment in the ADB-funded section of the expressway.

The RDA and WSA held several discussions with the Valuation Department on how to estimate the replacement cost for acquired structures and the market value for acquired lands. During these discussions, the role of the LRCs proposed in the resettlement-1 was reviewed and found suitable. The RDA, the Valuation Department, and the Survey Department agreed to give a wider scope and authority to the LRCs. The LRC was redesignated as the Land Acquisition and Resettlement Committee (LARC). Its key role was to determine the resettlement assistance after the statutory compensation was paid to each affected person for the loss of land and structures. The resettlement assistance included allowances for temporary accommodation and income losses, and special assistance

¹⁸ From Kurundugahahatakme to Godagama, which was originally the ADB-funded section of the expressway.

¹⁹ A list of property, income, and social network losses suffered by each affected household. The unit of data collection was a parcel of a land. This generated confusion and delays, and wasted resources. These weaknesses affected the quality of the project's information management system.

for vulnerable households. It also included the difference between the statutory compensation and replacement cost of the land and structures.

The Resettlement Implementation Plan 2

In 2000, ADB requested the RDA to prepare an RIP for the entire alignment of the ADB-funded and JBIC-funded sections of the expressway for an ultimately six-lane width and also for the Galle Port Access Road.²⁰ The RDA established an MIS for the project, identified resettlement sites, and consulted with the APs. A large number of consultations were conducted with the APs at several locations where resistance to the expressway continued. The RDA and CEA officials, APs, politicians, and nongovernment organizations attended these meetings.²¹ ADB approved the RIP in October 2002.

The RIP estimated that 5,683 households (with 20,340 APs) would be affected by the project. It also estimated that 1,315 houses, 151 commercial structures, and 22 other buildings on the entire alignment of the expressway and the Galle Port Access Road would be affected. The majority of the affected households—4,155 households (73%) were to lose only a plot of land. The total number of structures (houses, and commercial and other structures) to be demolished was 1,488. Based on these figures, it was estimated that about 1,145 households would be physically displaced and needed relocation assistance (Government of Sri Lanka 2002).

The RIP estimated the total budget for land acquisition, compensation, resettlement, and income restoration at SLRs2,861 million (\$29.80 million). The RDA planned to acquire land, pay compensation, and relocate all physically displaced households by the end of May 2003 in both the ADB-funded and the JBIC-funded sections of the expressway to facilitate the commencement of construction activities. The construction phase of the project was planned to be from 2003 to 2005. However, these targets had progressively become unrealistic when significant delays occurred in land acquisition, payment of compensation, and relocation of displaced households.

²⁰ Until 2000, the proposed expressway was commonly known as the proposed “highway” from Bandaragama and later from Kottawa to Matara. In project documents, “highway” is sometimes used after 2000 to refer to the expressway, following the old practice of calling it a highway. We use “the expressway” from here onward to avoid confusion except when quoting a project document that uses the term “highway.”

²¹ See Chapter 7 for details.

Project Approval

Central Environmental Authority

The EIAR of the project completed in March 1999 was approved by the CEA in July 1999 subject to several conditions: (i) the Final Trace (FT) of the expressway should be moved to the ORT, as specified in the EIAR, to avoid the Weras Ganga and Bolgoda wetlands; (ii) the FT should be relocated to avoid the Koggala and Madu Ganga wetlands; (iii) the FT should minimize its traversing through other wetlands; and (iv) a comprehensive drainage plan should be in place to minimize impacts on all wetlands. The CEA also noted that WSA had recommended significant deviations (40%) from the ORT without conducting detailed hydrology and drainage studies, and recommended to conduct such studies. The CEA's approval was valid for 3 years, and the RDA was expected to obtain fresh approval from the CEA in terms of regulation 17 (i) (a) of the Gazette Extraordinary No. 772/22 of 24 June 1993 in case any significant change was introduced to the original scope of the project.

At the RDA's request, WSA reexamined the possibility of changing the alignment. They quickly developed an alternative alignment that was referred to as the Blue Trace. It deviated from the CT at several locations, but stayed within 2–3 km of the CT. The RDA requested further modifications to the alignment. One modification was to move the alignment toward the highlands to reduce the number of affected households. Another was to change the alignment to avoid the commercial and residential areas of Pinnaduwa. This meant a deviation from the CT by about 300 meters.

The RDA introduced a number of adjustments to minimize the displacement of households and adverse impacts on the environment, improve road safety, and address technical issues raised by the CEA. Once these minor adjustments and corrections were completed, the RDA informed the CEA that design consultants had introduced the required alignment changes. The CEA informed the RDA that if the FT deviated significantly from the two traces (ORT and CT) evaluated by the EIAR, a supplementary EIA study needed to be carried out.²²

In January 2001, the RDA wrote to the CEA requesting its approval of the Blue Trace as the FT. But the CEA did not approve the revised EIAR. In

²² The CEA's letter to the RDA of 12 August 1999.

November 2001, the Project Monitoring Committee of the RDA confirmed that the Bolgoda, Koggala, and Madu Ganga wetlands were avoided in selecting the FT as suggested by the CEA. The RDA resubmitted the FT to the CEA and sought its approval. The RDA sent several letters to the CEA requesting the approval for the FT.²³ On 19 April 2004, the CEA required the RDA to reconfirm that the FT was within the area where the EIA of 1999 was conducted. After the RDA's confirmation, the CEA in its letter of 31 May 2004 informed the RDA that since the FT of the expressway falls within the EIA study area, the CEA's previous approval was sufficient to proceed with the project.

WSA pointed out to the RDA that a supplementary EIA and an updated SIA were required to fully address the environmental and social issues of the deviating sections of the FT, and requested funds to conduct these studies. The project management unit (PMU) informed WSA that additional studies were not required as the CEA's approval covered a corridor of land 3–4 km wide. ADB indicated that the additional studies were needed, but WSA did not conduct them as such studies were not in their terms of reference, and funds were not available from the RDA for such additional studies. However, WSA prepared an “environmental findings report”, and updated the social impact assessment for the FT to meet the minimum requirements.

The Asian Development Bank

An ADB mission visited Sri Lanka in April and May 1999 to discuss the project concept and its scope with the RDA and the Ministry of Finance. An ADB Appraisal Mission visited Sri Lanka in June and July 1999 to confirm the project design, its cost estimates, and implementation arrangements. In September 1999, the Environmental and Social Division (ESD) of ADB acknowledged the CEA's conditional approval of the project, its request for a resettlement plan and revision of the EIAR.

ADB Management prepared an RRP of the loan for the project using the findings of the project feasibility studies. Loan negotiations were held between the government and ADB in October 1999. The ADB Board of Directors approved the project on 25 November 1999. The inception mission of the project visited Colombo in December 1999.

²³ On 24 January 2000, in January 2002, and on 26 April 2004.

Project Components and Funding Sources at Appraisal in 1999

The project had two key components: the construction of a new expressway from Colombo to Matara, and assistance to the government to address the issue of road accidents. The length of the expressway from Kottawa in the Colombo District to Godagama in the Matara District is 128 km. The project was funded by the Government of Sri Lanka, ADB, JBIC,²⁴ Nordic Development Fund (NDF), and Swedish International Development Cooperation Agency (Sida).

The total project cost of \$295.9 million was to be financed by ADB (\$90 million) for construction and supervision consulting services of the southern 66 km section of the expressway from Kurundugahahatakme to Matara; JBIC (\$120 million) for construction and supervision consulting services of the 62 km section from Kottawa to Kurundugahahatakme; the Government of Sri Lanka (\$78.2 million) for land acquisition, resettlement, and project management; NDF for management consulting services (\$6.7 million); and Sida for the road safety component (\$1 million).

Project Implementation

Project Implementation Risks

The RRP of the project identified four potential project implementation risks: (i) the RDA's inadequate institutional capacity to manage and implement the project, especially its ability to find sufficient funds in a timely manner for various project components; (ii) possible delays in awarding consulting and civil works contracts; (iii) inability to pay full compensation to each affected person prior to displacement; and (iv) possible damages to local infrastructure such as local roads and noise pollution during construction. The government and ADB included assurances in contract awards to manage these risks.

The civil works of the ADB-funded section of the expressway were to commence in August 2001. The arrangement was to award the first civil works contract after the RDA acquired and cleared 50% of the right-of-way of the expressway. JBIC too included a similar condition in its loan

²⁴ Now known as the Japan International Cooperation Agency (JICA).

agreement in March 2001. The remaining 50% of the acquired land was to be handed over to the contractor after full payment of compensation to the APs. The RDA had to ensure that the compensation payment,²⁵ relocation, and income rehabilitation would be carried out in accordance with the RIP that met the requirements of the involuntary resettlement safeguard policy of ADB.

Land Acquisition and Compensation Program

The RDA planned to pay compensation and to complete the relocation of the physically displaced households in the ADB-funded section of the expressway by the end of December 2003, except in the road sections of the Bope–Poddala and Akmeemana divisional secretariat areas, where engineering designs were not finalized. In the JBIC-funded section, the RDA planned to pay compensation fully and to relocate physically displaced households before 15 May 2003.

In early December 2002, ADB approved the RDA's recommendation to award the contract as a single package in the ADB-funded section, and requested it to carry out the resettlement program in accordance with the RIP. In January 2003, the RDA awarded the construction contract to Kumagai Gumi Company of Japan. The PMU agreed with the contractor to hand over the first 50% of the expressway section (32 km) by the end of April 2003, and the balance within 12 months. The construction activities were expected to be completed in 40 months, by the end of April 2006.

ADB's Sri Lanka Resident Mission recruited a social sector/resettlement officer to supervise the project. The RDA recruited an international resettlement specialist to help it in implementing the RIP.²⁶ Both experts were requested to check whether the land acquisition and resettlement program had been carried out in accordance with the RIP—

²⁵ To avoid delays, where landowners could not be traced, or where the acquired land had several claimants, the RDA deposited cash compensation in district courts. Also, the compensation for land parcels over which ownership issues were not resolved was deposited in district courts. These APs were expected to collect their compensation from the district courts after establishing their ownership rights over the land, and after resolving disputes, if any.

²⁶ A social sector/resettlement officer was appointed in 2002 at ADB's Sri Lanka Resident Mission to monitor the resettlement activities and assist the PMU in implementing the RIP. The international resettlement specialist was recruited from 15 March 2003 to 14 March 2004 for 6 months intermittently for the same purpose.

all APs were fully compensated and resettled by the end of April 2003 in the first priority section of the ADB-funded section of the expressway.

In March 2003, a loan review mission of ADB requested the RDA to obtain a certificate from the international resettlement specialist that the land acquisition and resettlement program on the first 50% of the ADB-funded section of the expressway had been satisfactorily completed. The PMU reported to ADB on April 2003 that some payments, such as interests, compensation for land plots with ownership disputes, and government lands leased to plantation companies, had not been fully compensated. The Ministry of Highways assured ADB that it would take all necessary steps to complete the acquisition of the remaining land and the payment of compensation payment as early as possible. Based on this assurance, ADB approved the commencement of the project construction works in April 2003.

Challenges in Land Acquisition

By April 2004, 80% of the APs in the ADB-funded section and 30% of the APs in the JBIC-funded section of the expressway alignment received full compensation for the land acquired from them. In the disputed areas of Akmeemana in the ADB-funded section of the expressway, only 25% of the APs received compensation. There was no payment of compensation in the deviating alignment area in Bope-Poddala and in the Galle Port Access Road area because of the delays in land acquisition. The ADB-funded section of the expressway was given the priority on land acquisition and compensation payment after the awarding of the contract to construct the expressway in April 2003 and the decision to complete land acquisition in the ADB-section of the expressway before April 2004. The slow progress in the JBIC-funded section of the expressway was due to delays in the implementation of new organizational arrangements, difficulties in land surveys and valuation, delays in project designs, delays in conducting LARC meetings, and the shortage of funds (Management Consultants 2004). The continuing agitation of the APs against the FT in the JBIC-funded section of the expressway also delayed land acquisition, as in case of the ADB-funded section of the expressway.

A Revised Action Plan for Land Acquisition

The Supreme Court heard the complaint of a few APs who challenged the FT and compensation packages.²⁷ In its judgment in January 2004, the Supreme Court directed the appellants to accept the compensation that the court awarded for the infringement of their rights and the compensation package offered by the project. It also ordered them to hand over possession of their land to the project as early as possible. After this judgment, the Management Consultants formulated a revised disbursement plan to expedite land acquisition and compensation payment (Table 1.1).

**Table 1.1: Revised Compensation Disbursement Plan
(March–December 2004)**
(SLRs million)

Type of Compensation Payments	Total (SLRs million)	ADB Section		JBIC Section		Total per month
		Total	Target per month	Total	Target per month	
Compensation payments under LAA Section 17	1,984	511	130	1,473	150	280
Compensation payments under LARC	573	111	40	462	50	90
Interest payments	100	26	4	74	7	11
Total payments	2,657	648	174	2,009	207	381

ADB = Asian Development Bank, JBIC = Japan Bank for International Cooperation, LAA = Land Acquisition Act, LARC = Land Acquisition and Resettlement Committee.

Source: Management Consultants (2004).

²⁷ See Chapter 2 for a full discussion on the Supreme Court's judgment on the Southern Transport Development Project.

According to the revised disbursement plan, the project needed SLRs2,657 million (SLRs2,009 million for the JBIC-funded section and SLRs648 million for the ADB-funded section of the expressway) to pay full compensation and associated costs such as interest payments. Based on these estimates and the plan for paying all outstanding cash compensation by December 2004, the Management Consultants proposed that the RDA pay SLRs174 million per month in the ADB-funded section of the expressway until July 2004 and SLRs207 million per month in the JBIC section as compensation until December 2004. However, there were doubts about the institutional capacity of the project implementing agencies to pay SLRs381 million a month as compensation to the APs. In addition, SLRs123 million was required for the development of the resettlement sites, and SLRs11 million for the income restoration program. The Management Consultants suggested an incentive scheme to encourage surveyors, valuation officers, and divisional secretaries to expedite the land acquisition process. They also emphasized the importance of meeting the land acquisition and resettlement targets in order to avoid additional payments to contractors.

Resettlement of the physically displaced households in the JBIC-funded section of the expressway was very low compared with that in the ADB-funded section. A JBIC review mission in November 2004 requested the Treasury of Sri Lanka to release additional SLRs400 million to expedite compensation payments, improve coordination between the RDA and other relevant agencies involved in land acquisition, and expedite the development of resettlement sites. The ADB-funded section of the expressway too had suffered from inadequate funds in paying compensation to the APs before their land was acquired. The overall progress in contract awards in both the ADB-funded section and the JBIC-funded section of the expressway was behind schedule, and the delay exceeded 2 years.

ADB Supplementary Loan and the Four-Lane Expressway

The project road was designed with a view to being constructed in stages, whereby the first stage would involve construction to a two-lane standard (except for the section from Kottawa to Welipenna, which was from the beginning constructed to the four-lane standard), scheduled to be upgraded to the four-lane standard after 2010 and finally to the six-lane standard. However, the land acquisition was planned for six lanes, without adopting the staged approach. During implementation, traffic growth on the Galle Road from 2000 to 2005 was higher than forecasted in 1999.

There was a similar increase in traffic volume for road networks in the Western Province and Southern Province. In this context, the proposed expansion of the expressway to four-lane standard was expected to result in substantial time and cost savings and to reduce disruption caused by construction activities of the staged approach. Considering these factors, the government decided to advance the upgrading of the whole road to the four-lane standard in 2007. The upgrading involved a restructuring of the civil works contracts for the sections funded by ADB and JBIC. At the time, earthworks, road structures, and around 10 km of road pavement works in the ADB-funded section from Pinnaduwa to Godagama had already been completed and the remaining works in that section were excluded from ADB finance. Subsequently, in 2010, this section was financed by the Export-Import Bank of China of the People's Republic of China.

Both JBIC and ADB processed additional financing in 2008 to accommodate this change of scope and the cost overrun with respect to the construction of the original two-lane highway. ADB approved a supplementary financing loan of \$90 million in 2008 (ADB 2008). At appraisal for the ADB supplementary loan in 2008, the total cost for the project was \$757.7 million. The actual project total cost, at project completion in 2014, had risen to \$906.5 million.

The due diligence report included in the RRP revealed that statutory compensations and resettlement allowances had been paid for all acquired property except for a few land lots where land disputes had not been resolved as well as for the land lots acquired during expressway construction. The report also outlined how the income restoration program of the project had been implemented to assist the vulnerable and severely affected households.

Affected Persons' Resistance and Legal Remedies

The Public Interest Law Foundation commented on the EIAR in June 1999 and requested a public hearing. Then it filed an action in the Court of Appeal in October 1999 (CA Application No. 981/99) challenging the decision of the CEA to approve the EIAR. The foundation pointed out that the EIA had failed to consider reasonable and environmentally friendly alternatives to the proposed project and also to provide adequate reasons for the rejection of several reasonable project alternatives. The Court of Appeal dismissed the case in October 2000 on the grounds that project alternatives had adequately been evaluated and sufficient reasons were given for the selection of the CT and the rejection of other alternatives.

The foundation submitted an application for special leave to the Supreme Court (SC/78/2001) and the Court of Appeal dismissed the application as there was “no basis to grant leave to appeal.”

An organization of the APs named Gama Surakeeme Sanvidanaya (GSS) in the JBIC-funded section and another organization called the United Society for Protection of Akmeemana in the ADB-funded section of the expressway submitted three complaints to the Human Rights Commission of Sri Lanka in October 2001 stating that the project had violated their fundamental rights guaranteed by Article 12(1) and 14(1)(g) and (h) of the Constitution of Sri Lanka by the actions taken by the RDA to change the expressway trace without (i) giving any opportunity for the APs to comment on the alteration, (ii) preparing a supplemental EIA for the altered trace, and (iii) obtaining approval for a fresh EIA from the CEA.

As the Human Rights Commission delayed the hearing of the complaints, the United Society for Protection of Akmeemana also lodged a complaint in 2002 regarding the change of the expressway trace with the Board Inspection Committee of ADB that the RDA had violated ADB’s safeguard policies and procedures in project approval and implementation, and requested a safeguard inspection. The Board Inspection Committee of ADB recommended that a safeguard inspection was not warranted because 20 out of 32 objectors had agreed to take part in further mediation, and because the objectors were more concerned with compensation issues than with the alignment of the expressway. The Committee, however, requested ADB Management to take early action to bring about effective mediation and satisfactory resolution of the outstanding compensation and resettlement issues.

Four groups of APs in Bandaragama in the JBIC-funded section and in Akmeemana in the ADB-funded section of the expressway filed writ applications in the Court of Appeal (CA No.1447/02, CA No.1330/02, CA No. 688/02, and CA No.1322/02) against the alterations of the CT and the CEA’s approval of the EIAR. The Court of Appeal appointed a committee comprising the retired Chief Justice and two retired judges of the Supreme Court to submit a report to the Court of Appeal on the issues raised in the petitions. The committee concluded that deviations in both Bandaragama and Akmeemana could only be considered feasible and desirable if the procedures set out in the National Environmental Act and its regulation 17 relating to alterations were complied with. Four applications were heard together, and the judgment emphasized the importance of giving more weight to environmental considerations than to social considerations,

and the court did not want to stop the project because it was a project of national importance. In 2003, the court dismissed all four applications.

Three out of the four groups who filed writ applications in the Court of Appeal appealed to the Supreme Court against the Court of Appeal's judgment. The three applications were heard together and the court considered alterations to the CT were substantial and should be considered as deviations. It also found that the APs were entitled to be noticed and to be heard before the RDA adopted the FT. The appellants were compensated for the infringement of their rights under Article 12 (1) and the principle of natural justice. This decision was significant from a broad perspective of the human and environmental consequences of large infrastructure development projects. The judgment awarded compensation to the litigants for the violation of their fundamental rights, but allowed the continuation of the project activities based on the principle of primacy of national development over private interests and losses.

In November 2004, the Joint Organization of the Affected Communities (umbrella organization for United Society for Protection of Akmeemana and GSS) submitted a complaint to the Compliance Review Secretariat of ADB requesting a compliance review of ADB's application of its own policies and procedures to the project. The final report of the Compliance Review Panel (CRP) was submitted to the Board of Directors of ADB in October 2005. Based on the recommendations, a course of actions was developed by the Sri Lanka Resident Mission with the RDA and JBIC (ADB 2005). Among the key actions agreed were (i) engagement of a nongovernment organization to prepare and implement an income restoration program, (ii) appointment of an independent external resettlement monitoring agency, (iii) updating of the MIS, (iv) provision of information on specific entitlements and payments to the affected households, (v) updating of the environmental management report, and (vi) preparation of a benefit monitoring framework. The progress in the implementation of the actions were reviewed and monitored annually by the CRP for 5 years with the assistance of the Sri Lanka Resident Mission.

External Monitoring of Resettlement

The RDA recruited Environmental Resource Management Consultants in April 2001 as external monitors of the project activities for 2 years. In May 2003, the RDA appointed Finnroad and Surath Wickramasinghe Associates with the Nordic Development Fund's support as the external monitors. Finnroad recruited an international resettlement specialist to monitor the

progress of resettlement activities from April 2003 to March 2004 on an intermittent basis. A project review mission of ADB in 2004 noted that the role of the management consultants as the independent external monitors of resettlement during 2003 and 2004 was not satisfactory because of conflict of interests arising from their engagement in project implementation. The mission recommended the engagement of a qualified and experienced agency to undertake independent external monitoring of resettlement aspects of the project to meet the loan covenant.

Through a TA for an Independent External Monitor of STDP Resettlement Activities, ADB assisted the RDA in engaging an independent institution to review and monitor the progress of resettlement activities of the project. In 2006, the RDA in consultation with ADB appointed the Centre for Poverty Analysis (CEPA) in Colombo as the independent external resettlement monitor for 2 years. JBIC agreed to provide funds for external monitoring of resettlement activities in the JBIC-funded section of the expressway. ADB's TA was extended for another 2 years from January 2008 to December 2010 to complete its review and monitoring tasks.

CEPA developed a comprehensive resettlement monitoring framework in consultation with the RDA and ADB. Initially, an international resettlement specialist assisted CEPA. CEPA collected information from a sample survey, focus group discussions, and field observations to identify resettlement issues and discussed with the RDA on actions to be taken to bring the project back to safeguard compliance. During their 4-year period of engagement, CEPA prepared several documents including a monitoring framework, stakeholder workshop proceedings, quarterly reports, case studies, and the final report. Some of the key recommendations of CEPA were to (i) expedite the compensation payments; (ii) establish clear, transparent, and fair criteria for payment of the LARC allowances; (iii) issue all payment certificates soon after the LARC determined resettlement allowances to individual APs; (iv) issue title deeds to resettlers for housing lots at the resettlement sites; (v) improve the MIS for operational use and make it user-friendly; and (vi) complete infrastructure development in resettlement sites before relocation. Each of the recommendations reflected a best practice in involuntary resettlement and encouraged the government, and especially the RDA, to incorporate them in their land acquisition and resettlement procedures.

Conclusion

This chapter, as a background description of several key milestones of the project history, highlights how complicated the land acquisition and resettlement processes were, and what intended and unintended consequences could arise from actions and institutional arrangements of a project. These processes and their consequences will be addressed in detail in subsequent chapters.

As a large-scale infrastructure development project, the STDP introduced a number of best resettlement practices and new institutional arrangements. Among them were the formulation of comprehensive RIPs, recognition of entitlements of the nontitled APs, introduction of the LARC, a novel modality for the APs to negotiate the replacement cost of the acquired property, an income restoration program for the APs, and continuous monitoring of resettlement operations by external monitors.

The project has had a long history of complaints and challenges. Different concerns and complaints arose over the years at various phases of the project, particularly during the determination of the final alignment of the expressway. Court cases and engagement of the inspection and compliance review mechanisms of ADB resulted from such complaints. The judgment of the Supreme Court in 2004 and ADB's CRP recommendations in 2005 set a series of actions to bring back the project to safeguard compliance.

A large-scale infrastructure development project such as the STDP requires careful planning, public consultation, and adoption of an adequate legal framework. The government, ADB, and JBIC initially believed that a new expressway project could be designed in 3 years (1998–2000), its land acquisition and resettlement could be accomplished in 2 years (2001 and 2002), and it could be constructed in 5 years (2002–2006). However, the project experience clearly showed that such planning was too ambitious. Even in the nondisputed areas of the project, the project could not achieve its original targets on time. The government's failure to anticipate the social and legal consequences of an important decision such as the alignment change of the expressway caused significant project implementation delays resulting in cost escalations. However, the adoption of several key international best practices in involuntary resettlement by the government

for the first time in Sri Lanka, with the assistance of ADB, established a robust resettlement framework for future development projects. The results of innovative experiments and lessons learned from project planning and implementation, in particular, helped the RDA significantly to improve and update its safeguard approaches to large-scale infrastructure development projects and entitlements of the APs of projects.

CHAPTER 2

Socio-Legal Background of the Project

This chapter outlines the socio-legal background of the project. It first discusses the social and economic factors that justified the construction of the expressway. This is followed by a review of the land acquisition regulatory framework within which the project attempted to achieve its objectives. The regulatory framework is composed of the Land Acquisition Act of 1950 (LAA); the National Involuntary Resettlement Policy (NIRP) of 2001; Regulations of the LAA of 2009; various compensation and resettlement packages used in other projects; and some international best practices in involuntary resettlement applied in project planning, implementation, and monitoring. The chapter also discusses the legal and administrative challenges and constraints that project authorities encountered in planning and implementing the resettlement program of the STDP.

From the 1980s, the prevailing international state-centric development policies gradually shifted toward a people-focused development policies absorbing development best practices from international law pertaining to development. State-centric means the use of the state's eminent domain powers to acquire land and other property disregarding the rights and entitlements of the affected persons (APs) without paying little or no attention to their socioeconomic status and the need for livelihoods recovery and improvement. A people-focused or people-centric development approach, on the other hand, pays careful attention to the APs' current socioeconomic status, income levels, livelihoods, and social networks, and arranges to pay cash as the replacement cost for acquired property or to provide land for land, based on the equivalence in productivity and land quality together with resettlement assistance.

With the development of new land acquisition and resettlement laws and guidelines at the country level, involuntary resettlement safeguards have evolved rapidly to cover the land acquisition, compensation, relocation, and rehabilitation aspects of development projects with the objectives of reducing poverty, sustaining development, and providing development opportunities to the APs. With regard to the development of

land acquisition and resettlement safeguards in Sri Lanka, the role played by the STDP as a catalyst and a field laboratory to test out new policies, laws, and regulations has been significant. Thus, the STDP was the outcome of a shift from a state-centric development approach to a people-focused approach. At the same time, it hastened this shift by introducing new guidelines, innovative action frameworks, and institutional arrangements.

The STDP was planned and implemented at a time when ADB and the Government of Sri Lanka were engaged in reviewing their own land acquisition and resettlement policies, laws, and guidelines. ADB introduced its involuntary resettlement policy in 1995 and its first operational manual for its staff in 1998. Since then, the policy and its operational procedures went through a series of changes which culminated in a revised and updated Safeguard Policy Statement (ADB 2009b) that covers the environment, the involuntary resettlement, and the indigenous people.

Socioeconomic and Poverty Dimensions

In the 1990s, poverty alleviation and income generation were the key drivers in international development. Partly to establish development benchmarks for regional development and partly to satisfy donor requirements, the government during this time either sponsored or conducted several important social and poverty studies in the southern quadrangle of Sri Lanka. The findings of these studies provided the base for poverty mapping and the formation of regional development programs. In this context, one key regional development program was the Colombo–Matara expressway.²⁸

Several key studies examined the socioeconomic conditions of the southern region, including poverty levels and unemployment rates at the household and community levels. In 1996, the United Nations Development Programme and the World Bank assisted a transport sector strategy study in Sri Lanka. In 1997, the Ministry of Transport and Highways formulated a national road policy that was based on the findings and recommendations of that transport sector strategy study. The policy recognized the important role of a well-planned road network in economic development and in meeting the social and development aspirations of the people.

²⁸ At that time, it was known as the Colombo–Matara Highway.

The national study of poverty conducted in 1995 and 1996 estimated poverty headcount rates at the national and provincial levels (Aturupane 1999). The study used the World Bank's consumption poverty definitions (Datt and Gunewardena 1997). It defined the term "poor" on the basis of the monthly per capita consumption, which was less than SLRs861. The term "ultra-poor" was based on the monthly per capita consumption below SLRs717. The study found that, in the Southern Province, 33% of the households were poor and 23% were ultra-poor. In the Sabaragamuwa Province, 44% were poor and 32% were ultra-poor, while in the Western Province, 24% were poor and 13% were ultra-poor. It was determined that the lack of economic opportunities associated with physical inaccessibility generated poverty in remote rural areas. The study also found that poverty in the southern region was linked with the predominance and slow growth of agriculture. Nonfarm economic activities were confined to coastal towns. Tourism badly hit by social unrest in the 1980s took a long time to recover.

In 1995, the government, with the help of Japan International Cooperation Agency, conducted a study to prepare a Master Plan on how to develop the southern region. The key objectives of the study were to catalyze development in the southern region and to strengthen its linkages with the national economy (JICA 1996). The study found that the region's development had been constrained by poor transport links with the other parts of the country, which, in turn, contributed to a low per capita income and a high rate of unemployment. In 1994, the gross domestic product per capita of Galle and Matara districts was 20% below the national average, and only half of that of Colombo. The average unemployment rate of Kalutara, Matara, and Galle districts was 18% as compared with the national average of 13%.

Poverty and unemployment mapping was conducted in 41 administrative divisions in the southern region, using the data obtained from the 1994 demographic survey (Government of Sri Lanka 1994). The proportion of households receiving monthly allowance of SLRs500 to SLRs1,000 under the welfare transfers component of the Samurdhi program was used as a proxy for measuring poverty.²⁹ On this basis, the proportion of the district population living in poverty was found to be 34.5% in Matara, 25% in Galle, and 31% in Hambantota districts. These poverty

²⁹ This program was introduced in 1994. It was the government's principal poverty alleviation and social safety net program. In 1998, the program budget was 4% of the total government expenditure. The welfare transfers component, accounting for 85% of program budget, provided needy households with in-kind transfers using food stamps.

levels matched realistically with the consumption poverty rates estimated at the provincial level in 1995 and 1996 (ADB 1999b).

The results of the poverty mapping exercise confirmed that the proposed Colombo–Matara expressway would traverse the administrative divisions that were characterized by high poverty levels. In 1994, of the 17 administrative divisions through which the expressway would run, five had poverty rates of 15%–31%, and nine had poverty rates of more than 31%. In the adjacent 41 administrative divisions that represented a wider area, 15 had poverty rates of 15%–31%, and 16 had poverty rates higher than 31%. Thus, virtually all of the administrative divisions in the southern region had high poverty levels.

The results of unemployment mapping indicated that five of the 17 administrative divisions identified as the proposed STDP area had unemployment rates between 12% and 19%, with the other 12 administrative divisions having less than 12% of unemployment. Among the 41 administrative divisions referred to earlier, 17 had unemployment rates between 12% and 19%, and in 4 divisions the unemployment rate was 19%.

The poverty mapping exercise illustrated that the poverty level of a district increases along with the degree of its inaccessibility to Colombo. This pattern was also evident in the case of unemployment. Poverty was highest among the working poor—people who were in low-paid employment categories such as plantation labor or hired labor in traditional agriculture. Among the youth and females of such households, the unemployment rate was high, even though there were job vacancies in tea and rubber plantations. This reflected their preference for formal sector jobs that would make use of their education, and their unwillingness to take up traditional forms of employment that were considered low-paid, unskilled, and of low social status.

The four community studies conducted as part of the regional social and economic impact study noted widespread consensus among the respondents that the poor standard of transportation had deprived them of having access to job opportunities.³⁰ One of the most commonly cited constraints was that, due to the long travel time and poor quality of roads, it was not feasible to supply high-valued perishables such as vegetables and fruits to premium markets in Colombo and for export. Another common

³⁰ As part of the technical assistance Preparation of the Southern Transport Development Project (TA 3184-SRI). See Chapter 1 for details.

problem was damage to breakable goods such as tiles, glassware, and electrical products. The tourist operators in the project area complained that inaccessibility arising from poor roads discouraged tourists from visiting interior areas.

Poor transportation facilities affected many other aspects of quality of life as well. Children often had to make a long journey daily to and from schools, especially from secondary level onward. This meant that they could not fully participate in extracurricular activities that were considered important in preparing children for their prospective working life as adults. Health facilities in rural areas were poor and insufficient. As a result, in many instances, villagers had to travel for several hours to consult a specialist or to get admitted to a hospital. Some villagers complained about a more general sense of isolation. Living without good access to urban and town centers, some felt left out of the mainstream of national development (ADB 1999b).

Communities expected the proposed expressway to bring significant improvements to their economic life so that they could overcome constraints in finding employment and in improving their household income levels. Among their expectations were (i) more remunerative employment and livelihoods with the opening up of their communities to the wider economy; (ii) better employment opportunities for the youth and women in the formal sector; (iii) faster travel, which would improve the quality of life of those who worked in Colombo and other cities and towns; (iv) better and frequent bus and other transportation services; (v) a development momentum leading to other improvements in transport and communications infrastructure; (vi) willingness among qualified teachers from outside to get transferred to rural areas where teaching quality is very poor; (vii) opportunities for children to take part more in extracurricular activities and to achieve a balanced education; and (viii) fast and easy access to district hospitals in an emergency (Marga Institute 1999, ADB 1999b).

The Sri Lanka Human Development Report of 1998 (Aturupane et al. 1998) pointed out that, although the southern region had benefited from social development programs over several decades, in terms of economic development and accessibility to towns and cities it continued to lag behind the other regions. The districts within the region had access to basic social services, health facilities, and schools although they were characterized by low per capita income and high levels of underemployment and unemployment, especially among females. The disproportionately high rate of female underemployment is one of the main gender inequalities in the region.

To conclude, the project's economic internal rate of return was estimated at 12%, if only traffic-related benefits were considered (Government of Sri Lanka 1999b). The project was also expected to provide substantial benefits to the poor, justifying poverty reduction as a secondary project objective. By improving physical access to the hinterland, the project was expected to (i) trigger economic development and employment in the hinterland, (ii) raise returns in small-scale and commercial agriculture, and (iii) improve labor mobility. Such benefits would reduce unemployment and raise household income, resulting in fewer households being below the poverty line. Indirect and longer-term benefits for the poor would arise from improved access to education and health facilities, resulting in a population that would be more skilled and able to take up the employment opportunities that the project would make available (ADB 1999b). This was the socioeconomic background of the project area in the mid- to late 1990s. The region at that time was recovering from social unrest and militant movements that began in the late 1980s, which cost many human lives and caused serious damage to private and public property. The collapse of the mutual trust between the government and ordinary people, especially the youth, needed urgent attention and healing. Development projects such as the STDP were expected to repair such damage and to set up a better environment for all of them to enjoy the benefits of regional development.

Local Regulatory Framework for Land Acquisition and Resettlement

At the time of designing the STDP, two key domestic laws governed the land acquisition, compensation payment, and relocation processes: (i) the Land Acquisition Act of 1950 and its amendments and regulations; and (ii) the National Environmental Act (NEA) of 1980, as amended in 1988, as well as its regulations of 1993 and 1995. The NEA required the approval of the Central Environmental Authority (CEA) for "prescribed projects," which included those resulting in involuntary resettlement of over 100 households. The approval granted by the CEA for such prescribed projects was based on an environmental impact assessment report (EIAR) or an initial environmental examination report. These environmental planning reports include resettlement plans, if land acquisition is required.

Land Acquisition Act No. 9 of 1950

The LAA regulates the acquisition of land for a “public purpose” and the payment of compensation to those who have interests or rights in the acquired land. It comprised nine parts: (i) preliminary investigation and declaration of intended acquisition, (ii) inquiry into claims, (iii) reference to court, (iv) assessment and award of compensation, (v) appeals to the Board of Review established under the LAA or to courts on questions of law, (vi) compensation payment, (vii) possession and disposal including immediate possession, (viii) assessment of compensation, and (ix) general provisions. The LAA provides detailed procedural guidance on each part of the act.

The state’s right to acquire land for a public purpose emanates, as mentioned earlier, from the principle of eminent domain. In international law, a state is regarded not only as having a power of disposition over the whole of the national territory, but also as the representative owner of the national territory and all property found within its limits. The LAA has its history going back to a period of more than a century. The original ordinance on land acquisition in India was introduced in Bengal as early as 1833, and later modified, developed, and applied to other parts of British India. Sri Lanka, being a British colony, adopted the Indian land acquisition ordinance in 1876 as its land acquisition ordinance.³¹ After Sri Lanka gained independence from British rule in 1948, the ordinance was adopted as the Land Acquisition Act of 1950.

The LAA provides a detailed procedure for acquiring land or servitude, and sets a process with several in-built safeguards for the benefit of the APs. Judicial reviews of land acquisition and compensation payment have clarified and expanded the scope of the act with regard to the process followed in compensation determination and payment, assessment of environmental adverse impacts, and investigation into incidents of violating the principle of public trust (Fernando 2014).

The LAA provides a legal framework for land acquisition and compensation. It has a comprehensive mechanism to determine cash compensation for the acquired land at its market value, redress grievances, restore livelihoods of the physically and economically displaced persons,

³¹ Sri Lanka was known as Ceylon during the British period of Sri Lanka (1815–1948) and later until 1972.

compensate non-owners for their “interest” in the land acquired, and use the willing-seller-willing-buyer land modality in land acquisition. Section 45(1) of the LAA states that “the market value of a land in respect of which a notice under section 7 has been published shall... be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity...” It further states that “in determining that amount, all such returns and assessments of income from that land will be taken into consideration.” The LAA directs the acquisition officer to pay the market value of the land acquired as compensation to any person who has proven interests in the land that was acquired (section 46(1)). Persons who have “interests” in such land include a person having an interest in the land as owner, co-owner, mortgagee, lessee, or otherwise, whether absolutely for himself or herself or in trust for any other person or for any charitable, religious, or other purpose; or a person having a servitude over the land. The list of eligible persons for compensation does not include tenants on a monthly tenancy. Limited livelihood restoration assistance is also provided under the LAA to those who lose land-based income sources.

The above mechanism of the LAA, though it provided a framework to develop best practices in land acquisition and resettlement, was inadequate to address complex land acquisition and resettlement issues of large-scale infrastructure projects such as the STDP. Although the LAA prefers the “willing-seller-willing-buyer” modality in land acquisition, land acquisition programs often do not find willing sellers of land because of the poor land markets and sale conditions which are not always favorable to the seller when the government is the buyer. The LAA provides an average of 20% of the statutory value of the land acquired as assistance for the restoration of the income of an AP. Moreover, land acquisition officers usually do not offer compensation for severance, “injurious affection”³² and for physical displacement as part of the compensation package, although the LAA allows such payments. The LAA does not pay the market value as compensation for structures acquired or demolished without deducting their depreciation value. As a result, the compensation is invariably insufficient to restore the lost assets and livelihoods. This leads to impoverishment of the APs.

The LAA provides special powers to the state under “urgency” section 38(a) to take immediate possession of any land on occasions such as a national emergency, a security threat, or a natural disaster. Immediate

³² Reduced value of the remaining land after the acquisition of a part of the land.

possession of land on grounds of urgency is a decision that the Minister of Lands takes. It excludes consultations, negotiations, and payment of compensation before the acquisition of land. In *Marie Indira Fernandopulle and another v. E.L. Senanayake*, Minister of Lands and Agriculture, the Supreme Court of Sri Lanka held that the minister could issue an order to acquire the land under the section 38(a) of the LAA only in an emergency, and the order is subject to judicial review. As Chief Justice Samarakoon pointed out, the state cannot take possession of a private land until and unless an offer of payment of compensation is made and the acquisition proceedings are concluded. The section 38(a) of the LAA in this context is an exception to the general rule. When the land is acquired under this section, the landowner loses the land before receiving compensation, and without having the opportunity for consultation and price negotiation. This breaches two best international resettlement practices: (i) land should not be acquired until after the owner or user is fully compensated and provided with resettlement assistance, and (ii) allow those who lost land to stay on the acquired land until they find an alternative land which could be bought with cash compensation received for the land acquired. The first avoids or at least minimizes the impoverishment risks of the APs; the second gives time to the APs to buy suitable alternative land to cultivate or to build houses before moving from their original land.

The state acquired land for the STDP under the section 38(a) of the LAA. The RDA did its best to follow the above second best practice, but failed in the first. Because of the difficulties in obtaining sufficient funds from the Treasury on time, the RDA initially managed to pay only the statutory compensation under section 17 of the LAA for the acquired land.³³ The resettlement (Land Acquisition and Resettlement Committee [LARC]) allowances were paid later. Thus, the STDP acquired a significant amount of land before full compensation at the replacement cost was paid to the APs. This has been the general practice of the RDA in any infrastructure project that needs land acquisition.

The purpose of applying section 38(a) of the LAA was to block the APs' right to challenge the acquisition of land, leaving only the right to negotiate the compensation after the acquisition. The RDA thought that by using section 38(a), it could acquire land without any delay. But the

³³ Statutory compensation under section 17 of the LAA provides for the payment of the market value of the land acquired. In the STDP, the difference between the market value paid by the government and the actual replacement cost negotiated at LARC meetings was paid as a resettlement allowance.

STDP experienced a protracted land acquisition process, although the land was acquired under section 38(a).³⁴ It shadowed many best practices that the STDP introduced for the first time in Sri Lanka, such as the payment of replacement cost for the acquired property and the recognition of nontitled APs' entitlements for compensation and resettlement.

During the project preparation phase of the STDP, ADB staff discussed the issues with the Valuation Department, the Ministry of Highways, the RDA, and the Ministry of Finance. After lengthy discussions, all of them agreed to address some of these issues through LARC, an innovative institutional mechanism. This set the background for a large leap toward introducing international best practices in land acquisition and resettlement. In fact, the missed opportunity to negotiate compensations and other allowances because of the acquisition of land under the section 38(a) of the LAA was compensated through the LARCs by the RDA.

National Environmental Act (1980) and the Amendments of 1988

The Rio Declaration of 1992 states that human beings are at the center of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature (United Nations 1992). In the international development arena, there has been a steady growth in the recognition of environmental rights as human rights, which include individual and community rights. The fundamental right to a healthy and productive life in harmony with nature includes the right to a decent livelihood, right to own property, and the right to environmental information and decision making. Most of these rights are now considered the environmental rights of individuals and communities indispensable for environmental protection. As a result, they have increasingly been incorporated into national legal systems, either explicitly or by judicial interpretation of constitutional guarantees (Birne and Boyle 2002). Sri Lanka in the 1990s was a good example of this practice.

In the 1990s, the Government of Sri Lanka attempted to match the national safeguard regulatory framework with the donors' safeguard

³⁴ The process has two parts: the acquisition of land and the vesting of the land in the state. By a gazette notification under section 38(a), a landholding can be acquired within 48 hours, but its vesting in the state could be blocked by the owner by seeking a writ of mandamus from the Court of Appeal, as happened in the STDP. The court procedure could take months, if not years, to settle the dispute.

policies, especially of ADB and the World Bank, as part of its initiative to improve environmental protection and the sustainability of development projects. The NEA, its regulations, especially the gazette notifications of 1993 and 1995, and the extensive training programs on environmental impact assessment methodologies, conducted with the help of the United States Agency for International Development, triggered the state's interest and commitment to apply international best safeguard practices to development projects.

Landmark judgments of the Supreme Court and the Court of Appeal further elaborated on the links between the domestic laws, the international laws, and the safeguard best practices. For example, in *Bulankulama v. Minister of Industrial Development* (Eppawala case),³⁵ the Supreme Court held in 1999 that although the Stockholm and Rio Declarations are not legally binding in the way in which an Act of Parliament is, they may be considered “soft laws,” and being a member of the United Nations, Sri Lanka cannot ignore them in the realm of development. Justice Amarasinghe pointed out that the Stockholm and Rio Declarations would be binding if they have been either expressly enacted or become part of domestic law by adoption by the superior courts of record and by the Supreme Court, in particular, in their decisions.³⁶ By 2000, in Sri Lanka, key concepts such as the principle of public trust, the right to employment and property, and the right to income restoration and improvement were familiar concepts frequently used in court judgments and in planning documents of the government.

The National Involuntary Resettlement Policy

The national involuntary resettlement policy of 2001 (NIRP) was a development parallel to the intensive resettlement planning for the STDP carried out by the Ministry of Lands and the RDA. It reflected the desire and commitment of the government to improve the country safeguard system to the level of international best practices. The resettlement plan of the STDP formulated in 1999 highlighted the improvements the LAA needed to meet international best practices. When ADB agreed to fund the STDP in 1999, the government felt the urgency for a comprehensive resettlement policy as a preparatory step toward a revised and updated LAA to accommodate the local and international land acquisition and

³⁵ Supreme Court Application No. 884/99 (F/R).

³⁶ Supreme Court Judgment No. 884/99 (RF). p. 16.

resettlement best practices. The outcome was the NIRP formulated by the Ministry of Lands with ADB assistance.³⁷

Food insecurity, lack of access to common property resources and public services, and disruption to social organization are some of the common adverse impacts that the APs experience because of land acquisition and resettlement. The resettlement experience of the Mahaweli Development Project and other large infrastructure development projects with significant resettlement impacts generated a considerable body of knowledge on planning and implementation difficulties of land acquisition and involuntary resettlement (Perera 1992). In this context, the NIRP was designed to ensure that (i) the APs are adequately compensated, relocated, and rehabilitated; (ii) delays in project implementation and cost overrun are reduced; and (iii) better community relations are restored after displacement and resettlement. In summary, resettlement is introduced as a development opportunity for the APs of development projects.

The Cabinet of Ministers approved the NIRP in 2001 as the policy framework for land acquisition and resettlement. The NIRP is based on the best practices found in ADB's involuntary resettlement principles; the LAA and its amendments; the NEA (amended in 1988); the Urban Development Authority Act; the Coastal Conservation Act; the regulations of these acts; and the legal opinions of the courts on land acquisition, compensation, consultation, and income restoration.

The objectives of the NIRP are to

- avoid, minimize, and mitigate negative involuntary resettlement impacts by rehabilitating APs on a productive and self-sustaining basis;
- ensure that the APs are fully and promptly compensated and successfully resettled, their livelihoods are reestablished, and their standard of living is improved;
- ensure the APs will not get impoverished as a result of compulsory land acquisition for development projects;
- assist the APs in dealing with psychological, cultural, social, and other impacts caused by compulsory land acquisition and resettlement;

³⁷ The World Bank supported the Ministry of Lands subsequently to train government staff and nongovernment organizations in applying the policy to development projects.

- establish an accessible grievance redress mechanism in each development project; and
- establish a consultative, transparent, and accountable involuntary resettlement process with a time frame agreed to between project executing agencies and the APs.

The NIRP principles match most of the safeguard policy principles of ADB and the World Bank:

- Involuntary resettlement should be avoided as much as possible by reviewing alternatives to the project as well as alternatives within the project.
- Where involuntary resettlement is unavoidable, the APs should be assisted to reestablish themselves and improve their quality of life.
- Gender equality and equity should be ensured and adhered to throughout the project.
- The APs should be fully involved in the selection of relocation sites, livelihood compensation, and development options at the earliest opportunity.
- The replacement of land should be an option for compensation in the case of the loss of land; in the absence of the replacement of land, cash compensation will be an option for all APs.
- Compensation for the loss of land, structures, assets, income, and livelihoods should be based on the full replacement cost and should be paid promptly. This should include transaction costs.
- Resettlement should be planned and implemented with full participation of the provincial and local authorities.
- The participatory measures should be designed and implemented to assist those economically and socially affected to get integrated into their host communities.
- Common property resources and community and public services should be provided to resettlers.
- Resettlement should be planned as a development opportunity for the APs.
- The APs without title deeds to the acquired lands should receive fair and just treatment.
- The vulnerable groups should be identified and given appropriate assistance to improve their living standards.
- The project executing agencies should bear the full costs of compensation and resettlement.

