



# Technical Assistance Consultant's Report

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## TA 7566-REG: Strengthening and Use of Country Safeguard Systems

Subproject: Supporting and Strengthening  
National-Level Capacity for a Country Involuntary  
Resettlement System (Sri Lanka)

### FINAL SUBPROJECT REPORT

Prepared by ADB Staff and Consultant Team

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Asian Development Bank

**TA 7566 – REG: Country Safeguard Review for Country Safeguard Systems**

**Sub Project: Supporting and Strengthening National-level Capacity for a Country  
Involuntary Resettlement Safeguard System in Sri Lanka**

## **Final Sub-Project Report**

(April 2014)

*The Report on Supporting and Strengthening National-level Capacity for a Country Involuntary Resettlement Safeguard System in Sri Lanka* has been prepared a team of specialists comprising SLRM staff, SAOD, and TA Consultants. The Report does not necessarily reflect the policies of the Asian Development Bank, its Board of Governors and Directors and the Governments they represent. The Asian Development Bank does not guarantee the accuracy of the data included in this Report and accepts no responsibility for any consequences arising from its use. Use of the term “country” does not imply any judgment by the Asian Development Bank as to the legal or other states of any territorial entity.

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## ABBREVIATIONS

ADB	Asian Development Bank
CBO	Community-based Organization
CEA	Central Environmental Authority
CEPA	Center for Poverty Analysis
CRP	Compliance Review Panel
CSS	Country Safeguard System
DMCs	Developing Member Countries
EIA	Environmental Impact Assessment
EIAR	Environmental Impact Assessment Report
ESD	Environmental and Social Division
GRC	Grievance Redress Committee
GRS	grievance redress system
IEE	initial environment examination
IMA	Independent Monitory Agency
IOL	Inventory of losses
IRP	income restoration program
JBIC	Japan Bank for International Cooperation
JICA	Japan International Cooperation Agency
LAA	Land Acquisition Act
LARC	land acquisition and resettlement committee
LARD	Land Acquisition and Resettlement Division
MIS	management information system
NEA	National Environmental Act
NGO	non-government organization
NHSP	National Highway Sector Project
NIRP	National Involuntary Resettlement Policy
NRMP	National Road Master Plan
PAA	Project Approving Authority
PCRM	Public Complaints Resolving Monitoring System
PMU	Project management unit
RAP	Resettlement Action Plan
RDA	Road Development Authority
RETA	Regional Technical Assistance
RIP	resettlement implementation plan
ROW	Right-of-way
SEEDS	<i>Sarvodaya</i> Economic Enterprise Development Services Ltd
SEA	Strategic environmental assessment
SEIA	Strategic environmental impact assessment
SPS	Safeguard Policy Statement (2009)
STDP	Southern Transport Development Project
TA	Technical Assistance
TOR	Terms of Reference

## PREFACE

The Government of Sri Lanka has taken the initiative to establish a comprehensive involuntary resettlement policy framework during the past 15 years. Two landmarks in this regard are the approval of the National Involuntary Resettlement Policy by the Cabinet of Ministers in 2001, and the approval of the National Compensation Policy (NCP) by the Parliament. The NCP supersedes different compensation packages, displacement support, and income restoration and improvement measures. The NCP introduced a comprehensive land acquisition policy and law which incorporate many international best practices regarding involuntary resettlement. The Land Acquisition Act, the National Involuntary Resettlement Policy (NIRP) and the NCP form a comprehensive legal framework for compensation determination, payment, income rehabilitation and relocation in Sri Lanka.

In 2009, the Parliament approved new regulations to the Land Acquisition Act of 1950 enabling the payment of (i) market value for land, (ii) market value and reinstatement value for structures that are affected, (iii) compensation for injurious affection and severance and project generated disturbances and other damages. These new regulations replaced the earlier Cabinet approved project-specific compensation packages. This demonstrates a move towards the implementation of a consolidated national policy on involuntary resettlement which is applicable to both foreign-funded and locally-funded development projects.. Moreover, the government of Sri Lanka in July 2010 initiated a review of land laws, national policies and regulations pertaining to land acquisition, compensation, relocation and income restoration. The government was also keen to identify and examine weaknesses, if any, in the implementation of such laws and regulations. Thirdly, it is committed to improve institutional capacity of Government ministries and departments in acquiring land, paying compensation and rehabilitating project-affected persons.

The Safeguard Policy Statement (2009) of Asian Development Bank (ADB) requires that (i) social impacts are identified and assessed early in the project cycle; (ii) resettlement plans are prepared and implemented to avoid, minimize, and mitigate identified adverse social impacts; and (iii) affected persons are informed and consulted during project preparation and implementation. ADB is responsible for explaining its safeguard policy requirements to borrowers and to assist them in their capacity-building programs. In this context, ADB provided technical assistance to develop the National Involuntary Resettlement policy (2001), and several technical assistance programs to develop institutional capacity of government departments in applying the NIRP to development projects. .