The policy applies to

- all development-induced land acquisition or recovery of possession by the state,
- all projects regardless of the source of funding, and
- all projects in the planning phase on the date the policy came into effect, and
- all future projects.

The Ministry of Land and Land Development is responsible for the implementation of the NIRP. It applies the NIRP to development projects in collaboration with a wide network of public agencies including the Central Environmental Authority (CEA), the Survey Department, the Valuation Department, the ministries concerned, and the relevant divisional secretariats.

The Land Acquisition and Resettlement Committee

The Cabinet of Ministers approved the two Cabinet memoranda in April 2001: “Providing Special Assistance to Persons Affected by the Acquisition of Land and Properties for the Construction of Road Projects by the Road Development Authority,” and “Payment of Compensation to the Persons Affected by Acquisition of Property for the Construction of STDP.” The memoranda provided a broad policy framework to expedite land acquisition and payment of the replacement cost for the acquired land as compensation. For this purpose, LARC, a special division-level institution, was established.³⁸

The first memorandum aimed to expedite the process of land acquisition. It suggested that land should be acquired under the section 38(a) of the LAA in order to reduce the average 72-week process to an 18-week process. It enabled the establishment of LARCs as a negotiating forum of the replacement cost of acquired land and other property. It also broadened the scopes of compensation and resettlement to include encroachers, squatters, and other informal dwellers on public land as APs who are eligible for compensation. The second memorandum authorized the RDA to provide the APs with all entitlements and benefits listed in

³⁸ See Chapter 4 for a full description of the LARC’s scope, mandate, and members.

the entitled matrix of the resettlement plan of the STDP,³⁹ and any other benefits determined as appropriate by the LARC. It also enabled the LARC to determine land compensation based on oral evidence collected at a public inquiry and allowing 2 weeks to raise objections, if any, in accordance with section 9 of the LAA. This helps nontitled land users such as encroachers, squatters, and informal dwellers to claim compensation for the land acquired over which they had interests. Moreover, it allows them to claim compensation for the structures on such land and for land improvement.

Statutory compensation under section 17 of the LAA is determined by the acquiring officer in consultation with the Valuation Department, the Survey Department, and the Grama Niladhari (village-level administrative officer) of the area. Under the NIRP, an *ex gratia* compensation as a resettlement allowance was paid in addition to the statutory compensation to each AP based on the negotiation the AP had with the LARC to bring the total package of compensation to the level of replacement cost of the acquired property. The *ex gratia* payment included the difference between the replacement cost and the statutory compensation for the land and structures, assistance to restore and improve the lost incomes, an inducement payment of 25% of the statutory compensation to leave the acquired land on a stipulated date, an interim house rent for the period between the physical displacement and the physical relocation, resettlement grants for the resettlers including squatters and encroachers, special assistance to vulnerable and disabled households, and the shifting cost of movable properties to the new residences. The *ex gratia* package also included costs of getting connections to basic facilities such as telephone, water, and electricity. An allowance of SLRs100,000 was also given to each voluntarily relocated affected household as an incentive to self-relocate.

The details of the *ex gratia* payments and their benefits were explained to the APs before and during the LARC meetings by resettlement officers (ROs) and resettlement assistants (RAs) who had established a good rapport with the APs. If an AP disagreed with the LARC's decision, the AP could appeal to the Super Land Acquisition and Resettlement Committee (Super LARC) in Colombo, which was chaired by the Secretary to the Ministry of Highways. The other members of the Super LARC were the Secretary to the Ministry of Land and Land Development, the Chief Valuer, the Survey General, the Director General of the RDA, and the Divisional Secretary in whose area the property in question is located.

³⁹ The RDA submitted the Resettlement Plan to ADB for review in 1999.

International Best Practices and Resettlement Planning

ADB worked closely with the RDA in developing environmental and resettlement planning instruments of the STDP. This partnership facilitated the RDA's adoption of the best practices found in ADB's Involuntary Resettlement Policy for the STDP.

The Government and the RDA will ensure that relocation, resettlement, and compensation for all persons who are adversely affected by the Project will be carried out in accordance with the Resettlement Implementation Plan, as agreed between the Government and the Bank, the Bank's *Policy on Involuntary Resettlement* and *Handbook on Resettlement*, so that the project-affected persons will improve or at least maintain the standards of living they were enjoying before the implementation of the Project. (ADB 1999a: 28)

The RDA adopted several best practices in land and involuntary resettlement from ADB's involuntary resettlement policy partly because of its interest in improving land acquisition, compensation, resettlement, and rehabilitation programs of development projects and partly because of its desire to expedite the construction of the expressway. Among the best practices adopted from ADB's involuntary resettlement safeguard policy were the full payment of compensation prior to APs' relocation, the provision of an additional entitlement package for the affected poor and vulnerable household that includes housing and income restoration and improvement, and the special compensation package to nontitled land users and squatters (ADB 1999b). The application of these best practices raised the issue of legality of compensation at the replacement cost, resettlement assistance to the squatters, and special assistance to the vulnerable households which were not found in the LAA.

The application of a donor's safeguard policy to a project is to be done in congruence with the regulatory framework of the country, which is known as the country safeguard system. However, in a donor-funded project such as the STDP, when there is a gap or difference between the donor's safeguard policy requirements and a country safeguard system, the former prevails over the latter.⁴⁰ Such gaps can permanently be addressed only through the revision of the country safeguard system in line with international best practices that are enshrined in safeguard policies of international development agencies such as ADB and the World Bank;

⁴⁰ The Operational Manual (1998) for the ADB's involuntary resettlement policy of 1995.

otherwise, project-specific application of international best practices is the norm. This would create two types of development projects: (i) projects that formulated safeguard planning documents to meet donor safeguard requirements and received donor assistance; and (ii) projects that did not receive donor assistance and followed the country safeguard system.

The STDP combined several international best practices with the country safeguard system or the local regulatory framework by adopting new institutional arrangements such as the LARC, payment of the replacement cost for the acquired property, and the recognition of nontitled APs as eligible APs for receiving compensation and resettlement assistance. The application of these best practices facilitated the formulation of the NIRP in 2001 that applies to all infrastructure development projects regardless of the sources of project funding. This is one of the key successes of the STDP.

Uncertainties and legal issues related to land acquisition and resettlement were addressed through several key actions. The first was the formulation of the NIRP. The second was the approval of the two special Cabinet memoranda in 2001, which enabled the RDA to formulate and implement the comprehensive entitlement matrix of the resettlement implementation plan (RIP) of 2002, which encapsulated most of the known best practices in land acquisition and involuntary resettlement. The third was the allocation of sufficient funds to implement the RIP, although during the project implementation, the RDA sometimes experienced severe fund shortages that delayed the payment of full compensation to the APs.

The RDA formulated the RIP of 2002 for the entire project, based on the NIRP. The original plan was to conduct a census of the APs and an inventory of lost assets, and then to formulate an RIP for the ADB-financed section of the expressway. When ADB and the Japan Bank for International Cooperation (JBIC) agreed to have one RIP for both sections of the expressway, the RDA prepared one RIP for the entire project based on the NIRP and the ADB's involuntary resettlement policy.

Shifting Alignment of the Expressway and Public Litigation

The judiciary of Sri Lanka supported mainstreaming of the resettlement policies, regulations, and guidelines pertaining to land acquisition, compensation, and resettlement. In 1997, in the *SmithKline Beecham Biological S. A. v. State Pharmaceutical Corporation of Sri Lanka and others*,

the Supreme Court held that “law includes regulations, rules, directions, instructions, guidelines, and schemes that are designed to guide public authorities.” It further stated that under Article 43(1) of the Constitution, the Cabinet of Ministers and the President are charged with the direction and control of the Government of Republic. In the context of the above, the NIRP is a government policy that “creates legally recognized rights and entitlements and has to be followed by government authorities” (Fernando 2014:377).

During the detailed design phase of the project, the RDA changed the Combined Trace (CT) to establish the Final Trace (FT) of the expressway (see Chapter 1). The changes focused on minimizing the acquisition of dwellings; separation of communities from their lands, schools, temples, and markets; avoiding or minimizing impacts on locations of environmental or cultural significance; and minimizing road safety hazards by designing the expressway above the existing local road system. The poor soil condition, drainage requirements, and also the topography of some alignment locations necessitated adjustments to the CT.

Several APs, either as aggrieved citizens or as members of grassroots organizations that opposed the expressway, agitated against the project planning procedures and the selection of the FT as the alignment of the expressway. In 2000, the Public Interest Law Foundation filed an application in the Court of Appeal⁴¹ on the grounds that the CEA failed to (i) consider reasonable and environmentally friendly project alternatives before approving the EIAR, and (ii) provide adequate reasons for the rejection of other project alternatives. The Court of Appeal rejected both these arguments on the basis that the court was satisfied with the CEA’s action to consider the proposed project alternatives. It was also found that the CEA had not abused its discretion in choosing the FT as the expressway alignment. The court further stated that it was compelled to defer to the decision of the CEA, which approved the EIAR on the basis of the recommendations submitted by a group of experts. The Court of Appeal denied an application for special leave to contest this decision at the Supreme Court.⁴²

In 2002, 43 APs filed four applications at the Court of Appeal for mandates in the nature of writs of certiorari and mandamus in terms of

⁴¹ *Public Interest Law Foundation v. CEA & RDA*, CA Application No. 981/99, 20 Nov 2000.

⁴² *Public Interest Law Foundation v. CEA & RDA*, Supreme Court Special Leave Application No. 78/2001, 22 June 2001.

Article 140 of the Constitution of Sri Lanka.⁴³ The applicants “explicitly and candidly” stated that they do not oppose the construction of the expressway, and their applications did not seek to change the entire length of the FT. Instead, they requested the court to issue writs of certiorari quashing the notices under section 2 of the LAA to acquire land, and the CEA’s decision to approve the EIAR. They requested that the court issue a writ of mandamus compelling the CEA to obtain a supplementary EIA from the RDA for the FT.

The Court of Appeal held that the changes to the CT were introduced to avoid environmental damage to (i) the network of waterways feeding the Bolgoda River, the North Lake and South Lake of Bolgoda, and the Weris Ganga wetlands; and (ii) the Koggala and Madu Ganga wetlands, and therefore were justifiable. It stated that the RDA had to deviate from the CT in order to avoid the expressway traversing through the wetlands. It further held that “the only option is to adopt the Final Trace,” which, if adopted, “will result in displacement of affected people in that area.” The court found that the EIAR had taken a sensitive approach to the issue of displacement of the APs. It also found that an in-depth study on short- and long-term social impacts of the project on the APs had been done, and that the results of the study had shown that such impacts were significant. Moreover, the EIAR had developed resettlement guidelines according to ADB’s involuntary resettlement policy, which required the formulation of a resettlement plan and enhancement of the income and livelihoods of the APs after their relocation. The court stated that “the obligation to the society as a whole must predominate over the obligation to a group of individuals, who are so unfortunately affected by the construction of the highway.”⁴⁴ The Court of Appeal dismissed all four applications.

In 2003, the 43 APs appealed to the Supreme Court challenging the decision of the Court of Appeal.⁴⁵ The appellants complained that (i) they were denied an opportunity of being heard before such adoption, (ii) the CEA was not informed of the FT, (iii) there was no supplementary EIAR that examined the deviations to the CT, and (iv) the CEA’s approval was not obtained for the FT of the expressway. These issues were rephrased by the court as follows: (i) whether the FT was adopted in order to avoid

⁴³ Court of Appeal Writ Applications 1322/2002, 1447/02, 688/02, and 1330/02.

⁴⁴ A similar conclusion was arrived at the Court of Appeal in 688/1330/1447/2002 by J. Weeramantry, which was upheld by the Supreme Court Appeal 58/59//60/2003 by J. Fernando, J. Ismail, and J. Wigneswaran.

⁴⁵ *Heather Mundy & others v. Central Environmental Authority, Road Development Authority and others*, SC Appeal 58/2003; SC Appeal 59/2003; and SC Appeal 60/2003.

environmental harm to the wetlands, (ii) whether the adoption of the FT was procedurally flawed, and (iii) whether the appellants were adversely affected by the FT.

The Supreme Court held that the first issue was not in dispute—the physical change of the expressway’s alignment at two key points to avoid the wetlands was necessary. With regard to the second issue, the Supreme Court held that (i) there is nothing in the act or the regulations which purported to exclude the principles of natural justice, (ii) the appellants were entitled to notice and to be heard before the RDA adopted the FT, and (iii) the appellants’ fundamental right to equal treatment and to the equal protection of the law entitled them to notice and a hearing. The court held that according to section 23EE and Regulation 17(1)(a) of the National Environmental Act (NEA), the RDA should have notified the CEA and obtained the CEA’s approval for a supplemental environmental impact assessment report. It also held that the CEA’s approval of the EIAR in 1999 “did not constitute and cannot be construed as constituting an absolute, uncontrolled and irrevocable delegation to the RDA to determine the FT.” It further held that the location of the FT was contrary to the CEA’s approval of the EIAR, as the FT did not move to the ORT, as requested by the CEA.

Regarding the third issue, the Supreme Court held that “alterations” that led to the selection of the FT adversely affected some APs, and therefore they are entitled to a hearing under Article 12(1) of the Constitution. The Supreme Court further held that, although the Court of Appeal recognized that appellants’ rights had been infringed upon, no action was taken to compensate their “sacrifice.” “While the circumstances were such, the Court could reasonably have concluded that the Final Trace should be left undisturbed. One of the major considerations was cost; as well as the delay, it also involved costs. If a judicial discretion was exercised in favor of the state, inter alia, to save costs, it was only equitable that the appellants should have been compensated for the injury to their rights.”

The Supreme Court granted and issued an order directing the CEA to require the RDA to pay each appellant SLRs75,000 in addition to the compensation payable by the state under the LAA, and in terms of the CEA’s approval and the compensation package referred to by the respondents. The appellants were also paid costs. The court advised the appellants to hand over the possession of their lands without prejudice to their rights of appeal in respect of the quantum of compensation in order to avoid further delays, misunderstandings, and allegation of victimization.

Regardless of the Supreme Court's direction, several landowners who opposed the FT and those who objected to the amount of compensation offered continued to protest and obstruct the RDA in taking possession of their land. Twelve months after the judgment of the Supreme Court, the RDA informed ADB that, because of these obstructions, contractors could not start construction work in a 10-kilometer section on the expressway alignment. This delayed the handing over of the acquired land to the construction contractor by more than 15 months. As a result, the RDA paid SLRs 2.4 million a day to the contractor as damages. The RDA pointed out that the extra claims of the contractor had increased the contract value and exhausted contingency funds of the project.

The delay in handing over of the acquired land to the RDA was compounded by the acquisition of additional 500 land parcels to accommodate the shifting of the CT to the FT. The RDA expressed its concern that the acquisition of these new land parcels would take at least 12 months even with the accelerated land acquisition procedures introduced under the Cabinet memoranda of 2001.

Several APs filed two applications at the Court of Appeal on 30 November 2004 seeking writs of mandamus against the RDA and the Divisional Secretary of Akmeemana who had failed to take possession of all lands acquired for the STDP, as directed by the Supreme Court.⁴⁶ The RDA and the Secretary of the Ministry of Highways promised the court that the ministry would take all available actions in law expeditiously to take possession of the lands acquired for the STDP. The director of the project management unit of the STDP informed ADB of its intention to take physical possession of the land acquired for the expressway before 28 February 2005. The director explained that the failure to comply with this court order would constitute contempt of the court and the RDA officials might face prison sentences. The RDA surveyed the 500 land parcels with police protection and paid compensation before removing the APs from their land. This too delayed the project activities by several months.

By 2005, the possibility of changing the FT through the national legal system had been exhausted. Those who agitated against the project then turned to ADB and triggered its Accountability Mechanism to seek the support of its Board of Directors to gain their demands. In fact, ADB could not assist them to achieve their demands from the government because it is the policy of ADB not to interfere with internal administrative and legal matters of the country (ADB 1966). The only assistance that it could

⁴⁶ Court of Appeal Writ Applications Nos. 2368/2004 and 2369/2004.

provide to the APs was to facilitate consultations between the government and the APs through its Office of the Special Project Facilitator and to examine through its Compliance Review Panel (CRP) whether ADB staff had failed to apply ADB's safeguard policies to the project. However, the objecting APs thought that by exposing the violations of ADB's safeguard policy by the RDA, they could get ADB either to stop or suspend the project.

Accountability Mechanism: Watchdog of Best Practices

The loan agreement signed by the Government of Sri Lanka and ADB is governed by international law, as ADB is a public international agency, established under a charter recognized by the United Nations (ADB 1966). The charter that established ADB in 1966 to which participating members subscribed has the status of an international treaty that binds its participating members by its provisions. It highlights the obligations and privileges of the members. In 1966, Sri Lanka enacted the Asian Development Bank Agreement (Ratification) Act No. 21 to legally validate the relationship between the government and ADB. Thus, when the government signs a loan agreement, it is bound by the safeguard policies as well as other operational policies of ADB which direct the planning and implementation procedures of projects that it finances (Fernando 2014).

Based on the agreement between the borrower and ADB, the Accountability Mechanism of ADB applies to projects that it funds. As mentioned in Chapter 1, the Accountability Mechanism has two arms: (i) consultations with project stakeholders to resolve compliance issues, and (ii) review of ADB Management's performance in safeguard compliance. The first is to assist project managers, the APs, and communities in discussing and resolving compliance issues through consultation and mediation. The second is a formal review mechanism of compliance of a project's planning, implementation, and monitoring to ascertain whether ADB Management has actually applied and vigorously followed its own safeguard policies to projects that it has funded. It is the responsibility of the compliance review⁴⁷ to ascertain facts and make recommendations to the Board of Directors of ADB to investigate whether ADB Management

⁴⁷ Until 2003, it was the compliance inspection function; after 2003, it became the compliance review function.

violated ADB's own safeguard principles and, in case any principles were violated, what specific actions ADB Management should take to correct them.

In March 2002, 240 households out of 5,683 affected households (4.2%) objected to the STDP. The Gama Surakeeme Sanvidanaya, an organization of protesters, requested ADB to conduct a safeguard inspection on the STDP.⁴⁸ Their main concerns were physical displacement, disintegration of communities, inadequacy of compensation, delays in compensation payment, poor infrastructure facilities at resettlement sites, uncertainties regarding the restoration of income and livelihood sources, and the attitudes of land acquisition officers. They requested ADB to suspend the project until the above issues were addressed and resolved. ADB and the RDA agreed to resolve the issues through consultations and mediation.

From March to September 2002, the RDA and other concerned government agencies, nongovernment organizations, and members of the Parliament conducted an intensive consultation and mediation program with community representatives and affected property owners to understand and address their concerns (see Chapter 7). As a result, individual agreements were reached with more than 99% of affected households, leaving only 32 households still opposed to the STDP. The government informed ADB that these objectors would oppose any kind of resolution by the government, highlighting the futility of further negotiations with them.

In the above context, a joint initiative of the government and ADB decided that a third party independent of the government, ADB, and the affected households should be engaged to identify mutually agreeable means of resolution with respect to the demands of the 32 "objectors." The Arthacharya Foundation, a local nongovernment organization with a record of impartiality and grassroots experience in arbitration of development issues, was engaged and the RDA's international resettlement specialist assisted the organization. ADB financed the third-party mediation.

The mediation agency reported that 20 out of 32 (63%) objector-households agreed to participate in the mediation process, while 12 did not. Interviews with the 32 objector-households indicated that the

⁴⁸ Loan 1711-SRI: Southern Transport Development Project Inspection Request Submitted by Gama Surakeeme Sanvidanaya (United Society for Protection of Akmeemana), R 77-02, 15 April 2002.

better-off and influential objectors prevented some of them from access to the free flow of project information from the RDA. On the other hand, the defensive attitude of the RDA toward the objectors exacerbated the communication gap between them and the government. The RDA's failure to pay full compensation for acquired land before displacement, in fact, triggered the initial objection to the project.

The mediator identified several conditions under which the 20 affected households would withdraw their objections: (i) early valuation and advance payment of full compensation, (ii) reconsideration of the micro-design aspects of the project, and (iii) establishment of community-contractor liaison communities. The 20 affected households indicated that they wished mediation to focus more on compensation issues than on issues regarding the FT of the expressway. Based on the above findings and results of the consultations between the government and the affected households, the ADB Board's Inspection Committee decided not to proceed with the inspection of the project. It requested the RDA and ADB to start a dialogue between the RDA and the APs, and to reconcile their views on the project.

The Inspection Committee highlighted two best practices that arose from the mediation process. First, mediation is an important tool for overcoming problems of opposition to ADB-financed projects, and strenuous efforts from the government and ADB can help to soften seemingly entrenched positions and establish a dialogue leading to amicable solutions. Second, information dissemination and consultation need to be planned and implemented in such a way that it clears all matters of communication gaps and misinformation, and also ensures free flow of project information into all segments of the affected population.

In December 2004, the CRP received a complaint from the Joint Organization of the Affected Communities on Colombo–Matara Highway, representing 25 complainants living in the project area.⁴⁹ They pointed out that the project planning documents including the resettlement plan submitted to the ADB Board of Directors for approval referred to the CT as the expressway alignment. However, the FT altered the CT by 40% and such alterations to the CT was done without conducting appropriate studies and consultations, following the ADB safeguard policies and procedures adopted by the project. This, they claimed, caused harm to

⁴⁹ Some of them were party to the appeal to the Supreme Court in 2003 against the Court of Appeal's dismissal of their complaint on the same issues. The APs continued to label the Colombo–Matara expressway as the Colombo–Matara highway.

the APs. The harm comprised loss of homes, loss of livelihoods, damage to the environment, degradation to wetlands, dispersion of integrated communities, damage to five Buddhist temples, negative effects of resettlement, and human rights violations. The CRP found the request to be eligible, and the ADB Board of Directors authorized the panel to investigate the complaint.

In 2005, the CRP, having examined the project documents and consulted the government, requesters, other APs, and ADB staff, presented several findings on the safeguard performance of the project. These findings in fact could be considered as a summary of the findings of a comprehensive review of the project at its midpoint:

- ADB Management should have raised issues with the government on the adequacy of the EIAR of 1999 submitted to the CEA for approval and of the ensuing environmental findings reports, prepared for the ADB-financed section of the expressway.
- The RDA did not conduct an adequate review of the environmental issues of the Galle access road to the expressway.
- Some sections of the FT were located at a distance from the CT and could not have been examined by the EIA or the social impact assessment (SIA) conducted for the CT. These alterations to the CT to establish the FT warranted separate environmental and social impact studies.
- Changes in the project's scope had certainly occurred, and therefore their environmental and social impacts of such changes should have been examined and recorded.
- Public information dissemination and project stakeholder participation in the environmental and social impact review process were inadequate. The project's compliance with ADB's involuntary resettlement policy was problematic, as some significant shifts in the expressway's alignment had taken place without adequate public consultation and information disclosure.
- Gender issues were not analyzed sufficiently during the project formulation and, as a result, no gender action plan was prepared, although the project had significant impacts on women.
- The project did not incorporate adequate social dimensions in project planning. This was partly derived from the shifting of the traces several times, and from the absence of environmental and social analysis of the Galle access road.
- The vulnerability of some groups and households should have been identified earlier in order to assist them throughout project

implementation phase to ensure that they are better off at the time the project is completed.

- The weaknesses of the management information system and the rudimentary income restoration program were serious breaches of safeguard compliance that would have challenged any effort to bring the project back to safeguard compliance.
- The project did not establish an independent resettlement monitoring mechanism for the project. Ad hoc resettlement monitoring had failed to grasp key safeguard compliance issues.
- The project benefit monitoring and evaluation system should have been further developed to comply with ADB's involuntary resettlement safeguard policy requirements.

The CRP pointed out several major changes in the project that should have triggered an early safeguard review of the project by ADB Management. This failure contributed to noncompliance of the project with safeguard best practices incorporated into the project's loan agreement.

ADB Management prepared a course of action to address the CRP findings. In its first progress report in October 2005, ADB Management informed the CRP that it had started additional studies on environmental impacts, income restoration program, and gender issues. The Director of the ADB Resident Mission in Colombo stated that "ADB has recognized implementation problems with the STDP and has already taken several steps well ahead of these findings to address the issues highlighted by the panel, in close cooperation with the government." He added that these measures included physical upgrading of resettlement sites, payment of full compensation in a timely and fair manner, revamping of the management information system, conducting additional environmental and gender studies, and income restoration programs. "We [ADB] expect the project to be in full compliance by the end of the year [2006]," he assured. He further said that "at the same time, all parties including the complainants agreed that this is a vital project for the development of Sri Lanka. In spite of some imperfections, it has significantly advanced the way land acquisition and compensation takes place in Sri Lanka through concepts such as payment based on replacement value, bonuses and other facilitation measures for the affected people, review committees, and environmental monitoring plans."⁵⁰

⁵⁰ Memo to the RDA sent by the Country Director, Sri Lanka Resident Mission of ADB, October 2005.

ADB funded the recruitment of the Centre for Poverty Analysis (CEPA) as an external independent resettlement monitoring agency in consultation with the RDA to monitor the progress of the resettlement activities of the project included in the course of action and to prepare regular monitoring reports. The CEPA formulated a comprehensive monitoring methodology and chose a sample of 400 APs to monitor changes in the resettlement program of the project. The monitoring continued from 2006 to 2010. During this period, the CEPA completed several studies on the payment of the replacement cost and its benefits, agricultural land and highland productivity, and the role of the LARC.

In 2010, ADB funded a sample income survey of the project-affected households to ascertain their socioeconomic status 7–8 years after resettlement. The sample size was 100 households, selected to represent different groups of resettlers, such as relocated households and households who remained in their original villages. The survey found that about 80% of affected households had managed to restore their preproject income levels mainly because of the general regional development programs. The expressway was still under construction and impacted adversely on the households because of dust and water pollution and the security threat arising from the presence of a large number of laborers in the vicinity.

By 2011, the RDA completed all the required activities listed in the course of action, except the payment of compensation prior to land acquisition. In 2011, the CRP discontinued its annual review of the progress of safeguard compliance of the project.

Recent Developments beyond the Southern Transport Development Project

The compliance review of the STDP provided a good opportunity for ADB staff and the RDA to become familiar with international resettlement best practices. The awareness among the RDA, the Ministry of Lands, and the CEA about international best practices in land acquisition, compensation, resettlement and rehabilitation, and impact monitoring increased substantially because of their engagement in the compliance review. This created an enabling environment for the development of a broader resettlement regulatory framework that could accommodate many more resettlement best practices within the scope of the Land Acquisition Act (LAA).

By 2007, the entitlements listed in the RIP of 2002 were well incorporated into land acquisition and compensation procedures in Sri Lanka. When additional land acquisition became necessary for the expressway for technical reasons such as unanticipated land fillings and waterlogging, for example, the RDA acquired such land following the National Involuntary Resettlement Policy (NIRP) and the land purchasing procedures introduced in the Ministry of Highways' Circular No. MH/W/1/93 of 8 September 2006. The circular also enabled the RDA in purchasing economically unviable land parcels (less than 375 square meters each) that were left behind as a result of the acquisition of land for the project. This provided an additional compensation to those APs who had such small land parcels, after the acquisition of land for the project.

In July 2007, the Ministry of Land and Land Development submitted to the Cabinet of Ministers the National Policy on Payment of Compensation to establish a uniform system of compensation payment. The Cabinet of Ministers approved the policy in November 2008.⁵¹ It superseded all ad hoc and special compensation packages that existed on the date of the Cabinet approval of the policy. The ministry communicated instructions on the assessment of compensation under the National Policy of Compensation to all land acquiring officers in divisional secretariats.⁵² The Land Acquisition Regulations of 2008 were ratified by the Parliament on 17 March 2009 as the regulations under the LAA, giving effect to the National Policy on Payment of Compensation.⁵³

The LAA Regulations of 2009 have brought far-reaching revisions to land acquisition and resettlement practices. Among them are the manner in which market value of acquired land is calculated; clear directions on acquisition of servitudes; resuscitation of additional compensation packages, which had remained dormant in the LAA over several decades; compensation for land development on encroached lands, compensation for paddy lands to tenants and leaseholders as persons who have "interests" in the land acquired; elaborate payment structure for disturbances and other expenses; and compensation for injurious affection and severance (Fernando 2014).

⁵¹ Memorandum No. CP07/1183/336/011 of 25 July 2007, and Cabinet Memorandum No. 07/2025/336/011-1 of 2 November 2008.

⁵² Ministry of Land and Land Development Circular No. 4/2008 (i) of 6 October 2008.

⁵³ Regulations issued by the Ministry of Land and Land Development under Section 63(2)(f) of the LAA, approved by the Parliament of Sri Lanka on 17 March 2009 and published in the Extraordinary Gazette No. 1596 of 12 April 2009.

The above mentioned policy and regulatory changes are significant. As estimated by a recent ADB technical assistance project,⁵⁴ the congruence between the local regulatory framework for land acquisition, compensation, and resettlement, and international best practices had significantly increased because of the implementation of the NIRP and the enactment of the LAA Regulations of 2009. The estimated level of congruence was 85%. The experience in planning and implementing the STDP has significantly contributed to these safeguard policy reforms in land acquisition and involuntary resettlement in Sri Lanka. The approval of the National Policy for Payment of Compensation of 2008, the LAA Regulations of 2009, and other policy changes pertaining to land acquisition and compensation payment were not initiated under the STDP by the RDA. They were formulated by the Ministry of Land and Land Development. But such policies and regulations would not have been introduced to the resettlement regulatory framework without the resettlement planning and implementing experience gained from the STDP.

As recently as 2013, the Parliament approved a new LAA regulation to institutionalize some of the best practices applied in the STDP in project planning and implementation. The Land Acquisition Regulations and the Payment of Compensation in Sri Lanka – Regulations of the LAA under Section 63(2)(e) for compensation payments listed 18 projects where the LARCs would determine the replacement value of the acquired land and the resettlement assistance packages.⁵⁵ The regulations outlined the functions of the LARC and the procedures for determining the replacement values of acquired property and for awarding resettlement assistance. It also made provisions to establish a Super Land Acquisition and Resettlement Committee (Super LARC) as the appellate agency at the ministry level and spelled out its functions. This institutional arrangement is very similar to that of the STDP, and it enables the APs to attend the LARC meetings to negotiate their compensation and resettlement packages.

The 2013 regulations authorize the Chief Valuer to assess statutory compensation under section 17 of the LAA, and the LARC to assess the difference between the statutory compensation and the replacement cost of land acquired, and pay the difference as an *ex gratia* payment. The regulations also authorize the LARC to pay compensation for residual land after acquisition, if it has no economic value. Encroachers and squatters

⁵⁴ Strengthening and Use of Country Safeguard Systems – Sri Lanka: Supporting and Strengthening National Level Capacity for Country Involuntary Resettlement Safeguard Subproject, 2012–2013 (TA 7566-REG).

⁵⁵ Gazette Notification No. 1837/47 of 22 November 2013.

are recognized as persons who have interest in acquired property and are paid for land improvements, crops, and trees. Tenants, lessees, vulnerable households, subfamilies, and wage workers at business establishments are also considered eligible candidates for compensation.

Conclusion

The STDP was planned and implemented when Sri Lanka's environmental and resettlement regulatory frameworks were undergoing structural changes. The government found that large-scale development projects, especially infrastructure projects, cannot be executed without external financial assistance. Most of external financial assistance came in the form of loans and technical assistance from multilateral donor agencies such as ADB and the World Bank.

When the STDP was planned, safeguard policy frameworks of international development institutions such as ADB and the World Bank were also going through major revisions. Complex projects such as the STDP provided testing grounds for such safeguard policy frameworks. Thus, while the STDP was guided by local and international safeguard best practices, it too contributed to the development of international best practices in land acquisition and resettlement. In this regard, innovative institutions such as the LARCs and the recognition of nontitled land users as persons with entitlements for compensation and resettlement assistance were significant contributions from the STDP.

The judiciary played a key role in the constructive interpretation of some core ideas such as adequate compensation, consultation, and project information disclosure, paying full compensation prior to displacement, grievance redress mechanism through mediation, and socioeconomic and environmental impact assessments. Such interpretations and the elaboration of the law pertaining to the APs' right to know, right to be heard, and the right to be informed have facilitated the mainstreaming of such key legal concepts in the country safeguard system. The landmark judgment on Eppawala phosphate mining, for the first time in Sri Lanka, applied international environmental law and international treaties as applicable soft laws. At the same time, one could notice in the late 1990s a resurgence of judicial activism regarding peoples' sovereignty. Legal doctrines such as public trust, peoples' sovereignty, and the right to know and to be informed were discussed frequently in superior court judgments, and they became popular slogans among urban and rural communities that were affected

by infrastructure development projects. In this regard, the frequent court decisions regarding the environmental and land acquisition issues associated with the STDP played an important role.

The STDP introduced, for the first time in Sri Lanka, third-party mediation and facilitation in resolving land acquisition and resettlement issues and disputes. The private interests of less than 1% of the APs, however, thwarted the value of such mediation and facilitation and delayed the implementation of the project, causing cost escalation and unhappiness among the APs. Vested interests and ethnic biases too played a role in derailing the project on several occasions as revealed in the report to the Prime Minister regarding land acquisition in the Akmeemana Division.

One key shift in the application of laws and regulations to development is that their interpretation has moved from a state-centric approach to a people-focused approach. The approval of the NIRP, the National Compensation Policy of 2008, the LAA Regulations of 2009, and the Regulations of the LAA under section 63(2)(e) for compensation payments are good examples. These policies and regulations focus on the APs' rights and entitlements, and on how to minimize adverse impacts of land acquisition and resettlement on them. Such policies and regulations also paid attention to how to restore and improve income sources and livelihoods of the APs, especially of the affected poor and vulnerable households. Innovative institutional arrangements such as the LARC and grievance redress committees, vigorous consultation methodologies such as mediation, and dedicated income restoration and improvement programs introduced through the STDP were trailblazers that guided subsequent improvements to land acquisition and resettlement laws and regulations in Sri Lanka.

CHAPTER 3

Best Practices in Resettlement Planning and Implementation

This chapter discusses the resettlement best practices applied in resettlement planning and implementation phases of the Southern Transport Development Project (STDP). Resettlement planning and the formulation of the final resettlement implementation plan (RIP) took about 3 years (1999–2002), and its implementation, 7 years (2002–2008).

Part 1: Best Practices in Resettlement Planning

As discussed in Chapter 1, the formulation of the RIP was a complex task to which ADB, the Road Development Authority (RDA), the Cabinet of Ministers, and different ministries and departments had contributed. It was the first RIP in Sri Lanka that attempted to meet local regulatory requirements and international best practices in land acquisition, resettlement, and rehabilitation. In this section, the best practices applied during resettlement planning are discussed.

Learn from Previous Projects

The first resettlement planning document of the project—the resettlement plan (RP) of 1999—reviewed local land acquisition and resettlement policies, laws, regulations, procedures, and special compensation packages approved by the RDA in 1998 for the Road Network Improvement Project. The compensation package included compensation for the acquired land at its market value and for the structures at replacement cost, resettlement allowances for all displaced including squatters and encroachers, an allowance for temporary accommodation after physical displacement until resettlement sites were ready to be occupied, and residential plots for squatters and encroachers with relocation support and income restoration assistance at resettlement sites. With minor revisions, this compensation package was adopted for the STDP in the RP (Government

of Sri Lanka 1999d). In adopting the compensation package of the Road Network Development Project, the RDA identified several gaps between the Sri Lankan regulatory framework for land acquisition and resettlement and the involuntary resettlement safeguard policy of ADB. Several best practices were chosen and included in the RP of the STDP to bridge the gaps.

Conduct a Comprehensive Social Impact Assessment

The RP of the STDP dealt with potential significant impacts of physical displacement and income and livelihood losses identified by the social impact assessment conducted for the Combined Trace (CT) of the expressway. The RP using this data and information stated that the CT required further corrections once the 3–4 kilometer (km) wide corridor of the alignment was re-demarcated to minimize adverse resettlement impacts on communities and individuals. It also proposed to conduct a detailed measurement survey to determine the number of affected persons (APs), the extent of land to be acquired, relocation requirements, and the costs of land acquisition and resettlement (Government of Sri Lanka 1999d). These corrections and the collection of additional data and information helped the RDA to identify the APs and plan appropriate mitigation measures. As a result, when the project was approved by the ADB Board of Directors in 1999, the RP of the project was in compliance with the local regulatory framework and ADB's involuntary resettlement safeguard policy. The Compliance Review Panel (CRP) supported this view (ADB 2005).

Prepare an Involuntary Resettlement Framework

There was neither a national involuntary resettlement policy nor a resettlement law at the time of the project's approval in 1999. The land acquisition and compensation procedures under the Land Acquisition Act (LAA) and its amendments were inadequate to deal with the land acquisition, compensation, resettlement, and rehabilitation requirements of the STDP. As discussed in Chapter 2, the government realized that the LAA could not deal with the broader social and economic aspects of land acquisition and resettlement such as income restoration and improvement, relocation assistance, consultation, special assistance to vulnerable groups, and the development of resettlement sites. It also found

that the National Road Policy of the Ministry of Transport and Highways could not adequately address the land acquisition and resettlement issues of large-scale infrastructure projects (ADB 2000b). Having tried in several projects, the government also found that the project-specific ad hoc compensation packages could not deal with the land and resettlement-related social issues. It realized that a national involuntary resettlement policy (NIRP) would help standardize such project-specific initiatives. A robust, comprehensive NIRP was considered by the government and ADB as the best approach to deal with the land and resettlement-related issues of the STDP, in particular, and of infrastructure projects, in general.

Several case studies were conducted between 2000 and 2001 to identify the weaknesses and gaps in the land acquisition and resettlement regulatory framework in order to address them through a NIRP.⁵⁶ In formulating the NIRP, the following key issues that needed specific policy prescriptions in the NIRP were identified (Table 3.1).

Table 3.1: Key Land Acquisition and Resettlement Issues and Policy Prescriptions

Issue	Policy Prescriptions
National-level resettlement policy was not considered as a priority in national policy planning exercises.	Review land acquisition, compensation, relocation policies, laws, and regulations to identify the gaps in relation to international LAR best practices. Formulation of the NIRP should be considered as a national policy planning priority in order to bring local regulatory framework for LAR to international standards.
Resettlement impacts were handled on a project basis in an ad hoc manner.	Develop a common resettlement policy framework based on international best practices in LAR.

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⁵⁶ Project consultants conducted eight case studies in development projects that had significant resettlement impacts in order to understand the nature and status of resettlement activities in infrastructure projects. They prepared discussion papers on thematic topics of resettlement planning process, institutional capacity, the legislative and regulatory background, and gender issues.

Table 3.1 *continued*

Issue	Policy Prescriptions
Compensation calculation was largely based on the LAA and its regulations.	Amendments to the LAA or the enactment of a new land and resettlement law or at least a policy were required to pay the replacement cost of acquired property, and to provide resettlement assistance to APs.
Nontitled APs were considered ineligible to receive compensation and resettlement assistance.	Recognize nontitled APs' interests in land and include them among APs with entitlements. Provide them with a special compensation and resettlement package.
There are no specific guidelines on livelihood restoration and improvement of the APs.	A national-level resettlement policy or amendments to the LAA are needed to address the livelihood restoration and improvement issues of the APs.
There is no well-defined mechanism to resolve APs' grievances.	The LAA should be revised to include a robust grievance redress mechanism.
There are no established procedures for stakeholder consultation and participation in project activities.	As a critical aspect of resettlement planning, project-specific stakeholder consultation and participation in all projects need to be streamlined.
It is necessary to expedite land acquisition and compensation payment procedures to minimize impoverishment among the APs.	Amend the LAA to correct this weakness.
Poor identification of different stakeholders' responsibilities in LAR and coordination adversely affects project planning and implementation.	Review institutional arrangements and establish a separate resettlement division in a relevant ministry. Share responsibilities among relevant institutions in a consistent manner.
There is a need to ensure women's participation and identification of gender-related rights in LAR.	RIPs should highlight gender rights and women's participation in resettlement programs.

AP = affected person, LAA = land Acquisition Act, LAR = land acquisition and resettlement, NIRP = National Involuntary Resettlement Policy, RIP = resettlement implementation plan.

Source: The National Policy on Involuntary Resettlement Project study (TA 3246-SRI) conducted by Acres International, and Infotechs, September 2001.

The NIRP preparation between 1999 and 2001 provided a good opportunity for the RDA to learn key international best practices in land acquisition and resettlement. The approval of the policy in 2001 facilitated the final formulation of the RIP of the STDP in 2002. As the policy covered most of the best practices in involuntary resettlement, by adopting the policy, the RIP met ADB's involuntary resettlement policy requirements.

Update the Resettlement Plan after Project Approval

The STDP went through several RPs.⁵⁷ The change of the alignment of the expressway from the CT to the FT generated problems regarding basic project data and socioeconomic information that were available for resettlement planning. Wilbur Smith Associates⁵⁸ had in their terms of reference the formulation of an RIP for the FT based on a fresh socioeconomic survey and on the RP of 1999. They conducted a sample socioeconomic survey of 30% of the affected households in the ADB-funded section of the expressway. They also used the information from the completed inventory of losses (IOL) in a 5 km alignment section.⁵⁹ Based on these limited data and information, they prepared an RIP for the ADB-funded section of the expressway. This did not meet the requirements stipulated in the report and recommendation of the President of the project in December 1999: “a resettlement implementation plan for the ADB financed portion of the expressway, to include a complete census of affected people and lost assets, and resettlement and relocation arrangements for the affected people, will be submitted by RDA to the Bank for review and acceptance. A similar procedure will apply to the JBIC-financed portion. Loan effectiveness was contingent upon the Bank's acceptance of the RIP” (ADB 1999b).

In the Japan Bank for International Cooperation (JBIC)-funded section of the expressway, the preparation of an RIP was delayed because of delays in IOL surveys resulting from poor coordination between the RDA

⁵⁷ See Chapter 1.

⁵⁸ Detailed engineering design consultants of the project.

⁵⁹ The IOL survey conducted in a 5 km section of the expressway alignment was the first complete IOL survey conducted on a road alignment in Sri Lanka. The method of preparing a full inventory of all lost assets was a major step in resettlement planning in Sri Lanka. Before that, the normal procedure for identifying and quantifying losses was the “condition report” prepared for each acquired property during property valuation by a valuation officer.

and Grama Niladharis (village-level administrative officers). Moreover, the preparation of advanced tracing drawing of the expressway alignment took more time than expected. However, the Valuation Department and the RDA held several discussions on how to (i) identify entitlements of each category of APs; and (ii) plan land acquisition, resettlement, and income and livelihood restoration; and (iii) improve the paying procedures of the replacement cost for acquired property. Despite such assistance, IOL surveys, data processing, and consultations with the APs could not be completed as planned in the JBIC-funded section of the expressway.

The RDA, ADB, and JBIC reviewed the progress of resettlement planning and agreed that one RIP for both sections of the expressway would be the best option for resettlement implementation and monitoring. After discussions with the Survey Department, Valuation Department, and ADB, the RDA decided that one entitlement matrix with identical resettlement implementation procedures for the entire alignment of the expressway would facilitate project activities and satisfy the APs regarding their entitlement packages.

The preparation of the final RIP for the entire length of 128 km of the expressway and the Galle Port Access Road (4.8 km) became a challenging task for the RDA because ADB insisted that the RDA should (i) complete IOL surveys for the entire alignment of the expressway including the disputed areas, (ii) consult all APs, (iii) identify resettlement sites, and (iv) develop income restoration and improvement strategy before finalizing the RIP. The RDA submitted a consolidated RIP to ADB in February 2001. ADB did not accept it and advised the RDA to revise it. The RDA submitted a revised RIP in June 2001, and again ADB identified specific gaps and weaknesses of the RIP. Thereafter, ADB supported the formulation of the final RIP.

The RDA submitted the final RIP to ADB in October 2002. ADB's guidance on the RIP preparation and the RDA's experience in preparing RPs for the project helped the inclusion of a number of innovative resettlement practices such as the payment of the replacement cost for the land and structures prior to displacement, and the provision of an attractive compensation package for non-titleholders that included the allocation of free residential plots at resettlement sites and post-resettlement assistance such as income restoration and improvement of income sources and livelihoods.

An addendum to the RIP was approved in February 2007. The addendum, based on new project information, addressed the impacts of

additional land acquisition. The acquisition of about 19 hectares required the removal of several houses and other structures to deal with waterlogging, rock blasting, and unanticipated earth slips, and to build underpasses to facilitate APs' movement, which were not fully considered in the 2002 RIP.

A progress review assessment of the RIP implementation was conducted in October 2008 by the project management unit (PMU) to ascertain whether the project had achieved its resettlement outputs regarding the payment of cash compensation prior to displacement, resettlement of displaced households, and restoration and improvement of income sources and livelihoods of APs. The assessment concluded that the implementation of the RIP and its updates contributed to improving resettlement outcomes such as reducing impoverishment risks and restoration of incomes and livelihoods. It also pointed out that further improvements were necessary in resettlement planning, particularly timely conduct of social impact studies (PMU 2008).

One Resettlement Implementation Plan for the Project

Although the ADB-funded section and the JBIC-funded section of the expressway operated as two separate projects with their own detailed design consultants and different administrative frameworks, the government, ADB, and JBIC agreed that all policy matters relating to the RIP implementation were applicable to both sections of the expressway. The three parties also agreed to hire one group of management consultants for the entire project. An international consultant was also hired to assist the PMU in monitoring implementation of the RIP. These arrangements facilitated the application of the RIP to resettlement issues wherever they arose, and also promoted consolidated planning and implementation of land acquisition, resettlement, and rehabilitation programs.

When some APs complained regarding ADB's staff performance regarding the RIP implementation, the CRP reviewed the land acquisition and resettlement programs in both the ADB-funded and the JBIC-funded sections of the expressway. The justification for this expanded scope of the CRP sprang from the fact that the RDA was the project executing agency for both sections of the expressway, and from the agreement among the RDA, ADB, and JBIC that the RIP applies equally in both sections of the expressway.

Long-Term Review and Assistance in Implementing the Resettlement Implementation Plan

Donor assistance is not limited to financing a project. It also encompasses continuous assistance to review and update RIP of the project, and building institutional capacity of the borrower in the land acquisition and resettlement process. This best practice of continuous support and directions from ADB helped the RDA to improve its own resettlement capabilities in formulating RIPs, resettlement monitoring reports, and evaluation studies. Table 3.2 outlines the activities carried out by the RDA with assistance from ADB in the formulation, revision, and update of resettlement planning instruments.

Table 3.2: Assistance from ADB to Review and Update Resettlement Planning

Date	ADB's Comments and Updates Required	Actions Completed by Road Development Authority
January 2001	More data collection and analysis in several road sections after the completion of IOL surveys and a revised resettlement budget for the ADB-funded section of the expressway.	Wilbur Smith Associates prepared an addendum to the RIP in November 2000 for the ADB-funded section of the expressway with a budget and a timeline.
February 2001	The RDA submitted an RIP to ADB for the entire length of the expressway for review. ADB found gaps in the data analysis.	Gaps were identified such as incomplete IOL survey data and incomplete consultations with the APs. IOL data collection formats were reviewed and improved.
April 2001	ADB commented on the RIP and requested more rigorous analysis of the IOL data.	RDA complied with the requirement.
May 2001	ADB project review mission requested an RIP update.	Further improvements were made to the draft RIP.
June 2001	The RIP was revised and submitted to ADB for review. ADB requested more analysis of the IOL data.	Additional data on IOL surveys were analyzed and incorporated into the RIP.

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Table 3.2 *continued*

Date	ADB's Comments and Updates Required	Actions Completed by Road Development Authority
July 2001	ADB sent a special project administration mission to review the progress of the RIP updating.	ADB conducted consultations with APs in disputed areas and improved the RIP's database.
September 2001	ADB sent a special project administration mission for further support to finalize RIP.	The mission filled in data gaps in the RIP and collected additional project data for analysis.
November 2001	ADB sent a consultation mission to review resettlement issues discussed in the RIP.	The mission prepared the outline of the income restoration program of RIP and discussed with ADB.
September 2001	ADB supported the Cabinet approval of the entitlement matrix of the RIP and the establishment of LARC.	The Cabinet approved the memorandum. Planning of LARC and its operations.
December 2001	ADB's consultation mission further reviewed the RIP.	Further improvement was made to the draft final RIP.
June 2002	ADB requested an addendum to the RIP for review.	An addendum to the RIP was submitted.
June 2002	ADB sent a consultation mission to review and provide comments on the final draft of the RIP.	The mission improved the presentation of the draft RIP.
October 2002	ADB requested a consolidated RIP for both the ADB-funded and JBIC-funded sections of the expressway.	Final submission of the RIP.
29 October 2002	ADB approved the final RIP.	

ADB = Asian Development Bank, AP = affected person, IOL = inventory of losses, JBIC = Japan Bank for International Cooperation, LARC = Land Acquisition and Resettlement Committee, RDA = Road Development Authority, RIP = resettlement implementation plan.

Sources: ADB loan review mission reports, and the RIP of October 2002.

As Table 3.2 shows, ADB fielded many loan review missions and project consultation missions to help the PMU expedite the preparation of the RIP and to resolve some disputes that the RDA encountered with some APs. The process of the RIP updating also shows the commitment of ADB and the RDA to incorporate safeguard best practices into the RIP. These interventions and recommendations from ADB assisted the RDA to develop a comprehensive RIP to address key issues in resettlement planning of a complex and large-scale infrastructure project. This shows the need for periodic review of RIPs to update them to suit the ground realities of the project. This was one of the best practices that the STDP established in resettlement planning.

Project-Specific Compensation Package

The Minister of Highways submitted a Cabinet memorandum in April 2001 titled “Payment of Compensation to the Persons Affected by Acquisition of Property for the Construction of Southern Transport Development Project.” The Cabinet requested the Minister to appoint a committee comprising the Secretary of the Ministry of Highways, the Attorney General, the Secretary of the Ministry of Land and Land Development, and the Secretary of the Ministry of Minor Export Crops to further review and ascertain whether the proposed compensation procedures in the memorandum could be accommodated within the domestic legal systems.

The committee reported to the Cabinet of Ministers that the procedures outlined in the memorandum would help accommodate the innovative land acquisition and resettlement best practices in the local regulatory framework. The Cabinet accepted the findings of the committee and approved the memorandum in September 2001. The approval of the memorandum was a remarkable achievement of the STDP, as it introduced a more comprehensive project-specific land acquisition and resettlement, without amending the legal provisions of the LAA to pay the replacement cost of acquired assets. The memorandum stated to “confine statutory compensation payable under the LAA to the statutory limits as determined by the Chief Valuer and pay all other payments in the entitlement matrix (attached to the memorandum) as decided by the LARCs” (Government of Sri Lanka 2001c:1). These fundamental improvements of the LAR procedures were the beginning of a new institutional arrangement to determine compensation for acquired assets at their replacement cost, and to provide resettlement assistance for APs through the novel institution of the Land Acquisition and Resettlement Committee (LARC), where APs negotiate their entitlements and resolve their grievances with the government and project officials.

Combined Cash-for-Land and Land-for-Land Compensation

Generally, under the LAA and its amendments, statutory compensation was paid in cash for the acquired land disregarding the economic consequences of the displacement of an affected household. The LAA and its amendments did not provide for the relocation of physically displaced households with resettlement assistance. The LAA provided only for giving a piece of land in lieu of the land acquired, if alternative land is available.

The project provided housing plots to the physically displaced households for a nominal fee and free housing plots for the nontitled households and vulnerable households at the resettlement sites. Social infrastructure services such as water, electricity, and access roads were provided in resettlement sites, and the quality of such facilities was much higher compared with the preproject situation in villages. At resettlement sites, each squatter household was given 10–20 perches of land and assistance to build houses (Government of Sri Lanka 2003a). It also provided commercial land plots to owners of business establishments that were physically displaced. These procedures were important nonmonetary elements of the STDP compensation package. The project combined the land-for-land and cash-for-land modalities of compensation ensuring that APs received shelter and assistance to reestablish their dwellings and income sources regardless of their landownership status at the time of land acquisition.

Engagement of Affected Persons in Resettlement Planning

The establishment of a committee called the Divisional Body for each road section to speed up the payment of replacement cost of acquired assets was first proposed in the Road Network Improvement Project in 1998. This committee consisted of the land acquiring officer, RDA engineer, valuation officer, and representative of the Superintendent of Surveys. The key role of the committee was to conduct consultations with the APs and to facilitate land acquisition, assessment of compensation, and resettlement implementation. A local resettlement committee (LRC) was the counterpart of the committee. This committee system was adopted by the STDP in July 1999. However, it revamped the LRC by authorizing the project resettlement officers to select representatives from community-based organizations (Government of Sri Lanka 1999c).

The RIP of November 2000 proposed the establishment of a committee called the Land Acquisition and Resettlement Committee (LARC) at the divisional level comprising the divisional secretary, the valuation officer, the land surveyor, the RDA technical officer, the Grama Niladharis, Resettlement Assistants (RAs), and representatives of the APs (Government of Sri Lanka 2000b). It facilitated compensation payment procedures under the LAA and the provision of project-specific compensation packages, approved by the Cabinet. Discussions and negotiations at LARC meetings between the government officials and the APs were cordial and helped achieve the objectives of fair compensation and information disclosure. Table 3.3 shows how the LARC-level negotiations and discussions increased the statutory compensation by at least 27%.

Table 3.3: Enhanced Compensation Payment by the Land Acquisition and Resettlement Committee

Category of Loss	Payment under Section 17 of the LAA (SLRs million)	LARC Assistance (SLRs million)	Total Amount of Compensation (SLRs million)	Percentage Increase of Total Compensation
Houses	537	515	1,052	49
Home gardens	509	192	701	27
Commercial structures	42	28	70	40
Commercial land	69	83	152	55

LAA = Land Acquisition Act, LARC = Land Acquisition and Resettlement Committee, SLRs = Sri Lanka rupees.

Source: Project Management Unit (2007).

On average, the LARCs increased the compensation by 55% for commercial land, 40% for commercial structures, 49% for houses, and 27% for homesteads acquired. The cost of reconstruction of houses went up as the demand for labor and construction materials increased because of the project. Therefore, the LARCs awarded higher compensation for houses, when necessary. Any AP who disagreed with the LARC compensation award could appeal to the Super Land Acquisition and Resettlement Committee (Super LARC), established by the Cabinet of Ministers in April 2003. The Super LARC was established at the project level and its members were

the Secretary of the Ministry of Highways, the Chief Valuer, the Surveyor General, the Project Director of the PMU, and an AP representative.

The Centre for Poverty Analysis (CEPA), as an external monitor of the STDP, reported on the performance of the LARC system that “among the range of innovative means adopted by the STDP to reduce disruption to people’s lives, the most significant has been the LARC to determine compensation. Calculating compensation at ‘replacement value’ that took it beyond market value and providing allowances for shifting and rebuilding, as well as compensating for livelihood losses was another key principle of the RIP. It also recognized payments for those without titles as well as support to restart livelihoods and these payments were decided by LARC” (Jayawardena 2011:4).

The CRP noted in May 2005 that “this project [STDP] ushered a new approach for resettlement in Sri Lanka with more generous compensation, described as ‘replacement cost of assets’ instead of the depreciated value for structures and was then combined with frequent generosity of LARCs and appeals were considered. This has resulted in much large awards than might have ever been seen before” (ADB 2005:31). The new compensation package often exceeded the open market value of the property. The positive impact of the LARC was its fairness and willingness to assist the poor, landless persons, and vulnerable households. The LARC included them in the compensation payment process, and, as a result, they too received land plots at resettlement sites as well as resettlement assistance.

Each LARC informed the APs in its divisional area to attend its meetings individually to negotiate their resettlement entitlements. Individual sessions at the LARC allowed them to negotiate freely their entitlements. The RAs and Grama Niladharis assisted them in finding documents before the LARC met them. This was the key strength of the LARC mechanism as it provided an equal opportunity to each AP to participate in the determination of resettlement entitlements (CEPA 2008b).

Part 2: Best Practices in Resettlement Implementation

Implementation of an RIP is a challenging task. It needs effective institutional arrangements with adequate staff and a budget. It is difficult for an executing agency to synchronize civil works programs with land acquisition, relocation, and resettlement in a complex project such as the STDP. However, the STDP demonstrated that some best practices could

be inculcated in project implementation even without having adequate institutional arrangements and a satisfactory budget. This section of the chapter discusses some of the best practices that were applied in implementing the STDP.

Expedited Land Acquisition

The land acquisition and compensation process can take 5 years when there are objections from those who have interests in land, landownership disputes and court cases, and disagreements over the amount of compensation offered. The RIP identified several difficulties in the land acquisition procedures: (i) the APs often cannot find required documents such as land deeds for compensation negotiations with the land acquiring officer, (ii) coordination difficulties among several agencies in establishing a LARC and difficulties in getting the LARC members to attend meetings on a regular basis, and (iii) difficulties the APs encounter in meeting the LARC officials to negotiate their compensation packages. When the key LARC members fail to attend the meeting, the hearing for the day is postponed, causing hardship on the APs. Because of these recurrent difficulties and problems, it is very difficult to complete the entire process of acquisition and compensation payment in 18 weeks.

The RDA attempted various methods to meet the 18-week time frame for land acquisition: First, acquire the land simultaneously in all sections of the alignment. Second, acquire land under section 38(a) of the LAA. The Cabinet of Ministers approved the application of section 38(a) to land acquisition of the STDP, because it wanted to reduce the total period of acquisition to 18 weeks. The use of section 38(a) of the LAA soon after the issuance of the section 2 notice under the LAA effectively blocked landowners and users from contesting the decision. Soon after the notice under section 2 of the LAA was issued, the land acquiring officer could move to property valuation under section 7 of the LAA, and update the value of the property on the day that section 7 gazette notifications were issued. Third, improve coordination among the Ministry of Lands, divisional secretariats, and the Government Printer. The Ministry of Lands helped the divisional secretariats resolve land title issues and find suitable land for resettlement sites. The Government Printer expedited the printing of gazette notifications. In addition, resettlement officers and RAs helped the APs in finding land titles and other documents, and assisted APs at the LARC meetings in negotiating resettlement allowances and assistance.

Accelerated Land Acquisition

As outlined in Chapter 2, the RDA applied the “urgency” clause 38(a) of the LAA to take immediate possession of the land with the Cabinet of Ministers’ approval. The RDA accepted out that the acquisition of land using the section 38(a) of the LAA could deprive the APs’ rights to be heard and to be informed. In the case of the STDP that risk was not there as opportunities were given to all APs to state their objections in several cycles of selection of the expressway alignment and also during initial public hearings. It pointed out that the implementation schedule of the RIP needs to be synchronized with the project schedule for civil works, including the award of contracts, commencement date of work, and handing over the cleared land alignment area of road sections to the contractor. The best practice in this regard in the RIP is for all key resettlement activities such as land acquisition, compensation payment, and relocation of people to the new resettlement sites to be completed well before any construction work started. Another best practice is to hand over the acquired lands in segments or phases to the contractor, so that the pressure of compensation and resettlement activities could be reduced and completed in phases. In case of the first best practice, the STDP followed the RIP, and in case of the second, it attempted to hand over segments of cleared land to the contractor.

Although the government took immediate possession of the land, it did not remove people from the acquired land within 48 hours as the section 38(a) demanded. Instead, it was used only to block APs’ right to object to the government decision to acquire their land. Once this was done, the government followed all other steps of the normal acquisition procedures such as land surveys (section 5), valuation (section 7), determining ownership (sections 9 and 10), and awarding compensation (section 17). The LARC meetings provided sufficient room for consultation and negotiations. Moreover, the government paid the replacement cost as compensation for land acquired, which was much higher than the statutory compensation paid under section 17 of the LAA. At each LARC meeting, the divisional secretary, the chair of the LARC, discussed with the APs the dates for removal of structures and land clearance and handing over the land to the project contractor. This shows that the project adhered to all the requirements in the RIP and the Loan Agreement, except for giving the opportunity for submission of objections for inquiries under the section 4 of the LAA.

The case study in Box 3.1 reveals what best practices were applied in acquiring land in the contested areas of the expressway under the section 38(a) of LAA.

Box 3.1: Land Acquisition under Section 38(a) in the Contested Area of the ADB-Funded Section of the Expressway

The area contested by the affected persons (APs) was about 9 hectares of land in 86 lots in the Asian Development Bank-funded section of the expressway. It covered five Grama Niladhari divisions. Land acquisition affected 36 houses with 75 persons who lost their agricultural lands.

The notices under section 2 of the Land Acquisition Act (LAA) were issued in the contested area in January 2001 based on the land surveys conducted during the engineering designs. The Survey Department carried out land surveys to prepare advanced tracings with police protection due to strong objections from some APs. The advanced tracings were prepared in September 2002. The section 38(a) gazette notification was issued in June 2003, after the Court of Appeal dismissed the complainants' request to change the Final Tracing to the Original RDA Trade.

A group of about 25 APs continued to object and resisted land surveys even after the Supreme Court judgment in January 2004. The Survey Department made written complaints to police stations, divisional secretaries, and its regional offices that some APs did not allow its officers to enter their lands to survey the land.

Following the Supreme Court judgment, the Road Development Authority (RDA), through the Ministry of Highways, instructed the Survey Department to complete the remaining survey works and submit preliminary survey plans required for issuing sections 5 and 7 notices under the LAA and for the valuation of properties. In November 2004, the Ministry of Highways decided to acquire lands and avoid further delays in handing over the road section to the contractor. The ministry published two special notices in local newspapers on 14 November 2004 and 6 January 2005 requesting the APs to "sign a consent paper indicating their willingness to vacate their premises and sign the vouchers for payment of compensation and hand over the possession of the acquired property and accept compensation payments..." There were no written responses from the APs declaring their willingness to cooperate with the RDA and divisional secretaries.

At the same time, two groups of APs filed two applications in the Court of Appeal seeking expeditious implementation of the land acquisition for the construction of the expressway. The Court of Appeal heard the two appeals together and ordered the RDA in December 2004 to "expeditiously take all steps available in the law" to take possession of the required land for the expressway. The Ministry of Highways also wrote on 2 February 2005 to the chair of the committee appointed by the Prime Minister to inquire

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Box 3.1 *continued*

into grievances of the APs requesting to “conclude the proceedings and submit the final report before 15 February 2005.” The divisional secretary was asked to prepare a special program to complete the remaining survey works for land acquisition without delays.

The resettlement staff of the RDA, in consultation with the divisional secretary, the Survey Department, and the Valuation Department, made special arrangements to carry out land surveys and property valuation in January 2005 in the contested areas. A team of four police officers was present during the surveys, and APs did not object to land surveys. From January to June 2005, preliminary survey plans were prepared. In August 2005, the section 7 of the LAA Gazette notifications were published, title inquiries were held under section 9, ownership determination was made under section 10, and valuation reports prepared. Finally, the APs were compensated according to section 17 of the LAA and the Land Acquisition and Resettlement Committee entitlements. Thus, in the contested areas, it took more than 18 months to prepare preliminary plans after gazetting section 38(a) of the LAA in June 2003.

Source: Gamaathige and Somarathne (2006).

Resettlement Assistants as Catalysts

The RDA introduced two new institutional arrangements during the implementation of the RIP: (i) recruitment of 36 graduates as resettlement assistants (RAs) to improve communication between the project staff and the APs, and (ii) the establishment of four regional offices each of which with a resettlement officer (RO) as the head of the office with several RAs and other staff to help the officer in day-to-day resettlement operations.⁶⁰

The ROs and RAs played a valuable role in communicating information to the APs regarding land acquisition, compensation, and resettlement. They assisted different agencies involved in land acquisition such as the Ministry of Lands, divisional secretariats, the Valuation Department,

⁶⁰ The STDP recruited four consultants to the PMU to coordinate resettlement implementation activities between the Head Office and four regional offices located at Kurundugahahatakme, Galle, Bandaragama, and Dodangoda. They reported to the Deputy Project Director, and were responsible for the land acquisition and resettlement activities. The regional field office staff included an RO, 8–10 RAs, an engineer, a technical officer, and the support staff. The area of operation of each regional office was about 30 kilometers of the alignment of the expressway, which went through 6–8 divisional secretariat divisions. RAs were recruited on a contract basis.

the Survey Department, the supervision consultants, and the project contractor in resolving land acquisition and resettlement issues.

The international resettlement consultant of the management consultants found in 2003 that the APs were satisfied with the services provided by the RO and RAs. The APs learned about their entitlements from the RAs. They received their compensation packages on time largely because of the efforts of the RAs. The RAs held frequent discussions with the APs on compensation, the LARC, and relocation options, making activities transparent and efficient. Within a short time, the RAs gained significant insights into land acquisition, compensation, and resettlement programs. They displayed an intimate knowledge of the APs and had good information on each affected household.

Capacity Building during Project Implementation

The technical assistance (TA) on capacity building in resettlement implementation focused on the training of relevant government officials in resettlement best practices.⁶¹ The key outputs of the TA were four manuals on resettlement implementation, training of 130 officials from the ministries and other institutions engaged in resettlement implementation,⁶² the establishment of an environmental and social division at the Ministry of Lands, drafting of the amendments to the LAA and the National Environmental Act, preparation of proposals for strengthening key institutions of the Ministry of Lands and the Central Environmental Authority, and the initiation of a program to increase public awareness about the NIRP and its implementation.

ADB monitored the progress of the amendments to the LAA initiated by the Ministry of Lands. It supported the Ministry of Lands' intention to include the principle of paying compensation based on replacement cost, procedures to expedite land acquisition, direct purchase of land under special conditions, and establishment of a legal framework for the implementation of RIPs. ADB offered TA to complete these important legal reforms as the government could not provide sufficient resources

⁶¹ ADB provided a TA for "Capacity Building for the National Policy on Involuntary Resettlement" (TA 3792-SRI) to RDA. Six local consultants were recruited for institutional development, training, legal amendments, valuation, administration, and environmental law. The TA was conducted from March 2002 to June 2003.

⁶² Each workshop lasted 5 days and covered land acquisition, compensation, and resettlement aspects of development projects comprehensively.

and institutional arrangements for such activities because of the ravaging civil war. According to the resettlement budget in the RIP (2002), the total cost of land acquisition and resettlement of the STDP was estimated at SLRs2,861 million, to be borne by the government. When the expressway was completed in 2013, the total cost of resettlement was SLRs4,988 million (ADB 2014:66). This was a 74% increase over the original budget. Given the financial shortages at the national level for development owing to the escalated and prolonged civil war, the Treasury could not even provide the estimated original amount on time to pay the compensation.

ADB, in consultation with the RDA, hired the CEPA as the independent external monitor of resettlement activities of the STDP in 2006. Its monitoring program, field findings, and reports provided comprehensive information on the STDP's progress. The CRP stated that many of the findings of the CEPA's quarterly reports and the final report were of high quality and highly relevant in understanding the on-the-ground realities of the restoration of APs' livelihoods, expressway interchange planning, and urban development activities (ADB 2009a).

ADB also provided TA to engage an international environmental specialist and local environmental and social development consultants to improve the capacity-building skills of the Environmental and Social Division (ESD) of the RDA.⁶³ The role of the ESD was to improve the social and environmental safeguard application in project planning and implementation. The ESD developed its own guidelines for environmental and social assessments. It reviews RIPs and environmental impact assessments (EIAs) and monitors the progress of their implementation. The monitoring and evaluation system established within the ESD was a positive development in project management and provided a framework for further reviewing the progress of the STDP and its long-term impacts.

Donor–Borrower Partnership in Conflict Resolution

The advice and financial and human resources assistance from ADB significantly improved the RDA's capacity to deal with safeguard issues of the project. A project consultation mission from ADB in 2001 held discussions with a group of APs who requested ADB's Inspection Committee to

⁶³ ADB's Capacity Building of the Environmental and Social Division of the Road Development Authority (TA 4736-SRI).

examine the project regarding the proposed changes to the Combined Trace (CT), some irregularities in paying compensations, and the delay in loan effectiveness. They conveyed to the mission the seriousness of their complaints and the risks associated with the delays in loan effectiveness. On this request of the group of APs, the RDA informed ADB that the majority of the APs had accepted the Final Trace (FT) of the expressway, and 243 affected households had already received compensation and no one complained about the rates of compensation. It explained to the mission that given the amount of technical work completed in the project designs and the progress in land surveys and land acquisition, any change in the FT could generate fresh opposition to the project by those who would be affected by such new changes. The RDA agreed to establish a task force comprising the Secretary of the Treasury, the Director General of the Department of External Resources, the Secretary of the Ministry of Highways, and the Chair of the RDA to look into the complaints. Their key task was to prepare an action plan for land acquisition in disputed areas of the FT. It prepared an action plan and included third-party mediation and a vigorous project information dissemination program as possible actions to satisfy the agitated APs. The task force met weekly to discuss the progress in land acquisition and the resettlement program of the STDP.

The RDA prepared a draft addendum to the RIP in June 2002 and informed ADB that only 94 households were opposed to the land acquisition in the Japan Bank for International Cooperation (JBIC)-funded section and 136 households in the ADB-funded section of the expressway. ADB informed the RDA to appoint a mediator if the APs' opposition continued in order to resolve the complaints of the APs. ADB and the RDA agreed to engage the Arthacharya Foundation as the mediator. In October 2002, an ADB review mission discussed with the RDA the progress of the third-party mediation. As Chapter 1 described, the mediator confirmed that six APs in the JBIC-funded section and 26 in the ADB-funded section of the expressway did not accept the third-party mediation to resolve their issues. The mediator continued discussions with the APs on ADB's request. The final report of the Arthacharya Foundation indicated that 32 APs continued to oppose the project regardless of any benefits that it might bring to them. The report of the mediator was annexed to the final RIP of October 2002.

In December 2001, the Gama Surakeeme Sanvidanaya (GSS) and, in January 2002, the United Society for Protection of Akmeemana lodged complaints with ADB's Board of Inspection Committee that the project

had violated their rights and did not provide them adequate entitlements.⁶⁴ The complainants requested the committee to change the road alignment. They stated that they approached the committee for relief because they could not get any sympathetic hearing from the RDA (ADB 2002c). The committee informed the ADB Board of Directors that there were no sufficient grounds to proceed with the complaints: “The reasons for ineligibility are that (i) the requester has not demonstrated that it has the authority to represent a particular group of affected persons; (ii) many of the allegations referred to actions that cannot be attributed to ADB, (iii) many fail to allege direct and material adverse effect by ADB; (iv) many lack supporting evidence” (ADB 2002c:iii).

In 2004, several APs filed a complaint again through ADB’s Accountability Mechanism about the infringement of their rights and interests by the project. ADB first attempted to resolve it through the Office of the Special Project Facilitator (OSPF) of ADB’s Accountability Mechanism. The OSPF conducted a series of meetings, workshops, and field visits with complainants and other interested parties aiming at establishing trust and confidence and the de-escalating of any conflict. A number of meetings were conducted also with the South Asia Department of ADB, the Ministry of Highways, and the RDA to collate results from the review and assessment and to work toward agreements on issues in the complaint (ADB 2004a). A well reputed international mediator was recruited by the OSPF to mediate between the complainants and the RDA. However, the complainants were not interested in resolving issues; they were interested in either suspending or cancelling the project so that their land would not be affected. As a result, the mediator could not proceed with the mediation. “In this case the Parties have been provided with an adequate opportunity within the OSPF procedures to have their complaints heard and discussed and have been afforded opportunity to achieve an agreement regarding the Complaints made. I am of the further opinion that the Complainants’ perceived issues are incapable of resolution with the forum of a mediated settlement” (ADB 2004b:13).

The above discussion shows that ADB took an impartial but sympathetic approach to resolve safeguard issues of the STDP. In partnership with the RDA in particular and the government in general, ADB seriously wanted to see the progress of the project which would

⁶⁴ The GSS submitted a request to the Board’s inspection committee on 10 December 2001 to examine their complaint. The United Society for Protection of Akmeemana submitted several letters on 7 January 2002 to the committee complaining about the harm that the project would impose on them.

not seriously harm the interests of the APs. It attempted to resolve issues through discussions and mediation and did not hesitate to take a firm stand on the relevance and significance of such issues. This best practice of ADB as the donor helped improve the institutional capacity of the RDA and ensure that APs receive their entitlements.

Conclusion

Throughout the project cycle, the RDA and ADB applied several best practices to the STDP. The RDA received adequate support and guidance from ADB on how to improve land acquisition and resettlement policy and legal frameworks. It helped the RDA identify the APs and their needs, and to prepare comprehensive RIPs and other planning documents such as due diligence reports. The planning processes of the RP and the three RIPs of the STDP enhanced the RDA's understanding of social safeguards, its responsibilities toward protecting APs' entitlements, and the need for sharing project information with the APs. It also helped the RDA learn how to consult the APs and to get their views and support in project planning and implementation. The project planning experience, together with meeting the challenges of the project, provided an ideal learning arena for the RDA and other government agencies who were involved in the acquisition of land and resettlement programs of the project. By participating in such complicated and difficult exercises such as conflict resolution and safeguard compliance review, ADB too enhanced its own knowledge about the practical aspects of resettlement planning and implementation.

The planning and implementation experience of the STDP shows the importance of consulting the APs when project alternatives are considered. Such a dialogue between the executing agency and the APs could prevent costly mistakes; reduce APs' reluctance to relocate; expedite land acquisition; and facilitate the development of a system of dissemination of information about relocation, AP rights, and compensation procedures.

Although the number of protesters against the project was small, they tried to change the location of the alignment of the expressway to their personal advantage. This cost the project a lot financially, and the reputational damage to the government and ADB was enormous. An effective communication system and adherence to the project covenants, especially relating to compensation and relocation, are prerequisites for obtaining the support from the affected population and the nongovernment organization community for any development project. The project did not actively engage community-based organizations and religious leaders in

resettlement planning or implementation activities or in mechanisms of conflict resolution. This was a weakness of the project shared by the RDA and ADB.

A number of best practices in land acquisition, resettlement planning, and resettlement implementation were applied in the STDP. Among them are resettlement planning based on a comprehensive database, payment of the replacement cost for the land and structures acquired, special assistance to encroachers and vulnerable groups, implementing a single RIP for all components of the project, establishment of LARCs, strategies adopted such as mediation to mitigate adverse social impacts, and the recruitment of RAs as catalysts. These practices adopted by the STDP have had strong impacts on other development projects as well.

At times, both the government and ADB failed to apply involuntary resettlement best practices with adequate rigor and consistency. Sometimes, they failed to apply the involuntary resettlement safeguard policy principles of ADB, as well as the NIRP and the procedures required in the process of realigning the trace of the expressway during engineering designs after project approval. The government was legally bound under the National Environmental Authority to prepare supplementary EIAs and to hold public hearings whenever there were significant changes to an approved project such as an expressway. ADB did not change its project scope or request the RDA to prepare a fresh summary environmental impact assessment and conduct social studies for the deviated road sections. Both ADB and the RDA believed the procedures adopted in changing locations in road alignment were within the legal procedures of the National Environmental Authority and safeguard policy requirements of ADB. On this issue, ADB and the government did not play proactive roles.

The continued efforts at conflict management set an example of how to address critical issues in resettlement planning and implementation through consultation and negotiations, rather than cancelling or suspending disbursements. Despite several best practices either applied to or invented in the STDP, the review of the project experience shows that both ADB and the government need to further improve their performance in resettlement planning and implementation and to build a robust safeguard framework into the development regulatory framework.

CHAPTER 4

Institutional Framework for Resettlement Planning and Implementation

This chapter discusses the institutional framework and capacity-building programs of the Southern Transport Development Project (STDP). It also assesses their strengths and weaknesses, and outlines some best practices that have been applied to improve the institutional framework and their outcomes. In hindsight, several specific actions that might make institutional arrangements much more effective and replicable are proposed.

During the phase of resettlement planning of the STDP from 1998 to 2002, the government displayed a strong commitment to review and reform its national legislative framework for land acquisition and resettlement. The outcome of this commitment has had far-reaching impacts on the land acquisition and resettlement regulatory framework. Some easily identifiable impacts are the payment of compensation for lost assets at their replacement cost for the first time in Sri Lanka, relocation planning and resettlement assistance packages for all physically displaced persons regardless of their land tenure status, and the income restoration and improvement strategy for the benefit of affected persons (APs) and the affected nontitled and vulnerable households. The Cabinet of Ministers' approval of the National Involuntary Resettlement Policy (NIRP), the special compensation package for road projects, and the land acquisition and resettlement committees (LARCs) at the STDP for negotiations of compensation for land and structures were concrete results that marked an important milestone in involuntary resettlement planning in Sri Lanka. What is really interesting in this regard is that such enabling legal and institutional mechanisms were in place before the implementation of the resettlement implementation plan (RIP) of the project.

When ADB approved the STDP in 1999, the Road Development Authority (RDA) did not have sufficient institutional capacity and resources to manage its land acquisition and resettlement programs.

When the project started the phase of resettlement implementation, the project management unit (PMU) was in place headed by a full-time project director, who was supported by the RDA senior management and the Secretary of the Ministry of Highways. ADB, the Japan Bank for International Cooperation (JBIC), and the Nordic Development Fund (NDF) provided financial assistance to engage management consultants and international resettlement specialists to assist the PMU in project management and coordination. ADB provided technical assistance to establish an Environmental and Social Division (ESD) at the RDA to assist not only the STDP but also other highway projects to deal efficiently with environmental and social impacts, their mitigation, and capacity building among project personnel. The government established resettlement coordination mechanisms such as steering committees, project coordination committees (PCCs), and a task force to facilitate and expedite resettlement planning and implementation of the project (ADB 1999b).

The project loan agreement between the government and ADB included specific covenants for effective institutional arrangements. One such covenant was the time-specific handing over of acquired land as unencumbered right-of-way of the expressway to the project construction contractor. The handing-over process was planned in two stages: 50% of the acquired land to be handed over immediately after the award of the contract, and the other 50% within 3 months from the date of contract award. It stipulated that such handing over should take place within 12 months from the award of the civil works contracts in the ADB-funded section of the expressway (ADB 1999). It was a challenging task for the PMU to acquire land within the stipulated time frame. This challenge was compounded by the other requirements of paying all compensation prior to land acquisition and relocation of physically displaced households before handing over of the land to the contractor. In hindsight, such arrangements were too ambitious given the administrative and legal structures of Sri Lanka. In this regard, ADB should have advised the RDA and helped it with a flexible and realistic time frame for vital targets.

For a successful implementation of a complex and sensitive project such as the STDP, a robust institutional framework and the commitment of the government are alone not sufficient; it also needs to be supported by a dedicated and sufficient budget and qualified and committed professionals. The government allocated sufficient funds for land acquisition and resettlement at the beginning of the project. But because of the civil war, there were some delays in defraying required finances to pay full compensation at replacement cost.

Part 1: The Institutional Framework for Land Acquisition and Resettlement

To address significant resettlement impacts of the project and to achieve the targets of project implementation schedule listed in the report and recommendation of the President, the loan agreement, and the RIP, ADB and the government agreed to build an appropriate institutional framework with adequate authority, staff, and budgets. This was to be done by supporting the existing institutions responsible for land acquisition and compensation payment, and introducing new institutional arrangements to address their weaknesses and inadequacies.

During the formulation of the NIRP, the National Planning Department under the Ministry of Finance took the responsibility for improving coordination among the relevant departments and agencies in capacity building on land acquisition and resettlement. After the Cabinet of Ministers' approval of the NIRP in May 2001, the Ministry of Lands established its Resettlement Division and improved its coordination with divisional secretariats on land acquisition and resettlement. ADB assisted this process from 1999 to 2003 through several technical assistance programs aimed at strengthening institutional capacities of key institutions that were involved in land acquisition and resettlement.

The key actions regarding the improvement of the land acquisition and resettlement framework were the establishment of LARCs and the application of section 38(a) of the Land Acquisition Act (LAA) to expedite the land acquisition process. The RDA handed over the entire land acquisition and resettlement process as a decentralized process to divisional secretariats and regional resettlement offices. ADB and JBIC, as donors of the project, conducted regular safeguard review missions to examine the progress. The management consultants and the external monitor helped to develop a better system of close supervision of land acquisition and resettlement activities, internal and external monitoring, and capacity building of the relevant institutions by providing advice and timely allocation of adequate resources.

There were four types of institutions involved in resettlement planning, implementation, and monitoring of the STDP: (i) government institutions that approved project components, executed the project, and monitored its progress at the project and national levels—the Ministry of Highways, the RDA, the Ministry of Finance, the Central Environmental Authority, and the Ministry of Lands, divisional secretariats, the Survey Department, and

the Valuation Department oversaw the project implementation; (ii) ADB and JBIC, which approved the project's external finance components and oversaw the resettlement monitoring and capacity building of local institutions; (iii) national universities and international and local consulting firms who assisted in conducting social impact assessments and the formulation of the RIP, and carried out resettlement monitoring and reporting; and (iv) nongovernment organizations who worked with the APs to ensure their entitlements are provided fully and on time. They also planned and implemented the income restoration program and the external resettlement monitoring processes of the project.

In addition to the above institutions, project-specific coordination mechanisms and ad hoc committees such as the project coordinating committees, the task force, steering committees, LARCs, the Super Land Acquisition and Resettlement Committee (Super LARC), grievance redress committees (GRCs), and public complaints resolving and monitoring committees (PCRMCS) were also established.

Project planners, project implementers, and project monitors of the STDP came from different organizations, departments, and agencies. Technical and financial decisions pertaining to the project were taken at the Ministry of Highways, the RDA, and the PMU. The PMU was directly engaged with the local agencies in implementing the RIP and coordinated with 22 divisional secretariats and with the district and divisional officers of the Survey Department and the Valuation Department. These agencies supported the project to achieve its targets in land acquisition, compensation payment, and relocation of displaced APs. The progress monitoring of the resettlement program was undertaken by the South Asia Department at ADB headquarters in Manila, the Sri Lanka Resident Mission of ADB, the JBIC offices in Colombo and Tokyo, management consultants, international resettlement specialists, and external monitors of various consulting firms.

Institutional Structure during Phase I of Resettlement Planning (1998–2003)

Chapter 8 of the RIP outlined that in addition to the existing institutions for land acquisition and compensation payment, new institutions such as LARCs, GRCs, and community consultative groups (CCGs) were required to handle specific resettlement activities related to compensation payment at the replacement cost, consultation and negotiation with APs,

and information dissemination and conflict management. To expedite, the implementation of the resettlement program, the RDA established a PCC and a task force at the project level for regular monitoring of the RIP implementation (Government of Sri Lanka 2002). The organizational chart for the implementation of the RIP is shown in Figure 4.1.

The following section of the chapter describes the role and functions of the core agencies that engaged in land acquisition, and resettlement planning and implementation. It will be followed by the section on policy-level agencies that contributed to project planning and implementation. They did not implement the project, but provided the necessary guidance and assistance by creating a milieu within which the project progressed.

Ministries and Agencies Engaged in Land Acquisition and Resettlement

Ministry of Lands

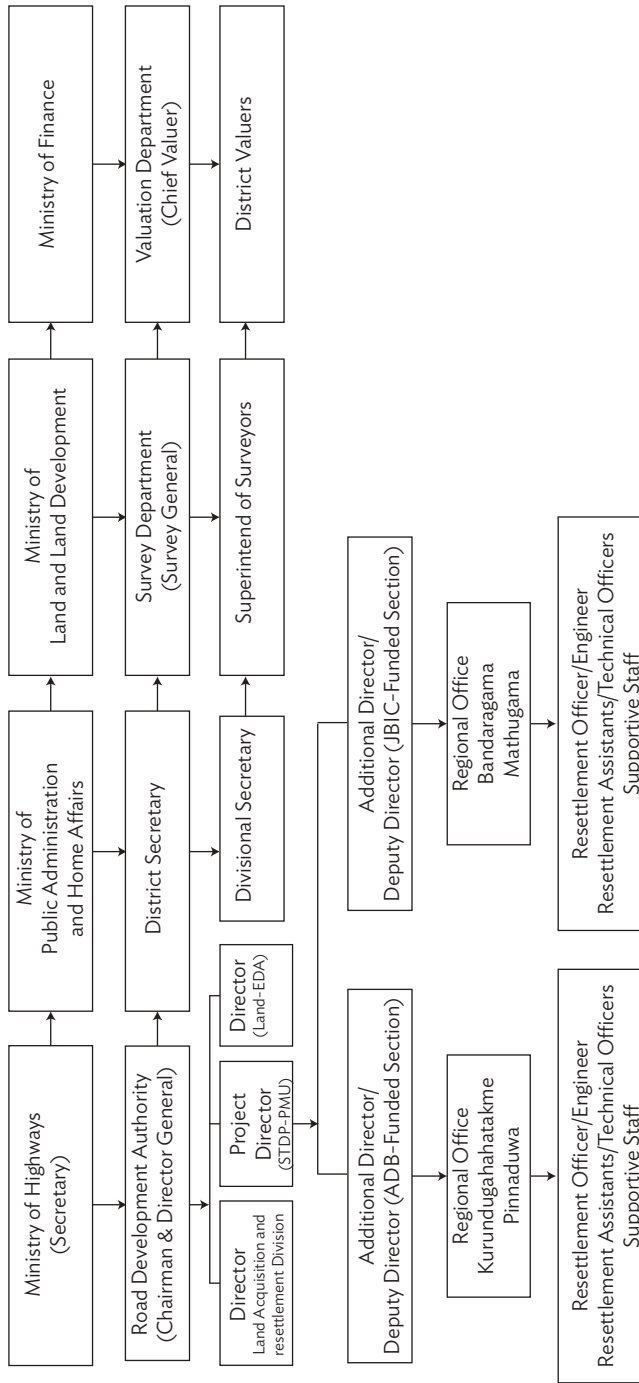
It is empowered under the LAA, and is the mandatory body that authorizes land acquisition and compensation payment processes of any project that requires acquisition of private land for a public purpose. In addition, it is entrusted with the implementation of the NIRP. ADB provided technical assistance to the ministry in 2002 to prepare four manuals that would serve as guides for the implementation of RIPs.⁶⁵ The ministry issued a circular in 2003 requesting all applicants for land acquisition to outline special assistance packages to build alternative houses and provide infrastructure facilities for the displaced households at resettlement sites with cost estimates when land acquisition proposals are submitted to the ministry for approval.

Steering Committees and Coordination Committees

A project steering committee chaired by the Secretary of the Ministry of Finance had members from the Department of External Resources, Ministry of Transport and Highways, the RDA, and other relevant agencies. It was established to address the issues of delays in land acquisition and civil works contract award.

⁶⁵ Capacity Building for the National Policy on Involuntary Resettlement (TA 3792-SRI).

Figure 4.1: Organizational Structure for Resettlement Implementation Plan (2003)



ADB = Asian Development Bank, JBIC = Japan Bank for International Cooperation, PMU = project management unit, RDA = Road Development Authority, STDP = Southern Transport Development Project.

Source: Project Management Unit (2003).

A PCC was established to coordinate the project activities of both the ADB-funded section and the JBIC-funded section of the expressway. The chairperson of the PCC was the Chairperson of the RDA, while other members included representatives of the Department of External Resources, the Ministry of Highways, the Ministry of Lands, the Survey Department, the Valuation Department, the Government Printer, the Ceylon Electricity Board, the RDA, the National Planning Department, JBIC, ADB, the management consultants, the engineering services consultants, the supervision consultants, and several others.

In terms of the Management Service Division's Circular No. 10 of 2000 on the PMU, the Secretary of the Ministry of Highways became the chairperson of the PCC. As a result, the overall monitoring and coordination of the project was directed through the PCC which met at the Ministry of Transport and Highways. The PCC was responsible for the coordination of land acquisition, resettlement, environmental impacts mitigation, contract award, contract supervision, and services of engineering consultants.

Road Development Authority

The implementing agency of the STDP was the RDA. It was established by the Road Development Authority Act, No.73 of 1981. It functions under the direction of its Chairman and the Board of Directors. The chief executive officer is the general manager who supervises a number of directors placed in charge of separate divisions. These different divisional heads are responsible for road designs, LAR, administration, finance, and engineering services. Part 11 of the act deals with the areas declared for road development including the construction of new roads, as well as maintenance and improvement of existing roads. Section 22 of the act recognizes that land acquisition for road development is a public purpose and empowers the RDA to acquire any private property for a road project following the procedures given in the LAA.

The RDA had the overall responsibility for the RIP planning and implementation. In this regard, its responsibilities included overall planning, implementation, and monitoring of the resettlement program; synchronizing resettlement activities with project construction activities; facilitating expressway alignment selection, designs, and handing over of lands to construction contractors; and overseeing and facilitating the RIP implementation through the PMU and other relevant institutions. The Chief Accountant of the Ministry of Highways liaised with the General Treasury to obtain necessary funds for the payment of compensation,

relocation, and rehabilitation. The accounting unit of the RDA released compensation payments and other cash entitlements to the APs through the divisional secretariats.

Land Acquisition and Resettlement Division of the Road Development Authority

The Land Acquisition and Resettlement Division (LARD) was established in the 1990s at the RDA Head Office in Battaramulla as the principal unit responsible for land acquisition and resettlement activities of the RDA projects. Its main functions and responsibilities are as follows:

- Prepare RIPs to provide compensation and resettlement assistance to APs.
- Coordinate with agencies involved in land acquisition such as the Valuation Department, the Ministry of Lands, the Survey Department, and divisional secretariats.
- Determine compensation rates with relevant agencies and calculate estimates for different resettlement activities.
- Estimate the land required for resettlement sites.
- Determine what project facilities are to be shared with the host communities of resettlers.
- Monitor unforeseen and adverse impacts of road construction activities and take corrective actions.
- Plan and implement income restoration and tree planting programs.
- Liaise with nongovernment organizations, Grama Niladharis, LARCs, and others.
- Monitor socioeconomic conditions of the relocated households.
- Appoint agencies/persons for RIP implementation.
- Provide computer facilities for inventory of losses (IOL) data entry and prepare individual files of all APs.
- Prepare progress reports and submit them to the RDA and donors, and share them with project design consultants.

At the time of project preparation, the LARD was responsible for the overall planning, implementation, and monitoring of the resettlement program of the STDP. It also coordinated land acquisition activities with divisional secretariats, the Survey Department, and the Valuation Department. The LARD was headed by a director who was a senior administrative officer with wide experience in acquiring land for public

purposes. A deputy director assisted the director. It was proposed to expand the LARD with additional staff to assist the director in land surveys, land acquisition, and resettlement planning. Two consultants were appointed to backstop the LARD. They were assigned for land acquisition and resettlement activities in the ADB-funded section and the JBIC-funded section of the expressway. The LARD reviewed and forwarded the requests for land acquisition to the Ministry of Highways in 2001 and 2002. However, after the RIP was approved in October 2002, the PMU replaced the LARD and took over all its functions and powers.

Divisional Secretariats, Survey Department, and Valuation Department

Divisional secretaries acquire land and pay appropriate compensation according to the provisions in the LAA and its regulations. They are responsible for preparing notices and gazette notifications, conducting landownership inquiries (under section 9 of the LAA), determining ownership (under section 10), and awarding compensation (under section 17). Each divisional secretariat has a land officer or a staff member exclusively assigned for land acquisition and compensation payment.

Four key organizations assist the divisional secretaries in the land acquisition process. They include the Ministry of Lands; the Survey Department that surveys the land to be acquired and prepares advance and preliminary survey plans; the Valuation Department that values property and prepares condition and valuation reports; and the Government Printer that publishes statutory notices and gazette notifications. The PMU coordinated among these different agencies in the process of land acquisition, compensation determination, and payment.

A LARC assisted divisional secretaries in determining nonstatutory compensation and resettlement assistance to the APs. A LARC comprised the Divisional Secretary as the chair, and representatives of the Valuation Department, the Survey Department, and the PMU. The ROs and RAs at the regional offices were responsible for coordinating LARC meetings until after the award of compensation under section 17 of the LAA and taking possession of the acquired land. During land acquisition, about 12,000 LARC meetings were conducted in the project area. The project did not use private surveyors and private valuers. Instead, it introduced an incentive payment scheme for the staff of the Survey Department, the Valuation Department, and divisional secretariats to compensate for any additional work that they carry out to expedite the land acquisition process.

Project Management Unit

The PMU was established for day-to-day project management of the ADB-funded and JBIC-funded sections of the expressway. The Project Director and Project Manager were appointed at the beginning of the project in 1998 to organize project feasibility studies, environmental and social impact surveys, and engineering designs, and to facilitate the interactions between the consultants and other project stakeholders. The Project Director also held the overall responsibility for project monitoring and supervision.

The responsibility for the resettlement program of the STDP was transferred from the Director of the LARD to the Project Director of the PMU. The Project Director reported directly to the Director General of the RDA. The responsibilities of the PMU were as follows:

1. Plan and implement the resettlement program.
2. Coordinate with the Survey Department for land surveys.
3. Coordinate with Valuation Department for valuation reports.
4. Coordinate with divisional secretaries for land acquisition and establishment of LARCs to determine compensation for land and structures at their replacement cost and payments of other entitlements according to the entitlement matrix of the RIP.
5. Select suitable resettlement sites in consultation with the APs.
6. Support the regional offices in conducting consultations with and information disclosure to the APs.
7. Form and facilitate the GRCs.
8. Hand over acquired vacant lands to contractors.
9. Monitor LAR progress and prepare progress reports.
10. Disburse adequate funds for LAR programs.

The PMU was furthermore responsible for budget planning. The resettlement budget in the RIP provided separate budget items for compensating land and structures acquired and for providing other entitlements, resettlement sites development, income restoration, and resettlement monitoring. The PMU was responsible for the allocation of funds for each cost item and for the implementation of each activity with the support of its regional offices.

The PMU was also responsible for ensuring that all resettlement activities were integrated with the construction schedule of the expressway in order to provide the APs their entitlements on time and to complete the construction of the expressway as planned. The PMU interacted with concerned agencies to ensure that they too perform their respective tasks without delays.

Regional Offices

One regional office was set up in the ADB-funded section of the expressway at Kurundugahahatakme and the other regional office was established in the JBIC-funded section of the expressway at Bandaragama. Two more regional offices were later established at Mathugama in the JBIC-funded section and at Pinnaduwa in the ADB-funded section of the expressway to deal with day-to-day responsibilities of resettlement planning and implementation. The regional offices reported to the Deputy Director of the PMU. Each regional office was headed by an RO and 6–8 RAs. A single RA was assigned to each cover a population of about 300 APs who were spread over one or two Grama Niladhari divisions. The RA acted as a catalyst between an affected community and the project administration facilitating LARC activities and helped ensure that APs received their entitlements and assistance from the project.

It was proposed in the RIP to appoint 12 women support officers to help the affected women during relocation, but this proposal did not materialize. Instead, the female RAs were expected to play the role of women support officers. The RIP proposed establishing community consultative groups (CCGs) consisting of Grama Niladharis, chief incumbents of Buddhist temples, community leaders, and representatives of community-based organizations. The CCGs were expected to assist in the processes of verifying land acquisitions, assessment of valuation, and compensation rates as well as to assist the APs in preparing and submitting their claims and grievances, to participate in resettlement site selection, and to prepare relocation schedules with the RDA. The CCGs were also tasked to facilitate the formation of self-help groups and the implementation of income restoration programs. However, CCGs were never established. The presence of RAs in the field, consultations conducted by the RAs and other field-level officials with the APs, and the active role played by the LARCs took over the role of the CCGs.

Land Acquisition and Resettlement Committees

The most significant innovative institutional change introduced by the STDP in the institutional framework for land acquisition, compensation, and resettlement was the establishment of LARCs (Government of Sri Lanka 2001c). The Cabinet of Ministers approved the following procedures for LARCs:

- Determine additional entitlements of the APs after paying the statutory compensation.

- Prepare a calendar of activities for LARC meetings for each land lot and allocate a date and time for discussions and negotiations.
- LARC meetings are chaired either by the Divisional Secretary or the Additional Divisional Secretary who schedule sufficient number of LARC meetings to determine the compensation package of each AP.
- Only the concerned AP was allowed at the LARC meetings for negotiations.
- Divisional secretaries receive funds from the PMU for the payment of compensation and other resettlement allowances.
- ROs collect the payment vouchers signed by the APs at the conclusion of negotiations and forward them to the PMU for payment.
- The Divisional Secretary submits a certified copy of the LARC's decisions to the RO, and the RO, in turn, submits it to the Director of the LARD/Project Director.
- The Director of the LARD/Project Director approves the payment after deducting any advance given to the AP.
- Vouchers are sent to the management information system (MIS) branch for further verification before their submission to the Director of LARD/Project Director for approval.
- Approved vouchers are sent to the Chief Accountant of the STDP for payment.
- Checks are sent from the Finance Division of the STDP to the RO who hands the checks to the APs and obtains an acknowledgment of receipt.

The LARC procedures introduced under the STDP enabled the APs to officially participate in compensation determination process; discuss grievances, if any; and share additional information that could have a bearing on LARC decisions with the LARC members. A LARC meeting was held for each eligible acquired land lot. This procedure was effective in settling the grievances that the APs had with regard to compensation packages. LARCs further provided an opportunity for the APs to discuss and resolve outstanding issues on physical relocation and the restoration of lost assets, income sources, and livelihoods. Despite LARC meetings being conducted soon after the award of the statutory compensation, there was a considerable delay in the payment of resettlement allowances (determined by LARCs) due to the lengthy financial and administrative procedures embedded in the procedures and the delays in releasing sufficient funds from the Treasury.

Grievance Redress Committees

The RIP proposed establishing grievance redress committees (GRCs) to address the grievances of APs arising from the RIP implementation. However, the GRCs did not have the mandate to deal with compensation-related issues, as the LARCs dealt with them. The main objective of GRCs was to avoid the APs resorting to lengthy and costly judicial processes over project-related activities. Five GRCs were established by the project to cover the entire project area of 22 divisional secretariat divisions. The GRCs were originally located at the district secretariats but were later shifted to the divisional secretariats. This provided easy access for the APs to approach the GRCs to resolve their issues in an environment quite familiar to them. Each GRC comprised the District/Divisional Secretary or Additional District/Divisional Secretary as the chairperson, the District Valuer, the District Engineer of the RDA, and four members representing community-based organizations. The RDA subsequently expanded the membership of the GRC to include an RO or the Project Manager, RAs, and representatives of the project contractor. The Grama Niladhari attended LARC meetings when the GRC requested them to provide specific information on the land acquired, socioeconomic status of the APs, and issues in resettlement.

Management Consultants

The report and recommendation of the President proposed to recruit two groups of consultants selected from an international consulting firm: one group to be the supervision consultants for contract supervision, and the second group to be the management consultants for social and environmental impact monitoring. Both groups were to be assisted by local consultants. The management consultants were Finnroad in association with Surath Wickramasinghe Associates. They were appointed in May 2003. Their salaries and other expenses were paid by the Nordic Development Fund. Under the loan, EGIS International, in association with Consulting Engineers and Architects Associated, were appointed as management consultants. They undertook internal monitoring, resettlement audits, and maintenance of the MIS. They also assisted the PCC meetings (the team leader of the management consultants was the secretary of the meeting) and prepared monthly progress reports.

Internal and External Monitoring System

The PMU was responsible for the internal monitoring of land acquisition and resettlement programs through its regional offices. Internal monitoring of land acquisition focused on the progress in land acquisition and payment of compensation and entitlements and the disbursement of the RIP budget. The monitoring of resettlement programs focused on information disclosure, consultation, relocation of displaced households, development of resettlement sites, provision of displacement support, and the delivery of income restoration assistance. The information collected through the IOL surveys and land acquisition documents were maintained at district secretariat offices for easy access to the APs. They provided benchmark information for monitoring. Field-level monitoring activities also assessed the daily operations of land acquisition and resettlement activities carried out by the project field staff. The methodology adopted for monitoring included compiling a file for each land lot, conducting sample surveys, key informant interviews, doing case studies, and taking photographs of housing conditions of APs during the pre-displacement and post-resettlement phases.

The regional offices submitted monthly progress reports to the PMU which contained information on different categories of APs who were paid compensation, types of resettlement activities completed, grievances and complaints regarding land acquisition and compensation received, and the measures required for their redress. The PMU arranged a monthly coordinating committee meeting to discuss the progress of resettlement activities among its staff and to decide what actions should be taken to continue the process according to the timetable.

The PMU engaged Environmental Resources Management Consultants, a local consultancy firm, in April 2001 as the external monitor to review the compliance of resettlement implementation against the RIP indicators and to verify the results of internal monitoring in consultation with relevant field staff. However, the contract of Environmental Resources Management Consultants was not renewed after 2 years, and the management consultants and the international resettlement specialist served as the external monitors from 2003 until 2006.

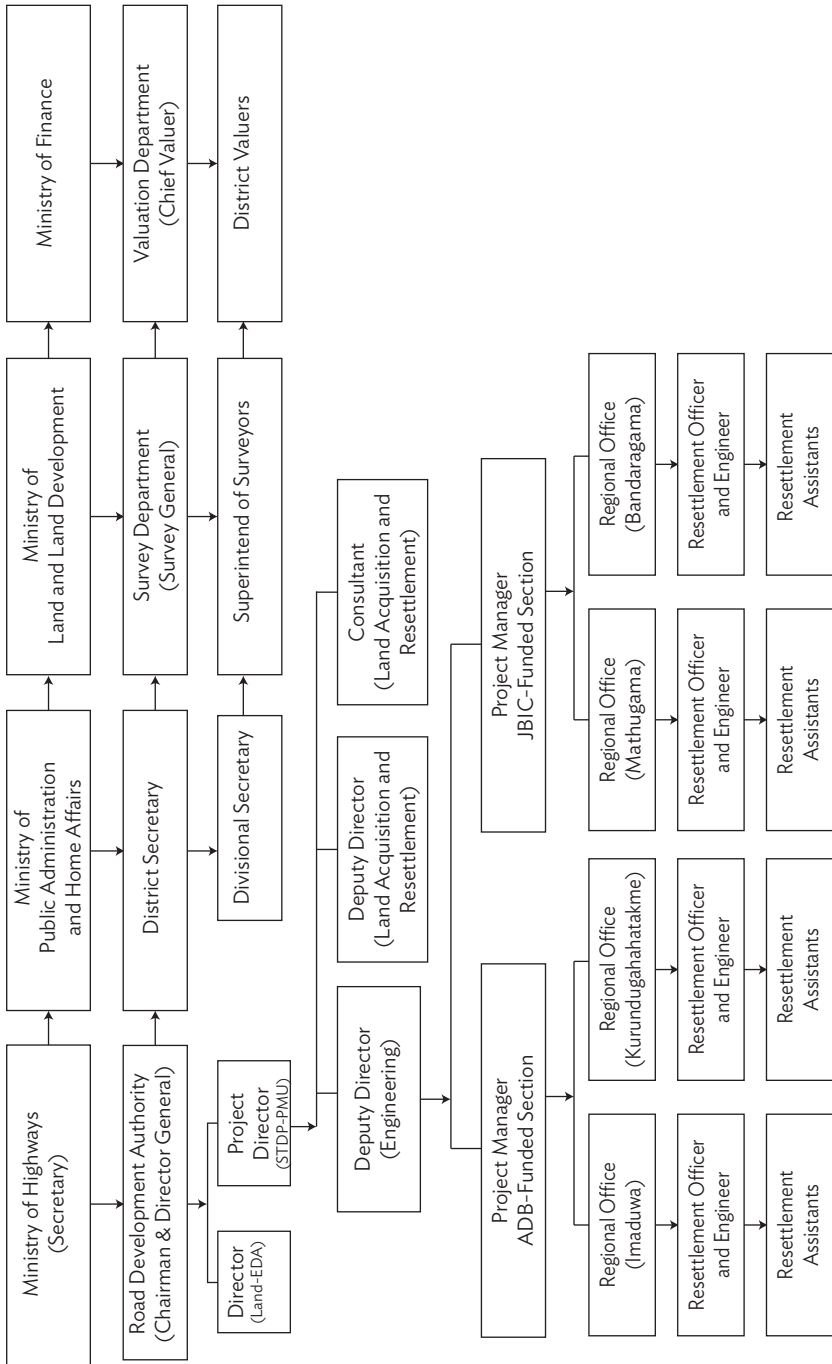
Revised Organizational Structure (2003–2010)

The PMU and its regional offices failed to realize the target of acquiring 50% of the land required for the construction of the ADB-funded section of the expressway by March 2003, 6 months after the approval of the RIP. By March 2003, only 177 households in the first priority subsection of the ADB-funded section of the expressway had been resettled. The PMU realized that it was not possible to pay full compensation to all APs before handing over the construction sites to the contractor as the RDA could not get sufficient funds from the Treasury for this purpose. This generated issues regarding the project's compliance with the loan covenants, and ADB insisted that the PMU complete compensation payments before the end of April 2003, and that all such payments be certified by the international resettlement specialist. The PMU reported its inability to comply with the loan covenant of Loan Agreement – Schedule 6, para 8 (iv) which stated “handing over the balance area after 12 months of the award of the civil works contract” (ADB 1999a). Therefore, both the PMU and the PCC requested the management consultants to prepare a proposal to change the project's organizational structure and to develop a new organization structure that might ensure the compliance of land acquisition and resettlement activities with the loan covenants. The proposed changes to the organizational structure are shown in Figure 4.2.

The management consultants proposed a new organizational structure in April 2003 to decentralize project activities and to appoint additional resettlement staff who could coordinate resettlement activities at the project and at the local levels. The new structure included the following arrangements:

1. Appoint two deputy project directors—one for engineering and the other for land acquisition and resettlement.
2. Appoint two project managers for the ADB-funded and the JBIC-funded sections of the expressway replacing the resettlement officers as the heads of regional offices. The four ROs were placed under the supervision of project managers. More administrative and financial authority was delegated to project managers to enable them to pay prompt compensation.
3. Appoint a software developer to update the MIS and a senior engineer to be in charge of the MIS.

Figure 4.2: Revised Organizational Structure for the Southern Transport Development Project (2003–2010)



ADB = Asian Development Bank, JBIC = Japan Bank for International Cooperation, PMU = project management unit, RDA = Road Development Authority, STDP = Southern Transport Development Project.

Source: Project Management Unit (2003).

4. Appoint two team leaders to look after land acquisition and resettlement programs in the ADB-funded and the JBIC-funded sections of the expressway.
5. Appoint a special committee at the Ministry of Lands to resolve issues related to compensation payments.
6. Create an independent external agency to undertake the external monitoring activities.
7. Appoint an international resettlement specialist to monitor the implementation of the RIP from March 2003 to March 2005 on an intermittent basis.

Deputy Project Directors

The Deputy Project Director for land acquisition and resettlement resigned in July 2003 and was replaced by a senior engineer. Operational aspects of land acquisition and resettlement were temporarily handled by two consultants—one was in charge of land acquisition and the other in charge of resettlement until the appointment of two deputy project directors. All ROs who were under the resettlement consultant were reassigned to work with two project managers of the ADB-funded section and the JBIC-funded section of the expressway. The two project managers were appointed from among the senior engineers of the RDA. The recruitment of the deputy project directors was delayed due to a court injunction. Several RAs were redesignated or promoted as environmental impact monitoring officers, social impact monitoring officers, and business development officers, as the volume of work in land acquisition in the ADB-funded section of the expressway decreased over time. Regional offices were provided with additional facilities such as computers and transport to improve their capacity in handling resettlement activities.

International Resettlement Consultant

The international resettlement consultant was appointed for 5 person-months on an intermittent basis in March 2003 to monitor the progress of land acquisition, compensation, and resettlement until March 2005. The consultant submitted land acquisition and resettlement progress reports in April 2003, August 2003, and February 2005. The reports provided valuable information about how the innovative institutional arrangements such as LARC were operating at the grassroots level and the significant role played by RAs as grassroots catalysts. Their impending departure

was noted by the specialist, who predicted that if they were to leave the project, the institutional memory of LARC activities would be harmed and would create a knowledge gap increasing the distance between the APs and the government officials, especially the LARC members. As one of the architects of the NIRP, the consultant possessed wide knowledge about the land acquisition and resettlement impacts of development projects. This knowledge and field experience placed him in a good position to advise RDA and ADB on involuntary resettlement issues of the project.

Super Land Acquisition and Resettlement Committee

The Super LARC was established in 2003 at the Ministry of Transport and Highways to review any appeals from the divisional-level LARCs and to determine suitable entitlements. It was chaired by the Secretary of the Ministry of Transport and Highways. Other members of the Super LARC were representatives of the Valuation Department, the Survey Department, the RDA, and the PMU. The APs who were dissatisfied with divisional LARC decisions with regard to resettlement assistance could appeal to the Super LARC, which was the apex body that dealt with LARC entitlements.

Public Complaints Resolution and Monitoring Committee

The Public Complaints Resolution and Monitoring Committee (PCRMC) was set up in 2006 by the RDA. Its members were senior officials of the PMU, the RDA and its regional offices, contractors, and the supervision consultants. It dealt with complaints that posed a risk of delaying construction activities. The APs lodged a large number of complaints at the district secretariat offices, police stations, offices of politicians, and offices of the contractor on issues of adverse construction impacts, nonpayment of compensation for the damaged structures, environmental harm, and land disputes. There was no formal provision for the participation of the complainant in the PCRMC meetings, but the supervision consultants invited the complainants to such meetings to find solutions to problems, address grievances, and inform them of the actions taken by respective project implementation agencies (CEPA 2008b).

External Monitoring

The Centre for Poverty Analysis (CEPA) played the role of the independent external monitor from April 2006 to December 2010. The following was their mandate:

- (i) Verify whether the activities listed in the RIP were completed or ongoing; their quantity, quality, and timeliness; and whether such works have achieved the stated goals of the project.
- (ii) Generate information that would enable the RDA to respond more effectively and equitably to the concerns of the APs and address shortcomings in the implementation of the RIP.
- (iii) Assess whether the living standards and well-being of affected households and communities have improved or have at least restored to the preproject level.
- (iv) Analyze how the STDP would benefit those affected by the construction of the expressway both in economic and social terms.
- (v) Learn lessons from the experience of resettlement planning and implementation for the RDA, in particular, and for Sri Lanka, in general.

The CEPA developed a monitoring framework around six thematic areas: (i) verification of the process and outputs of the RIP implementation, (ii) restoration of the living standards of APs, (iii) restoration of livelihoods of APs, (iv) level of satisfaction among APs surrounding the resettlement program, (v) effectiveness of resettlement planning in terms of achieving equitable resettlement outcomes and benefits, and (vi) social and environmental impacts. The methodology was a mix of both quantitative and qualitative modalities applied to a sample of 400 households. Focus group discussions, interviews, document reviews, and workshops supplemented the continuous monitoring of the sample APs. The CEPA prepared a series of reports including the monitoring framework, quarterly monitoring reports, case studies, annual reports, and proceedings of workshops. They formed a comprehensive database of implementing arrangements of the resettlement activities of the project and their performance.

Overview

The changes in the organizational structure of the project administration between 2003 and 2005 improved the performance of resettlement implementation in respect of land acquisition, compensation payment, relocation of displaced households, and handing over of the entire trace of the expressway to construction contractors by September 2005. However, all payments of compensation were completed only by end of June 2007 (ADB 2014:32). As a result, two important loan covenants were not complied with—completion of land acquisition within 12 months after the award of the first civil works contract in ADB-funded section of the expressway, and all compensation payments to be made to APs prior to their displacement.

Prompt and comprehensive compliance with social and environmental safeguards was a challenge to project management throughout the implementation phase, although the management team attempted to follow the loan covenants closely. Difficulties in obtaining sufficient funds for land acquisition and resettlement and continuous protests of a few APs delayed the project leading to a significant escalation of project costs. The Compliance Review Panel (CRP) in May 2005 observed that from project processing to implementation, project management had failed to fully comply with a number of loan covenants and best practices such as conducting sufficient environmental impact assessment studies and a gender analysis, engagement of an external monitor after 2003, the establishment of a user-friendly and updated MIS, and the well-designed income restoration program. The CRP also noted the need for improved performance in the areas of compensation and development of resettlement sites (ADB 2005). Although there were some delays in meeting safeguard requirements, all were eventually met by the project, except the covenant that full compensation should be paid prior to displacement. This could not be corrected retroactively.

The implementation of a large-scale institutional system such as the STDP highlighted several key actions that are vital to make it a success. First, it is necessary to coordinate national-level ministries and departments to resolve issues such as timely release of adequate funds. Second, it is necessary to be vigilant regarding interagency coordination as each agency has its own priorities and procedures. This may pose a challenge to bring them together to implement a project. Third, effective project-level coordination with relevant agencies is required to monitor the progress and to expedite project implementation. Fourth, at the local level,

it is necessary to coordinate regional resettlement units and their actions to maintain a balance in land acquisition and resettlement programs. This is critically important in the context of shortage of funds and experienced field staff. Fifth, it is necessary to engage the APs in project planning and implementation in addition to their engagement in negotiating compensation packages.

Part 2: Assessment of Strengths and Weaknesses of Institutional Arrangements

Perspectives of ADB

1995–2002

The government, with ADB's technical assistance from 1995 to 1998, initiated a series of actions to address critical institutional weaknesses and resource deficiencies of the RDA, including contract approval procedures, inadequate road maintenance funds, and project implementation delays. The government introduced new institutional arrangements—a Tender Support Bureau in 1998 to improve procurement, a PMU with a full-time project director and staff to address day-to-day project activities, and steering committees and project coordinating committees to reduce implementation delays and to ensure coordination among different agency work programs. It also introduced new procedures of procurement and recruitment of consultants with ADB's technical assistance.⁶⁶

2003–2010

ADB review missions from 2003 to 2010 identified and reported several key issues in project administration and recommended that capacity building of the STDP-related agencies needed further improvement. In 2003, an ADB mission noted that the PMU did not have the capacity to effectively manage the project, particularly its environmental and resettlement activities. This was because its management structure was broadly in line with what was developed during project preparation. As a result, the project had suffered from inadequate management, not suited to its scale, complexity, and sensitivity. ADB had discussed the same issue on many occasions with the government at all levels, but with limited success. The recommendation to elevate the STDP management structure to the

⁶⁶ Reengineering of Road Sector Institutions (TA 3110-SRI) and Improvement in Project Implementation in Sri Lanka (TA 2745-SRI).

level where its project director's position was on par with a deputy general manager of the RDA was not implemented. The other recommendation that the project director should have sufficient experience in managing large public infrastructure projects and resettlement and environmental programs was also not recognized. There was an urgent need, however, to build the PMU capacity to effectively manage the project's environmental and resettlement programs.

Perspectives of the Road Development Authority

At the time of the planning of the STDP, the RDA had neither the experience nor an institutional setup required for applying best practices in involuntary resettlement to large-scale highway construction projects. The STDP provided both experience and a better institutional setup for planning and implementation of involuntary resettlement programs of projects. The RDA was grateful to ADB for providing technical assistance from which it benefited immensely. Through such assistance, the RDA learned resettlement planning, implementation, and coordination with relevant agencies to monitor the progress of land acquisition and resettlement programs. The RDA addressed issues in land acquisition, compensation, resettlement, income restoration, and monitoring with the help of ADB. By positively responding to the recommendations of ADB's review missions, the Office of the Special Project Facilitator, the Inspection Committee, and the CRP, the RDA had the opportunity to fine-tune its own policies and procedures in applying involuntary resettlement best practices to complex and sensitive projects.

Within the RDA, the PMU benefited most from the close interaction with ADB. With the help of ADB, it reorganized the institutional framework. The PMU implemented the project with due diligence and efficiency. In doing so, it was careful to confirm with the NIRP, loan covenants, and ADB's involuntary resettlement safeguard policy requirements. The PMU recruited ROs and RAs on a contract basis to effectively manage the land acquisition and resettlement activities of the project, particularly to deal with complex environmental and resettlement issues. The large-scale STDP generated complexities, and the RDA, through the PMU, responded to them by introducing significant changes in the project's institutional framework.

The project completion report of 2014 noted that the RDA had emerged as an effective development organization with strong institutional capacity. The RDA attributed the development of this capacity to ADB.

The RDA also acknowledged the assistance it received from ADB in establishing the Environmental and Social Division (ESD) as part of the RDA. The ESD has contributed to developing new skills, competencies, and capabilities among the STDP staff, in particular, and the Ministry of Highways, in general.

Perspectives of Management Consultants

ADB requested the management consultants to undertake external monitoring from May 2003. In the progress report submitted in February 2004, the consultants identified three reasons for delays in resettlement activities: (i) court cases, (ii) design changes, and (iii) less-than-expected output from the Survey Department, the Valuation Department, and divisional secretariats involved in the land acquisition process. The cost of land acquisition increased with the delays in project activities which, in turn, increased land prices. Such problems could have been avoided with careful resettlement planning. The process of land acquisition approved by the Cabinet of Ministers in 2001 did not guarantee the completion of land acquisition and payment of compensation within a specified time period. These issues were discussed at the RDA management meetings and at the project coordination committees (PCCs).

The management consultants brought to notice of the PMU deficiencies in layout planning and the lack of basic facilities such as drainage, water supply, and access roads. The location of a few resettlement sites in hilly and undulating terrains created risks of landslides. There was an inordinate delay in implementing the project's income restoration program. It emphasized the importance of the engagement of the APs in planning of the resettlement sites and income restoration programs.

The management consultants emphasized the need for monitoring social and environmental impacts during the construction phase and also for conducting resettlement audits. They conducted two audits, according to which most of the resettlement activities were behind the approved time schedule. The achievement of targets was not possible because of the delays caused by outputs lower than planned. The volume of compensation payments had to be increased fourfold. In February 2004, there were delays due to insufficient funds, limited number of LARC meetings conducted, and slow progress in valuation and land surveys. Disbursement of compensation payments of SLRs175 million a month was proposed to complete land acquisition and compensation payment by the end of July 2004 in the ADB-funded section of the expressway. However,

the RDA failed to realize this target in 12 months, and thereby to meet the requirements of the loan agreement.

The MIS was not updated for several years and, as a result, the original database built on the IOL survey data could not be used for effective resettlement monitoring. The consultants also recommended an improved communications system to enhance the flow of information between regional offices and the PMU to expedite LARC activities and recording of LARC decisions. The RDA provided new computers to the offices of ROs and further training on data entry for the MIS staff. It increased disbursement of compensation in the JBIC-funded section of the expressway to SLRs250 million a month. It thought that increasing the volume of funds available at regional offices would facilitate the completion of compensation payments by the end of 2004. In addition, a special incentive scheme was introduced to acknowledge the meeting of targets, and surveyors, valuation officers, and divisional secretariat staff benefited from the scheme. The management consultants recommended a further increase of the disbursement of compensation to SLRs300 million a month. But the revised operational program did not bring the expected results because of organizational limitations within participating agencies to handle such vast sums of money.

The revised organizational structure introduced in 2003 was developed to reassign the RAs to take over the tasks related to business development, social impact monitoring, and environment impact assessment. However, their skills and capacity in business development and environmental assessment were not assessed before their appointment. The RIP identified the need for business development officers in addition to the RAs. The RIP proposed recruiting 10 community resettlement workers and establishing community consultative groups (CCGs) to help the affected households enroll in the income restoration programs. The RDA failed to make these appointments and also to recruit women support officers. The income restoration program was delayed and, finally, a nongovernment organization was brought in to plan and implement it in 2005.

The management consultants proposed conducting an assessment of the project management structure at the field level. They suggested that the ROs should be given more authority regarding compensation determination and payment and more funds should be made available at regional offices for this purpose. They also proposed to appoint two project managers with a social science background and experience in community development projects for resettlement management. The management

consultants argued that unless the capacity of regional offices was improved, it would be difficult to ensure proper coordination among the relevant agencies, which, in turn, would adversely affect the payment of compensation on time. They further proposed reducing the workload of the PMU and to increase the number of field-level staff by hiring them on a contract basis to expedite the payment of compensation. These proposed changes to the organizational structure were not fully implemented and, as a result, there was a significant delay in compensation payments and the implementation of the income restoration program. This situation was further aggravated by the difficulties of getting sufficient funds from the Treasury to pay compensation and resettlement allowances.

Perspectives of Resettlement Specialists

The international resettlement specialist prepared three reports during the critical period of the RIP implementation from April 2003 to February 2005. As mentioned earlier, the specialist was involved in the formulation of the NIRP and possessed vast knowledge about best practices in land acquisition and resettlement and their application in Sri Lanka. The specialist's reports provided a detailed account of major issues in project administration and monitoring, as well as a set of recommendations to address them. Table 4.1 summarizes the key issues identified by the consultant and his recommendations.

Table 4.1: Key Issues and Proposed Action for Institutional Capacity Building

Key Issue	Proposed Action	Status as of February 2005
Need a new organizational structure to decentralize resettlement implementation activities	Management consultants to prepare a proposal	Organizational structure was changed with the appointment of two deputy directors and two project managers with decentralized powers and authority.
Absence of a detailed plan of specific targets to complete land acquisition and compensation payment at each divisional secretary's office	Management consultant to prepare a detailed work plan	Payment of compensation has considerably improved due to timely release of funds from the Treasury, and decentralized payment arrangements.

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Table 4.1 *continued*

Key Issue	Proposed Action	Status as of February 2005
Terms of reference for resettlement staff and accountability for expected outputs	Prepare terms of references for resettlement consultants, ROs, and RAs	No action was taken by the project management in this regard.
Assign responsibility to a person with sufficient authority and experience to prepare and execute a work plan for land acquisition	Deputy director and project managers to be appointed	The deputy director in charge of land acquisition and resettlement at RDA had no control over the PMU managers—lack of coordination.
Improve relationship between the contractor and field resettlement staff	Project managers to be appointed	Field resettlement staff worked closely with supervision consultant and the contractor—substantial improvement in the relationship between contractor and resettlement staff. Contractor sometimes took the initiative to resolve small-scale adverse impacts on APs
Absence of coordinated plan and supervision for resettlement sites	Improvements in resettlement sites to be identified and a subsidiary plan to be implemented	There were significant infrastructure development issues requiring attention which did not get resolved until 2008.
Failure to establish grievance redress committees (GRCs)	Establish GRCs	GRCs were not established until October 2003, and less priority was given to the formation of new GRCs. Grievance Redress Mechanism meetings were regular for a while and then became irregular owing to poor supervision and support from the PMU.

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Table 4.1 *continued*

Key Issue	Proposed Action	Status as of February 2005
Update the management information system (MIS) as a monitoring tool	Update the MIS	An engineer was appointed to update the MIS, and later management consultants were entrusted with the task. But it was difficult to generate benchmarks and information for resettlement monitoring, and the MIS remained a partially completed database. The CRP in 2005 tried to extract socioeconomic data of APs from the MIS, but failed.
Poor morale among ROs and RAs due to their placement on a contract basis	Appoint ROs and RAs to the regular resettlement staff of the RDA	Experienced resettlement staff took up graduate employment, creating a vacuum in resettlement management at the village and resettlement site levels.
Lack of coordination and communication among key project stakeholders	Identify constraints and difficulties in RIP implementation in consultation with divisional secretaries and others. Set up units with RAs to expedite land acquisition and compensation payment at the village cluster level.	Most of them were recognized as appropriate actions to address the issue of coordination among key stakeholders. Actions, however, were delayed because of RAs leaving the project.

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Table 4.1 *continued*

Key Issue	Proposed Action	Status as of February 2005
	Seek political, religious, and community leaders' support to educate and inform APs regarding resettlement benefits. Inform APs about the contractor's work schedule. Allow ROs to prepare vouchers for compensation payment and to issue checks without channeling such payments through the accounting unit at the RDA in Colombo.	

AP = affected person, CRP = Compliance Review Panel, PMU = project management unit, RA = resettlement assistant, RDA = Road Development Authority, RIP = resettlement implementation plan, RO = resettlement officer.

Sources: Government of Sri Lanka (2003a), (2003b), (2005).

Perspectives of the Affected Persons

By the time the project started its physical works, all APs knew about the project, although the frequent changes of the alignment of the expressway had confused some of them. As discussed in Chapter 2, many potential APs, especially the youth of the affected households, hoped that the project would bring benefits to them mainly in the form of employment and social mobility. The dissemination of information against the project by a handful of APs generated some chaos. Findings of various committees, court judgments, and ADB's Office of the Special Project Facilitator and the Compliance Review Panel (CRP) created some uncertainty among the APs as to the benefits of the expressway and how it would affect them.

The delays in land acquisition, compensation payment, and relocation generated a sense of unease among many APs. They wanted to see the construction of the expressway as early as possible. They wanted to diversify their income sources, as they had lost the land on which they depended for their livelihood. Without the expressway, they could not even plan for such changes, and the expressway took nearly 10 years to become operational. During this period, those who moved into resettlement sites or remained in their original land lost their livelihoods and sources of income without being

replenished by alternative and better income sources. Many households did not participate in the income restoration program activities of the project because of the psychological trauma of the physical displacement. Their nostalgia for their lost assets, lands, social networks, and income sources prevented them from building communities at new resettlement sites or merging with host communities in the vicinity. Moreover, because of their uprooted status in the community, they did not want to take risks or search for employment outside the project area. They tried to maintain their connections with their ancestral land and social groups in their original villages. This gave them some sense of identity and a safety network.

Those APs who remained in their original villages had day-to-day issues of noise and dust pollution, and the exposure to outsiders who moved into the area as construction workers, heavy machine and vehicle operators, and suppliers. At the same time, the APs' heavy dependency on project authorities was detrimental to the development of their entrepreneurship and social integration with their host communities. Those who self-relocated were satisfied with generous cash compensation packages that they received from the RDA and were willing to take the risk of restarting their lives at new locations without external support. Most of them had the entrepreneurial drive to better their life chances and did well in their new environment and maintained links with their original villages.

Perspectives of the Independent External Monitoring Agency

According to the Centre for Poverty Analysis (CEPA), institutional arrangements and mechanisms envisaged in the RIP were largely implemented, particularly the establishment of the LARC system and an appeal mechanism in the form of the Super LARC to settle disputes in compensation determination. The income restoration program and operations of grievance redress committees (GRCs) were monitored by the deputy director of the PMU for environment and social impacts (CEPA 2008b).

From 2008, the ESD of the RDA was engaged in environmental and social impact monitoring of the project. The key monitoring instruments were regular field visits and field observations as well as interviews. The ESD engaged a consultant to develop a project performance management system that included a performance indicator framework consisting of 37 indicators against outputs, outcomes, and impacts of the project. The

assessments were carried out at regular intervals by the ESD staff. This improved the monitoring of resettlement and income restoration programs of the project.

The implementation of the RIP had demonstrated considerable flexibility in response to ground realities. Some institutional structures and procedures such as the Super LARC and the payment of additional resettlement allowances were developed as a response to particular resettlement implementation issues. The MIS, although weak, was used not only for reporting to donors, but also as a management tool at the project operation level. If regional offices had had access to the MIS, they too could have updated the data and information regularly as and when they were collected.

Some grassroots institutional mechanisms envisaged in the RIP were not fully implemented. Among them were the CCGs that would have enabled community representatives to be involved in local decision-making processes, verifying land acquisition, and assisting APs to make their entitlement claims. Instead, these tasks were performed by the RAs who acted as mediators in compensation negotiations between the APs and the project administration.

The ROs who were involved in implementing the RIP at the regional level were affected by the narrow terms of reference and the lack of resources. Most of them did not have adequate community development and resettlement experience. But a few ROs and especially many RAs managed to improve their social mobilization skills while working with the APs. The departure of most of the RAs from the project adversely affected the communication channels between the project management and the APs. The APs lost a group of change agents who were sympathetic and willing to listen.

Part 3: Institutional Capacity Building

The development of institutional capacity involves policy changes, provision of sufficient resources for early planning and participation, flexibility in institutional changes, educational and technical training, and reform of the legislation and regulatory frameworks. Capacity-building initiatives of the Southern Transport Development Project (STDP) focused on the policy development, new institutional arrangements, changes in organizational structures, and mostly on-the-job training and skills development of the project staff. The organizational structure and individual performance

became effective when there were adequate resources and a supportive environment. Involuntary resettlement involved many organizations and agencies carrying out different actions, but some institutions did not consider such activities as their priorities. The relevance and usefulness of the “resettlement cadre” within the organizational culture were largely overlooked. The agencies and departments engaged in land acquisition and resettlement should have a clear line of command within a hierarchical authority to enforce responsibility and accountability for actions.

The RDA entrusted the contractual staff to carry out the bulk of the resettlement programs. Most of them were retired government officials. On the one hand, they did not have any authority over decision making and using resources, but had to deal with risky situations of conflict management. They lacked the authority to coordinate the work of the four regional offices. On the other hand, the ROs and the RAs were not given any training in safeguard policy application or in community engagement. As mentioned earlier, the skills they gained were mainly through their self-learning and working with the APs. This generated some friction between the consultants and the regional staff and, as a result, coordination of the work of the two groups became difficult.

The divisional secretaries who participate in LARC meetings too did not have much training on land acquisition and resettlement. The project used the services of the existing system of land acquisition and built in incentive schemes for government surveyors and valuers to expedite the land acquisition process. These government officials had other responsibilities and commitments, and sometimes were not available to meet the tight implementation schedule of the project. As a result, the land acquisition process took more than 4 years to complete, instead of 18 weeks for which it was planned.

Best Practices in Institutional Arrangements

Several best practices can be identified from the institutional arrangements of the land acquisition and resettlement programs of the project. Some of them were in their incipient stages while others were well established.

The agencies involved in the project’s land acquisition and resettlement had to ensure that the NIRP objectives and principles; loans covenants and assurances; and the RIP implementation requirements for land acquisition, compensation, resettlement, and rehabilitation assistance were strictly followed as uniformly as possible.

Under the LAA, there were two major weaknesses in the land acquisition procedures: the inadequate compensation and the lack of participation of APs in decision-making processes. By paying compensation at the replacement cost and providing a mechanism for the APs to formally participate in determining compensation through the LARC and the Super LARC, these two weaknesses were reasonably addressed.

A LARC meeting was held for each acquired land parcel eligible for compensation. In addition, an opportunity was provided to those who disagreed with LARC decisions to renegotiate compensation and resettlement entitlements at the Super LARC. The LARC—in terms of its location, composition, and scope of powers—fulfilled the requirement of having a robust grassroots-level mechanism to ensure that all APs were heard and allowed to negotiate their entitlements.

In 2006, the public complaints resolution and monitoring committee (PCRMC) adopted a holistic approach in resolving construction-related complaints through a collective effort and reduced possible disruptions to construction work. The effectiveness of the PCRMC largely emanated from the engagement of representatives of contractors, the RDA, other relevant departments and agencies, and supervision consultants in discussions and in search of solutions.

The regional offices of the STDP played a critical role in the process of the RIP implementation even though they did not have clear terms of reference and sufficient resources. The RAs played an important role in getting the support of the APs for the project. They also resolved APs' grievances mainly relating to compensation claims, relocation support, and development of resettlement sites.

A large number of actors with different roles and capacities from various institutions and agencies were engaged in internal and external monitoring of land acquisition and resettlement processes. Involvement of such a multitude of actors was the strength of the monitoring system that brought in diverse perspectives to address the issues and concerns of the APs. The weakness was the absence of a coordination mechanism for avoiding duplication of work and resources (Weerackody 2012).

Conclusion

Despite new institutional arrangements, changes to the organizational structures, and improved coordination mechanisms among different institutions, direct contacts between the project and the APs remained

weak at the initial phase of the project (i.e., until 2003). Regional resettlement offices were established to overcome these weaknesses. These offices significantly improved LARC activities, compensation payment, and physical relocation of physically displaced APs. However, regional resettlement offices did not have sufficient legal powers, databases, and adequate budgets to deal with all planning, legal, and implementation-related issues. The RDA should have hired nongovernment organizations to support such offices and provided funds to develop computerized MIS at the regional level.

Both the government and funding agencies are responsible for local capacity building based on the initial assessment of the adequacy of institutional arrangements to plan and implement a large and complex project. As the RDA (as the executive agency of the project) did not have much experience in IOL surveys and MIS development, development of resettlement sites, and the preparation and implementation of the income restoration programs, it should have selectively outsourced some key activities early in the RIP implementation phase of the project to competent agencies to implement.

There was no plan for identifying training needs of the project staff. Capacity-building activities should have also included the linkages with training institutions and universities in South Asian countries such as India for short-term training. For such training requirements, the RDA should have provided a training budget. Although ADB had financed two technical assistance programs at the beginning of the project, there was no financial support for involuntary resettlement management training, seminars, and workshops.

ADB, the Japan Bank for International Cooperation, the management consultants, the international resettlement specialist, and external monitoring agencies developed monitoring frameworks, methods, tools, and indicators. However, they did not provide a well-organized internal monitoring mechanism and a robust MIS. As a result, resettlement outputs and outcomes were monitored and evaluated without a well-functioning MIS and internal monitoring system. Adequate documentation of monitoring results was lacking in the STDP, except in the case of the 400-household sample monitored by the CEPA. Therefore, well-designed capacity-building training programs should have been provided to the project staff early in the project cycle with the possibility of having follow-up training programs. It is also necessary to establish a separate unit within the PMU to develop a robust and user-friendly MIS. It should have a budget to update data and information. The MIS, as an essential component of the

monitoring system, should have been effectively managed and supervised ensuring regular updates.

The estimated resettlement budget of the STDP was about SLRs2,861 million. The total amount of compensation payments for land acquisition was SLRs4,988 million at the end of January 2014 (ADB 2014:66). This was a 74% increase over the original budget. Financial shortages during resettlement implementation often indicate inadequate preproject resettlement cost calculations and unrealistic budgeting. It also indicates the unplanned land acquisition and resettlement activities during project implementation. Undervaluation of property losses and underestimation of resettlers' requirements for reconstruction costs were the main reasons for under allocation of finances for the project. Such initial underbudgeting is very difficult to correct during the resettlement implementation phase.

The decentralization of resettlement implementation is desirable, provided there is a sufficient number of trained and committed staff available at the regional and local levels. They should have their job security and basic facilities such as housing and transport sources. Once decentralized, actions including the approval of payment vouchers and the distribution of checks among APs should be kept with local officials. This should be preceded by comprehensive training of such officials in financial management and resettlement administration. Project officials and divisional- and district-level personnel who engage in project activities can be taught to maintain files and hold accountable for funds they handle.

CHAPTER 5

Compensation at Replacement Cost and Rehabilitation

The Southern Transport Development Project (STDP) is the first infrastructure development project in Sri Lanka to apply the international best practice of paying the replacement cost to compensate private land and other property acquired by the state for a public purpose. The key purpose of the best practice is to ensure that the nonpoor APs would not become poor, and the poor affected persons (APs) would not become poorer because of the acquisition of their property for a project. It is difficult to define the replacement cost, and even more difficult to apply it to a concrete set of actions that constitute land acquisition, payment of compensation, relocation, and rehabilitation. Replacement cost generally means an outcome of a range of methods of valuation aimed at paying adequate cash compensation to an AP enabling him or her to buy similar land and other assets in quantity and quality to those lost assets, and to cover transaction costs such as title search and land registration and other costs associated with asset replacement. Where functioning land markets exist, replacement cost is the market value, as determined by an independent and competent real estate valuer and transaction costs. If a functioning land market does not exist, the replacement cost is determined by calculating the output value of the acquired land and productive assets that are located on it. In case of buildings and other structures that are either acquired or demolished, their replacement cost includes the value of replacement material and labor for reconstruction of structures, and transaction costs (ADB 2009b).

This chapter examines the policy and the regulatory framework within which the STDP paid the replacement cost for acquired property for the project, the special institutional procedures that were established for this purpose and their performance, and the key findings of ADB's Compliance Review Panel (CRP) on involuntary resettlement safeguard policy application to the project on this particular issue. It will also highlight several international best practices that were introduced to the Sri Lankan regulatory framework enabling it to pay the replacement cost, and its impact on the income and livelihood rehabilitation of the APs.

Replacement Cost

As discussed in Chapter 2, there has been gradual shift from a development thinking framework that focuses on state-centric powers to usurp private property for a public purpose toward a development policy that is more person-centric. This development policy highlights the state's responsibility in ensuring that the affected nonpoor do not become poor and the affected poor do not become poorer and vulnerable, as a result of land acquisition for a development intervention. This shift in development thinking on land acquisition was well captured by the policy on involuntary resettlement of ADB of 1995. Its safeguard policy principle (iii) states:

If an individual or a community must lose land, means of livelihood, social support systems, or a way of life in order that the project might proceed, they should be compensated and assisted so that *their economic and social future will generally be at least as favorable with the project as without it*. Appropriate land, housing, infrastructure, and other compensation, comparable to the without project situation should be provided to the adversely affected population. (*italics added*)

Under the Project Processing section, the policy explains how to apply the above key safeguard principle:

It is important to ensure that involuntary resettlement is avoided where feasible and minimized. If it is unavoidable, that laws and regulations concerning displaced people provide for compensation *sufficient to replace all lost assets*, and that displaced people are assisted to relocate and generally at least to restore their form of living standards, income earning capacity, and production levels (para. 42, *italics added*).

ADB and other multilateral development agencies emphasize the importance of paying adequate compensation promptly to the APs, enabling them to replace their lost land and other assets. Its bottom threshold is the restoration of what the APs have lost to a project. It does not, however, emphasize the importance of improving their life chances; instead, it focuses on maintaining the status quo of the APs and affected households. In other words, it is a strategy to ensure that the project does not impoverish or further impoverish the APs. In 1998, the Operations Evaluation Department of the World Bank challenged this rationale

of maintaining the status quo of APs, based on the findings of a global study conducted by the department. It recommended that *restoration* of income and livelihood should be replaced with *improvement* of income and livelihood. The department pointed out that:

In most instances, the upheaval attending relocation should be managed as a development opportunity and funded accordingly. Restoration is an appropriate short-term objective, but improvement of the productivity, living standards, and lifestyles of the displaced is as valid a long-term objective of the projects as are the improvement planned for the primary beneficiaries. (World Bank 1998: 73).

The Management of the World Bank responded to this recommendation as follows:

Current [World Bank's Involuntary Resettlement] Policy provides, as a requirement, that income restoration be the minimum benchmark against which the adequacy of resettlement is assessed. Improvement in the incomes of affected persons is an objective of the policy; it is especially important when the affected people are poor and/or vulnerable (World Bank 1998:19).

This distinction between restoration and improvement of income and livelihood of the APs has since become a key safeguard policy issue in policy deliberations on how to revise and update involuntary resettlement safeguard policies. The key assumption in such deliberations has been that if the APs received compensation at the replacement cost for their lost land, they could at least maintain their preproject status quo; and those APs who are identified and categorized as poor and vulnerable should receive additional assistance to improve their income and livelihood. Such additional assistance is not part of the replacement cost.

When the STDP was approved by ADB in 1999, the payment of the replacement cost for acquired property and the restoration of income of the APs were not principles recognized by the regulatory legal framework of Sri Lanka. The key legal instrument that was applicable at that time to land acquisition and compensation was the Land Acquisition Act (LAA). Section 45 (1) of the LAA states that "...the market value of a land in respect of which Notice under section 7 has been published shall...be the amount which the land might be expected to have realized if sold by a willing

seller in the open market as a separate entity on the date of publication of the notice in the Gazette....” Section 46 (1) states that the amount of compensation to be paid to a person who has any “interest” in acquired land is based on the market value of that land; in the case of acquisition of a servitude over that land, it is based on the market value of that servitude. Section 36(a) of the LAA provides for land-for-land compensation as well. Thus, the LAA provides for cash-for-land or land-for-land compensation modalities of compensation.

The Loan Agreement of the STDP, signed by ADB and the government in 1999, directly applied the land acquisition and resettlement best practices outlined in the ADB’s involuntary resettlement safeguard policy.⁶⁷ The Loan Agreement stated that the land acquisition and resettlement will be completed in compliance with ADB’s involuntary resettlement safeguard policy for the entire project length, irrespective of funding sources (ADB 1999a). It further stated that the APs will, to the extent possible, receive replacement land for farming and for other land-based livelihoods. If land is not available, cash compensation will be paid at the *market value* of the land. Likewise, loss of standing crops and productive trees will be compensated at market price. Regarding acquired structures, it stated that if residential/commercial structures and other fixed assets are permanently damaged, they will be compensated at replacement cost without depreciation.

The loan agreement used “market value” instead of “replacement cost,” because the annex of the Cabinet memorandum of 2001 used the term “market value”. On the other hand, ADB’s involuntary resettlement policy emphasized that APs should be given compensation sufficient to replace lost assets. This is a vague and difficult policy prescription to implement. In this context, the application of the market value is the only method to provide sufficient compensation for lost assets including land. In many projects in South Asian countries, borrowers asked ADB whether market value was equal to replacement cost. Some countries avoid the use of the term “replacement cost” altogether in resettlement planning documents on the grounds that (i) domestic laws specify that the market value should be paid to APs for the land acquired, (ii) ADB’s involuntary resettlement policy (1995) does not stipulate replacement cost as an involuntary resettlement policy principle, (iii) the calculation of the replacement cost of lost land is difficult as replacement goes beyond cash

⁶⁷ The Cabinet memorandum of April 2001 titled “Payment of Compensation to the Persons Affected by the Acquisition of Property for the Southern Transport Development Project” included an entitlement matrix as an annex that matched the ADB’s involuntary resettlement safeguard policy principles (see Chapter 2).

compensation to include income restoration, and (iv) the APs may not be able to find replacement land of identical size and land quality to purchase in the area where they live or where they want to live as resettlers.

The abovementioned discussion shows the ambiguities surrounding the application of replacement cost to pay compensation for the acquired property. These ambiguities were further complicated by ADB's operations manual on the policy of involuntary resettlement (1998). In the early years of the first decade of the 21st century, the replacement cost gradually became the basis of cash compensation calculation for property acquired, and the market value was considered a component of the replacement cost (ADB 1998, 2009b). Assistance in the form of resettlement assistance, paying registration fees, assistance in transportation of salvaged materials, interest accrued, and allowances for rental of temporary dwellings in case of physical displacement were all lumped together with the market value to create the replacement cost.

The gradual movement from market value to replacement cost was considered by the borrowers and some ADB staff as a "policy plus" safeguard requirement. This meant that the involuntary resettlement policy did not have a policy principle regarding the replacement cost, and as a result of which the concept of replacement cost was introduced to the ADB-funded projects through revision of the operations manual of the policy from time to time without revising the policy.

Only in 2009, the ADB's involuntary resettlement policy included the payment of the replacement cost for acquired property as an involuntary resettlement safeguard policy principle. The justification for this was that the key objective of the Safeguard Policy Statement (2009) is to consolidate and incorporate all policy and operational practices found in various versions of the operations manual. Among them was the payment of the replacement cost for acquired land and other property.

The National Involuntary Resettlement Policy and Replacement Cost

The National Environmental Act No. 47 of 1980, amended by Act No. 56 of 1988, considers resettlement of displaced persons as an environmental activity, and recognizes a resettlement plan as a component of the environmental impact assessment report. The Minister of Environment by Gazette Notification No. 859/14 of 23 February 1995 directed that any project that affected more than 100 households should have a resettlement

plan. But neither the act nor the gazette notification specified how such households should be compensated, resettled, and rehabilitated.

As discussed in Chapter 2, when the Loan Agreement of the STDP was signed in 1999, the Ministry of Lands, ADB, and the Road Development Authority (RDA) were in the process of developing a national involuntary resettlement policy based on international involuntary resettlement best practices. The National Involuntary Resettlement Policy (NIRP) aims to ensure that (i) APs are adequately compensated, relocated, and rehabilitated; (ii) delays in project implementation and cost overruns are reduced; and (iii) better community relations are restored after land acquisition and resettlement. The policy has, as one of its key principles, the prompt payment of the replacement cost for the acquired land and other assets.

The NIRP provides a broad framework to ensure that the APs of development projects are treated in a fair and equitable manner, and that they are not impoverished as a result of the acquisition of land. In this context, the payment of the replacement cost of the acquired land is considered critical. The NIRP provides two options in this regard to those who lose their land. The first is the provision of replacement land as compensation for the acquired land, the second is prompt payment of cash compensation for loss of land, structures, other assets, and income based on the full replacement cost. By applying these two options, the NIRP matches the key international resettlement best practice—that is, no impoverishment of APs will result as a consequence of compulsory land acquisition for development projects. This principle is further buttressed by indicating that the estimation and payment of the replacement cost is to be done in an atmosphere that is consultative, transparent, and accountable and is to be completed within a time frame agreed to by the project executing agency and the APs.

The documents prepared to enable the application of the NIRP, such as the Process Manual, General Guidelines on Planning and Implementation of Involuntary Resettlement, Guidelines for the Preparation of Resettlement Action Plans, and Guidelines for a Participatory Resettlement Process, emphasized the application of replacement cost principle as part of the NIRP to all development projects.⁶⁸ They clearly indicate the importance of paying the replacement cost for the acquired property and the need for

⁶⁸ These activities were supported by the ADB technical assistance Capacity Building Project for the National Involuntary Resettlement Policy (TA 3792-SRI) given to the Ministry of Lands in 2003.

the rehabilitation of the APs. The decision for the Ministry of Lands to be responsible for the implementation of the NIRP, in collaboration with a wide network of public agencies including the Central Environmental Authority, the Survey Department, the Valuation Department, the ministries concerned, and the divisional secretariats, shows the government's determination to move away from the regulatory framework of statutory compensation paid under the LAA to a new framework for the payment of the replacement cost for the acquired property, and for providing assistance for the APs' relocation and economic rehabilitation regardless of their land tenure status.

In summary, in 2002, when ADB and the government approved the final resettlement implementation plan (RIP) of the STDP, Sri Lanka had a very favorable involuntary resettlement policy and an institutional framework to implement it. In fact, some of the resettlement policy principles went beyond international best practices in involuntary resettlement planning and implementation. APs' entitlements to assistance such as obtaining electricity and water supply, gratis payment of 25% of statutory compensation as an incentive to hand over land by a prescribed date, and the provision of land parcels for squatters at resettlement sites, in addition to cash compensation for land development and structures, in fact exceeded the expectations of ADB's involuntary resettlement safeguard requirements.

Replacement Cost and Associated Entitlements

The RDA vigorously applied the following safeguard best practices that had a direct impact on the sources of income and livelihoods of the affected households:

- (i) The RDA ensures that all compensation payments will be paid at their replacement cost to the APs prior to taking possession of such land, and certainly prior to their relocation.
- (ii) The RDA ensures that the vulnerable households, such as the displaced households headed by women and elderly persons, receive in addition the replacement cost of their acquired property; adequate support such as house construction, or at least building materials and labor; and administrative and technical assistance.
- (iii) The government and the RDA ensure that a special compensation package is given to nontitled land users and squatters so that they will not become further impoverished.

- (iv) The government and the RDA ensure that the affected commercial enterprises receive assessments of and information on the possibilities of gaining access to locations where markets as easily accessible to restart their business. Such extra help is particularly to be provided if the cash compensation of the replacement cost of the acquired property is insufficient to restart their business.

The above best practices in involuntary resettlement particularly emphasized the importance of the payment of replacement cost prior to displacement, and the restoration and improvement of income sources and livelihoods of APs, particularly the poor and vulnerable AP households. The full incorporation of these principles in the RIP set the stage for a resettlement program that would provide a development opportunity for all APs. But wrong estimates, inadequate budgets, and agitation of a few APs derailed the land acquisition and resettlement program, causing inordinate delays in paying full compensation at replacement cost prior to displacement in case of a substantial number of APs. This demonstrates that an excellent RIP with all international best practices in involuntary resettlement could go astray unless preparatory work for its implementation is fully planned with adequate institutional and financial resources.

Application of the Replacement Cost

Under the RIP of the STDP, the determination of the replacement cost of the land acquired was done in three phases. The first was the determination of the statutory compensation under section 17 of the LAA. This was approved by the land acquiring officer after following the procedures prescribed in the LAA.

The second phase was the determination of ex gratia payments to the APs by the land acquisition and resettlement committee (LARC). Its remit was to bring the statutory compensation to the level of the replacement cost of the acquired land and property. This process was elaborate, as there were many ex gratia LARC compensation payments to be determined based on lengthy negotiations and consultations. These included (i) the difference between the replacement cost and statutory compensation for land and structures, (ii) compensation for cultivated crops and trees, (iii) payment for structures and land improvements, (iv) compensation for the loss of income from property, (v) inducement payment (25% of statutory compensation) for leaving the land on a stipulated date, (vi) temporary housing rent, (vii) resettlement allowance for squatters

and/or encroachers, (viii) resettlement allowance for landowners, (ix) loss or interruption to employment and/or income sources, (x) payment for vulnerable and/or disabled heads of households, (xi) shifting cost of movable properties, and (xii) payment for the loss of employment of sharecroppers and informal sector employees. The package also included (xiii) costs of getting connections to basic facilities such as telephone, water, and electricity for their new houses at resettlement sites and to commercial structures; as well as (xiv) a self-relocation allowance of SLRs100,000 to each voluntarily relocated household.

The third phase was the payment of cash compensation based on the aforementioned calculations. In order to avoid corruption and misappropriation, the RDA opened an account in a state bank for each household that received cash compensation, which was deposited into that bank account.

Components of the Compensation Package

The STDP paid statutory compensation and provided an attractive resettlement assistance package to each affected household. In addition, project-specific financial assistance was also provided to the affected households. The total value of such payments, compensation, and assistance programs exceeded the replacement cost of the lost assets to the project. The following sections outline various sources of compensation and assistance provided by the STDP and the difficulties and challenges that the RDA encountered in deciding them and finding funds to pay them.

Statutory Compensation

There were several difficulties regarding the assessment of the statutory compensation for the acquired land. One was the subplotting of individual land plots by surveyors. The division of a single landholding into several subplots confused the landowners and land users, and sometimes deprived some of them from getting fair compensation for the land that they lost. One homestead, for example, was artificially divided into different land tenure and land-use categories such as the homestead, home garden, low-lying land, highland, marshy land, and scrubland. The surveyors and valuers used these land subplots to measure and value highlands. Estimation errors and unnecessary paperwork inordinately delayed compensation determination and payment. These delays had a direct impact on the replacement cost of acquired property as land values increased in the project area in anticipation of development.

Agricultural land received the lowest statutory compensation, and homesteads received the highest. This was owing to the different valuation norms that the Valuation Department applied to different types and uses of the land. On the whole, paddy land did not fetch higher prices compared with lands that were cultivated with tea or other cash crops. Paddy lands were highly fragmented, and each plot was often owned by several individuals. As a result, the acquired paddy land was paid nominal values under section 17 of the LAA.

Land Acquisition and Resettlement Committee Entitlements

Determination of LARC entitlements of the APs went through a detailed process in which each AP had an opportunity to discuss the ownership or user rights of the land, and the current replacement cost of the property. At the beginning of the process of land acquisition, LARC meetings were more frequent, and each AP had the opportunity to meet the LARC officials several times. During LARC hearings, LARC entitlements of each acquired land plot were considered in the light of multifaceted losses arising from land acquisition such as the loss of source of income and livelihood in order to arrive at a fair resettlement assistance package. In this process, the LARC was assisted by the resettlement assistants (RAs) and the Grama Niladharis (village-level state administrative officers) and the agricultural extension officers. If an AP was not satisfied with the LARC's offer, he or she could appeal to the Super LARC for a better resettlement assistance package.

The rationale for such a detailed process under the LARC was to ensure that each AP receives the replacement cost of his or her lost property. As the external monitor of the resettlement program found, the APs were happy with the manner with which the LARC conducted its duties and with the awards that it offered (CEPA 2008b).

Business Recovery

Most of the affected businesses failed to recover fully, although the business owners who lost land and structures to the project received the replacement cost of such losses. Their problems were twofold. First, they ceased to be businesspeople at short notice, and they never recovered from that trauma or the loss of their business network and goodwill in the community. Second, the cash compensation they received was not invested fully in businesses

immediately. This was because they could not find suitable locations to reopen their businesses. They also spent a sizable portion of their cash income in household activities and in rebuilding better houses. Most businesses could not find spacious locations where they could diversify their business activities. The shopkeepers could not run their businesses because the number of customers who visited their shops dwindled given difficult access caused by the construction of the expressway. For example, the shops located close to the Kurundugahahatakme Exchange of the expressway experienced a significant reduction of regular customers because of access difficulties. The prolonged construction period of the expressway also lowered the morale of businesspeople as they did not know when the expressway would be completed. All these factors contributed to the nonrecovery or very slow recovery of businesses in the project area despite the payment of the replacement cost and the assistance given to find suitable locations to restart their businesses.

Incentive Payments

There were two incentive payments. First, the RDA awarded 25% of the statutory compensation as a LARC entitlement and as an incentive bonus to the APs for handing over of the acquired land by a stipulated date. This payment was subject to the minimum payment of SLRs25,000 per household. The minimum payment was specifically meant for the poor and vulnerable households who lived in very small houses without amenities. Others who received the incentive payment considered it as a bonus. Second, the payment of SLRs100,000 for each physically displaced household that opted to self-relocate. This incentive played a critical role in the final decision of a displaced household whether to self-relocate or move to an RDA-sponsored resettlement site as resettlers.

Compensation for Squatters

Squatters on government land were not given statutory compensation for the land that they had occupied. But under the LARC procedures, they were paid a special allowance to sufficiently compensate for land improvement, structures lost, and loss of livelihoods and income sources. Each squatter household also received a piece of land 10 perches (0.025 ha) at a resettlement site and financial assistance to build a house. In addition, each displaced nontitled household received a relocation allowance and other amenities such as electricity, water supply and access roads. Thus, the STDP has met one of the key international involuntary resettlement best practices—that the lack of title is not a bar for compensation and resettlement assistance.

Interest on Delayed Payment of Statutory Compensation

Because of the delays in paying the compensation, the RDA paid interest at 7% per year on outstanding statutory compensation from the day a land plot was gazetted under section 38(a) of the LAA until the day compensation was fully paid. About 5,876 lots were eligible to receive interest on compensation. The RDA completed the interest payments for delayed compensation by the end of May 2007. The interest paid for the delays amounted to SLRs451.45 million (SLRs287.23 million in the ADB-funded section and SLRs164.22 million in the Japan Bank for International Cooperation (JBIC)-funded section of the expressway).

Replacement of Affected Cash Crops

The project adversely affected cash crops. Unlike paddy, cash crops are commercially viable, and as a result, the cash crop sector recovered slowly but unevenly in project area, whereas the paddy sector uniformly lagged behind. A sample survey conducted in 2008 showed that nearly two-thirds of the households were generally on a recovery path (CEPA 2008a:17). While the replacement of lost cash crops had been slow in smallholdings, large landholdings showed a quick recovery. Soon after land acquisition, as Table 5.1 shows, a significant number of households stopped cultivating their cash crops due to the total loss of land or abandonment of the remaining residual land. This affected their household incomes. About 30% of cash crop farmers were worse off than they were before, and they were mainly APs who were unable to restart land cultivation due to construction impacts and other constraints.

Table 5.1: Changes in Productivity by Crop Type (%)

Crop	Increase in Productivity	No Change	Decrease in Productivity	Cultivation Abandoned
Tea	0.0	0.0	71.0	29.0
Rubber	12.5	12.5	43.7	31.3
Cinnamon	14.4	0.0	42.8	42.8

Source: Centre for Poverty Analysis (2006a).

Jayawardena observed that “The lack of productive land on the market, especially in the vicinity of the lost land, the rising prices in the area, and the receipt of compensation in installments, constrained the purchase

of replacement land. In general, the trend has been a definite drop in productivity related to all crops (2011:41).”

Construction activities of the project affected cash crop cultivation by blocking irrigation and drainage canals. Siltation, dust, and floods also had varying impacts depending on the crop type. Such adverse impacts over a long time, combined with uncertainty regarding the degree of potential impacts of the expressway on their livelihoods, imposed serious constraints on farmers who wanted to restart their agricultural pursuits, especially cash crop cultivation. These constraints continued for many years especially on the agricultural land located closer to the expressway.

Replacement Cost and Economic Rehabilitation

Gamaathige and Somarathne (2006) showed that the APs received substantially enhanced compensation as a result of the LARC negotiations. According to the Valuation Department’s estimates, in 2000, the average value of a perch of home garden was SLRs18,000.⁶⁹ The statutory compensation paid for such land was generally lower than the estimated market value of the land. However, LARC-negotiated payments and allowances, as a compensation package, raised the compensation an AP received well above the market price (Table 5.2).

Table 5.2: Compensation for Home Gardens

Area	Acquired Land (perches)	Statutory Compensation (SLRs per perch)	LARC Offered (SLRs per perch)	Increase of Compensation (%)
Ambagahawila	449.3	16,424	22,220	35
Ankokkawala	397.8	12,695	18,775	48
Pinnaduwa 1	344.7	11,375	20,300	78
Ihalagoda	176.7	12,560	18,500	47
Pinnaduwa 2	38.7	11,280	14,500	29
Total	1,407.2			

Note: 160 perches = 1acre = 0.405 ha. 1407.2 perches = 8.795 acres = 3.56 ha.

LARC = land acquisition and resettlement committee, SLRs = Sri Lanka rupees.

Source: Gamaathige and Somarathne (2006).

⁶⁹ One perch is 0.025 ha.

In case of highlands, LARC payments were more than 50% of the amount paid as statutory compensation, and in some cases, more than 400% (Table 5.3). This indicates that statutory compensation paid under section 17 of the LAA did not reflect the market price on which the willing-seller-willing-buyer would negotiate the value of the land.

Table 5.3: Compensation for Highlands

Area	Acquired Land (perches)	Statutory Compensation (SLRs per perch)	LARC Offered per Perch (SLRs)	Increase of Compensation (%)
Ankokkawala	298.2	11,275	16,895	50
Pinnaduwa 1	7.5	5,500	10,000	82
Ihalagoda	9.9	7,235	12,880	78
Pinnaduwa 2	2.8	715	3,640	409
Total	318.4			

LARC = land acquisition and resettlement committee, SLRs = Sri Lanka rupees.

Source: Gamaathige and Somarathne (2006).

Compensation for paddy land remained depressed. However, after LARC negotiations, the total compensation for paddy land sometimes increased by more than 70% (Table 5.4). But as the statutory compensation was low, the percentage increase in monetary terms was not significant. As a result, affected farmers could not invest in buying paddy lands to restart their livelihood in their post-displacement phase.

Table 5.4: Compensation for Paddy Land

Area	Acquired Land (perches)	Statutory Compensation (SLRs per perch)	LARC Offered per Perch (SLRs)	Increase of Compensation (%)
Pinnaduwa	179.5	710	1,275	80
Ihalagoda	51.4	737	1,250	70
Total	230.9			

LARC = land acquisition and resettlement committee, SLRs = Sri Lanka rupees.

Source: Gamaathige and Somarathne (2006).

Replacement Cost and Income Restoration

A key question regarding the replacement cost is: did LARC entitlements actually help APs restore and improve their household incomes? According to the external independent monitor of resettlement activities of the STDP, incomes have decreased compared with pre-acquisition levels among a majority of the APs in all categories, whether they lost houses and property, agricultural land, or commercial property (CEPA 2007). As the project attempted to reduce the impacts on human settlements and wetlands, nearly 70% of land acquired for the project was agricultural land on which the APs depended for their income and livelihood (CEPA 2008a). Paddy provided a stable food supply, and it was also their secondary source of income. As a result, the impact of the project on such paddy lands and landowners was significant, and they never recovered from the loss of their paddy lands.

The project-affected farmers did not have sufficient resources or motivation to look for new agricultural land to buy or to continue with cultivation of paddy land. Paddy land in the wet zone is less productive than the irrigated paddy land in the dry zone of Sri Lanka. Land fragmentation and the high cost of inputs discouraged paddy farmers from applying scientific cultivation methods in land cultivation. Land fragmentation reduced landholdings to unviable units, and the majority of such small holdings were sharecropped. They were valued at a low rate and, as a result, most of APs “who lost paddy lands were dissatisfied with the compensation they received. They said that paddy lands were paid very low amounts compared to other lands, and did not sufficiently compensate for the income and other benefits they had earned from the land. They also noted that in general, the amount of compensation they received was not enough to buy a replacement land” (CEPA 2008a:13). Most APs who moved into resettlement sites could not continue the cultivation of their paddy lands in their original villages because of the distance they had to travel and the difficulty in protecting their crops.

The affected paddy farmers could not buy new paddy lands because of the insufficiency of the replacement cost that they received to purchase new agricultural land. At the negotiations of statutory compensation and LARC entitlements, paddy land did not fetch high land values. The average compensation a farmer received per perch of paddy land plot was SLRs1,160. Often, because of land fragmentation and joint ownership, this amount had to be shared between joint owners who wanted to restart their life as separate households. In such instances, the replacement cost did not

help any of them to meet market prices of paddy land. This immediately brought them into the threshold of impoverishment associated with land losses.

Compensation was negotiated in 2001 and 2002 using the prevailing land values. The delay in actual payment of the cash compensation because of agitations against the project and the reduced Treasury allocations for compensation affected them adversely. While APs waited for their replacement cost payments, the market prices of land increased because of the demand and speculation that the expressway would make their land more valuable. No adjustment or revision of original negotiated compensation rates was introduced to further compensate such losses. This highlights the importance of paying the replacement cost promptly and fully to the APs, if they were meant to buy replacement land.

When the APs wanted to buy replacement paddy land with cash compensation and LARC entitlements, they often could not find suitable land to purchase. Paddy landowners did not want to sell their land because such land provided them their staple food—rice—and status as paddy landowners. Moreover, they did not have large tracks of paddy land to sell to others without losing their own livelihoods. In areas closer to urban or town centers, paddy land prices were high and in rural remote areas, prices were low. The price of paddy land ranged from SLRs600 to SLRs15,000 per perch in 2006. The APs wanted to buy land closer to their new residences. This further limited the chances of buying paddy land after their physical displacement. Absentee landlords who lived in urban areas sometimes were willing to sell their paddy lands in villages, but the low prices offered by the APs and pressure from original villagers against such transactions on grounds of caste, residence, and political connections discouraged the paddy land market. The result of these social and economic currents was that most of the paddy cultivators who lost all or a substantial part of their paddy land failed to recover their livelihoods as paddy landowners.

The paddy lands that were not acquired suffered many problems. As the expressway passes mostly through paddy lands, large-scale and decade-long construction activities impacted severely on paddy lands and their cultivation. Construction activities blocked irrigation and drainage channels and silted paddy fields. Flooding of paddy fields and other low-lying land by the expressway construction activities was a frequent phenomenon during the construction of the expressway. Difficulties in accessing land across the expressway under construction posed many problems to farmers who did not lose land to the project. Farmers experienced losses over several cultivation seasons, and some of them

were reluctant to invest in their paddy lands because of the uncertainty regarding irrigation and drainage facilities and pest control arrangements. These losses were not compensated, and led many farm households into impoverishment, including those that were not directly affected by the land acquisition. Such secondary adverse impacts were found not only close to the expressway but also in faraway places from the expressway. For several years, there were no mitigation measures to address disrupted infrastructure, changed natural drainage channels, and flooding risks in such areas. These farmers were subsistence farmers with no skills in other employment activities. Therefore, they continued to depend on their drastically reduced agricultural income as their primary source of income.

Loss of land, difficulties in accessing land, and expressway construction-related difficulties directly impacted on households' expenditure and household food security. Table 5.5 shows that, in 2010, the percentage of households who fell into the category of those spent less than SLRs3,000 a month was 12% and those who spent less than SLRs5,000 was 19% in the project area. Thus, nearly a fifth of affected households lived below the poverty line and received *Samurdhi* assistance.⁷⁰ At the same time, 50% of the households spent more than SLRs10,000 a month each in 2010. This indicates that while some poor households identified in 2002 became poorer or remained poor, the majority of affected households became nonpoor and also richer.

Table 5.5: Monthly Household Expenditure Patterns in 2010 (N=100)

Expenditure Category (SLRs)	Number of Households
Below 1,000	4
1,001–1,500	2
1,501–3,000	6
3,001–5,000	7
5,001–7,000	11
7,001–10,000	20
Over 10,000	50
Total	100

Source: ADB (2010).

⁷⁰ The state provided *Samurdhi* assistance to the poor and vulnerable households based on the national poverty line.

The project provided limited opportunities to the APs to change or improve their livelihoods. The lack of required employment skills other than agricultural skills and capital among APs also contributed to this situation. The educated children of AP households moved away from agriculture to white-collar or blue-collar employment in urban and town centers. They gradually built up their incomes and stabilized sources of nonland income bases in trade, private sector employment, and the transport business and gave up their dependency on agriculture. Those who did not move from their traditional agricultural employment had progressively impoverished. The 12% of households who, on average, spent less than SLRs3,000 a month were the poorest households, and this group constituted farmers, tenants, and landless agricultural wage laborers who depended on agriculture for their living.

Food security at the household level during a period of 12 months was studied by the ADB sample survey in 2010. About two-thirds of the sample households stated that they had sufficient food throughout the year for all household members. Only about 10% of households experienced starvation for a few days during the 12 months. In such instances, they either sold their household items or mortgaged them to buy food. About 17% of such households borrowed money from their friends and relatives, and 32% of households worked more hours or sent their children and women to find casual work so that they could contribute toward purchasing food.

Self-Relocation and Replacement Cost

Although land plots were offered at resettlement sites to all physically displaced households, two-thirds opted for self-relocation. Most of them desired to collect extra financial assistance of SLRs100,000 offered to those who self-relocated. Better living standards and reluctance to move into a resettlement site also encouraged some to self-relocate. About 50% of self-relocated households opted to live not far from their original villages. Sarvodaya Economic Enterprise Development Services, who gathered socioeconomic information to formulate an income restoration program for the poor APs, pointed out that most of self-relocated households were of middle class and had shown their entrepreneurial skills by investing part of their compensation and LARC allowances in businesses. The majority had sufficient wealth to restart their lives at new locations. Most of them moved to urban and semi-urban areas and diversified their sources of income. Their children, by getting a better education, escaped poverty and gained white-collar jobs. The payment of the replacement cost and the incentive bonus placed them in good stead to avoid impoverishment and to start their income restoration and improvement without delay.

Progress in Compensation Payment

By the end of February 2007, the Road Development Authority (RDA) completed the payment of statutory compensation and LARC allowances for all acquired property, except in the case of a few land plots. A total of 99% of project-affected property owners were paid full statutory compensation. In the ADB-funded section of the expressway, 99% of acquired land plots were paid statutory compensation and were also given LARC entitlements and assistance. The total statutory compensation paid was SLRs2.171 billion (SLRs0.881 billion in the ADB-funded section and SLRs1.29 billion in the JBIC-funded section of the expressway) (Government of Sri Lanka 2014). This satisfactory progress was to be viewed in the context of paying the replacement cost for all acquired property and the award of special entitlements to all nontitled APs, both of which were unprecedented in the involuntary resettlement history of Sri Lanka.

A few APs continued to agitate against the project. Having exhausted the environmental and social issues of the expressway, they focused on the easy target of the quantum of compensation. In February 2007, for example, there were six appeals before the Court of Appeal regarding the amount of compensation paid for the acquired property. The land in dispute had, however, been taken over by the RDA for the project. The RDA had reserved SLRs10 million to pay for compensation, interest, and LARC entitlements to those five APs who were the litigants, once the cases were disposed of by the court. By 2009, they too were paid their compensation and LARC entitlements.

Land Acquisition and Resettlement Costs

The total LARC payments amounted to SLRs2.02 billion (SLRs0.76 billion in the ADB-funded section and SLRs1.26 billion in the JBIC-funded section of the expressway). According to the original STDP loan agreement, SLRs541.88 million (\$7.6 million) was estimated and reserved for land acquisition and resettlement, whereas according to the resettlement implementation plan (RIP), estimated cost was SLRs2.862 billion. According to the records of the Land Division of the RDA, the total amount of compensation payments for land acquisition, including additional land acquisition, was SLRs4.988 billion as of the end of 2014. Total land acquisition and resettlement costs increased by 74% (see details in Box 5.1). This was largely due to the interest accumulated over the compensation payments that were delayed and the acquisition of more land during the project implementation (see Box 5.2).

Original estimate of land acquisition and resettlement costs at their replacement cost proved to be unrealistic, as the original cost estimation was based on a 20% sample survey conducted as part of the feasibility study. Subsequently, detailed designs of the expressway were prepared by taking into account the recommendation of the Central Environmental Authority to avoid ecologically sensitive areas. Based on the detailed designs, a census in the project-affected areas was conducted, and it indicated a much higher land acquisition and resettlement cost. Because of government's enormous spending on the civil war, the Treasury did not have sufficient funds for development projects. This caused delays in paying compensation, especially one-time LARC allowances. As a temporary measure, the RDA sometimes paid the statutory compensation and delayed the LARC allowance payments or paid a portion of the composite replacement cost as an advance, while waiting for the Treasury to release funds to pay the remaining compensation. This adversely affected the APs, as they needed sufficient money to buy land, build houses, and to improve their new homesteads at the resettlement sites. Those who self-relocated could not start their new businesses or buy new land without first getting their compensation at replacement cost for the lost property.

Box 5.1: Estimated and Actual Costs of Land Acquisition and Resettlement

Major cost items of the land acquisition and resettlement budget in 2002 were compensation payments for land and structures acquired under section 17 of the Land Acquisition Act as well as Land Acquisition and Resettlement Committee (LARC) entitlements (SLRs2,237.6 million), resettlement site development (SLRs260.1 million), income restoration (SLRs59.2 million), and other expenses (SLRs44.5 million). According to the Loan Agreement between ADB and the Government of Sri Lanka, the total cost was to be borne by the government and 73% of this amount was to be released by the government between 2002 and 2004.

Land Acquisition and Resettlement Cost Estimates (SLRs million)

	2002	2003	2004	2005	2006	2007	Total
Estimated resettlement cost							
	800	800	500	761.5			2,861.5
Actual financing							
	847	710	810	1,427	406	400	4,600.0

Source: Government of Sri Lanka (2002). Resettlement Implementation Plan of October 2002 and Project Management Unit (2002–2008).

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Box 5.1 *continued*

The total estimated resettlement budget was SLRs2.862 billion (\$29.8 million) in October 2002 (Government of Sri Lanka 2002) and the actual cost of land acquisition and resettlement was SLRs4.6 billion in 2008. The total amount of compensation payments for land acquisition was SLRs4,988.13 million (\$38.6 million) as of the end of January 2014 (ADB 2014: 66). The additional land acquisition and resettlement costs amounted to 57% of the original estimated budget.

A significant increase in land acquisition and resettlement costs occurred due to (i) the enhanced compensation payments for land and structures acquired; (ii) additional LARC allowances introduced after the approval of the RIP such as SLRs100,000 incentive payment for self-relocation; (iii) the payment for utilities (water, electricity, and telephones, etc.) at the resettlement sites; (iv) physical displacement of additional 117 households and subfamilies during the construction of the expressway; (v) additional land acquisition for the interchanges of the expressway; (vi) increased cost of resettlement site development, and (vii) the provision of associated infrastructure facilities such as water, electricity, and connecting roads. Of the total budget, 6.8% was also used to pay interest for delayed compensations, which was not an item in the original resettlement budget. The cost overruns were also due to the increases in land prices and building material costs in the project area.

Original estimates for land acquisition and resettlement in 2002 proved to be unrealistic, since the original cost was based on 300 hectares of paddy and 645 hectares of highlands, without considering the higher value of home gardens, agricultural lands, and commercial lands. The actual land acquisition was about 1,100 hectares compared with the extent of land of 945 hectares in 2002.

The Road Development Authority and the Ministry of Finance were able to make special arrangements to release the required funds, and a third of the total fund requirements were released by the Treasury between 2004 and 2005 to support the expedited land acquisition and resettlement program.

Source: Project Management Unit (2000–2008).

Box 5.2: Additional Land Acquisition for the Expressway during Project Implementation

The need to acquire more land for the project at the midpoint of project implementation (2006) opened a window to examine how the payment of the replacement cost had been done. Unanticipated landslides and waterlogging caused some minor project design changes. As a result, the Road Development Authority (RDA) had to acquire more land to accommodate such changes on the expressway alignment. Moreover, the RDA wanted to compensate a few uneconomical land parcels not compensated earlier. A few affected persons (APs) wanted better access roads and underpasses so that they could maintain their links with their original communities that were cut off by the expressway. To accommodate these requirements, the Ministry of Highways and Road Development issued the Circular No. MH/W/1/93 of 8 September 2006 which detailed the steps of acquiring land for such purposes. It stated that all such lands were entitled to receive statutory compensation, land acquisition and resettlement committee (LARC) entitlements, and all other relevant entitlements elaborated in the resettlement implementation plan. The circular also recommended the purchase of small land plots (less than 10 perches) through negotiation with landowners, based on the willing-seller-willing-buyer principle in order to provide relief to those landowners of unviable land plots.

Land belonging to 194 households were acquired under the above scheme. The total amount of land acquired was 16 hectares in the section of the expressway funded by the Asian Development Bank (ADB) and in the section funded by the Japan Bank for International Cooperation (JBIC) (see table). Of these, 37% were agricultural holdings that were minute land plots owned by 158 households. The RDA allocated SLRs20 million to acquire this additional land, and SLRs7 million to establish resettlement sites for those displaced APs, if they were willing to move to a resettlement site.

Acquisition of Additional Land for the Project (2007)

Resettlement Impact	ADB Section	JBIC Section	Total
Land acquired (hectares)	09	07	16
Houses affected	32	02	34
Number of households self-relocated	25	02	27
Number of acquired agricultural land plots	38	55	93
Number of owners of acquired agricultural land	43	115	158

ADB = Asian Development Bank, JBIC = Japan Bank for International Cooperation.
Source: ADB (2007a).

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Box 5.2 continued

The RDA obtained assistance from the Valuation Department in calculating the replacement cost of each affected house and in determining the replacement cost of the land acquired. The RDA provided up to 90% of the replacement cost of the land and affected house to a landowner, if the owner requested an advance payment to purchase a piece of land or to construct a dwelling. This advance payment was deducted from the final LARC payment. There were no squatters among those who were affected by the acquisition of additional land.

As shown in the table, 32 houses in the ADB-funded section and 2 houses in the JBIC-funded section of the expressway were affected by the 2007 land acquisition program. Affected houses in the ADB-funded section of the expressway were located in the Karandeniya, Welivita-Divitura, Akmeemana, Imaduwa, Baddegama, Welipitiya, and Malimbada divisional secretaries' divisions. The average size of an acquired land plot was about 10 perches (0.032 ha). The RDA paid the replacement cost for each house that was acquired prior to its demolition, enabling the affected household to buy a house or to build a house elsewhere. Any affected household that could not find a house to settle down was given an additional 3 months to find a house, thereby delaying the demolition of the house. Based on the statutory compensation, the owner of each acquired house was paid 25% of the statutory value of the house as an *ex gratia* payment for prompt compliance with the RDA request to hand over the land and house. Seven households moved to resettlement sites where each of them was given a land plot as a homestead. Others opted to rebuild their houses on their remaining land or to move out of the project area with their statutory compensation and LARC entitlements including a SLRs100,000 incentive payment for self-relocation. A few APs complained about their compensation. Their complaints focused on malpractices and the lack of uniformity in applying land valuation principles. But no AP complained that the replacement cost package was inadequate or unfair.

Source: ADB (2007a).

A Review of Replacement Cost

A detailed and independent review of the project progress by the Compliance Review Panel (CRP) in 2005 provided a midterm assessment of the compensation packages, their adequacy, and timeliness. The assessment also highlighted its direct impacts on the APs and major safeguard issues of the project. The CRP noted that the project had ushered in a new approach to involuntary resettlement in Sri Lanka, accompanied by

a more generous compensation package at replacement cost of lost assets. It also noted that when the replacement cost of the acquired property was combined with a generous LARC resettlement assistance package, the APs received a much better compensation package than what the APs of other projects had received in the past. As a result, the APs of the project were in a position to at least reestablish their preproject living standards and income levels.

Several APs from the ADB-funded section and the JBIC-funded section of the expressway complained to the CRP that the payment of compensation for the acquired property had been delayed and was inadequate, and, as a result, their socioeconomic conditions had deteriorated after the land acquisition. They specifically alleged that no replacement land had been given to them in lieu of the land acquired from them. They further complained that their land was part of their cultural heritage as well as a major source of income and food supply. They pointed out that the affected cultural heritage could never be restored even if alternative land were provided elsewhere. The failure to provide at least suitable replacement land meant that they would also be deprived of their sources of income and livelihood. They claimed that compensation paid to some APs who were resettled in the Matara District in March 2001 and in several other areas in 2002 was not sufficient to ensure that their economic and social future would be at least as favorable as without the project. Many APs as a result were not even able to construct houses for themselves and were living in temporary sheds with no money to construct houses with basic facilities.

The CRP accepted several complaints raised by the complainants, especially regarding compensation, as legitimate complaints. In its report, the CRP highlighted several issues that needed the further attention of the RDA. First, it found that the RDA did not do sufficient homework to find alternative suitable lands for farmers who were displaced from their lands; and as a result, they lost their income sources and livelihoods and failed to recover them. The RDA premised compensation packages on an attractive cash-for-land modality, depriving the APs of the possibility of choosing between the land-for-land modality and the cash-for-land modality.

Second, although the replacement cost was taken as the basis of compensation, the project could not provide multiple choices for investing the cash compensation. Without such choices and opportunities, the CRP pointed out that there was a high risk that the APs might use the money for nonproductive purposes and the households might become impoverished. This risk was significantly high when cash compensation was paid to

the male head of the household. It further pointed out that where there was insufficient replacement land of reasonable quality, other income-generating and retraining schemes should have been adopted as suitable alternatives. Such alternatives would have established multiple options enabling the APs to select the best option to restore their lost incomes and livelihoods. Because of a delay of 4–5 years in the implementation of a robust income restoration program, many APs were forced into poverty and vulnerability soon after their displacement and relocation. They spent their cash compensation on food and other household necessities and building houses that were beyond their financial capacity.

Third, the project failed to disburse cash compensation to the APs on time before displacement. The CRP quoted from schedule 6, para 13(a) of the Loan Agreement, which stated the “borrower and RDA shall ensure that all compensation payments and all entitlements not related to compensation payments shall be made to project affected persons prior to their relocation.” The Treasury did not have sufficient funds for development programs as it was engaged in a costly civil war in the Eastern Province and the Northern Province of Sri Lanka. Several reminders from the Sri Lanka Resident Mission regarding the need to pay compensation in full to the APs before they were displaced often drew no results. This created many difficulties for the APs, and they certainly became worse off compared with their preproject life chances. The CRP found that a significant number of the resettled households were being reduced to poverty. Some had improved their socioeconomic conditions, but they were the minority. Referring to the involuntary resettlement policy of ADB, the CRP pointed out that it required the APs to be individually compensated before civil works contracts were awarded or similar milestones occur. But nearly 50% of the APs experienced a delay in receiving compensation, especially the LARC allowances. In some cases, the delay was more than 12 months. The CRP concluded that “it is unlikely that the Project was ever brought into compliance on the timely compensation issue.”

After the submission of the CRP’s final report to the ADB Board of Directors and the course of action agreed between the government and ADB to implement the CRP’s recommendations, several APs submitted written comments on the course of action to the CRP. They requested to establish an independent panel to determine the adequacy of compensation for their acquired property. But the CRP did not agree to do so as such an action would be counter to the procedures agreed in the Loan Agreement and to Sri Lankan laws. However, an independent external monitor—the Centre for Poverty Analysis—and an international resettlement specialist were appointed by the RDA, in consultation with ADB, to review the

progress of the resettlement program and the compensation packages, and also to develop a monitoring framework and a methodology to monitor the ongoing resettlement activities.

The Role of the Resettlement Assistants

As discussed in Chapter 4, the resettlement assistants (RAs) played a key role in determining the replacement cost of acquired property and calculating other LARC entitlements of the APs. They lived in project-affected villages and developed a good rapport with the APs. They were rural youth who shared the same cultural milieu and values with the APs. They often called the APs *thathta/appachchi* (father), *amma* (mother), *aiya/malli* (brother), and *akka/hungi* (sister), thereby developing a close bond with the APs. Their integration into the affected community was deep. They were graduates in the social sciences and were knowledgeable about the project and entitlements of APs. They were articulate and committed to their mission of helping the APs, especially the vulnerable and the poor. Sometimes, government officials were shocked to note how they passionately argued for giving better and fair LARC compensation packages especially to vulnerable households. Each RA usually spent several days with a group of APs helping them to locate relevant papers, finding out the local market value of the land, and assisting them to decide whether to move to a resettlement site or to self-relocate. They carefully examined the title and mortgage arrangements and listened to the APs' concerns and worries regarding their entitlements and compensation packages. They kept meticulous records of their observations and helped the APs with documentation, opening of bank accounts, and negotiating on their behalf.

The RAs' close relationship with the APs and their presence at the LARC meetings inculcated in the APs that they received fair compensation and other resettlement assistance packages. The RAs helped the APs at the LARC meetings by presenting all relevant facts on their behalf. Such interventions strongly influenced the final decision of the LARC on resettlement entitlements and their timely provision to the APs. The total compensation package each AP received was substantial and could certainly be recognized as the replacement cost of the land and other property lost. According to field officials, compensation for crops and trees was sometimes added to the value of the land plot and recorded as land value.

About 40 RAs left the project in 2005 because they could not get a permanent appointment at the RDA. As mentioned in Chapter 4, their departure was a great setback to the resettlement process, and the institutional memory of the LARC process which had been built up by the RAs over a long period vanished with their departure. Soon after, the average number of LARC meetings to discuss the replacement cost of an acquired property decreased from an average three meetings to one meeting. Record keeping at the LARC meetings became erratic and sporadic. The RDA lost credible and reliable communicators who could explain the project, its benefits, and their entitlements to the APs.

Conclusion

The Southern Transport Development Project (STDP) is the first development project in Sri Lanka that paid the replacement cost for acquired property as compensation. The special compensation packages for squatters and vulnerable households, consultations with the APs on relocation plans, and the implementation of an income restoration program for the benefit of the poor are among the resettlement best practices that have been introduced by the STDP. These best practices did not remain as project-specific best practices, but became practices that are applied to all development projects regardless of their funding sources. The application of the replacement cost to the land acquired raised the bar of the government's accountability for ensuring that the affected poor would not become poorer and that the nonpoor would not become poor and vulnerable as a result of a development project. Thus, the STDP has contributed to improving and enhancing the country safeguard system with regard to land acquisition and resettlement.

Generous compensation packages provided large sums of money to the APs. However, the project authorities did not provide sufficient information or training (as discussed in Chapter 8) to the APs to enable them to channel the money into productive investments. At the beginning of the project, the lack of sufficient funds to pay compensation promptly and in full generated difficulties for the APs. Protracted legal battles and complaints to ADB and international arbitration agencies not only delayed the project, but also generated a view that the generous and innovative approaches and regulatory frameworks applied by the STDP to land acquisition, compensation, and resettlement were not sustainable.

A key lesson from the land acquisition and resettlement experience of the STDP is that comprehensive planning and adequate resources are necessary to implement the innovative payment of replacement cost for acquired land and other property. Comprehensive planning includes adequate and complete databases and adequate institutional arrangements. Another lesson is that unless replacement cost is paid in full immediately after the acquisition of land and other property, cash compensation tends to lose its value. This is because land prices in the project area rise soon after the project activities start, and the APs tend to waste the cash that they received on nonproductive investments. The third lesson is the payment of replacement cost as compensation needs to be linked with diversified investment options so that the APs could get the full benefit of it and keep them falling into the debt trap.

CHAPTER 6

Relocation Planning and Assistance

This chapter first examines the components of the physical relocation plan, which was an integral component of the resettlement implementation plan (RIP). The key actions of the physical relocation plan included finding suitable land for resettlement sites, allocation of residential plots to resettled households to construct their houses, and the development of common areas and infrastructure facilities at resettlement sites. The chapter then focuses on challenges, issues, and problems faced by the project authorities as well as by the displaced households during relocation. Finally, the chapter highlights key resettlement impacts of the project on physically displaced households, key lessons learned, and some of the best practices that emerged during the relocation planning and implementation.

As discussed in Chapters 2 and 3, the two memoranda of the Cabinet of Ministers, the National Involuntary Resettlement Policy (NIRP), and the RIP with special and enlarged compensation packages set a comprehensive and base for relocation planning and implementation. Resettlement planning activities demonstrated the government's strong commitment to elevate resettlement planning and implementation standards to the level of international best practices. ADB engaged itself in resettlement planning and implementation processes by providing expert knowledge and technical assistance to conduct studies and hire qualified consultants to assist the Road Development Authority (RDA).

The Physical Relocation Plan

There were eight components in the physical relocation plan of the RIP: (i) categories of physically displaced households and their socioeconomic profiles, (ii) their options and preferences for relocation, (iii) planning activities related to resettlement site selection and development, (iv) relocation assistance and other allowances, (v) income restoration program, (vi) assistance to vulnerable groups and women, (vii) provision of public utilities at resettlement sites, and (viii) relocation timetable (Government of Sri Lanka 2002).

The acquisition of 951 hectares of paddy land, highlands, and home gardens for the project affected 5,683 households, of which 1,315 households were physically displaced. Furthermore, 151 commercial establishments and 22 other structures were also affected. Such buildings were used as retail shops, small eateries, and hardware stores. Among the total number of households affected, there were 214 vulnerable households (the elderly, disabled, households headed by women, households with an income below the poverty line) and 244 nontitled households (encroachers on government land). The project management unit (PMU) prepared a timetable to complete the relocation of 1,448 physically displaced households prior to the commencement of civil works of the expressway. During the road construction, additional 16 hectares of land were acquired displacing 32 houses.

Land Acquisition Impacts

The land acquisition impacts of the project are summarized in Table 6.1.

Table 6.1: Summary of Land Acquisition Impacts of the Project

Impact	ADB Section	JBIC Section	Total
Demolished permanent houses	582	558	1,140
Demolished semipermanent houses	76	37	113
Demolished temporary houses/huts	60	2	62
Demolished commercial structures	72	79	151
Demolished other structures	00	22	22
Paddy lands (ha) acquired	132	168	300
Agricultural lands (ha) acquired	341	310	651
Affected nontitled households	212	32	244
Vulnerable households	103	111	214
Total households affected	2,909	2,774	5,683
Total affected persons	10,684	9,656	20,340

ADB = Asian Development Bank, ha = hectare, JBIC = Japan Bank for International Cooperation.

Source: Government of Sri Lanka (2002).

Options and Preferences in Resettlement

The relocation plan provided three resettlement options for those who were physically displaced: (i) self-relocation by either purchasing land in the same village or outside the village, (ii) relocation to project-sponsored resettlement sites, or (iii) relocation in the remaining portion of the homestead not acquired for the project. Many households displaced from their titled lands used the first option—receiving cash for their land and other assets at their full replacement cost and self-relocating according to their own plans. This option gave the displaced landowners the freedom of moving with minimum social disruption to a new location. During the inventory of losses (IOL) surveys conducted in 2002, 993 displaced households (76%) opted for the second option—relocation to a project-sponsored resettlement site. The project identified 58 resettlement sites for this purpose. Only 361 households (36%) were resettled in 32 resettlement sites. This is because the provision of the self-relocation allowance of SLRs100,000 encouraged some of affected households to self-relocate. Another 169 households (17%) who received land at resettlement sites opted for the third option—to live on their other lands. They wanted to keep such land plots at resettlement sites as an investment for their children. By the end of 2006, 530 displaced households were allocated housing plots in 32 resettlement sites, and the 361 households who moved to resettlement sites completed the construction of their houses. By that time, the RDA had completed the construction of infrastructure facilities at the resettlement sites.⁷¹

The displaced owners of commercial and commercial-cum-residential structures had several options: (i) reestablish businesses in their original location, if sufficient land was available; (ii) self-relocate to a place such as a location closer to an interchange of the expressway; or (iii) relocate to a resettlement site. The second option was not feasible until the expressway and its interchanges became operational. They preferred to move to towns or to reestablish their businesses closer to public roads. This category of displaced households did not get sufficient attention from the project until after the expressway was constructed.

Tenants of acquired houses for the project were entitled to receive an accommodation stipend that was equal to the annual rent with a ceiling of SLRs50,000 per household and a shifting allowance of SLRs1,500. Each tenant household was given a minimum of 6 months' notice prior to physical displacement.

⁷¹ The RDA provided assistance to the owners of the 32 houses that were demolished as a result of additional land acquisition to rebuild them on other locations. These houses were constructed by the end of 2008.

Resettlement Site Selection and Development

During the relocation planning, 47 potential resettlement sites were identified on private lands and 11 on land belonging to the Land Reform Commission. The Land Reform Commission lands were mainly tea and rubber estates managed by private plantation companies. The RDA did not pay compensation for such land except for losses of income from the acquired land and affected structures. As the demand for housing plots at resettlement sites decreased from 993 to 530, the RDA decided to establish only 32 resettlement sites on Land Reform Commission lands.

In consultation with the displaced persons, 20 resettlement sites in the ADB-funded section and 12 resettlement sites in the Japan Bank for International Cooperation (JBIC)-funded section of the expressway were identified. The displaced persons wanted resettlement sites not far from their original villages, and the PMU did its best to accommodate this key requirement in selecting resettlement sites and in allocating land parcels to build houses.

The PMU engaged private sector contractors to develop the infrastructural facilities at the resettlement sites. It also established a Housing Society comprising resettlers at each resettlement site to coordinate and supervise resettlement construction activities, especially the infrastructure development programs. To minimize negative impacts of relocation, the PMU allocated sufficient resources to develop resettlement sites, especially common infrastructure facilities, before transferring APs to resettlement sites. Because of the proximity to their original villages, resettlers had minimal disruption to their social, economic, and political networks. Moreover, they had access to the schools, hospitals, and other public facilities that were located in their original villages.

The distribution of housing plots at each resettlement site was done by the PMU in consultation with the displaced households and the leaders of the Housing Society through a lottery system. Land plots at the resettlement sites were given to the resettlers at least 3 months before their physical displacement. If a poor or vulnerable household requested assistance to build a house, the RDA provided such assistance through a private company.

Relocation Assistance

Compensation packages for different displaced household groups were elaborated in the RIP:

1. *Owners of affected houses and homesteads* who met the cutoff-date eligibility criterion were compensated for the acquired land and affected structures at their replacement cost.⁷² The owners of such structures had the right to salvage materials, and the value of such materials was not deducted from the compensation payment. Moreover, a relocating household was given an ex gratia payment of 25% of the statutory compensation, if they vacated the premises before or by the stipulated date. Each relocating household was also entitled to a shifting allowance of SLRs1,500. In addition to the compensation received, each displaced household was entitled to purchase 0.050 hectare (20 perches) of land at a resettlement site at a subsidized rate.
2. *Owners of partially affected houses* were compensated at the replacement cost for land affected and the repairing cost of the structure. If a household with a partially affected household preferred to relocate without repairing it, the RDA examined the application for relocation and decided whether the household should be relocated or not. If the application was justifiable, the RDA considered the household as a physically displaced household.
3. *A displaced squatter household* was entitled to receive 0.0252–0.050 hectare of land at a resettlement site with full access to all infrastructure facilities. In addition, it received compensation for its house at the replacement cost without depreciation, and salvaged materials were allowed to be collected. Furthermore, those households received assistance from the RDA to construct a house, a relocation grant of SLRs10,000, and a livelihood restoration grant of SLRs15,000.
4. *Owners of registered commercial establishments* who met the cutoff-date eligibility criterion were compensated for the lost structures at the replacement cost without depreciation. They had the right to collect salvaged materials, and the value of such

⁷² The cutoff date was the date of publication of the section 2 notice under the Land Acquisition Act by the Divisional Secretary for each division through which the expressway alignment passes. Those who moved into the project area after the publication were not eligible for any compensation.

materials was not deducted from the compensation payment. The owner of a commercial establishment also received an ex gratia payment of 25% of the statutory compensation for the affected commercial buildings, if vacated on or before the stipulated date. An affected registered business was entitled to a compensation package equivalent to the estimated income of the past 3 years of the establishment that was reported in the IOL survey. In addition, each owner was entitled to receive information and advice from the RDA to identify suitable commercial plots in the vicinity to restart their businesses.

5. *Owners of informal sector business* who were displaced received the replacement cost for the land lost and demolished structures. They had the right to collect salvaged materials from the demolished houses and other structures, and the value of such materials was not deducted from the compensation payment. Each informal business establishment was also entitled to an ex gratia payment of 25% of the statutory compensation, if they vacated the premises on or before the agreed date. In addition, they received a livelihood restoration grant of SLRs15,000 and professional assistance to reinvest the cash compensation they received to restart their businesses.
6. *Tenants* received a rental stipend equal to 12 months' rent payable in advance, with a ceiling of SLRs50,000 per household, and a shifting allowance of SLRs1,500 per household.

The entitlement matrix of the RIP provided detailed guidelines on the compensation packages and resettlement assistance to the displaced households, as shown in Table 6.2.

Table 6.2: Land Compensation and Resettlement Assistance to Displaced Households

Compensation and Entitlements	Categories of Displaced Households*					
	1	2	3	4	5	6
Replacement cost of titled land	x	x		x	x	
Replacement cost of house/structure without depreciation and with salvaged materials	x	x	x	x	x	
Ex gratia payment of 25% of statutory compensation for structures, if premises vacated on agreed date	x	x	x	x	x	

continued on next page

Table 6.2 *continued*

Compensation and Entitlements	Categories of Displaced Households*					
	1	2	3	4	5	6
Land parcel to build a house at a fully serviced resettlement site at a nominal cost	x			x	x	
Construction of house, if requested by a vulnerable household	x		x	x	x	
A temporary accommodation allowance, until the resettlement site was ready to occupy	x			x		
Payment of rent for 12 months in advance in case of tenants, with a ceiling of SLRs50,000						x
A shifting allowance of SLRs1,500 per household	x		x	x	x	
Additional shifting allowance to cover the cost of moving personal possessions and salvaged materials to a temporary location	x	x	x	x	x	
A relocation allowance of SLRs10,000 per household	x	x	x	x	x	
A livelihood restoration grant of SLRs15,000 to a household who lost its source of income or livelihood or having vulnerable family members	x	x	x	x	x	x
Compensation for loss of income from business equivalent to 3 years' income				x	x	
Professional assistance to reinvest cash compensation	x	x	x	x	x	
Allocation of land at expressway interchanges to establish businesses				x	X	
Training of one person from each severely affected household in skills to help find employment	X	x	x	X	X	x

Note: The categories are as follows: (1) titled land and house owners, (2) owners of partially affected houses, (3) displaced squatter/encroacher, (4) commercial establishments, (5) owners of informal sector businesses, and (6) tenants.

Source: Government of Sri Lanka (2002).

Challenges Encountered by the Relocation Program

According to the RIP land acquisition, payment of full compensation to all APs, development of all resettlement sites, relocation of 993 displaced households, and the commencement of the income restoration program were to be completed before the end of June 2003. Such complex activities cannot be done within 6 months (October 2002–March 2003); the time frame was unrealistic. This difficulty was exacerbated by APs' agitation against the project, and the delays at the Treasury in releasing sufficient funds for land acquisition and resettlement activities.

The RDA reviewed the progress of land acquisition and resettlement in the first priority section of the ADB-funded section of the expressway in March 2003 and found a number of critical land acquisition and resettlement issues. One was the nonavailability of a detailed action plan that identified specific targets for each activity, which should have been completed by the divisional secretaries and the resettlement staff of the project. As a result, the land acquisition and resettlement program of the priority section (31 kilometers) could not be completed as expected by the end of March 2003. But based on the assessment of the progress of land acquisition and resettlement in the priority section, the RDA concluded that the progress on the section was sufficient to issue the authorizing letter of commencement for civil works in April 2003. It pointed out that what was outstanding was the payment of compensation for the land acquired from private companies who received land on lease from the state and the Land Reform Commission. The RDA found that there were very few households to be relocated and to be paid the incentive bonus of 25% of statutory compensation for leaving the land on or before the agreed date. Based on these recommendations, ADB and the government agreed to issue the letter to the contractor to commence construction works in the first priority section in April 2003.

Similar situation was observed in the JBIC-funded section of the expressway. The challenge was to award two civil works contracts in March 2003 and June 2003 according to the implementation schedule of the RIP. The progress in land acquisition and resettlement in the JBIC-funded section of the expressway had been very poor. By 30 March 2003, not a single physically displaced household had been resettled at a resettlement site. Only 11% of the landowners of acquired land lots had been paid statutory compensation. The poor progress in land acquisition and particularly in compensation payment and relocation posed serious

challenges to the smooth completion of the project in the target time frame. In this regard, JBIC insisted on completion of land acquisition and payment of compensation as the conditions to start civil works, and monitored the progress.

The court cases, protests against land surveys, and design changes were the main reasons for the delay in completion of land acquisition in the JBIC-funded section of the expressway. After the Supreme Court decision in January 2004 on the FT of the expressway, the level of consultations, the quantum of compensation paid, and the land acquisition program gathered momentum. As of December 2004, 90% of statutory compensation and 73% of LARC entitlements had been paid. In August 2005, the first contract package in the JBIC-funded section of the expressway was awarded and civil works started from Kottawa to Dodangoda (35 kilometers) after the RDA and JBIC loan review missions confirmed the completion of land acquisition in the contract-awarded section. The second contract package from Dodangoda to Kurundugahahatakme (32 kilometers) was awarded in March 2006 after the completion of land acquisition and the payment of compensation and LARC entitlements.

Revised Relocation Plan

Based on the RDA's review of land acquisition and resettlement, the timetable for the resettlement of the APs was revised in April 2003. The revised target date for completion of these activities was extended by 12 months to April 2004. However, the project personnel largely ignored the new target date of completion of the key land acquisition and resettlement activities because of the pending Supreme Court judgment on the Final Trace (FT) and because of the continued objections from APs in disputed areas of the expressway. In January 2004, when the Supreme Court directed the RDA to expedite land acquisition, it could not do so until 2006 because of the continued opposition to the project from a few APs.

After the Supreme Court judgment in 2004, as discussed in Chapters 2 and 3, the same petitioners lodged a complaint with ADB's Office of the Special Project Facilitator that they were not consulted and necessary planning documents had not been prepared for the FT. The Special Project Facilitator conducted several consultations and a mediation process with the help of an international mediator, but the complainants were not happy with the mediation process and took their complaint to the Compliance Review Panel in December 2004. These external interventions further delayed project implementation, and as a result, it was difficult to follow

a strict time frame for land acquisition and relocation of APs in disputed areas. Court cases, poor institutional capacity at the PMU, and insufficient financial resources to implement the resettlement programs delayed their implementation, forcing the government and ADB to revise the relocation plan of the project to allow more time to complete land acquisition, compensation payment, and relocation activities, particularly in the JBIC-funded section of the expressway.

The government and ADB took several measures to expedite the land acquisition and relocation processes. As discussed in Chapters 3 and 4, the RDA appointed a task force to supervise the processes, the Prime Minister appointed a coordinating committee for the project, and the RDA recruited an international resettlement specialist and management consultants to check and verify whether all APs had been fully compensated prior to their physical relocation. This new institutional arrangement helped complete the land acquisition and resettlement programs in the JBIC-funded section of the expressway in 2005 and in the ADB-funded section in 2006. The revised timetable for land acquisition, resettlement, and handing over of right-of-way to the contractor is given in Table 6.3. It shows the delay in number of months with regard to the land acquisition and resettlement programs for each section of the expressway.

Table 6.3: Planned and Actual Time Frames of Land Acquisition and Resettlement

Section of the Expressway	Land Acquisition Started*	Planned Handing Over of Right-of-Way to Contractor	LAR Completed	No. of Months Delayed
First 50% of the ADB-funded section	Jul 2000	30 Nov 2002	30 Apr 2003	5
Balance 50% of the ADB-funded section	Jul 2000	28 Feb 2003	Nov 2006	30
First 50% of the JBIC-funded section	Nov 2000	30 Mar 2003	Mar 2005	24
Balance 50% of the JBIC-funded section	Nov 2000	30 Jun 2003	Sep 2005	25

*Section 2 under the Land Acquisition Act issued.

ADB = Asian Development Bank, JBIC = Japan Bank for International Cooperation, LAR = land acquisition and resettlement.

Source: Project Management Unit (2000–2005).

It took 5 years to complete the land acquisition and resettlement activities of the project. Although implementation delays escalated project costs, such delays gave sufficient time for APs to plan their relocation activities such as finding land for self-relocation, identifying income sources and livelihoods in which they could invest their cash compensation, reorganizing their lifestyles, and building houses at resettlement sites or finding temporary accommodation until houses are built at the resettlement sites.

Living Conditions at Resettlement Sites

The majority of households were satisfied with the basic facilities that were available at the resettlement sites (Table 6.4). About 20% of households were not satisfied with their new living environment. The primary source of dissatisfaction was the difficulties in accessing some basic utilities such as drinking water at some resettlement sites. As discussed earlier, the lack of initial mutual support among the resettlers and the lack of access to common property resources also contributed to this dissatisfaction.

Table 6.4: Resettlers' Satisfaction with Project Benefits

Benefits	Percentage
Better living environment	82
Better transport facilities	82
Better basic facilities: water, electricity, and drainage systems	84
Easy access to markets, employment, hospitals, and schools	79
Support from neighbors and the community	82

Source: Gamaathige (2013).

Many affected households now have adapted to their new social environment and also have the ability to reconnect and continue their social relationships with their relatives and neighbors at the resettlement sites and their original villages. They regularly visit their relatives and friends and attend important functions such as weddings and funerals.

Weaknesses in Relocation Process

The RDA and ADB identified a number of gaps and weaknesses in the relocation process. Among them were (i) poor living conditions of the APs during the transition from village communities to resettlement sites, (ii) poor infrastructure facilities at resettlement sites when resettlers arrived, (iii) delays in issuing title deeds for the land parcels purchased by resettlers at resettlement sites, and (iv) delays in handing over of the resettlement sites to the local government authorities to maintain utility services.

Poor Living Conditions during the Transition

The Centre for Poverty Analysis (CEPA) pointed out that 75% of the displaced households spent long periods of time between physical displacement and relocation at temporary accommodation that had poor facilities. The prolonged transitional phase was disruptive and traumatic for them and generated anxiety, anger, frustration, hopelessness, and resignation (Jayawardena 2011). Households with persons needing care to look after babies, the aged, and the sick were particularly affected.

Although each affected household was given a rental allowance of SLRs50,000, many APs chose to save this money toward building a new house. As a result, they opted to live in cheap poor-quality temporary structures. Some households spent more than 12 months in such poor and unhealthy dwellings. The elderly found the disruption caused by displacement and relocation too much to cope with. This feeling was further aggravated by the fact that the children on whom they depended for assistance moved away to new locations (CEPA 2008b).

Poor Infrastructure Facilities at Resettlement Sites

None of the resettlement sites had been developed to the levels prescribed in the RIP when resettlers arrived to establish their dwellings. Although the locations of most of the resettlement sites were acceptable to the displaced households, the provision of basic facilities such as water, electricity, and access roads was lacking for those who first moved to some resettlement sites. The RDA was to provide essential services before the relocation of affected households, but in most cases the provision of such facilities was delayed by more than 6 months.

At some resettlement sites, relocation planning was poor and as a result, the infrastructure facilities were incomplete when resettlers moved into their new houses. The agony and frustrations that the APs experienced during the transition phase continued to the early relocation phase. At several resettlement sites, the development of infrastructure facilities prior to the arrival of resettlers was not accomplished as planned. For example, at the Kiridadupe resettlement site, five households were resettled, but the RDA failed to provide them water for 6 months.

The international resettlement specialist, in his August 2003 report, identified several problems related to the development and servicing of resettlement sites. Poor access roads (e.g., Thalahena resettlement site), flooding during the rainy seasons due to poor land leveling (e.g., Agro resettlement site), and nonavailability of electricity and water supplies and drainage problems (e.g., Walpitawatta resettlement site) were some of the issues identified. In his February 2005 report, the specialist highlighted the delays in infrastructure development and issuing of titled deeds as the key problems at the resettlement sites.

By the end of 2006, the provision of basic facilities at most resettlement sites was completed. There was a widespread dissatisfaction among the resettlers, however, with regard to the quality of access roads, drainage, and water supply. The RDA attributed these lapses to (i) the unsuitable locations of resettlement sites selected to ensure close proximity to the original villages of the resettlers, (ii) the high cost of developing resettlement sites, and (iii) the failure of the housing societies to supervise contractors in infrastructure construction and improvement at the resettlement sites.

Issuance of Title Deeds

According to the RIP, the RDA had to hand over the resettlement sites to the local authorities and the land title deeds to the resettlers through divisional secretariats. However, the RDA neither sent the land title deeds nor the procedure of awarding title deeds to resettlers to the divisional secretariats before the arrival of the resettlers at resettlement sites. This was because the issuance of title deeds to the resettlers had never been a priority of the PMU, as it was involved in land acquisition and resettlement programs.

The delay in handing over of the title deeds was also caused by some resettlers who refused to pay the land value established by the RDA for the land parcels that they received. Some of them pointed out that until the land plots were fully developed, the RDA should not establish land values. Difficulties in land surveys and valuation, delays in landownership transfer to the RDA from the Land Reform Commission and private companies, and the delays in registration of landownership also contributed to this delay. For example, 35 title deeds could not be issued in seven resettlement sites because of the delays in vesting lands from plantation companies and the Land Reform Commission. By 2011, all land deeds had been handed over to the resettlers at the 32 resettlement sites.

ADB review missions monitored the progress of the issuance of land title deeds to resettlers from 2005 to 2010, and drew the attention of the RDA to this important task on several occasions. The total number of title deeds to be distributed among the resettlers varied between 512 and 530 (Table 6.5). This was because some resettler households moved out of the resettlement sites and others arrived.

Table 6.5: Land Title Deed Distribution at Resettlement Sites

Month and Year	No. of Deeds Distributed	No. of Deeds Outstanding	Total	Percentage Distributed
March 2008	366	146	512	71
September 2009	446	84	530	84
January 2010	463	67	530	87
February 2010	455	52	507	90

Project Management Unit (2008–2010).

Handing Over Resettlement Sites to Local Government Authorities

The RDA handed over resettlement sites to local government authorities such as Pradeshiya Sabhas and urban councils to manage and maintain common services. The RDA provided funds to local authorities to complete outstanding infrastructure works at the resettlement sites, but the local authorities did not have the capacity or experience to attend to such works in consultation with the housing societies at the resettlement sites. The key reason for this was the absence of linkages between the RDA and local government bodies. From the inception of the project, the RDA

maintained a close liaison with divisional secretariats but not with local government bodies. As a result, the local government bodies did not know much about the project, its resettlement program, and how to liaise with the PMU on land matters at resettlement sites.

Best Practices in Relocation

This section outlines some of the key resettlement best practices that emerged in the planning and implementation of the project over a period of 10–12 years.

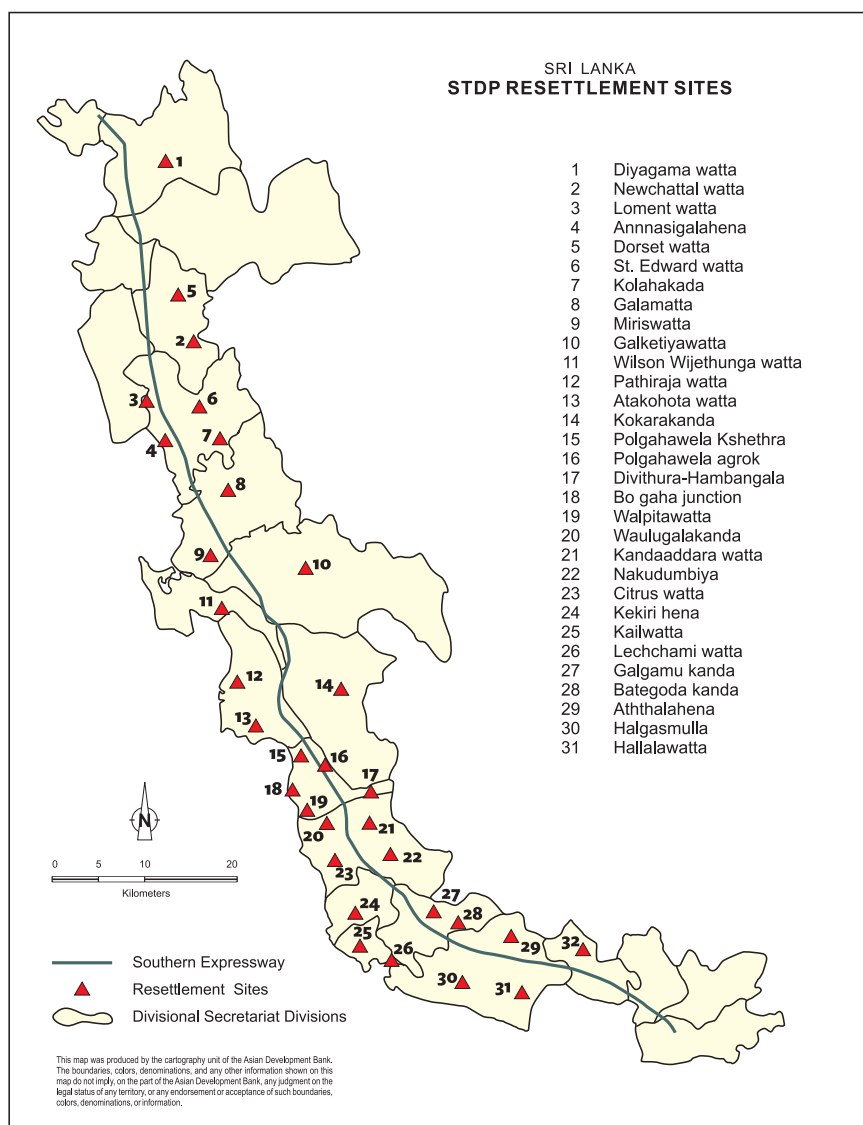
Selection of Resettlement Sites with the Displaced Households

A key best practice is to engage the displaced households in selecting locations for resettlement sites. As the APs requested, the RDA negotiated with private plantation companies to acquire land for resettlement sites in suitable locations not far from the communities of the displaced households. Affected households in about 70 villages were allocated land at the resettlement sites within the range of 100 meters to 2 kilometers from their original village communities. This was possible because the RDA conducted continuous and meaningful consultations with displaced households and because it vigorously searched for suitable land in the vicinity of the displaced communities. The results of such consultations and search led to the selection of resettlement sites to the satisfaction of the resettlers.

Incentives to Self-Relocate

In allocating housing plots at the resettlement sites to different categories of displaced households, the RDA encountered several difficulties. The completion of the land acquisition process, site development, and the construction of infrastructure facilities at resettlement sites took longer than anticipated. In order to minimize further delays, the government offered SLRs100,000 as an incentive payment to each household willing to self-relocate. Many displaced households who originally opted to move into resettlement sites thereafter decided to accept the incentive payment and to self-relocate. This helped the RDA to reduce the number of resettlement sites to be developed (Map 4), saving money for resettlement site development.

Map 4: Southern Transport Resettlement Project Resettlement Sites



Lottery System

At the resettlement sites, a lottery system was used to allocate land parcels to the resettlers to avoid bias and favors. Land plots located close to access roads and the land plots suitable for commercial activities were also allocated through a lottery system. This method of plot allocation was perceived as rational and fair by the resettlers. There were four resettlement sites that were located closer to the expressway (CEPA 2008b).

Land for the Nontitled

The allocation of free housing plots for the nontitled displaced households was another best practice that was introduced for the first time in Sri Lanka. No international social safeguard policy required, at that time, the provision of free housing plots and assistance in building houses to the nontitled displaced households. In addition, the project assisted subfamilies of the displaced households by providing land parcels at the resettlement sites (Table 6.6).

Table 6.6: Categories of Physically Displaced Households

Category	ADB	JBIC	Total
Title holders	617	570	1,187
Subfamilies	28	18	46
Encroachers	128	71	199
Total	773	659	1,432

ADB = Asian Development Bank, JBIC = Japan Bank for International Cooperation.

Source: Project Management Unit (2007).

The RIP counted 244 encroacher households among the 952 project-affected households. Of them, 212 were in the ADB-funded section and 32 were in the JBIC-funded section of the expressway. The progress report of the PMU in 2007 stated that 199 encroacher households had been affected. The reduction between 2002 and 2007 of 45 households was due to correction in the landownership of the project-affected households after the ownership determination process, conducted under section 10 of the Land Acquisition Act (LAA).

Encroachers and squatters who received resettlement assistance from the project chose to live in resettlement sites because they could not buy suitable land plots in which to settle down with the cash compensation

that they had received, and also because they did not want to move too far away from their original communities (Government of Sri Lanka 2003b). At resettlement sites, each household received about 10 perches of land, and each built a better and bigger house compared with what they had prior to displacement. However, in some cases, construction of a better house exhausted their compensation, leaving little for investment or to restart their livelihoods. Encroachers did not get compensation for the land that they lost to the project. Neither were they entitled to the 25% ex gratia payment for handing over of land on a stipulated date. The RDA provided additional financial support to the encroachers when it was found that they could not complete the construction of their houses without additional financial support.

The improvement of the housing conditions of the nontitled was significant. About 60% of those who did not have access to piped water or individual wells before the project now have access to either private wells or piped water. Those who lived in wattle and daub houses before the project were able to build houses with bricks and cement. A total of 93% of the nontitled households who used kerosene lamps for household lighting were given a power connection.

The compensation package offered to encroachers and landless subfamilies has had a very favorable impact on them. They acknowledged that their living conditions had significantly been improved with better housing and other infrastructure facilities at the resettlement sites. Box 6.1 shows the type of assistance that they received from the project.

Box 6.1: Special Assistance to Encroachers and Subfamilies

Resettlement Site in Diyagama

Encroacher households and subfamilies were severely affected by the project especially when their houses were acquired. The average floor area of an acquired house ranged from 150 to 250 square feet. These houses were temporary dwellings constructed with clay and covered with *cadjan* (palm leave) roofs. The Land Acquisition and Resettlement Committee allocated a 10-perch land plot to each displaced encroacher household and subfamily at a resettlement site. It also provided an additional housing allowance to build a house. In addition, they received SLRs50,000 for temporary accommodation. Encroacher households were also given SLRs15,000 in addition to a shifting allowance of SLRs1,500. Each such household received on average SLRs250,000 as land acquisition and resettlement committee entitlements. Apart from the provision of resettlement support, their economic rehabilitation was supported by providing advice on savings, income-generating activities, and skills training.

Source: Project Management Unit (2005).

Special Assistance for Vulnerable Groups

The RIP explained that vulnerable groups were distinct groups of people who would suffer disproportionately from the resettlement effects. It identified six categories of vulnerable households: households headed by women, elderly households, disabled households, households with incomes below the poverty line, households with less than 0.405 hectares, and ethnic minority households. The inventory of losses (IOL) survey identified 214 such vulnerable households in the project area.

The land acquisition and resettlement committee (LARC) used a number of criteria such as age, income sources, total amount of compensation received, the health condition of the head of the household, and other information provided by resettlement assistants (RAs) and Grama Niladharis to determine whether a household was a vulnerable household or not. Although the RIP identified 214 households as vulnerable households, only 127 were paid a vulnerability allowance according to management information system (CEPA 2008e). This was because some households initially identified as vulnerable households were not considered vulnerable by the LARCs. Each LARC had access to more accurate and complete information and data on each affected household than the IOL surveys had.

Table 6.7 shows the number of vulnerable households identified and additional compensation given to them.

Table 6.7: Additional Housing Assistance Received by Vulnerable Households

Project Regions	No. of Vulnerable Households	SLRs50,000–SLRs150,000	SLRs150,001–SLRs250,000	SLRs250,001–SLRs300,000
Bandaragama	21	10	8	3
Dodangoda	2	1	1	
Kurundugahahatakme	3	2	1	
Galle	3	3		
Total	29	16	10	3

Source: Government of Sri Lanka (2006).

Housing Societies

A housing society formed at each resettlement site was a forum for resettlers to participate in income restoration, infrastructure improvement, and home gardening programs. It also assisted the project's field staff to implement social welfare activities, community development programs, environmental impact mitigation exercises, and skills training programs. Housing societies arranged awareness creation meetings on income restoration and infrastructure development programs. However, because of the diverse perceptions of the resettlers on development, and the different priorities that various groups of resettlers had, it was difficult to build and operate robust housing societies at the resettlement sites. However, where they were established and supported by the RDA, they assisted project authorities in resolving problems of drainage and water shortages, and in carrying out home gardening programs.

Resettlement Impacts on Displaced Households

In 2013, the RDA, with ADB's technical assistance, engaged two consultants to conduct two field surveys. The first study that focused on the status of women before and after resettlement was conducted with a sample of 100 affected women. The 15% sample included 50 self-relocated women, 30 women living on the resettlement sites, and 20 women living in their original communities. The second field survey was focused on the changes in employment patterns, the strategies adopted in income restoration, and levels of satisfaction among displaced households about their present living conditions in new houses after their resettlement. A random sample of 100 displaced households was selected representing the resettlers (34), self-relocated (52), and those living in their remaining residential land (14). The main findings of the surveys are summarized in the following subsections.

Rebuilding of Houses

Both studies showed that about two-thirds of the displaced households built better and bigger houses with basic utilities. There had been significant positive changes in housing conditions with electricity and easy access to schools, markets, and hospitals. Resettlers built houses with separate big rooms for children and elderly parents. The young members of such households were happy to live in such houses and thought that resettlement had brought them more benefits. Weerackody (2013) observed that the APs not only built bigger houses but also used modern architectural designs

for tiled floors, roof ceilings, pantries, and attached bathrooms. They also purchased new appliances and fittings. A number of sample households had planned for building spacious houses and sometimes with two-story buildings to accommodate their married children as subfamilies. About 67% of households were able to construct houses with extra space and better facilities compared with their preproject housing facilities.

The poor and vulnerable households were happy to move away from their temporary huts and houses with no electricity and basic amenities to well-built large houses with electricity and water supply. The landless households who received housing plots and financial assistance to rebuild houses at the resettlement sites lived in new houses with better facilities and access to basic utilities. They also received land titles for their land plots. They now consider themselves landowners. The nontitled households such as encroachers too built their new houses at the resettlement sites. Before the project, they lived in wattle and daub houses, but as resettlers they occupied permanent new houses. The ensuing changes in their social status were significant, and this was especially appreciated by the affected youth.

Social Networks

The majority of the sample households of both studies stated that resettlement did not severely affect their relationships with household members and relatives because they were able to resettle closer to their original villages. As a result, they received social support from their relatives and friends on occasions of weddings, funerals, and in emergency situations. The self-relocated households claimed that they purchased lands in other villages with the support of relatives and friends. The independent resettlement external monitor also confirmed that many APs had retained continuity with their social environment in their original villages (CEPA 2008d).

Changes in Employment, Income Levels, and Livelihoods

When land acquisition for the project and the resettlement of the physically displaced households were completed, patterns of landholdings in the project area changed considerably, resulting in changes in households' asset bases and their income sources. According to a first study, the average size of a landholding of 40% of resettled households prior to displacement was

25 perches (Gamaathige 2013). The allocation of 20-perch land blocks in resettlement sites for housing was more or less the same size of land they held earlier. The loss of employment in this category of landowners was mainly due to their old age and the change of residence. The study found that some households left with less than 5 perches of land after land acquisition did not cultivate such small land parcels in their original villages. A few continued to cultivate such land with vegetables and other field crops, but reported that it was difficult to reach the land located along the expressway (Gamaathige 2013).

About 60% of the households owned between 0.066 to 0.405 hectares of land, and owners mostly cultivated cash crops such as tea, rubber, cinnamon, and coconuts on their land. The type and extent of land plots allocated to such households at the resettlement sites pointed to a significant loss of their land and incomes from cash crops. This also resulted in the loss of agriculture-based self-employment such as cash crop cultivators, rubber tappers, and tea pluckers. The study showed that the number of primary occupations in the sample households decreased from 93 (before resettlement) to 63 (after resettlement). The acquisition of agricultural lands contributed to the loss of self-employment of 20% of the sample households.

Although several affected small-scale businesspeople continued their commercial activities at new locations, the majority of them suffered due to the physical displacement. Four out of 11 small-scale businesspeople at the Wilson Wijethunga resettlement site in Kurundugahahatakme, for example, reported a significant loss of their business incomes. They have reported their grievances to local politicians, ADB, and the project authorities. Although each of them was provided with a plot of commercial land (about 4 perches) and a new commercial structure with more space, these businesspeople felt that the loss of their previous customer network and the poor demand for their products and services at new locations constrained their recovery from the losses caused by the project.

The main reason for reduced income levels among displaced households at least in the initial stages of resettlement was the loss of agricultural land and home gardens. A household that owned more than 40 perches of land before displacement usually found it difficult to buy a plot of land of the same quality and size elsewhere. Although a household received a generous compensation that equaled the replacement cost of the lost land, it did not use the entire compensation amount to buy land. The household generally used a sizable part of the compensation to build a better house. At several locations, after the acquisition of land, the residual

land became uneconomical and this too contributed to the reduced income from land. It was only in 2006 that the RDA developed a plan to buy such residual land from the APs who lost land to the project after 2005.

Status of Women

Several studies were conducted on the status of women in the project area. Rosa (2006) interviewed 80 women on the loss of income sources and changes in traditional roles as a result of displacement and relocation. They complained that infrastructure facilities such as water and transport at the resettlement sites were of poor quality and caused difficulties for women who were tasked with fetching water. The study found that women felt lonely and isolated as key problems associated with the displacement and resettlement.

The CEPA conducted a sample study of 400 households in the project area from 2006 to 2010. It found that women experienced the displacement and relocation processes differently from men. The main reason for the difference was the different roles that men and women played in a household and their associated risks and challenges in a new environment. Men were worried about how to find employment and money to spend on children's education. Women were worried about their and their children's security at a new location. Most of them felt that they lost their own sources of income because of their displacement.

The study showed that women constituted 52% of the project-affected population, and most of them lived in households headed by men. Both men and women owned land, and in some cases, they jointly owned property (CEPA 2009a). Focus group discussions held at two resettlement sites by the CEPA indicated that women were as knowledgeable as men about the resettlement process. The decision making within the household was often done jointly. This was evident in decisions regarding how to spend the cash compensation the household received for the land and other property.

Some sense of insecurity was created among men and women during the construction of the expressway. This sense of insecurity was disproportionately higher among women. They reported feeling vulnerable and unsafe because of the presence of construction workers in the vicinity of their homes. There were a few reports of rape, suicide, and prostitution. Women preferred relocating to a resettlement site than self-relocating elsewhere. About 40% of the affected women moved to resettlement sites compared with 26% of men.

Women were also concerned with their neighborhoods. The prolonged period of temporary residence and delays in constructing houses affected women more than men. Some women, especially widows and divorced women, felt vulnerable to attacks in temporary housing sites. Such a lack of sense of security discouraged them from engaging in home-based income-generating activities. This directly impacted household incomes and children's education.

Sex-disaggregated data of the sample household surveys and focus group discussions at the resettlement sites did not indicate any discrimination against women during the resettlement process. Access to project and resettlement information did not vary between men and women, but participation in the land acquisition and resettlement process was a challenging task for households headed by women. The RDA did not consider women's security during house construction at resettlement sites and also during the construction of the expressway as a critical factor in planning income restoration programs.

Displacement and resettlement have significantly reduced women's contribution to household income (Weerackody 2013). Moreover, because of relocation, many women lost their social networks. Some moved to live with their children, relatives, or friends in a cordial atmosphere of a village community. Although many women did not move very far away from their original village communities, their physical separation from others affected their contacts and social networks. Though many displaced households underwent difficulties over land acquisition, displacement, and resettlement, on the whole, they have gradually overcome many of these difficulties and have reasonably consolidated their positions in the communities where they resettled. This was true for both men and women.

Resettler Satisfaction

A high percentage of households (80%) were satisfied with the basic facilities at the resettlement sites. The other 20% were unhappy with their new living environment because of the difficulties of accessing basic utilities such as water, the lack of support from fellow resettlers, and the lack of access to common property resources (Gamaathige 2013).

A total of 87% of the sample households reported that their first priority was to construct a better house using the cash compensation that they had received. The second priority included purchasing a housing plot for their

children, giving cash dowries to daughters, and educating their children. Of the sample households, 41% stated that their children had received a better education after their relocation, and they could now afford to send them to urban schools and tuition classes. Some parents spent part of their cash compensation on their children's private tuition. They considered their children's access to better education as a development opportunity provided by the project. This idea was particularly widespread among the poor and middle-income households. Some households deposited their cash compensation in fixed deposit accounts at commercial banks to use the accrued interests to educate their children (Gamaathige 2013).

About two-thirds of women at the resettlement sites stated that they were confident of their future and did not perceive any threat from outsiders as most of them had already moved out of the project area with the completion of construction work. More than half (59%) of the women held positive views about the resettlement sites. Most of their children had grown up and moved away from the resettlement sites, and others had become members of the communities that evolved at the resettlement sites. The expressway has been in operation since 2013, and the displaced and resettled households hope that the expressway will generate better and more employment for them and their children, and trigger more local development through access roads and connectivity with major towns and cities (Weerackody 2013).

Conclusion

This chapter has outlined the main components of the relocation plan and reviewed challenges, issues, and problems that displaced households encountered during displacement, transition to new locations, and reestablishment of livelihoods. It also highlighted the best practices that emerged in the process of resettlement and resettlement impacts on physically displaced households.

An important best relocation practice is the consultation with the displaced households in finding land for resettlement sites. The allocation of free housing plots for subfamilies and encroacher households is the second best practice. The third is the offer of compensation packages to encroachers and landless subfamilies. Such packages have had very favorable impacts on them. Most of the displaced households acknowledged a direct link between their displacement and improved living conditions. Several studies and surveys conducted in the project area reaffirmed this key observation.

Another best practice is the identification of vulnerable households and the provision of special additional assistance to them, so that they too could improve their life chances. Despite some difficulties and problems experienced by some households, field surveys confirmed positive impacts of project interventions on the affected population. All displaced households have moved into new locations, and about two-thirds of the physically displaced households self-relocated. Others moved to the RDA resettlement sites.

The majority of resettled households at the resettlement sites are satisfied with their improved housing conditions and substantial assistance that they had received as resettlement assistance from the project. However, a few of the resettled households still complain that some infrastructure facilities at the resettlement sites, such as water supply, drainage, and access roads, are poor.

As discussed in Chapter 8, the restoration of income and livelihood sources had mixed results. The reduced incomes from businesses and changes in agricultural employment have largely contributed to the reduced income levels of about 25% of the resettled households. The income restoration program was not implemented effectively and had many shortcomings including the problem of identification of the real needs of those who lost their primary income sources.

CHAPTER 7

Public Consultations and Information Dissemination

The Southern Transport Development Project (STDP), in its history of more than a decade, engaged a large number of stakeholders who participated in different capacities in the project designing, planning, implementation, and review and monitoring. They included, among others, the Ministry of Highways as the project executing agency, the Road Development Authority (RDA) as the project implementing agency, ADB and the Japan Bank for International Cooperation (JBIC) as the project's main financiers, project consultants, project approval agencies such as the Central Environmental Authority (CEA), a large number of government ministries and departments, the judiciary, nongovernment organizations and a number of civil society organizations, project review and monitoring agencies, and the affected persons (APs).

This chapter recapitulates how these different stakeholders participated in the consultation and information dissemination processes, and their views and perceptions on the processes and their outcomes. It will elaborate the form, content, and adequacy of the AP consultations and the resettlement information disclosed during the project design and planning stages; the type of stakeholders who participated in these processes; the institutional mechanisms that facilitated the participation of a variety of stakeholders in public consultations; and the key outcomes of public consultations. The chapter also examines the extent to which those outcomes were incorporated into project design and planning. Finally, it highlights the best practices that emerged from public consultations and information dissemination processes.

Consultation and Information Dissemination Policies

Consultation, information dissemination, and participation are three essential components of resettlement planning and implementation. In the STDP, the processes associated with the conduct of public consultations,

information sharing, and public participation were largely influenced by three important policy frameworks: ADB's Policy on Involuntary Resettlement of 1995, the National Environmental Act (NEA) of 1980, and the National Involuntary Resettlement policy (NIRP) of 2001.

Involuntary Resettlement Policy of ADB (1995)

ADB's policy on involuntary resettlement emphasizes that "consultation and communication with stakeholders during the project preparation stage is an integral part of the process of gathering relevant data for impact assessment, and facilitates the development of appropriate options for the affected population. Affected people and beneficiary groups can influence and contribute to project design, planning and implementation" (ADB 1995:39).

It also observes that "information sharing is the first principle of participation. In many cases, opposition to a project arises from lack of information or misinformation. Project management must be willing to share all aspects of the project (planning, design, alternative options, and possible known impacts of the project) at the project identification stage. Information can be disseminated concerning the project and its impacts, compensation policies and payments schedules, resettlement planning and possible relocation sites, implementing institutions and timetable, and grievances procedures" (ADB 1995:40). The policy also suggests a number of mechanisms for conducting consultations. They include conducting public meetings, identifying focus groups, using the media, collecting household surveys that facilitate direct consultation, and engaging community workers who can be engaged to foster a process of group formation and development.

ADB's *Handbook on Resettlement: A Guide to Good Practice* (1998) states that affected people should be fully informed and closely consulted on compensation and resettlement options.

Consultation with APs is the starting point for all activities concerning resettlement. People affected by resettlement may be apprehensive that they will lose their livelihoods and communities, or be ill-prepared for complex negotiations over entitlements. Participation in planning and managing resettlement helps to reduce their fears and gives APs an opportunity to participate in key decisions that will affect their lives. Resettlement implemented without consultation may lead to inappropriate strategies and

eventual impoverishment. Without consultation, the people affected may oppose the project, causing social disruption, substantial delay in achieving targets or even abandonment, and cost increases. Negative public and media images of the project and of the implementation agency may develop. With consultation, initial opposition to a project may be transformed into constructive participation” (ADB 1998:39).

National Environmental Act of 1980

The NEA of 1980 and its subsequent amendments empowered the CEA to review and evaluate the environmental impacts of development projects. The act provides for the CEA to require the submission of proposals for new projects, and for changes or abandonment of existing projects for the purpose of evaluation of the beneficial and adverse impacts of such proposals on the environment (Government of Sri Lanka 1988). Development projects designated as “prescribed projects” by the CEA require their project proponent agencies to submit either an initial environmental examination report or an environmental impact assessment report (EIAR) for review and evaluation by the project approving agencies. The assessment of the social impacts of such prescribed projects, including involuntary resettlement, is a component included in the environmental impact assessment (EIA) process. According to the NEA, a separate resettlement plan has to be formulated if the proposed project physically displaces more than 100 households. The resettlement plan is considered part of the EIAR.

The preparation of an EIAR is a lengthy process and needs to be conducted through consultative and participatory processes. The guidelines prescribed by the CEA for the review and approval of an EIAR require disclosing information during environmental screening and conducting public consultations. The disclosure of EIARs for public scrutiny is mandatory. After a project proposer submits the project’s EIARs to the CEA or any of the project approving agencies, the latter will inform the public through a gazette notification and a notice is published in one of the national newspapers on the availability of the report and the venue and time for its public inspection. The public is invited to submit their written comments to the project approving agency within 30 days of publishing the notice. The project approving agency will also facilitate public hearings, if any person desires to be heard in support of his or her comments. Once approval is granted for the project, the project approving agency will notify the same to the public through the government gazette and a notice is

published in one of the national newspapers. If any alterations are made to such approved projects, it is the duty of the project proponent agency to inform the project approving agency of such alterations and receive fresh approval for the intended alterations.

National Involuntary Resettlement Policy of Sri Lanka

The importance of consultation, information disclosure, and participation in involuntary resettlement processes is also reflected in the objectives and principles of the NIRP (2001). The NIRP advocates a consultative and transparent involuntary resettlement planning process with a time frame agreed to by the executing agency of the project and the APs. It prescribes that all APs should be fully involved in the selection of relocation sites, livelihood compensation, and development options at the earliest opportunity. It also states that participatory measures should be designed and implemented to help integrate those economically and socially affected into their host communities.

Public Consultations Program of the Southern Transport Development Project

In the summary land acquisition and resettlement plan appended to the report and recommendation of the President to the ADB Board of Directors in 1999, the RDA pledged to ensure that communication, consultation, and interaction between the RDA and the APs are an integral part of the expressway's alignment selection and technical design process. It emphasized that extensive consultations would be held with the residents of each of the local government divisions through which the expressway passes in order to minimize the adverse environmental and social impacts of the project on the APs and their communities. The RDA also committed to disclose its construction plans and to consult with local populations about land acquisition processes, compensation policy, and resettlement options for the APs.

Consultations with the APs and affected communities transpired in different forms. They ranged from individual consultations largely conducted between RAs and the APs to small group consultations and large gatherings addressed by politicians and high-ranking government officials. Meanwhile, the grievance redress committee and the land acquisition and resettlement committees (LARCs) established at the divisional level in the

affected project areas and the Public Complaints Resolving and Monitoring Committee in Colombo also provided institutional spaces for the APs to engage in consultations regarding their various grievances, issues related to land acquisition, compensation, adverse impacts arising from the project construction activities, and to access desired information.

Consultations during the Formulation of Resettlement Plans and Resettlement Implementation Plan

During the preliminary and detailed design phase of the project, the RDA conducted consultations with the APs. In December 1999 and January 2000, detailed design consultants of the ADB-funded section of the expressway, together with the RDA officers, walked along the ADB section (except in the disputed area of Akmeemana Division) to consult with community leaders and local authorities to get their feedback on the design of the expressway alignment.

During the EIA, 14 meetings with relevant government departments and a series of public consultations with APs and other project stakeholders were conducted. The EIAR was disclosed publicly and made available at the RDA Head Office and at 16 divisional secretariats that fell within the affected area of the expressway. Furthermore, the RDA conducted two public hearings in Panadura and Galle, which were attended by 110 persons to discuss the findings of the EIAR. The RDA had received 287 written submissions that included 2,380 issues. Issues raised by the public were classified into (i) damage to houses and other properties (588 comments), (ii) damage to houses and other properties and environmental impacts (1,782 comments), (iii) environmental impacts only (2 comments), and (iv) criticism of the EIA's quality (8 comments) (Government of Sri Lanka 2002). The CEA also conducted several discussions with the RDA and other relevant agencies to reach a decision on the Final Trace (FT) design of the expressway.

The socioeconomic survey and the inventory of losses survey provided another opportunity for individual consultations. During these surveys, people were informed of the project, likely impacts of the project on them, and the compensation and relocation procedures. Feedback from the general public as to their concerns and preferences was also obtained. About 413 households (30% of the affected households) participated in the social impact survey (Government of Sri Lanka 2002). During such

consultations, affected households were further informed of the project's scope, construction schedule, and their LARC entitlements including the payment of the replacement cost for the acquired property. During the survey, community leaders and Grama Niladharis were also interviewed to gather their views and perceptions on land acquisition and resettlement.

Design changes in the alignment of the expressway, particularly the deviations from the the Combined Trace (CT) to the FT confused some APs. In fact, the RDA did not sufficiently inform them about the technical changes that it intended to introduce to the CT. The deviations from the CT at several points on the alignment, particularly to avoid the wetlands of Bolgoda and Koggala, were introduced without much consultation and participation of the APs who would be affected by such deviations. The RDA thought that the detailed consultations that it had held with the APs earlier were sufficient, and fresh consultations were not necessary, before the deviations were finalized. But the newly affected APs claimed that they did not know about the deviations and the RDA did not consult them on such changes. Some APs accused the RDA of shifting the expressway from the CT to the FT to protect the properties of politically influential families which had been earmarked for removal in the course of project construction. Meanwhile, the APs who continued to oppose the FT raised the issue of its legitimacy on grounds that it had not been covered by the approved EIA.

A majority of the consultations held in 2002 were conducted to address the objections raised by the APs on the deviations on the CT of the expressway. A variety of stakeholders participated in these consultations. Among them were the APs, government ministers such as the Ministers for Lands, Public Administration, Highways, Transport, and Tourism as well as the Deputy Minister of Finance; members of Parliament; provincial councilors and members of Pradeshiya Sabhas, particularly those who represented the affected region of the STDP; the secretaries of relevant ministries and other high-ranking officials from the abovementioned ministries; the officials of the CEA and the RDA; Grama Niladharis of the affected region; chief incumbents of Buddhist temples; and community leaders. Such consultations were held at village temples, community centers, divisional secretariat offices, and Pradeshiya Sabha offices. In Colombo, consultations were held at the Ministry of Lands, at the Ministry of Highways, and in the committee rooms of the Parliament. However, not all the consultations conducted were documented comprehensively as to their processes and the outcomes.

Among the other issues taken up for consultations were the availability and suitability of the resettlement sites, adverse project impacts on

commercial activities, and the amounts of compensation to be paid to the APs. A range of questions and issues were raised by the APs, such as those related to land acquisition and displacement, the basis and procedures of compensation payments, availability of alternative land for resettlement, entitlements of tenant farmers, distribution of project benefits, adverse environmental impacts, and personal safety during project construction.

Seven consultative meetings conducted by the RDA between January and July 2000 were attended by 38 senior government managers, 89 junior officers, 488 Grama Niladharis, 178 Buddhist priests, 913 community leaders, and 2,686 APs. From February to April 2002, consultations were conducted in the project-affected villages of Kahatuduwa, Rerukana (Gelanigama), Kolamediriya, Mahadeniya, Pelpola, Punsiripura, Dodammulla, Gomagoda, Thudugala East, Millaniya, Dodangoda, Karandeniya, Baddegama, Akmeemana, Bope-Poddala, Gelanigama, Bandaragama, Undurugoda, Arakagoda, and Diyagama. The purpose of such consultations was to inform and assure the APs and their communities that the project would not curtail access to their private properties, common property, and community facilities. The RIP shows that 5,741 APs participated in individual and group consultations: 2,799 in the JBIC-funded section, and 2,942 in the ADB-funded section of the expressway.

The outcomes of the consultations varied. At some consultations, the design consultants agreed with the APs to make adjustments to some sections of the expressway alignment to minimize damage to properties and to avoid land acquisition. At other consultations, design consultants explained to the APs the difficulty of changing the trace as such deviations would further increase the damage to properties or project costs. At the consultations attended by politicians, the consultants explained the national importance of the project, its socioeconomic benefits to the southern region and the entire country, and the government's determination to implement the project. During consultation meetings, support and cooperation of the APs were solicited for effective implementation of the project.

Participation and mediation of politicians and government officials helped minimize to a significant extent the objections to the project raised by the affected households. It was reported that by July 2002, political interventions and third-party mediation had helped reduce the number of the APs who opposed the project by 50%. And as of September 2002, land acquisition agreements were reached with more than 99% of the affected households, leaving only 32 households (of originally 240 in March 2002), or less than 0.6% of the total, who continued to oppose the FT of the STDP.

Political mediations also succeeded in resolving 88 issues in Baddegama, 17 in Millaniya, 3 in Polwaththagoda, 30 in Bope-Poddala, 15 in Kalutara, 18 in Dodangoda, 8 in Niyagama, and 29 in Akmeemana through group consultations (Government of Sri Lanka 2002).

Such consultations conducted during the RIP preparation served several purposes. They provided an arena to inform the APs about their entitlements, compensation rates, proposed resettlement sites locations, and income restoration measures, and also to obtain their feedback on the trace design, the design of the income restoration program, resettlement site selection, and determination of the AP entitlements. Such group consultations held in both the ADB-funded section and the JBIC-funded section of the expressway created a sense of goodwill among the APs toward the RDA and project administration. Engagement of AP groups in such key resettlement planning activities facilitated the preparation of the RIP.

Other arenas that provided APs with project and resettlement information and opportunities for consultation were the meetings organized by the Grama Niladharis (who had the drawings of the right-of-way of the expressway, and information on the timing and modalities of land acquisition) for the benefit of the APs. The regional offices of the STDP too were extensively contacted by several APs regarding inquiries and information.

Both the design consultants and the RDA noted that such consultations conducted in small groups helped further to improve the alignment. Feedback from the consultations helped the RDA to design mitigation measures to include additional underpasses, rehabilitation of local roads, and design changes to avoid or reduce community severance by the expressway and to avoid unnecessary land acquisition and save productive paddy fields. The RDA pointed out that the construction of a large number of additional underpasses was a result of the influence that the APs have had on the project design during the consultations.

Consultations during Project Implementation

Consultations continued during project implementation especially on land acquisition and resettlement. The RDA hired 40 RAs and 4 resettlement officers (ROs) to work with the APs and act as the facilitators between the RDA and affected households. The RAs visited the affected households to discuss their property losses and LARC entitlements including restoration

and improvement of their incomes and livelihoods. They organized AP groups to meet with government officials, negotiate their compensation packages, and facilitate their relocation.

In 2004, the Supreme Court held that the RDA had failed to inform and consult the APs in the sections of the expressway alignment where the FT deviated from the CT. The court awarded compensation for the violation of their right to know and right to be informed about the deviations, but the appellants were not happy as that did not stop the project. In the same year, they filed a complaint with the Compliance Review Panel (CRP) and requested the project to be suspended on the grounds of noncompliance with ADB's involuntary resettlement safeguard policy principles. The CRP also found that the APs were not sufficiently consulted on the environmental and social impacts of the alignment changes. Adequate and comprehensive consultations with the APs during the project life were one of the recommendations of the CRP and an action in the course of action (see the following section on information dissemination).

During additional land acquisitions for the project (2006), the project management unit (PMU) and the management consultants frequently visited the affected households to explain the procedure for land acquisition, payment of replacement cost, relocation plans, and resettlement options available to the APs. In such meetings, the PMU explained to the APs the project experience that they had gathered and how such knowledge and experience had helped them to facilitate compensation negotiations and resettlement arrangements.

Information Dissemination

An ADB fact-finding mission in 1999 discussed with the government a planned initiative by the RDA to conduct a public information campaign with a series of meetings scheduled in all administrative divisions through which the expressway would pass. These meetings were intended to disseminate information about the project, focusing on land acquisition, compensation packages, and the resettlement program. The meetings aimed at mobilizing the participation of the APs, local politicians, divisional-level officials, Grama Niladharis, Buddhist priests, and community leaders. The meetings would inform and discuss the positive impacts of the project such as improvements in transportation, new business opportunities, employment and local development, and increase of land values. In addition, in 1999, the Land Acquisition and Resettlement Division published and distributed brochures and leaflets explaining the project impacts, compensation

policy, resettlement options, the resettlement implementation strategies, and a tentative implementation schedule.

In 2001, the RDA published the “entitlement matrix” of the resettlement plan in English and Sinhala newspapers. A printed booklet in Sinhala and English was also circulated by the RDA to inform the public about the FT and the entitlement matrix. This booklet was prepared in the form of questions-and-answers in order to respond to the issues raised by the public about the final alignment and the entitlements of the various categories of APs. Maps of the alignment were also made available to the ROs and the Grama Niladharis. Each AP was also given a map describing the various components of the expressway in the Sinhala.

In response to concerns raised by some Japanese nongovernment organizations, an ADB mission in October 2002 reported that the project had provided comprehensive information to all APs and other stakeholders through person-to-person consultations, public meetings, and the mass media, as well as by government officials and a public relations firm hired by the government.

Since December 2004, the following documents have been made available at the regional offices of the STDP for public scrutiny: (i) the design drawings and maps of the alignment of the expressway; (ii) relevant sections of the EIAR in English and Sinhala; (iii) bills of quantities of the project; (iv) ADB’s loan agreement, memorandum of understanding, and project administration manual; (v) JBIC’s loan agreement and memorandum of understanding; (vi) the environmental monitoring plan (English) approved by the CEA; (vii) the RIP in Sinhala and English; (viii) plans for land acquisition; (ix) civil works contract documents; (x) Sinhala version of the guidelines for the APs on resettlement sites; (xi) Sinhala version of a poster for environmentally friendly design of housing; (xii) a document on avoiding landslide risks (English); and (xiii) the entitlement matrix (Sinhala). Furthermore, copies of the RIP in Sinhala and English, as well as the English and Sinhala versions of the EIAR, were also placed at the divisional secretariats, provincial councils, and public libraries.

Information on the detailed breakdown of compensation paid to each AP, minutes of LARC decisions, and adjustments to entitlements (marked on the liquidation sheet and countersigned by the AP) were made available at the STDP regional offices for the public to examine. The CRP stated in 2006 that 15,000 copies of the entitlement matrix of the RIP were printed and distributed in the project-affected areas. An audit was carried out in the ADB-funded section of the expressway to verify the extent to which

the RIP entitlement matrix had been disseminated among the APs. The audit revealed that only 11% of the APs had not received copies of the entitlement matrix. A total of 200 copies of the Sinhala translation of the RIP were circulated among divisional secretariats. Meanwhile, 1,000 copies of the resettlement information brochure in Sinhala were distributed among the STDP field offices in March 2007 to hand over to each resettled household. The addendum to the RIP of 2006 was also translated into Sinhala and its copies were distributed among the APs and the divisional secretariats in addition to its posting on the RDA website.

The CRP in 2011 noted that (i) resettlement information in Sinhala with the entitlement matrix had been disseminated to the affected households; (ii) the addendum to the RIP had been translated into Sinhala and distributed to divisional secretariat offices and also posted on the RDA website in 2007; and (iii) English and Sinhala versions of the RIP and entitlement matrix were posted on the RDA website. The Sri Lanka Resident Mission launched a publication titled *Designing and Implementing Grievance Redress Mechanisms: A Guide for Implementers of Transport Projects in Sri Lanka*, in English, Sinhala, and Tamil in July 2010, and distributed among the APs.

Issues of Compliance and Mitigation Measures

This section attempts to recapitulate the perceptions and discourses of different stakeholders of the project on the processes and the outcomes of public consultations and information dissemination.

Issues Raised by the Affected People

The complaint of the Joint Organization of the Affected Communities of the Colombo–Matara Highway that triggered the intervention of the CRP outlined how the project had violated ADB's operational policies. With regard to consultations and information disclosure, the complaint stated that (i) the public was not involved in social and environmental assessments, (ii) the notification of the EIA to the public was inadequate, (iii) the CEA's public hearings were not sufficient, (iv) there was no public education program, and (v) there was no specific information on the progress of construction activities and feedback on complaints. The complainants also reported their lack of understanding of key concepts such as full compensation, basic compensation, additional compensation, and replacement cost awarded at the LARC or Super LARC meetings,

the 25% bonus awarded for timely handing over of the acquired land, and the interest payable for delayed compensation. The complainants thus requested ADB to initiate a full consultation program with the APs after the completion of the new social and environmental assessment reports.⁷³ In response to these complaints, the CRP recommended that the ADB Management (i) closely monitor the plan to strengthen the disclosure of information to the APs; (ii) promote a dialogue between the RDA and the APs; and (iii) provide full project information, particularly the essential elements of the RIP, in Sinhala, to each affected household instead of requesting them to refer to the RIPs kept at the district offices.

Issues Raised by the Judiciary

As discussed in Chapter 2, the Court of Appeal and the Supreme Court heard several complaints from the APs. In its 2004 judgment in *Heather Theresa v. Central Environmental Authority & Others*, the Supreme Court held that notice and an opportunity should have been given to the affected parties to express their views and requirements before the alignment of the expressway was altered: “Here the changes are substantial, as the Judicial Committee too found; they adversely affected the Appellants and their property rights; they were changed in respect of the route of the expressway, and the route is a principal component of the project; and they were changes proposed before the commencements of the project.” The failure to inform the APs of such changes violated their fundamental rights to know and to be informed. The court awarded cash compensation to redress the infringement of their fundamental rights.

Issues Raised by the Office of the Special Project Facilitator

The Office of the Special Project Facilitator of ADB intervened to facilitate a resolution of a complaint of some APs in 2004 and observed that despite some meetings at divisional secretariat offices and public buildings involving very large numbers of people as well as visits to individual households by RDA officers prior to land acquisition to obtain consent, there was no facilitated consultative process using participatory methods at the village level with documented proceedings. Second, it observed that the communication strategy and style in planning and implementation was ineffective and sometimes counterproductive. A few APs complained

⁷³ The complainants requested a new EIA and a social impact assessment for the sections of the FT deviating from the CT.

that the communication strategy of the RDA was characterized by harsh attitudes and rudeness toward them and threats of removing them from their properties. Third, there was a paucity of information and lack of transparency in providing information on the LARC proceedings, entitlements, and project maps. The Office of the Special Project Facilitator highlighted the need (i) to disseminate documented project information to every affected household, (ii) to improve the interaction between the resettled households and ROs, (iii) for training in and use of systematic and facilitated participatory methods by field staff for consultations, and (iv) for an effective AP-oriented communication strategy ensuring transparency.

Issues Raised by the Compliance Review Panel

The CRP, in its annual reports from 2005 to 2011, discussed a number of gaps, inadequacies, and limitations in the consultation and information dissemination processes of the STDP. The CRP observed some inadequacies in the engagement of the APs in consultations during the EIA process. They pointed out that the dissemination of land acquisition and resettlement information to the public and the APs' participation in the environmental review process and in the EIA conducted in 1999 were inadequate. Consultations on the FT in areas not covered by the CT were inadequate. The CRP pointed out that the conduct of two public hearings was inadequate for a meaningful consultation on the environmental aspects of a major infrastructure project such as the STDP whose the trace is nearly 130 kilometers. Complaints were received that people who participated in the hearings were from the CT-affected areas and not from the FT-affected areas. Except for publishing a notice in the newspaper informing the public about the approval of the EIAR to meet a legal requirement, there was no evidence that the EIAR was brought to the public's attention after the CEA's approval. The CRP said that it was apparent that the newly APs were not consulted on the FT before it was gazetted in May 2001. Furthermore, it observed a decline in formal consultations with the communities, limited space for a process of consultations due to the hostilities of some of the households affected by the FT, and the distrust that grew between project implementers and the APs.

The CRP recommended that in the absence of any public consultation by the government on the supplementary EIAR, ADB should make arrangements for the supplementary EIAR to be available to the public for a specified period for their comments. It recalled that there had been some public consultations in the ADB-funded section and the JBIC-funded section of the expressway through rapid assessments, walk-through surveys

along sample stretches of the expressway, and focus group discussions with affected communities when preparing the supplementary EIAR. However, as the summaries of the content of those consultations were not provided, the CRP was unable to assess the quality of such consultations in order to ensure their compliance with ADB safeguard policies.

ADB, in consultation with the RDA and the Ministry of Highways, took the initiative to provide more project information, particularly on APs' entitlements, relocation, and environmental aspects of the project to the APs. However, the brochure posted on the RDA website in English (December 2006) and in Sinhala (2007) contained information inconsistent with the compensation packages that were outlined in the entitlement matrix of the RIP. Furthermore, the brochure did not contain information on the 25% *ex gratia* payment offered to the APs who vacated their premises on a stipulated date. The Sinhala translation of the title of the brochure also did not match the title of the English version of the brochure. The CRP noted that such inaccuracies could lead to confusion among the APs as to their entitlements.

The brochure printed in Sinhala in 2007 gave only the general information on broad thematic areas under which compensation was available. It did not provide the specific information given in the RIP entitlement matrix. As a result, the APs had to refer to the RIP to get the specific compensation information. There was no single source of published information for the APs to get the required information and to learn in advance about the project impacts and their consequences. On several occasions, the APs complained that they did not get the specific information on the progress of construction-related activities, particularly on the completion of the infrastructure facilities at resettlement sites. Without ample information on the expressway and relocation activities, it was difficult for potential APs to foresee the impacts of construction works on their lives. As a result, they could not make decisions on arrangements to reestablish their livelihoods. This particularly affected the APs who ran business or commercial establishments as they had to postpone their plans to improve or expand their business enterprises. The CRP in 2009 recommended that the government increase its on-the-ground communication efforts to improve the APs' understanding of project events, dispel misinformation, avoid unnecessary claims, and help create a more constructive and conflict-free environment that would facilitate the resolution of legitimate outstanding issues of the APs.

The Road Development Authority's Response to the Compliance Review Panel

The RDA agreed with the CRP's observations that public consultation and disclosure of project information on the FT was inadequate and that the APs did not have sufficient opportunity to influence during the determination of the FT. On the other hand, the RDA also pointed out that the number of letters and petitions that had reached the ministers, secretaries, and heads of departments in Colombo was a clear indication of the level of awareness of those letter writers and petitioners on the STDP and its various alignments—the Original RDA Trace, the CT, and the FT. Furthermore, the RDA pointed out that since 1999, some petitioners had often suggested alternative alignments with good justifications, which had been taken into consideration in determining the final alignment. In later years, the information dissemination process improved, and the RDA held the view that it had adequately disseminated the project information and relevant documents except among those few APs who opposed the surveying and entering into any dialogue with the RDA and refused to cooperate with the RIP preparation and implementation. In the latter part of the STDP and before the official inauguration of the expressway (2011), the RDA engaged a professional media team to produce documentaries (video films) to be telecast on national television to raise public awareness on how to use the expressway, and the applicable operational procedures and regulations. In 2010, the communication consultant of ADB observed an improvement in the dialogue between the project managers and the APs.

Issues Raised by the Independent External Resettlement Monitor

The Centre for Poverty Analysis (CEPA) observed that the APs had very little understanding of the bureaucratic process affecting them with respect to land acquisition and compensation packages, and the resettlement program. The CEPA also found that most of the documents that the APs received were process-related such as eviction notices, LARC attendance, brochures giving general information, and lists of documents needed in the land acquisition process rather than the contents of important discussions and agreements. They also observed that most communications on relocation were conveyed verbally. At LARC meetings, the APs were asked to sign agreements indicating their consent to the compensation determined, but a copy of these documents was handed over to the APs

only after all compensation payments were finalized by the STDP regional offices. No formal document was provided to the AP at the end of LARC meetings. On the other hand, these documents did not contain a detailed breakdown of the calculation of their compensation packages, which eventually led to misunderstandings such as whether or not the value of crops and trees were included in the compensation paid. Although most of the APs were happy with the compensation they received, the CEPA noted how this lack of documentation led to widespread suspicion, confusion, and dissatisfaction over their actual entitlements. There was a time gap between the actual compensation negotiations, payment, and delivery of documents. The CEPA concluded that the lack of written documents, particularly on critical issues such as compensation amounts, undermined the transparency of the land acquisition and resettlement process.

The CEPA also reported on how the APs were consulted during the selection of resettlement sites. There was no discrimination between men and women in their access to information. Most of the resettler households relocated to their preferred resettlement sites. However, the APs did not have adequate information on the facilities and services provided at the resettlement sites. There were also variations in the infrastructure facilities developed at different resettlement sites perhaps due to technical reasons or lack of funding. The APs had raised concerns about those variations, but the RDA did not communicate on such issues to explain the reasons for such variations.

Conclusions

Managing public relationships is an important part of successful project management. In this regard, the importance of an effective communication strategy cannot be overestimated. Different perceptions and discourses on the process and outcomes of public consultations and information dissemination that we presented in the preceding section point to several gaps and inadequacies in the communication strategy of the STDP, particularly in its early stages of implementation. Despite the large volume of consultations and project information disseminated, concerns were raised as to their comprehensiveness, consistency, availability, accessibility, and methodological rigor. The project's literature appears to point to the absence of an adequate communication plan developed for the STDP during its project formulation and early stages of project implementation. Consultations and information disclosure processes evolved through trial and error in the project. Several lapses were observed in the consultation

and information dissemination processes between 1999 and 2004, which generated strong protests and agitation against the project as well as several court cases.

The discourse on information dissemination points to several inaccuracies, inconsistencies, and delays in the process despite the voluminous information material made available for public scrutiny especially after 2004. However, with the interventions of a number of agencies such as the Office of the Special Project Facilitator, the CRP, and project review missions of ADB as well as the guidance that they provided, together with the pressures exercised by the APs, the project implementing agency successfully improved and strengthened its communication strategy from 2005 onward.

Public consultations and information dissemination did not begin early in the project preparation stage as recommended in ADB's involuntary resettlement safeguard policy. Project designs had been concluded by experts with hardly any consultations and inputs from the public. Subsequently, early consultations were conducted in an ad hoc manner with experts walking along the road alignment gathering people's opinions on their own technical designs. The primary intention of such random consultations was to get public consent to what had been already designed and planned by the experts. Such exercises did not constitute public participation and consultation. There were no organized consultations to receive inputs prior to the completion of technical design of the project.

The project literature also does not provide much evidence of organized forms of consultations providing a forum for APs' participation and facilitating a dialogue with the APs during the formulation of the RIP. The need for having consultations was largely felt when the APs displayed their strong opposition over the FT. The RIP recorded conducting 9 or 10 consultations with the APs in different locations within a day with the primary intention of addressing the disputes and objections raised by them to the FT. Less priority was placed on discussing the entitlements, compensation payments, livelihood and income restoration measures, and issues related to relocation and rehabilitation which constituted essential components of the RIP. Whether such consultations served any meaningful purpose and provided space for productive dialogue raises doubts. If the project had adopted a more organized and participatory public consultation process during its design stage, it could have minimized the protests and issues that arose to unprecedented levels with regard to the expressway trace design, land acquisition, compensation, and rehabilitation.

The lessons learned from the experience of the STDP calls for infrastructure development projects to put in place an effective and viable communication strategy aligned with international best practices from the start of the project preparation. It is necessary for such a communication strategy to be well-planned for the effective sharing of information and meaningful consultations with both primary and secondary stakeholders. Information to be disclosed and shared with different stakeholders should be carefully screened and identified, accurate and consistent, and compiled and documented systematically. It is also important that project implementing agencies ensure the timely disclosure of information in a language understood by the local populations and in a place easily accessible to the relevant stakeholders, including the APs.

Similarly, consultations should be systematically planned and organized, they should be facilitated by competent and experienced facilitators, and they should create a space for meaningful dialogue and discourse. Consultations are not a mechanical exercise and cannot be held in a hit-and-run fashion. They are a two-way process and should allow adequate space and time to share and express opinions, and also to address the fears and concerns of the affected parties. They should be free of coercion and manipulation. As the experience of the STDP illustrates, consultations can be conducted at different levels, i.e., at the individual level, in small groups, and in formal gatherings. Consultations should also involve both primary and secondary stakeholders such as in the case of the STDP where it involved the APs, government officers from the relevant departments and agencies, local level administrators, and the political authorities of different levels. Consultations should lead to community participation from the early stages of the project and throughout the project cycle. Finally, both information sharing and consultation should reflect transparency and accountability. Building mutual trust and confidence and the change of attitudes in all forms of interactions between the project implementing agencies, the public, and the project-affected people are essential elements of meaningful consultation.

CHAPTER 8

Restoration and Improvement of Sources of Income and Livelihoods

Acquiring land for a “public purpose” has direct and far-reaching impacts on income sources and livelihoods of landowners and others who depend on the land to earn their living. The Land Acquisition Act of 1950 and its regulations emphasize the state’s right to acquire private property for a public purpose using its right of eminent domain regardless of whether the owners or users of the land consent or not, and regardless of whether such land acquisition has significant impact on their livelihoods, income sources, and social networks. This state-centric approach to land acquisition prevailed over a century in Sri Lanka until the Southern Transport Development Project (STDP) highlighted the importance of developing an approach that emphasizes the rights and interests of affected persons (APs). As discussed in previous chapters, the STDP highlighted the need for a person-focused approach to land acquisition and resettlement. The adoption of international best practices in land acquisition and resettlement by the Road Development Authority (RDA) in preparing resettlement planning instruments facilitated this transition from the state-centric to the person-focused approach.

International best practices in involuntary resettlement aspire to achieve a fourfold outcome from a land acquisition and resettlement program. First, the affected nonpoor will not become poor and the affected poor will not become poorer as a result of a development intervention. Second, the replacement cost is paid as compensation for land and structures acquired. Third, the program assists the physically displaced persons to relocate with better life chances. Fourth, the program implements an income restoration program for the benefit of all APs. In projects funded by multilateral development agencies, project authorities adopt the international best practices found in the involuntary resettlement safeguard policies of these agencies in formulating resettlement plans (RPs) and resettlement implementation plans (RIPs). However, in implementing the RIPs, they often fail to apply them adequately. This is because the

country safeguard systems or the local regulatory frameworks are not fully geared to accommodate such international best practices.

As discussed in Chapter 2, the STDP was the harbinger of reforms to the land acquisition and resettlement laws, regulations, and institutions in Sri Lanka. Informed by international best practices in land acquisition and resettlement and supported by the National Involuntary Resettlement Policy (NIRP) of 2001, the STDP adopted four strategies as main pillars of its RIP: (i) identify all APs, specifically the poor and vulnerable, and prepare lists of their assets and losses; (ii) estimate and pay the replacement cost of all acquired land and structures as compensation; (iii) assist the physically displaced households to relocate to resettlement sites; and (iv) implement a well-planned and financed program to restore and improve incomes and livelihoods of affected poor and vulnerable households. Chapters 4, 5, and 6 discussed the first three pillars, and this chapter examines the fourth pillar—how well the project has enabled the affected poor and vulnerable households to overcome their poverty, or at least to avoid further impoverishment.

Land Acquisition and Impoverishment

The project affected the livelihoods of about 800 farmer households as a large proportion of the land acquired for the STDP was agricultural land. The impacts of the acquisition and the ability of the APs to recover depended on whether the affected land was paddy land, where subsistence crops were grown or highlands, where cash crops were grown. None of the paddy land had been replaced, which was due to a number of factors such as low compensation for paddy lands, the lack of paddy lands for sale, and the lack of local labor to work on the paddy lands. The loss of paddy land to the household may not be significant in terms of the economic contribution to their income, but the APs do lose what they once valued (ADB 2014).

Each displaced household that opted to resettle at a resettlement site, on average, received about 20 perches (0.056 hectares). A squatter household or a subfamily received a plot of land, which is, on average, 10 perches. Some resettlers who previously had larger home gardens that provided them with vegetables, coconuts, and firewood complained about the size of their home gardens at the resettlement sites. Although they were paid generous compensation for the loss of their highland land, they “felt” poor or poorer. The main reason was that they could not restart home gardening at the same scale as prior to relocation. Some APs who raised cattle were compelled to sell them before moving to a resettlement site. Such limitations on their

livelihoods were considered by the APs as an indicator of their newfound poverty and deprivation.

Prolonged construction works of the expressway also affected households' income sources and livelihoods.

Construction has affected and continues to affect paddy and cash crop cultivation, initially due to irrigation and drainage issues, which are now being dealt with. Siltation and dust have also had varying impacts depending on crop type. Continuous impact over a long period of time, coupled with uncertainty regarding degree of potential impacts, has been a serious constraint to restarting agriculture for farmers whose lands have been acquired, but also for those who have agricultural land around the right-of-way (CEPA 2008e:20).

According to the RIP, the RDA had to provide a special package of income rehabilitation and improvement to vulnerable and severely affected households. The key items of the special package are a customized income restoration and improvement program; counseling on project impacts, risks, and resettlement options; counseling on savings schemes and cash management; an assessment of current economic activities in the area and their potential future improvement; facilitation of starting small-scale income-generating schemes; assistance to access poverty alleviation and credit schemes; one household member to receive skills training under the income restoration program (IRP); priority access to project construction-related employment opportunities; and agricultural extension facilities to develop land cultivation.

In the early days of the project, the thinking at the RDA and the Treasury of Sri Lanka was that a comprehensive compensation package would place an affected household in a good stead to restart their lives with better development opportunities. In fact, housing and infrastructure facilities at the resettlement sites and the total value of cash compensation an affected household received for their lost property and livelihoods were much more than in any other resettlement program in Sri Lanka. Some households received as much as 400% of statutory compensation for their property losses as land acquisition and resettlement committee (LARC) entitlements (see Chapter 6). The income restoration and improvement component of the STDP therefore received a low priority in project implementation at least until 2005. The RDA until 2005 was mainly interested in completing the land acquisition and resettlement programs of the project.

Income Restoration Program

In the RIP, income restoration of the APs and their households was approached in two distinct phases. The first phase was the payment of adequate cash compensation to replace agricultural land or to restart disrupted livelihoods elsewhere, so that affected households could at least maintain their preproject living standards. The second phase was project-specific assistance targeted at a specific group of affected households to help them restore and improve their income and livelihoods. The first applies to all affected households, and the second applies to vulnerable and poor households affected by the project. Because of poverty and vulnerability, the latter needed special assistance to recover from the economic and social trauma of physical and economic displacement.

The first component of the IRP was completed with mixed results. The combination of statutory compensation and the LARC payments provided each affected household a large sum of cash to invest in income-generating activities. Compensation received at the replacement cost of the acquired property was often sufficient to restart income-generation activities. Some households used such money to build better houses and to buy household furniture and other goods such as televisions and three-wheelers. Others wasted their money and failed to reinstate themselves in better living conditions.

The second component of income restoration aimed at improving the living conditions of the affected poor and vulnerable households. Although income restoration and improvement of the poor and vulnerable households was an integral part of the RIP and SLRs60 million was already allocated to it, this component of the RIP was not implemented until 2006—that is, 4 years after the start of land acquisition for the project. This chapter primarily focuses on this component of the project.

The STDP's project assurances adequately covered both components of the income and livelihood restoration. Regarding the first component, the report and recommendation of the President stated that "the Government and RDA will ensure ... project-affected persons will improve or at least maintain the standard of living they were enjoying before the implementation of the Project" (ADB 1999b:28). In order to realize this key objective, the government and the RDA agreed with ADB to accomplish the following tasks:

- (i) payment of compensation at the replacement cost to the APs prior to land acquisition

- (ii) relocation of physically displaced households prior to displacement
- (iii) assessment of development opportunities for small businesses in the project area for the benefit of those who lost commercial establishments to the project
- (iv) assistance to affected farmers to purchase land for farming
- (v) assistance to vulnerable households in building their new houses at resettlement sites by providing free building materials and labor (ADB 1999b: 28–29).

Regarding the second component, there was a covenant in the Loan Agreement between the government and ADB on the STDP that the RDA would design and implement an IRP in line with the progress in land acquisition. The rationale behind this action was to ensure that each poor AP who received a fair and adequate cash compensation package could invest it or part of it in an income-generating activity that would help him or her at least to maintain the preproject income level. This is an important policy principle of the NIRP and also of ADB's involuntary resettlement policy.

The inventory of losses (IOL) of the project completed in 2002 identified 1,430 (25%) affected households as poor. The household poverty threshold was determined based on the 2002 official poverty line⁷⁴ (OPL) which was SLRs1,423 per person. The social impact assessment (SIA) of the project found that in most affected households at least two adults were gainfully employed and contributed to the household's common purse. On this basis, the RIP categorized a household with a monthly income of less than SLRs3,000 as a poor household.

The RIP outlined the key activities of an IRP. It specifically stated that the project will (i) gather and list information on local enterprises and tally them with APs' qualifications and interests; (ii) identify regional or local institutional resources to train them, especially unemployed youth, in technical, managerial, and entrepreneurial skills; and (iii) develop programs to promote their leadership qualities.

The RIP listed light or heavy vehicle drivers, masons and carpenters, bartenders, computer operators, clerks, and office assistants as suitable employments for the poor and vulnerable APs. It expected the RDA to establish contacts among the APs, relevant government departments, and the private sector institutions, where semiskilled APs could obtain

⁷⁴ Minimum amount of money one person needs to meet his or her basic needs.

technical support to improve their skills. The RIP also suggested providing employment for the APs as skilled, semiskilled, and unskilled workers at project construction sites. It also proposed to establish a revolving fund to provide SLRs25,000 as a credit facility for each affected household selected under the IRP to facilitate self-employment. (This activity was not implemented owing to institutional bottlenecks, especially the concerns of the Treasury regarding credit recovery difficulties of such loans.) Another IRP activity listed in the RIP was planting high-value trees in home gardens as an income-generating activity. This did not develop beyond the cultivation of vegetables in home gardens and a few perennial trees such as jack trees owing to the lack of funds to buy saplings and space constraints at resettlement sites.

The implementation of the IRP can be divided into three distinct phases: Phase I (2003–2005), known as the Community Welfare Program, was planned and administered by the project management unit (PMU) of the STDP. This was followed by Phase II (2005–2008), planned and implemented by the nongovernment organization Sarvodaya Economic Enterprise Development Services (SEEDS). Phase III (2008–2011) was implemented by the PMU of the STDP.

The Income Restoration Program: Phase I

The IRP at this phase supported the resettled households at resettlement sites who constituted about a third of physically displaced households. The justification for the exclusion of self-relocated affected households from the IRP was that each of them had been given an *ex gratia* allowance of SLRs100,000 as an incentive bonus to rebuild their livelihoods. Moreover, self-relocated households indicated their willingness to take risks and to pursue their own strategies to improve their livelihoods and socioeconomic conditions. Some considered the opportunity to move away from their original locality as a blessing, as it allowed them to restart their lives in a new environment with sufficient resources as independent and nuclear households. As a result, most of them invested their cash compensation much more prudently than those resettled at the RDA-sponsored resettlement sites.

The main income-generation activities until the end of 2003 were the distribution of plants and seeds among resettlers to develop their home gardens. In phase I, 343 resettled households started new home gardens. The Department of Agriculture instructed them on fertilizer use and planting materials, and provided seedlings at subsidized prices. It also

organized several training programs and experience-sharing tours for their benefit. The PMU trained 84 APs in computers, driving, dressmaking, and cosmetology at vocational training centers. The PMU also financially assisted several poor and vulnerable households to complete their partially built houses. During phase I, SLRs6 million (10%) of the IRP budget was spent on housing for some vulnerable households.

The housing society at each resettlement site oversaw group activities and mobilized the community support for house construction and infrastructure development. Generous assistance from housing societies in constructing houses at the resettlement sites helped affected households, especially the poor households, to save money and invest in income-generating activities.

In November 2003, at the request of the PMU, Finnroad, the management consultants of the project, prepared an income restoration action plan by linking the phases of land acquisition with a set of actions for income restoration (Finnroad 2003). The Finnroad identified 2,330 affected households as poor. The PMU started several preliminary income restoration activities, such as opening of a savings bank account for each affected AP to deposit cash compensation and the LARC allowances. Another key action was to recognize both husband and wife as project beneficiaries. Moreover, it provided ad hoc advice on income-generating activities to any AP who wanted such advice and further assistance. The RDA did not implement the action plan fully and, as a result, there was some agitation at the resettlement sites about impoverishment and the failure of the PMU to consult the APs on IRP activities.

As discussed in Chapters 1 and 2, in 2004, several APs lodged a complaint against the project with ADB's Compliance Review Panel (CRP) about the delays in land acquisition and compensation payment, and the ad hoc nature of the IRP. The inquiry by the CRP revealed that the project authorities had not taken sufficient interest in income restoration and improvement of the APs. It recommended that ADB should assist the IRP of the project and establish household income benchmarks through a management information system (MIS).

In phase I, planning and implementation of the IRP was poor and erratic. The RDA failed to link the IRP with the phases of the land acquisition process, a key requirement of the RIP. The PMU did not consider income restoration and improvement of the poor as a priority project activity. This was mainly due to several project-specific situations. First is the delay in land acquisition and compensation payment. Second,

project authorities did not have sufficient knowledge and institutional capacity to prepare a comprehensive IRP and to implement it. The RIP, particularly its IRP component, was a novel experiment for the RDA. Third, the formulation of a comprehensive IRP and its implementation were further delayed by the agitation mounted by some APs and several civil society organizations against the project. Fourth is the difficulty of obtaining sufficient funds from the Treasury to start up the IRP.

The Income Restoration Program: Phase II

The CRP recommended that a comprehensive IRP should be formulated immediately with sufficient funds to implement it following the guidelines given in the RIP. But the PMU did not have sufficient expertise or time to devote to the IRP. Therefore, the RDA in 2005, in consultation with ADB, outsourced the task of the formulation and implementation of a comprehensive IRP to SEEDS. SEEDS conducted an SIA of the affected households and identified 1,557 households as poor and who should receive project assistance to avoid further impoverishment.

SEEDS focused on five areas to support the poor affected households in their efforts to overcome poverty and economic vulnerability: (i) development of the housing society at each resettlement site as a mutually supportive action group, (ii) development of microfinance programs, (iii) income-generating programs, (iv) self-employment programs including home gardening programs, and (v) training in food processing. Delays in the development and implementation of these subprograms demoralized the APs. The dropout rate of the APs in some programs was high: 507 APs (33%) did not want to continue with income-generation programs. As a result, the number of APs who participated in the IRP fell to 1,050, of whom 332 (32%) were resettlers at the resettlement sites and 718 (68%) were self-relocated persons.

The impact of the IRP on the APs during phase II was marginal. Only about a quarter of those who attended the training programs found them to be useful or helpful in restarting their livelihoods or in improving their income sources. Based on this finding, the RDA in February 2008 terminated SEEDS' contract for the IRP.

Displaced youth found that SEEDS did not meet their aspirations. They attributed general economic development in the project area to regional development efforts of the national government and provincial

councils. According to them, SEEDS launched a few training programs such as sewing, computer operations, food processing, and compost making. All programs failed due to lack of planning, poor teaching techniques and models, poor management, and insufficient financial support. The youth stopped attending the training programs as they did not consider them useful in finding employment.

The key weakness of the IRP of SEEDS in phase II was that it did not focus on employment needs of the APs. In fact, the main source of income of the majority of poor households was agriculture, and the IRP did not provide a comprehensive agricultural development program other than the home garden program. SEEDS did not have a clear understanding about the resettlement process and how to link different phases of the resettlement process with income restoration and improvement requirements at the household level. Instead, SEEDS selected income-generating programs that were regional in scope without checking their relevance to the livelihoods of the APs. If SEEDS had provided training for specific jobs such as cinnamon peeling, tea plucking, or rubber tapping, it could have been more relevant and useful to the APs in finding employment.

SEEDS encountered several administrative difficulties such as finding self-relocated households and entering socioeconomic data and information of the APs into the MIS. It did not receive sufficient support and encouragement from the project authorities in planning and implementing its IRP or in developing the MIS. Moreover, SEEDS failed to develop a practical or working definition of a “poor household” or of a “vulnerable household.” This, in turn, resulted in the failure to identify such households who deserved special assistance from the program. SEEDS lacked experience in resettlement management, especially in managing a large-scale income restoration and improvement program. The emphasis on ideological precepts of SEEDS such as peace, equity, and compassion overwhelmed the practical aspects of learning skills to earn a living.

Although adequate assistance and guidance did not come from SEEDS, most poor households who benefited from the regional and district development programs gradually restored or even improved their household incomes. This has, however, been a prolonged process with many pitfalls and frustrations. Different income groups and occupational groups did not benefit equally from such developments and, in some cases, affected households became more impoverished as in the case of some estate plantation laborers who lost their main source of income because of land acquisition.

The Income Restoration Program: Phase III

By June 2008, 361 out of 1,359 displaced households (27%) had been resettled in 32 RDA-developed resettlement sites. A total of 18 out of 20 housing societies had been registered as community-based organizations (ADB 2014). The PMU conducted a household survey to re-interview the affected poor households who had been identified by SEEDS as eligible to receive IRP assistance. It interviewed 940 households registered in the MIS database. The PMU appointed an IRP specialist to analyze the data and to make recommendations on how to strengthen the IRP.

The expert used the poverty threshold of monthly income of SLRs3,000 per household, adopted in the RIP (2002), in determining whether or not the project had restored household income levels to their preproject income levels. While this was not the same as finding whether the households were still poor or not, the expert was interested in ascertaining whether ADB's safeguard policy requirement concerning the restoration of household income at least to its preproject level had been achieved.⁷⁵ The expert concluded that except for 22 households in the Japan Bank for International Cooperation (JBIC)-funded section of the expressway, all other poor households had at least managed to restore their income levels to their preproject level; therefore, only those 22 households were eligible to receive assistance from the IRP. He further pointed out that 77% of the households identified as poor by SEEDS in 2005 were not in fact "poor," as their average monthly household income even in 2005 was more than SLRs3,000 (Table 8.1).

Table 8.1: Socioeconomic Status of Households that Participated in the Income Restoration Program in 2008

Household Category	No. of Households	Percentage
Nonpoor (recovered from poverty)	131	14
Move out of project area (no information)	40	4
Considered as "poor" by error in 2005	719	77
Died during the past 10 years	28	3
Deserve income restoration program assistance	22	2
Total	940	100

Source: Government of Sri Lanka (2008).

⁷⁵ The World Bank's involuntary resettlement policy is thorough as it emphasizes income "in real terms," which is missing in ADB's policy on involuntary resettlement of 1995.

The conclusion of the expert is misleading as it did not reflect the changes in the official poverty line (OPL) between 2002 and 2008. In 2008, the OPL was SLRs2,845; in 2002, it was SLRs1,423. The RIP considered a household with a monthly income below SLRs3,000 as poor on the basis that at least two adults contribute to household income ($\text{SLRs1,423} \times 2 = \text{SLRs2,846}$, rounding off to SLRs3,000). On this basis, in 2008, the OPL of SLRs2,845 would revise the poverty threshold of SLRs3,000 to SLRs6,000 ($\text{SLRs2,845} \times 2 = \text{SLRs5,690}$, rounding off to SLRs6,000). Thus, to conclude that there were only 22 poor households in the project area based on the preproject poverty threshold of SLRs3,000 was to falsely claim the success of the project. However, according to international resettlement best practices (listed in the 1995 ADB involuntary resettlement policy), the cardinal principle regarding household income is that the project should at least restore affected households' income to their preproject income levels. In this sense, the conclusion of the expert was correct. But in the case of poor affected households, the requirement was income improvement, not restoration. The expert failed to address this requirement in his analysis of socioeconomic survey data.

Perceptions of Poverty

Many households did not participate in the IRP soon after their displacement because of the psychological trauma that they underwent as a result of physical displacement. Their nostalgia for their lost assets, lands, social networks, communities, and income sources prevented them from building communities at the new resettlement sites or merging with host communities in the vicinity. Moreover, because of their uprooted status in the community, they did not want to take risks or search for employment outside the project area. Those who moved to resettlement sites maintain their connections with their ancestral villages and relatives. But the ancestral villages had lost their character because of the project. Those APs who remained in their original villages suffered critical adverse impacts from noise and dust pollution. They were exposed to outsiders who moved into the area as construction workers, heavy machinery and vehicle operators, and suppliers.

Physical displacement and the loss of income sources generated a heavy dependency among the APs on project authorities. This dependency was partly created by the numerous official meetings that they attended and the assistance that they got from the project officials such as resettlement assistants to get the paperwork done to receive their compensation, LARC entitlements, and land plots at resettlement sites. The APs also needed

protection and guidance as resettlers at their new locations. The APs' prolonged dependency on the RDA and other agencies was detrimental to the development of their entrepreneurship and social integration with their host communities. The self-relocated households, on the other hand, escaped this dependency syndrome early in the project cycle. They collected their compensation packages and incentive allowances and left the project area. Most of them did not encounter various expressway construction issues such as noise and air pollution and frequent and continuous engagement with the project personnel.

The delays in income restoration and improvement created pessimism among the poor and vulnerable households regarding their uncertain future and the lack of resources to start a new and better life. They developed an inward-looking perspective as a coping strategy. Their aspirations for improved living standards, better access to services, and better roads and transportation facilities, and for better employment opportunities were largely unmet for many years. With the completion of access roads and the rapid regional development efforts of the government, however, they were able to meet some of their aspirations.

There was no continuing guidance and support from project authorities or line ministries on how to spend cash compensation on housing, invest in livelihoods, and develop remaining land. For example, between 2002 and 2006, farmer households affected by the project were not enthusiastic about cultivating their paddy lands not acquired for the project. This was because of poor yields, poor extension facilities, and difficulties in getting irrigation water supplies. They found it difficult to obtain good-quality seed paddy and adequate fertilizer. The Department of Irrigation delayed the reinstatement of irrigation facilities damaged or blocked by the construction activities of the project. At the resettlement sites, the Department of Agriculture conducted a few agricultural extension programs in the early years of the project, but failed to continue such assistance. Furthermore, it did not develop a good database of APs' cultivated paddy and highlands that were not affected by the project in order to examine the possibility of improving agriculture as a source of household income for those affected households who continued to live on their original land. In 2006, the government introduced a new policy for improving paddy cultivation with a subsidized fertilizer supply scheme. As a result, project-affected farmers gradually began to recultivate their small paddy landholdings that had been abandoned for several years and were able to earn an extra income at least once a year from paddy cultivation.

Table 8.2 lists the perceptions of households on the three most important improvements initiated by the project.

Table 8.2: Perceptions of Post-Displacement Improvements at the Household Level

Improvement (2002–2013)	Number of Households
Bigger houses with better facilities	87
Access to better education for children	41
Improved household incomes	26

(N = 100 households)

Source: Gamaathige (2013).

Of the sample households, 87% had constructed better and bigger houses with electricity and water supply and with access to main roads compared with pre-resettlement poor-quality small houses without electricity and water supply and without good road to the main roads. Bigger and better houses helped children in their studies as they had their own rooms and electricity. The poor households were the main beneficiaries of the project's housing program at the resettlement sites. Those households that opted to stay in their original houses were the least satisfied households. They commented on the progress among those who moved to resettlement sites and those who self-relocated. In retrospect, some of them wished that they too had moved to the resettlement sites to better their life chances.

As discussed in Chapter 6, encroachers also received residential plots at resettlement sites. With post-displacement support from the project, they constructed new houses. They used to live in small wattle and daub houses or in temporary shacks before resettlement; now they occupy new houses with basic amenities at the resettlement sites. They perceived themselves to be the real beneficiaries of the project.

Less than half (41%) of the sample households stated that their children receive better education after the relocation. They attributed this development to their proximity to urban schools and tuition classes and the easy access to main roads. Some households had given high priority to spending their cash compensation to educate their children by depositing the compensation into their children's savings accounts or in fixed deposits. They were satisfied with the continued support that they received for their children's secondary and higher education from the project.

Furthermore, 26% of households felt that their household incomes had improved after purchasing alternative agricultural land and commercial vehicles, and investing their compensation money in other income-generating activities. This is rather low compared with the level of their satisfaction over their housing and children's educational standards.

Income Restoration and Development Opportunity

A key component of any RIP is its income restoration and improvement strategy. The RIP should be backed by an adequate SIA to identify project-affected households, a budget linked to a detailed timetable, and a robust institutional framework to implement it. If the agreed timetable was not followed for any reason, the impoverishment of the APs is accelerated, thereby creating problems for the project authorities as in the case of the STDP. The STDP demonstrated some key requirements of a robust and effective IRP and how the absence of any of them would adversely affect the project and APs.

In 2010, ADB conducted a sample survey of 100 poor households (identified in 2002) to examine the overall impact of the STDP on their sources of income and livelihoods after 8 years.⁷⁶ Its primary focus was on occupational patterns, earned income from different sources, and their perceptions on various project activities initiated to improve their livelihoods. The survey identified three main employment categories in the project area: skilled, unskilled, and agricultural labor. It found that as much as 15% of household heads were unemployed in 2010. The category of "other" comprised old household heads (11%), household heads who were chronically ill (2%), and household heads who were underemployed (6%). Taking these two categories—unemployed and other—together, they constituted a third (34%) of the poor households, and some of them were indeed vulnerable households who needed not only income restoration, but also assistance to improve their incomes.

There was an improvement in household incomes among poor households after 8 years of displacement compared with their preproject income levels. A total of 87% of the poor households demonstrated an income improvement compared with their preproject incomes in 2002.

⁷⁶ Prof. K. Karunathilake of the Kelaniya University designed the survey, collected data, and analyzed them.

If the income threshold of poverty in 2010, based on the OPL of 2010, is applied with the formula used by the STDP to identify poor household, the poverty threshold was SLRs7,000 per household.⁷⁷ If this threshold is applied, 22% of households could still be considered poor. Still, the restoration of household income of 78% of poor households in 8 years is a remarkable achievement (Table 8.3).

Table 8.3: Monthly Household Incomes in 2010

Household Income (SLRs)	No. of Households
Below 1,000	5
1,001–1,500	0
1,501–3,000	8
3,001–5,000	5
5,001–7,000	4
7,001–10,000	8
10,001–15,000	23
15,001–25,000	23
25,001–40,000	17
Over 40,000	7
Total	100

(N = 1,000)

Source: ADB (2010).

Although 22% of households in the project area either remained poor or had become poorer, the majority of the poor households displayed a remarkable upward mobility in household income levels by 2010 (Table 8.3). Several factors contributed to this upward trend in household income levels. Some affected households invested a portion of their cash compensation in small-scale enterprises after building dwelling houses. Such investments began to generate incomes for the households after a few years. The expectations that the expressway would link the economy of the Southern Province with the economies of other provinces triggered regional economic development in the project area, creating employment opportunities in the service and tourism sectors. Many youths entered the

⁷⁷ The official poverty line in November 2010 was SLRs3,341. Applying the RIP formula of two adults per household employed, the poverty threshold is about SLRs7,000.

labor market during this period. Because of their better education, desire for mobility, and their computer literacy, they not only found employment easily, but also earned more income than their parents who were small farmers, sharecroppers, and small businesspeople.

As Table 8.3 shows, the average household monthly income of 70% of the households was more than SLRs10,000 and 24% of the households earned more than SLRs25,000 a month. Reported income of a household is not a sufficient indicator of its total household income, however. Especially in rural areas, several income sources such as the use of the commons and informal engagement in ad hoc daily wage labor are typically not reflected in household income data. Such extra, but temporary, income is usually spent by men on cigarettes, gambling, and liquor, without being added to the household's common purse.

Table 8.4: Monthly Household Expenditure in 2010 (N= 100)

Expenditure Category (SLRs)	No. of Households
Below 1,000	4
1,001–1,500	2
1,501–3,000	6
3,001–5,000	7
5,001–7,000	11
7,001–10,000	20
Over 10,000	50
Total	100

Source: ADB (2010).

Income levels of the sample households broadly matched their expenditure patterns. The number of households that spent below SLRs3,000 a month was 12% and below SLRs5,000 was 19%. Each of the 50% of poor households in 2008 spent more than SLRs10,000 a month (Table 8.4). This indicates that while some poor households became poorer, the majority became nonpoor. The latter's conspicuous consumption patterns are an indicator of their wealth.

Housing conditions are an important indicator of income and expenditure levels of a household and their socioeconomic status. Prior to displacement, many affected households lived in poorly built small houses. Those who had received large sums of cash compensation spent

some money to build spacious and well-lit houses. Of the project-affected households, 65% gave first priority to constructing a new roomy house with electricity and water connection and 17% spent the cash compensation to buy homesteads to build better houses. A good indicator of the improvement of housing conditions is the type of roofing. In 2002, 40% of project-affected poor households lived in thatched and mud houses; in 2010, only 10% lived in such houses.

The number of households with electricity doubled between 2002 and 2010. Majority of poor households (80%) owned electrical goods and vehicles in 2010. Compared with the 2002 household status, in 2010 the same households displayed more affluence and better income levels. In addition, the project provided safe drinking water to all resettled households, and 98% of households had easy access to local roads, bazaars, and other public facilities.

Lessons from the Southern Transport Development Project for Future Income Restoration Programs

Adequate and Updated Data Bank

The STDP suffered from poor data collection methodologies and data analysis especially with regard to household income levels. Household income data and types of livelihoods were collected as a part of the IOL surveys that focused on land plots acquired instead of on persons or households who owned them. This created numerous difficulties in paying compensation and resettlement assistance, identifying the poor and vulnerable households, and monitoring the IRP. Moreover, land plots identified as affected units of the project were not registered at land registry. Each registered landholding was temporarily divided into several subplots by the Survey Department based on its land-use pattern, such as cultivated land, homestead, drainage land, and highlands in order to ascertain their correct value. The department later attempted to consolidate such data of land parcels by using national identity card numbers against each subdivision entry and adding up subland plots belonging to a single person. But change of names of women after marriage, nonregistration of land, land fragmentation through inheritance, errors in the manner the names were written, and simple copying errors made the task almost impossible. These errors were not fully corrected and, as a result, it had been difficult

even to ascertain accurately the number of the affected population of the project. The MIS, the key database of the project, followed the same methodology of counting land lots and subland lots. The MIS had never been fully updated, and it remained an incomplete database. This distorted some critical income data as in the case of the number of poor households among the affected households of the project.

The data collected through the two SIAs were not comprehensive enough to support the RIP planning and implementation. In fact, the RDA focused more on IOL surveys to identify the land lots to be acquired. Landowners' socioeconomic data were also collected, but such data were considered secondary to the land lot data. Surveying and valuation of such land lots were done with precision without paying sufficient attention to the unaffected land, private savings, employment skills, and social support networks of the APs (Gamaathige 2014). Land parcel-level information was certainly useful and needed, but it did not provide a sound basis for planning an IRP. A project needs data and information on all assets and all sources of income of affected households to formulate a robust and realistic IRP. Such data and information are also essential in resolving land-related disputes, determining resettlement packages, and revising and updating the RIP and the IRP during project implementation. The collection of such data by various agencies should be coordinated. Ad hoc methodologies of data collection and contradictory databases could confuse project managers, monitors, and APs.

The difficulties in ascertaining the actual number of "poor" households in the STDP is a good example of the poor quality of project data. This key information was not available during the project implementation phase. Among other methodological weaknesses is the haphazard methods used to identify and categorize poor households. The RIP did not develop a consolidated poverty threshold to identify poor affected households based on the OPL and other measures applied to various poverty alleviation programs in the project area. Although the OPL is revised several times a year, the project continued to apply the 2002 OPL to evaluate income restoration efforts among the affected households. In fact, the OPL had more than doubled between 2002 and 2011.

It is necessary to collect project data and information and update them throughout the project cycle. Such data and information should include not only technical and land data, but also socioeconomic data of the affected households. The inevitable changes in the road alignments during the detailed design and construction phases should be reflected in

RIPs and IRPs. This means periodic revision and update of these planning instruments and allocation of adequate funds to meet new demands. It is also important to document and update the data and information in each resettlement site. This applies to self-relocated APs also. At the resettlement sites, project authorities should review and document the cost of land, progress in infrastructure works and services such as electricity and water supply, amounts recovered from the APs for allocated land parcels, number of unallocated land plots, status of the payment of compensation, socioeconomic conditions of affected households, and progress in the formation of housing societies and their current status. Progress in resettlement, income restoration, and income improvement cannot accurately be estimated without a comprehensive list of APs' names, addresses, and status of house construction at the resettlement sites as well as those who have self-relocated. Unless the socioeconomic database of APs is updated, some APs will lose their opportunities to receive adequate compensation, resettlement, and rehabilitation assistance.

The MIS of the STDP has remained incomplete and unfriendly to its users. Errors in data entry and data categorization, and difficulties in selecting datasets and their retrieval have hampered its usefulness. One key reason for this fiasco is the poor quality of data and the methods used in their collection. Definitions of the key concepts were poor. Data entry errors and delays also contributed to this weakness. Adequate staff with statistical and computer science skills should be hired and retained at the database centers to ensure the accuracy of data, their relevance, and their timeliness.

Definition of Key Concepts

It is critical to have adequate definitions of key concepts such as “poor” and “vulnerable” households in resettlement planning and implementation. Vulnerable households are a subset of the poor household set. The IRP did not make this distinction, and as a result, the key resettlement principle of improving in addition to restoring the incomes of the poor and vulnerable households did not receive sufficient attention in the implementation of the IRP. Definitions of key concepts and processes need to be finalized at the beginning of the project cycle, ideally at the stage of project classification and impact categorization.

Flexible Resettlement Implementation Plan

The RIP of the STDP has two volumes with a lot of data and information and summaries of resettlement policies, land laws, and regulations. But it suffered from a dearth of key information and data on the socioeconomic conditions of the APs and affected households. As discussed earlier, this created problems in identifying the poor and vulnerable households, the beneficiaries of the IRP.

The STDP has demonstrated that a robust RIP should be flexible and formulated in consultation with the APs using a comprehensive database developed through a comprehensive SIA. It should also be backed by a sufficient budget. If the RIP has any weaknesses regarding these key aspects, they are reflected in its IRP. This might make its implementation difficult.

Use of the Urgency Clause of the Land Acquisition Act

In the context of Sri Lanka, the application of section 38(a) of the Land Acquisition Act (LAA) in acquiring land for a public purpose needs a review. The RDA and other development agencies continuously apply this “urgency” clause in acquiring land for public purposes. It certainly facilitated the acquisition of land without delay, but the completion of the construction of the expressway was delayed by 5 years, mainly because of the protests and litigation triggered from such acquisition without conducting adequate consultations with the APs. A best practice in this regard would be to hold consultations with the potential APs and negotiate compensation, relocation, and income rehabilitation packages before gazetting section 38(a) of the LAA. This not only ensures a better compensation and resettlement package for the APs, which would help them to avoid impoverishment, but also their willingness to hand over their land to the project without protest or opposition.

Institutional Support

A well-trained and experienced project field staff is necessary to plan and implement an IRP. Most of the project personnel of the STDP did not have sufficient knowledge or experience in resettlement planning and implementation. They thought that the payment of cash compensation for

the acquired property was the end of the land acquisition process. ADB assisted in training ROs and RAs who collected and recorded field data, and educated the APs about the project. They helped the APs to negotiate compensation packages, especially resettlement assistance packages with the RDA and other agencies. They carried the institutional memory of the land acquisition process, compensation payment, LARC negotiations, the resettlement process, and income restoration and improvement programs. They, as catalysts, played a significant role in helping the APs to cope with their psychological trauma arising from being uprooted from their living spaces. As most of the ROs and RAs were from the same area as the APs and treated them like family, the APs could directly discuss their worries and concerns with them. They were successful in finding different sources of income of households. Their abrupt termination of services by the project authorities left the project in an institutional memory vacuum and removed the supporting facilitators, thus leaving the APs without an anchor. The project owners should have retained them throughout the project implementation phase, enabling the qualitative and quantitative assessment of the recovery of households from poverty and vulnerability.

Conclusions

This project [STDP] ushered a new approach for resettlement in Sri Lanka with more generous compensation, described as “replacement cost of assets” instead of the depreciated value for structures and was then combined with frequent generosity of LARCs and appeals were considered. This has resulted in much large awards than might have ever been seen before.

– Compliance Review Panel (ADB 2005: 31)

In the resettlement literature, the labels “project-affected persons,” “project-affected households,” and “project-affected communities” connote individuals and groups who are adversely affected by land and other property acquisition for a development project. In fact, a development project can positively benefit its affected persons, households, and communities, if project benefits are fully, or at least partially, transferred to them. For example, a small-scale community development projects, such as a rural water supply project, a village road project, or a health facility in an urban slum area, directly benefit the project-affected persons and groups. In both cases, the key focus is on the impacts of projects on their socioeconomic conditions, as depicted in their incomes, livelihoods, social networks, and living standards.

National or regional infrastructure projects, such as expressways, hydroelectric facilities, and irrigation canal systems, adversely affect a large number of persons, households, and communities, at least initially, because of the acquisition of their land and other property, as well as the restrictions imposed on their access to natural resources and common land. They will have to wait many years to regain what they have lost to the project, and to improve their incomes, livelihoods, and socioeconomic conditions. In other words, they first have to lose their income sources, livelihoods, houses, and social support systems, and then have to regain and improve them. Although they are compensated either through the land-for-land modality or cash-for-land modality, or through both modalities, it is inevitable that most of them will go through at least a short traumatic period that would impoverish and socially disarticulate them. If the project authorities

plan and deliver adequate compensation, relocation, and rehabilitation assistance, this period can be reduced; otherwise, impoverishment and social disarticulation would become permanent features of the APs and their households. Thus, the adversely affected persons, households, and communities form a distinct population that needs attention and the assistance of the project authorities from the preproject phase to the postproject phase. Land acquisition and resettlement safeguard policies and laws that have evolved at the international, regional, and country levels during the past 40 years focus on this group and their socioeconomic conditions.

The central question regarding land acquisition and resettlement of a development project is: what is the potential for rebuilding the lives of those adversely affected? This key question can be elaborated through the following subquestions:

- (i) Did the land acquisition and resettlement program consider the project alternatives and introduce changes to the project design so that physical and economic displacement of persons and households could be avoided or at least minimized?
- (ii) Were the definitions and categories of the APs comprehensive enough to identify all categories of physically and economically displaced persons and households?
- (iii) Was the project planned and implemented by engaging project stakeholders in decision making through meaningful consultations and creating room for their participation?
- (iv) Were the APs paid compensation at the replacement cost of the acquired property before displacement? If they opted for the land-for-land option, did the project authorities assist them in finding appropriate land to continue their livelihoods?
- (v) Did the project assist the physically displaced APs and households in finding suitable relocation sites, and suitable locations to reestablish their adversely affected business establishments?
- (vi) Did resettlement and rehabilitation programs restore the livelihoods of the APs at least to the preproject level and improve the incomes of adversely affected poor and vulnerable households?
- (vii) Was there a fair grievance redress mechanism for aggrieved parties?
- (viii) Was the RIP binding on the project authorities?

Based on the answers to these questions, it is possible to evaluate the project's success or failure and, more importantly, to construct a land acquisition and resettlement framework for the benefit of future infrastructure development projects. The case study of the STDP is a very rich field to glean sufficient data and information to answer the above questions. It is a unique development experience in Sri Lanka and South Asia. No other project in Sri Lanka has impacted Sri Lanka's land acquisition and resettlement legal framework and triggered the accountability mechanism of an international multilateral development institution as did the STDP.

This book has attempted to answer those questions. In this concluding chapter, those answers are summarized to throw light on the successes and weaknesses of the project. Then, it presents several land acquisition and resettlement best practices distilled from the resettlement planning and implementation experience of the STDP to develop a land acquisition and resettlement framework for the benefit of current and future large-scale infrastructure projects.

Application of Best Practices

Consultation and Participation

Although throughout the project life, consultations between the APs and the project authorities were conducted, such consultations were sometimes superficial and unplanned. The Supreme Court, the Court of Appeal, and ADB's Office of the Special Project Facilitator and the Compliance Review Panel stated that the RDA had not adequately consulted the APs to understand their views on the expressway and its designs, and to share project information, details of APs' entitlements, and how the project would affect them. The change from the Combined Trace of the expressway to its Final Trace was not preceded by adequate consultation and information sharing with the potential APs. The Supreme Court awarded compensation for the violation of the APs' fundamental right to know and right to be informed, as guaranteed by the country's Constitution.

The project began in the early 1990s and since then has gone through many technical, legal, and institutional changes. As a result, it was difficult for the APs to grasp the scope of the project in its different forms and

their potential impact on them. Rumors spread rapidly, giving the APs wrong or misleading information about the project and its impact. A few APs protested against the project and ran their own information centers to instigate others to join them. Protests, rumors, and misinformation confused many APs.

The consideration of several alignments of the expressway, land acquisition for a six-lane expressway, and the swift change from the Combined Trace to the Final Trace confused some APs, as the RDA had not told them the reasons for the acquisition of land for six lanes or why the Final Trace was more appropriate than the Combined Trace. Although land was acquired for a six-lane expressway, the construction was initially limited to two lanes and subsequently expanded to a four-lane expressway. Neither the RDA nor the APs were prepared for such radical and swift changes in the scope of the project. Moreover, the social impact assessment report and the environmental impact assessment report of the project were not updated and revised to discuss such critical changes. The project's two social impact assessments (SIAs) did not cover the entire alignment of the expressway. At best, they were sample surveys planned and implemented to meet the requirement of ADB and later of the National Involuntary Resettlement Policy (NIRP). As a result, AP categories, especially the poor and vulnerable persons and households, were not adequately defined or identified.

The project suffered from the lack of an effective, well-planned, and viable communication strategy from the start of the project preparation. Although it disclosed project information through newspapers, pamphlets, and radio and television programs, it did not target specific AP groups in such programs. It took many years for the project to distribute the APs' entitlement matrix of the RIP in Sinhala.

In LARC meetings, APs' participation in determining the replacement cost and other entitlements was satisfactory. They regularly attended LARC meetings, and their contribution to LARC decisions was significant. Participation of the APs in resettlement sites selection was adequate. Through their participation, the APs managed to select resettlement sites closer to their original villages. This enabled them to maintain their relationships and social networks with their original communities and to choose their own relatives and friends at the resettlement sites as neighbors. The book highlights the importance of having a well-planned communication strategy from the beginning to the end of the project and beyond.

Compensation at Replacement Cost

The STDP is the first project in Sri Lanka that paid the replacement cost for the acquired property from titleholders and non-titleholders for a development project. The special Cabinet memoranda of 2001 and the NIRP of 2001 facilitated the payment of the replacement cost for the acquired property. They allowed the inclusion of nontitled land users, such as squatters and subfamilies of affected households, in the eligibility list of APs for compensation. The establishment of the LARC, an innovative grassroots-level mechanism, handled the compensation payments well. The APs knew the difference between statutory compensation paid under section 17 of the Land Acquisition Act and the resettlement entitlements provided by the LARC. The combined compensation packages were attractive enough for nearly 70% of physically displaced households to self-relocate. Resettlement assistants helped both the LARC and the APs to negotiate the replacement cost of the acquired land and houses and other structures, market value of crops and trees, and the cost of land development.

Although the LARC proved that it was the most suitable mechanism to determine the replacement cost and other entitlements of each AP, it could not ensure the payment of the compensation packages before the acquisition of land and other property. Sri Lanka was embroiled in a civil war between 1983 and 2009. As a result, the Treasury could not provide sufficient funds to pay the compensation packages in full before land acquisition. As a result, some APs received only the statutory compensation before displacement. This demoralized some APs and delayed their handing over of the acquired land to the project. The acquisition of additional land because of technical requirements of the expressway aggravated this problem. The payment of the full compensation package to almost all APs by the end of 2006, despite fund shortages at the Treasury, however, is a commendable achievement of the RDA.

Relocation Assistance

The project planned to relocate about 1,350 physically displaced households at the RDA-sponsored resettlement sites. However, about 70% of physically displaced households opted for self-relocation. The RDA, in consultation with the APs, selected 34 resettlement sites not far from their original villages. It developed basic infrastructure facilities at the

resettlement sites. Two sites were abandoned as their soil conditions were not suitable for human settlements. Land parcels at resettlement sites were allocated by lottery to the satisfaction of resettlers.

Because of the delays in constructing the resettlement infrastructure, the APs remained in their rented dwellings for a long period, sometimes as long as 9–15 months. A best practice in this regard is not to move APs from their original dwellings until suitable housing facilities are built for them at the resettlement sites, and, in case of the self-relocated APs, until they have built or bought dwelling units elsewhere. The infrastructure facilities at the resettlement sites certainly improved the living conditions of the displaced households. Before resettlement, for example, only 40% of the displaced households had access to water sources such as private wells or public water taps. At the resettlement sites, each household has access to a drinking water source and common water sources such as public bathing places. The majority of displaced households previously lived in wattle and daub or wooden houses, and 93% of them used kerosene oil lamps. Now each resettled household lives in a brick and cement house with electricity and water supply. The enhanced cash compensation packages based on the statutory compensation and the LARC entitlements, and the nominal fee charged for the land plots at the resettlement sites placed the APs in a good stead to build better and more spacious houses. The groups that benefited most from this arrangement were the project-affected squatters and other vulnerable households. Each such household received a piece of land and assistance from the RDA to construct a house at a resettlement site. The home garden program started at the resettlement sites was a success. The housing society established at each resettlement site provided a social base for resettlers to reestablish their social networks and also an institutional arrangement to bring their needs and suggestions regarding resettlement facilities to the RDA and local authorities.

The presence of project counselors or project officials trained in counseling at resettlement sites and in project-affected areas helps the APs cope with their sense of loss, psychological trauma, and nostalgia. In the STDP, the resettlement assistant did play that role for a while. If the potential APs are told about their pending displacement well in advance they could have, at least to some extent, adjusted their lives for the change. Moreover, if they know where they would be relocated, they could establish

links with the host communities before displacement, thereby reducing the trauma and uncertainty associated with new locations.⁷⁸

Income Restoration and Improvement

The income restoration program did not start until 2006, except for some piecemeal programs conducted by the project management unit such as home garden programs and programs to train some APs in employment skills. The delay was due to many land acquisition issues that confronted the RDA that took most of its time, and the lack of experienced staff who could launch a comprehensive and well-planned income restoration and improvement plan.

The income restoration plan of the project did not have a practical or working definition of “poor household” and “vulnerable household.” As a result, some households that deserved special assistance from the income restoration program were not included in the program. Sarvodaya Economic Enterprise Development Services, the agency that managed the second phase of the IRP, lacked experience in managing a large-scale income restoration and improvement program. It harped more on some ideological precepts such as peace, equity, and compassion and paid little attention to checking the suitability of selected employment opportunities and skills training for the APs.

The two SIAs were not helpful in identifying the poor and vulnerable households. Surveying and valuation of such land plots were done with precision, but without identifying unaffected land, private savings, employment skills, and social support networks among APs. Plot-level information did not provide a sound database for income restoration planning.

⁷⁸ This best practice has been tried out recently in the Kalu Ganga reservoir and Moragahakanda reservoir projects in the Mahaweli development system in Sri Lanka. The project authorities identified the households who would be physically displaced. The projects provide them alternative land well in advance at the resettlement sites to build their new houses and to develop the land with the assistance of their host communities. The project authorities provided school bus facilities for the children of the resettlers to go to their original schools from the resettlement sites. The project opened marketplaces in the vicinity of the resettlement sites for the APs' benefit. Several APs stated that such arrangements have given them confidence, trust, and room for planning well in advance for actual relocation.

The impact of the income restoration plan on the APs was marginal. Only about a quarter of those who attended employment skills training programs found them to be useful or helpful in restarting their livelihoods or in improving their income sources. Displaced youth found that the IRP did not meet their aspirations.

The main source of income of the majority of the poor affected households was agriculture, and the income restoration program did not provide a comprehensive agricultural program other than the home garden improvement program. The IRP also did not reflect on the nonagricultural skills that the poor household members already possessed and wanted to improve or on new skills they were willing to learn. If the IRP had provided training for specific jobs such as cinnamon peeling, tea plucking, or rubber tapping, it could have been more relevant and useful to the APs in finding employment.

Grievance Redress Mechanism

From project inception, the APs used various avenues to redress their grievances related to land acquisition, compensation, and relocation. Chief among them was the judiciary. Between 1999 and 2005, more than 15 court cases were filed by aggrieved APs seeking relief from the Court of Appeal and the Supreme Court. Such cases were a learning experience for judges as well as for the RDA, the Survey Department, and the Valuation Department.

A grievance redress mechanism (GRM) was established early in the project life as per the NIRP of 2001 and the ADB involuntary resettlement policy requirements. However, it did not get sufficient recognition as its publicity program was weak. The resettlement assistants at the grassroots level who played the catalyst role between the RDA and the APs resolved many of APs' grievances. After their departure in 2005, there was a vacuum in affected villages and resettlement sites regarding grievance redress. The GRM was resuscitated in 2009 and had become an active agency of the project by 2010.

The Public Complaints Resolution and Monitoring Committee established in 2005 and the Super Land Acquisition and Resettlement Committee (Super LARC) too played a useful role in grievance redress. The former dealt with project-related engineering, environmental, and construction issues, while the Super LARC dealt with land acquisition and compensation payment-related issues and grievances.

Legally Binding Resettlement Implementation Plan

The RIP was a part of the Loan Agreement signed by the government and ADB. Its covenants were binding and governed by international law. Its innovative actions, such as paying compensation to the nontitled APs and the payment of compensation at the replacement cost of the acquired property, were initially not congruent with the local regulatory framework. But through special Cabinet memoranda and the NIRP, the RIP gained the stature of a comprehensive legal instrument that the judiciary and the public administration recognized as valid.

The processes of updating the RIP during 1999–2007 showed the commitment of ADB and the RDA to incorporate safeguard best practices into the RIP. Such revisions and updates improved the RIP, and it became capable of addressing the land acquisition, compensation, and resettlement issues of a complex and large-scale infrastructure project. In numerous court cases, no one challenged the innovative programs found in the RIP.

Constraints to Implementing Best Practices

As much as the resettlement best practices facilitated the project implementation, the realization of project objectives, and many international best practices, there were several bad practices that harmed the project and the APs. Some of these, such as the long delay in project completion, were beyond the control of the project authorities. However, with carefully arranged consultations with the APs, the provision of a sufficient budget at the right time, and better advice and guidance to resettlers, some of them could have been avoided or at least partially avoided.

Long Delay in Project Completion

Long delays in the construction of the expressway harmed some of the affected households who remained in their rented dwellings for a long period, sometimes as many as 9–15 months, until the relocation sites were allocated and houses were built. Many households who had partially lost their land and continued to live on the remaining land underwent various hardships because of the delays in project completion. Among them were noise and air pollution; the security threat arising from the presence of large number of project workers in the vicinity; and access difficulties across the expressway, which adversely impacted their children's schooling,

petty businesses, cattle grazing, and the continuity of social networks. The project should not have moved the APs from their original dwellings until suitable housing facilities had been built for them at the resettlement sites, and in case of self-relocated APs, until they had built or bought dwelling units elsewhere. The project contractor informally paid some compensation to the APs who were directly affected by the air and noise pollution, access difficulties, and waterlogging and flooding of their land. But the prolonged social and environmental disturbances over a decade thwarted or at least slowed down their attempts at improving their life chances, and also exposed them to health problems.

Weak Income Restoration Program

As mentioned earlier, the failure to develop a working definition of “poor household” and “vulnerable household” resulted in difficulties in identifying such households who deserved special assistance from the project. This methodological weakness, together with poor planning and lack of resources, adversely affected the program. As a result, the impact of the program on the APs was marginal. This single factor delayed the recovery of many affected households from induced poverty and vulnerability.

Poor Supervision on House Construction

Many APs spent the bulk of the compensation and resettlement assistance that they received in building spacious houses. Such use of the compensation limited the APs’ ability to diversify their income sources or to restart their livelihoods at new locations. Moreover, because of the delay in providing the LARC entitlements, many APs could not complete the construction of their houses. While APs waited for their LARC entitlements, the construction costs increased, forcing a significant number of relocated households to abandon the completion of their house construction.

The story of the STDP is not one of uncomplicated success stories in applying resettlement best practices, but rather a mixed one where some best practices became firmly grounded in the project, whereas others did not due to a combination of factors that are closely connected with the development history of post-colonial Sri Lanka.

Based on the above, one could answer the question whether the project was a success or a failure with regard to land acquisition, compensation payment, relocation, and rehabilitation. As the discussion

shows, the weaknesses of the project arose not from the suitability or the applicability of specific best practices; they arose mainly from the weak institutional capacity, poor planning, and the lack of sufficient funds. The project was a learning experience for all of its stakeholders. It provided a rich environment to test several resettlement best practices and to learn what factors contribute or constrain their absorption into the local social safeguard system. The government and the RDA have learned many lessons from the project, and they are well incorporated into the country safeguard system as policies, regulations, and innovative institutional mechanisms. This has strengthened and expanded the country safeguard system that guides post-STDP development programs in Sri Lanka.

It is pertinent to conclude this section by quoting the project completion report of the STDP:

The project had a *significant* impact, contributing to expansion of economic opportunities and improvement of socioeconomic conditions of the people in the southern region. All design and monitoring framework targets have been achieved (ADB. 2014. para. 55).

Overall, the project was well implemented and is rated as successful. The project was relevant to the development goals and context at appraisal and remained so at completion (ADB. 2014. para. 62).

The success of the project can be attributed to a combination of solid government ownership and strategic vision; the long-term partnership between the Government, ADB, and a number of development partners; the high level of advocacy of civil society groups; and a series of well-targeted TA projects that bridged existing knowledge gaps. The STDP is an invaluable source of lessons for mega road project planning and implementation (ADB 2014. para. 64).

Land Acquisition and Resettlement Framework

The foregoing discussion has highlighted (i) several best practices in land acquisition and resettlement adopted from outside and developed within the project, such as the LARC; (ii) how they helped to avoid chaos, APs' frustration, delays, waste, and poor results; and (iii) what difficulties were encountered in applying some of them to the project. This section

ranks the key best practices and indicates why they should be applied to infrastructure projects to avoid delays and impoverishment of the APs. These best practices do not supersede detailed project processing and implementation processes discussed in the book; instead, they highlight and supplement such processes.

(1) Communication with Affected Persons

The most important best practice in land acquisition and resettlement programs is consultations with the potential APs and affected households and communities. Consultation can take many forms: direct meetings on an individual basis, group discussions, and public meetings. Consultative meetings are to be planned by taking into account the project scope and its likelihood to generate land acquisition and resettlement. Potential APs and groups are to be informed well in advance so that they can attend consultation and discussion meetings. Consultations are to be conducted in a language that participants understand and include all groups including women, vulnerable households, and different employment groups who are likely to be affected by the project. The cost of consultations could be high if travel to faraway places is needed. This means that there should be a budget, vehicle allocation, and a sufficient number of trained personnel who can lead consultations and record the key recommendations. The initial consultation phase of a project could extend over several months. This phase includes the sharing of the draft entitlement matrix of the RIP with the APs and soliciting their views and suggestions on how to improve it. Consultations with the APs will continue throughout the project cycle.

A robust communication strategy is needed to organize consultations and media participation. Pamphlets summarizing project information and key entitlements of different categories of the APs, radio and television programs, newspaper articles, and advertisements are the key tools of a communication strategy. A dedicated budget, trained personnel, and a detailed timetable and targets are essential ingredients of an effective communication strategy. As part of the strategy, the project authorities will have to disseminate information on the progress of the project components such as land acquisition, compensation payment, relocation, and income rehabilitation and improvement in local languages.

(2) Social Impact Assessment and Resettlement Implementation Plan

The best practice is to conduct a sample socioeconomic survey, a census of affected households, and an inventory-of-losses survey before any resettlement planning is started, and after the scope of the project is determined. In Sri Lanka, the date of issuance of section 2 under the Land Acquisition Act will be the cutoff date for compensation entitlements. Questionnaire surveys, group interviews, and structured and unstructured interviews can be used to study the project's potential social impacts. It is also important to start fieldwork early after recruiting qualified field staff and testing questionnaires for their accuracy and relevance.

A census of the APs and affected households will be needed to prepare the budget and timetable for land acquisition and resettlement. If the scope of the project changes after the census, it is necessary to reconduct the census. Unless the socioeconomic impacts and the census of the potential APs are available, project budgets and timetables should not be finalized. The STDP's key problem in this regard was not the dearth of surveys and SIAs, but their poor planning, scope, and analysis. If the institutional capacity does not exist at the project implementing agency, it should hire competent survey specialists from outside. A sufficient budget for these surveys is also required with a time frame to complete them and to hand over the SIA findings to the project authorities to prepare the RIP.

Another key best practice is to combine social and environmental impact assessments to avoid duplication of fieldwork and interview fatigue among the potential APs, and to understand the social aspects in an environmental perspective. An SIA and an environmental impact assessment could use the same social data and information. This would avoid mismatched findings and contradictory mitigation measures proposed by two groups of specialists.

All surveys should be guided by practical and working definitions of key concepts such as vulnerable household, poor household, squatter, encroacher, and replacement cost. Sex-disaggregated data are required in all survey reports. A key area where the STDP did not perform well was the income restoration of the poor APs. A key reason for this was the poor definitions of key affected categories of the population and poorly planned socioeconomic surveys.

(3) Commitment and Budget

Another key best practice is to identify and confirm the institutions that will participate and contribute to the proposed project. The lead contributor should be identified and named, the rationale for the project has to be stated, and how the project could affect people needs to be elaborated. If land needs to be acquired, at least a tentative extent of the number of hectares of land that will be acquired and the number of potentially affected households should be listed and published. The project executing agency will prepare a note on the scope of the land acquisition and resettlement, the main mode of compensation, that is, whether the land-for-land modality or the cash-for-land modality will be applied. The key requirement at this stage is a firm commitment from the executing agency to provide an adequate budget and sufficient institutional arrangements to develop and implement the land acquisition and resettlement program. The budget should firmly be with the executing agency to facilitate quick and adequate disbursement on short notice. The agency for land acquisition and resettlement is to be named and its institutional strength, experience, and knowledge on land acquisition and resettlement should be evaluated and publicized. If sufficient institutional capacity is not available within the implementing agency, it should not proceed with the project, especially with land acquisition. If donor funds are available, assistance should be sought to improve the institutional capacity.

(4) Grievance Redress Mechanism

One way to keep the APs linked with the project authorities is to provide the APs an avenue to access the latter regarding their grievances, complaints, and suggestions. It is a best practice for each project to have a GRM that covers both social and environmental issues and a formally appointed group including representatives of APs to administer it. A vibrant GRM will avoid project delays, as aggrieved parties could resolve their grievances without approaching the judiciary. A GRM will be in a much better position than a court to resolve project-related issues, because its members have good local knowledge, and its approach is to resolve issues through consultation and mediation. In a large infrastructure project, it is desirable to establish a multilevel GRM given the large area over which it spreads. A GRM will not obstruct the right of an aggrieved party to take its complaints and grievances to a court for relief.

(5) Engagement of Social Specialists in Project Activities

Land acquisition and resettlement programs are to be treated as a component of the project. Artificial segregation of social programs such as land acquisition and resettlement from environmental programs, project design activities, and implementation strategies will harm the performance the project and the land acquisition and resettlement programs. Site visits, interviews with the APs, and consultation meetings related to land acquisition and resettlement programs should be attended by design engineers, environmental specialists, project managers, consultants, donors, and the AP representatives. A weakness of the STDP was its inadequate coordination among these diverse, but interrelated, programs and activities. The formulation of an RIP thus becomes a group activity with different perspectives.

(6) Compensation before Displacement

Economic displacement and physical displacement impact a population differently, but the trauma and impoverishment risks they hold for the APs are significant. A best practice in this regard is never to take over land or other property before the payment of the replacement cost or the provision of replacement land and other property acquired. Any deviation from this will certainly generate fertile ground for impoverishment, social disarticulation, food insecurity, and several other risks as discussed in Chapter 8.

The current practice of acquiring land and other property under section 38(a) of the Land Acquisition Act should be reviewed in light of this best practice. It is a long-standing practice in Sri Lanka to acquire land for infrastructure projects under the urgency clause of the Land Acquisition Act. This is done to avoid delays arising from opposition from APs to land acquisition, which could, in turn, delay the project. However, it violates the best practice of compensation before displacement. One way to minimize the adverse impact of such acquisitions is to conduct sufficient consultations with the APs before the project is formally started. A prior agreement with the APs regarding the compensation packages and resettlement allowances would give them some confidence to go through the trauma of losing land before receiving compensation.

(7) Income Restoration Programs before Land Acquisition

Restoration of income sources and livelihoods of APs is not easy. It needs careful planning, an adequate budget, and competent agencies to implement an income restoration program. Preliminary activities such as the identification of the APs and households for the program, development of their socioeconomic profiles, and thresholds to monitor the progress, at the very least, can be completed soon after the socioeconomic surveys and the census are completed. Such databases facilitate the selection of suitable skills training programs and the determination of the cost and time frame. A viable income restoration program needs a dedicated and adequate budget and a competent institutional setup to implement it. Any program for income restoration and improvement will take time. Therefore, income restoration and improvement planning should pay attention to the need for maintaining the program even after project completion, if the need arises.

Annex: A Chronology of Key Project Milestones

Table A1: Initial Planning Activities by the Road Development Authority (1991–1996)

Year	Major Milestones
1991–1993	Pre-feasibility study investigated four alternative road traces—A,B,C, and D—and recommended Trace B as the feasible road trace (Original RDA Trace).
1993–1996	Economic feasibility study was conducted for the Original RDA Trace and improved railway and road widening of the existing A2 road. The Original RDA Trace was recommended as the most feasible option.
1996 –1997	Environmental impact assessment report (EIAR) for the Original RDA Trace. EIAR was not approved as the Central Environmental Authority required further studies to be conducted.

Source: Roads Development Authority (RDA).

Table A2: Project Design and Approval (1996–1999)

Month/Year	Major Milestones
Nov and Dec 1996	ADB carried out a fact-finding mission on a proposed technical assistance for the proposed project from 29 November to 10 December, and a memorandum of understanding was signed for the need of additional social and environmental studies in accordance with ADB policies.
Oct 1997	ADB approved a project preparatory technical assistance project (TA 2892-SRI) for \$1 million to undertake a project feasibility study.
Mar 1998	Wilbur Smith Associates (WSA), in association with Resources Development Consultants, signed the contract with ADB on 13 March.

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Table A2 *continued*

Month/Year	Major Milestones
Apr 1998	WSA commenced work on 20 April.
May 1998	WSA submitted the inception report to ADB and the Road Development Authority (RDA) on 21 May.
Sep 1998	WSA submitted the interim report on 18 September.
Dec 1998	WSA submitted the draft final report with initial social impact assessment report and initial environmental examination report for the recommended road trace, the Combined Trace on 4 December.
Jan–Feb 1999	The RDA commissioned the University of Colombo to conduct a social impact assessment study for the Combined Trace, and field surveys were carried out.
Mar 1999	The social impact assessment report was submitted to the RDA.
Feb 1999	The RDA and ADB provided comments on the draft reports submitted by WSA.
Mar 1999	<p>WSA submitted the final report with responses to comments as annexes to the main text.</p> <p>The University of Moratuwa prepared the environmental impact assessment report (EIAR) based on findings from EIAR and economic feasibility studies for the RDA Trace and additional studies conducted for the Combined Trace. The environmental impact assessment (EIA) team recommended the Combined Trace as the best option to achieve project objectives. Final report was submitted to the Central Environmental Authority (CEA) and the RDA.</p>
Apr 1999	<p>ADB fact-finding mission visited between 21 April and 6 May to discuss the project concept and scope with the government.</p> <p>ADB provided technical assistance (under TA 3184-SRI) for a study on regional social and economic profiles and impacts of the project on economic development and poverty reduction in the southern region.</p>
May 1999	<p>Marga Institute carried out the study of regional social and economic profiles and impacts.</p> <p>The RDA submitted the EIAR on 4 May to the CEA, which appointed a technical evaluation committee, and the EIAR was open for public comments on 5 May for a period of 30 days.</p>

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Table A2 *continued*

Month/Year	Major Milestones
Jun–Jul 1999	ADB project appraisal mission visited from 24 June to 7 July to confirm the project design, cost estimates, and implementation arrangements.
Jul 1999	Summary EIA was circulated to the ADB Board of Governors.
	Public hearings for the EIA were held on 3 and 10 July at Panadura and Galle, and the CEA approved the EIA on 23 July with conditions including avoiding the wetlands at the Bolgoda and Koggala lake areas.
	ADB hired an international consultant to prepare the resettlement plan for the Combined Trace, and the report was submitted to the RDA and ADB.
Aug 1999	Marga Institute submitted to ADB the final report on regional social and economic profiles and impacts.
	ADB provided technical assistance (under TA 3246-SRI) to develop the National Involuntary Resettlement Policy to review existing legislation to identify gaps and develop a national policy. Technical assistance was carried out for 18 months with inputs from two international consultants and four local consultants.
Oct 1999	Loan negotiations were conducted from 4 to 6 October.
	The RDA engaged WSA on a contract to prepare preliminary and detailed engineering designs.
	The Public Interest Law Foundation filed an action in the Court of Appeal on 5 October 1999 (CA Application No. 981/99) challenging the decision of the CEA and that the EIA has failed to consider reasonable and environmentally friendly alternatives to the proposed project.
Nov 1999	The report and recommendation of the President (RRP) to the Board of Directors on the proposed loan to the Government of Sri Lanka for the Southern Transport Development Project was prepared. The RRP was approved on 25 November.

Source: Files at RDA.

Table A3: Final Alignment Selection and Resettlement Planning (2000–2002)

Month/Year	Major Milestones
Dec 1999	ADB loan inception mission visited from 7 to 10 December, and loan agreement with ADB was signed on 16 December.
Jan 2000	The Road Development Authority (RDA) agreed to change the road alignment in the ADB-funded section.
	The Japan Bank for International Cooperation (JBIC) mission discussed with the government to finance about 75 kilometers from Kottawa to Kurundugahahatakme.
	Wilbur Smith Associates (WSA) commenced preparation of engineering designs and environmental and social impact updates.
Mar 2000	WSA submitted its inception report (ADB-funded section) to the RDA on 7 March.
	The RDA engaged Pacific Consultants International on a contract for the JBIC-funded section to prepare preliminary and detailed engineering studies.
May–Aug 2000	WSA submitted engineering maps and initial survey maps to the RDA for land acquisition.
	Invitations for prequalification of contractors in ADB-funded section issued on 5 May.
	The RDA prepared section 2 notices of the Land Acquisition Act for 5 kilometers in the ADB-funded section (9+400 to 14+100 kilometers), and WSA conducted social surveys in the ADB-funded section to prepare the updated social impact assessment.
	The first national workshop for the National Involuntary Resettlement Policy (NIRP) preparation was held in June.
Oct 2000	The technical evaluation report was approved by a Cabinet-appointed tender board on 23 October.
Nov 2000	WSA submitted draft resettlement implementation plan (RIP), environmental findings report, and updated social impact assessment for the final road trace in the ADB-funded section.

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Table A3 *continued*

Month/Year	Major Milestones
Dec 2000	Environmental findings report for JBIC was completed by Pacific Consultants International.
	Draft NIRP was presented to the steering committee and approved.
Jan 2001	WSA prepared an addendum to the November RIP to include additional information.
	Draft NIRP was discussed at the second national workshop.
Feb 2001	The RDA submitted the draft RIP for both ADB-funded and JBIC-funded sections.
	Draft RIP was not acceptable to ADB because of incomplete data on inventory-of-losses surveys.
Mar 2001	JBIC signed the loan agreement.
May 2001	The Cabinet approved the NIRP for Sri Lanka.
	ADB loan review mission from 14 to 20 May.
Jun 2001	The NIRP was published in the newspapers.
Jul–Dec 2001	ADB conducted four missions to review the RIP and advise the RDA to resolve resettlement-related issues for finalization of the RIP. Loan review missions: July, 11–14 September, 21–22 November, 10–12 December.
Dec 2001	ADB Board Inspection Committee acknowledged the request for inspection by Gama Surakeeme Sanvidanaya and United Society for Protection of Akmeemana. JBIC concluded that there was no sufficient basis to recommend an inspection to the Board, but mediation efforts were recommended.
Mar 2002	Capacity-building project for NIRP implementation was implemented with technical assistance from ADB and the World Bank funded by the Environmental Action Plan (EA1P).
Jun 2002	The RDA submitted the revised RIP, and ADB review mission provided comments.
Sep 2002	ADB commented on the RIP and requested revisions to the RIP.
Oct 2002	ADB Chief Compliance Officer approved the RIP on 29 October, and the loan was declared effective.

Source: Files at RDA.

Table A4: Formulation of the Final Resettlement Implementation Plan (2000–2002)

Month/Year	Major Milestones
Nov 2000	Wilbur Smith Associates (WSA) submitted a draft resettlement implementation plan (RIP), updated social impact assessment, and environmental findings report for the final road trace in the ADB-funded section.
Dec 2000	Environmental findings report for the Japan Bank for International Cooperation (JBIC) was completed by Pacific Consultants International.
Jan 2001	WSA prepared an addendum to the November RIP to include additional information.
Feb 2001	The Road Development Authority (RDA) submitted the draft RIP for both the ADB-funded and JBIC-funded sections.
	Draft RIP was not acceptable to ADB because of incomplete data on inventory-of-losses surveys.
Mar 2001	JBIC signed the loan agreement.
Apr 2001	A memorandum was submitted to the Cabinet of Ministers titled “Payment of Compensation to the Persons Affected by the Acquisition of Property for the Southern Transport Development Project (STDP).” The Cabinet requested the Secretary of the Ministry of Highways to discuss with relevant ministries to see whether the proposed procedure could be accommodated within the existing legal provision and report back to the Cabinet of Ministers.
May 2001	The Cabinet approved the National Involuntary Resettlement Policy (NIRP) for Sri Lanka, and ADB loan review mission visited from 14 to 20 May
Jun 2001	The NIRP was published in the newspapers.
Sep 2001	Cabinet approved a note to the Cabinet of Ministers regarding the procedure of land acquisition and compensation, including expediting the land acquisition process and establishment of Land Acquisition and Resettlement Committee for payment of compensation in the entitlement matrix in the RIP.
Jul–Dec 2001	ADB conducted four missions to review the RIP and advise the RDA to resolve resettlement-related issues for finalization of the RIP. Loan review missions: July, 11–14 September, 21–22 November, 10–12 December.

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Table A4 *continued*

Month/Year	Major Milestones
Dec 2001	ADB Board Inspection Committee acknowledged the request for inspection by Gama Surakeeme Sanvidanaya and United Society for Protection of Akmeemana. JBIC concluded that there was no sufficient basis to recommend an inspection to the Board, but mediation efforts were recommended.
Mar 2002	Capacity building for NIRP implementation with financial assistance from ADB (TA 3792-SRI) and the World Bank commenced.
Jun 2002	The RDA submitted the revised RIP, and ADB review mission provided comments.
Sep 2002	ADB commented on the RIP and requested the revised RIP.
Oct 2002	ADB Chief Compliance Officer approved the RIP on 29 October, and the loan was declared effective.
	ADB engaged Arthacharya Foundation to negotiate with 32 objectors solutions to their requests and grievances.

Source: Files at RDA.

Table A5: Land Acquisition and Expressway Construction (2003–2012)

Month/Year	Major Milestones
Apr 2003	ADB approval to commence construction in the first priority section.
May 2003	Court of Appeal dismissed four applications and three groups appealed to the Supreme Court.
Jan 2004	Supreme Court judgment concluded that the deviations are alterations requiring approval of the Central Environmental Authority and ordered the Road Development Authority (RDA) to pay compensation of SLRs75,000 for each appellant and SLRs50,000 for the three appeals in addition to the compensation payable under the project.
May 2004	ADB review mission to review safeguard compliance requirements.
Jun 2004	Complaint filed with the Office of the Special Project Facilitator (OSPF) by the Joint Organization of the Affected Communities of the Colombo–Matara Highway.
July 2004	OSPF determined complaint was eligible.

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Table A5 *continued*

Month/Year	Major Milestones
Dec 2004	The request was made by the Joint Organization of the Affected Communities (umbrella organization for the United Society for Protection of Akmeemana and Gama Surakeeme Sanvidanaya) to the Compliance Review Panel (CRP) and submitted its eligibility to the Board.
Jan 2005	ADB Board of Directors authorized to conduct a compliance review.
	Environmental management plan was submitted to the Central Environmental Authority.
Jun 2005	CRP approved a “course of actions” to bring the project back to safeguard policy requirements.
Aug 2005	The first contract package in the Japan Bank for International Cooperation (JBIC)-funded section from Kottawa to Dodangoda (35 kilometers) was awarded.
Oct 2005	The first CRP report was submitted to the ADB Board, and the course of action was to implement CRP recommendations.
Dec 2005	Technical assistance for independent external monitoring of resettlement activities of the Southern Transport Development Project (STDP) (TA4748-SRI) was approved by ADB.
Feb 2006	Technical assistance agreement for independent external monitoring of resettlement activities was signed.
Mar 2006	The second contract package from Dodangoda to Kurundugahahatakme (32 kilometers) was awarded.
	The contract between ADB and Centre for Poverty Analysis (CEPA) for independent external monitoring of resettlement activities was signed and also with an international resettlement specialist to guide the CEPA.
Sep 2006	Income restoration program was implemented by Sarvodaya Economic Enterprise Development Services.
Mar 2008	Supplementary loan for the STDP (LA 2413) was approved by ADB for \$90 million (ordinary capital resources) to finance the cost overruns and widening of the expressway from Kurundugahahatakme to Pinnaduwa interchange and Galle Port Access Road. Contract with Kumagai was restructured.

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Table A5 *continued*

Month/Year	Major Milestones
Apr 2008	Supplementary loan was signed on 30 April 2008, and original loan (L1711) closing date was extended from 30 December 2006 to 30 December 2010.
Jun 2008	Technical assistance grant (TA 7065-SRI) for land-use planning of the STDP commenced.
Jul 2006	The first annual monitoring report on the implementation of the CRP recommendations was disclosed.
Oct 2008	Consultants were mobilized for TA 7065.
Dec 2008	Technical assistance for independent external monitoring of resettlement activities was extended for another 2 years, from January 2009 to December 2010.
Jun 2009	International and local consultants for TA 7239 for strengthening the RDA in implementing the environmental management plan.
Aug 2009	OSPF recruited CEPA and a consultant to develop a guide on grievance redress mechanism for the transport sector based on STDP experiences.
Nov 2011	Opening of the highway from Kottawa to Pinnaduwa.
Mar 2014	Opening of the highway from Pinnaduwa to Godagama, Matara.

Sources: Mid-Term Evaluation Report of the Project; Compliance Review Panel Final Report (2005), Project Completion Report (2014).

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Challenges in Implementing Best Practices in Involuntary Resettlement

A Case Study in Sri Lanka

Infrastructure projects sometimes physically displace households and disrupt income sources and livelihoods. The Asian Development Bank offers several good governance practices to its borrowers to minimize such adverse impacts, especially since the absorption of such best practices by countries is usually slow and erratic. This book presents an in-depth case study from a complex and sensitive infrastructure project in Sri Lanka, where international best practices in involuntary resettlement were successfully merged with local legal systems. The book demonstrates that the application of best practices to infrastructure projects needs continuous consultations with affected people and a firm commitment of resources.

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