This Technical Assistance (TA) subproject was approved in November 2010. It has completed an inventory of land laws, regulations, Cabinet approved compensation packages, judicial review of key land acquisition issues, ministerial circulars, and other guidelines which constitute the country involuntary resettlement safeguard system. The provisions of the Land Acquisition Act, NIRP and NCP were compared with the scope, objectives of the involuntary resettlement policy component of ADB's Social Safeguard Policy (2009) in order to ascertain the areas where they match each other and the areas where more changes or reforms are required in the

national safeguard system. This comparative analysis helped in ascertaining the degree of equivalence of ADB policy principles with legal provisions in the country legal system on involuntary resettlement and the institutional capacity available in Sri Lanka to apply involuntary resettlement safeguard requirements to development projects.

The Southern Transport Development Project (STDP) and National Highway Sector Project (NHSP) were reviewed to understand the processes, procedures and practices in land acquisition, compensation, relocation, and income restoration activities used by the Government. The planning and implementation experiences of these two case studies indicate the strengths and weaknesses in implementing policy and legal provisions compared with international good practices. Finally, several recommendations are proposed on how to improve country safeguard system pertaining to involuntary resettlement.

## EXECUTIVE SUMMARY

### I. Introduction

1. This Country Safeguard Review (CSR) study is a sub project of the Regional Technical Assistance program (RETA 7566): Strengthening and Use of Country Safeguard System (CSS). It was undertaken between November 2010 and January 2013. The subproject reviewed land laws, regulations, policies pertaining to land acquisition, compensation and rehabilitation. In addition, and relevant Cabinet papers to find similarities between country social safeguard system and international best practices and also to identify gaps between legal provisions and ADB Safeguard Policy Statement (SPS) in 2009. This constituted the 'equivalence' test of the country safeguard system (CSS). The review also assessed implementation practices and institutional capacity in implementing the land acquisition, compensation and rehabilitation laws, regulations and special packages approved by the Cabinet of Ministers. This constituted the 'suitability' test of the CSS. . These assessments were validated at workshops conducted with different stakeholders including the Ministry of Land and Land Development, Ministry of Public Administration, Department of Valuation, relevant government agencies and NGOs. This report presents 1) a short summary of the evolution of the legal regulatory framework and institutional arrangements land acquisition, compensation and relocation; 2) their current status; 3) a review of planning and implementation practices and institutional capacity of implementing agencies in land acquisition, compensation and resettlement in selected projects in the transport sector; 4) identification of gaps between country safeguard system and its implementation practices and international best practices including ADB involuntary resettlement policy; and 5) recommendations for an updated legal and regulatory framework for involuntary resettlement planning and needs of institutional capacity building.

### II. Land Acquisition and Resettlement Experience in Sri Lanka

2. **Construction of major reservoirs and involuntary resettlement in the 1970s.** The Government of Sri Lanka developed land settlement schemes in the Dry Zone of Sri Lanka to restore major irrigation schemes, provide lands for landless people, and to provide employment opportunities for the growing farmer population. These early settlers were provided with a package of services and other assistance to re-settle them in their new villages and colonies. In the 1970s and 1980s, the Accelerated Mahaweli Development Program was implemented to generate hydropower and support agricultural development. Major dams and reservoirs were constructed and irrigation facilities were provided to new settlers. Three categories of people were resettled in newly irrigated areas: 1) landless voluntary settlers from the Wet Zone, 2) traditional villagers within the developed area with improved irrigation facilities, and 3) those whose lands were acquired involuntarily for the construction of dams, reservoirs and power plants. They were given lands in newly developed areas in irrigation schemes. This program was primarily a land-based involuntary resettlement program. The Accelerated Mahaweli

Development Program offered them good quality land, cash compensation, and resettlement assistance to improve their living conditions. **3. Development of Infrastructure Facilities and Urban Housing Development.** In the 1980s and 1990s, there was an increasing demand from a large number of government agencies for acquisition of private lands for development projects in different sectors of housing, water supply, power and energy, roads, and coastal resource protection. These institutions included the newly established departments, ministries and authorities including Urban Development Authority, Housing Authority, the Coastal Conservation Department, Ceylon Electricity Board, Sri Lanka Land Reclamation and Development Corporation, National Housing Authority, hotels and industries. Four highway projects were planned from 1990 to 2000, namely, the Colombo-Matara Highway, Colombo-Katunayake highway, Colombo-Kandy Highway and the Outer Circular Road. The rehabilitation, widening and road improvements also necessitated acquisition of private land. A number of donor funded road rehabilitation projects were implemented in the 1990s. The Third Road Rehabilitation and Improvement Project (ADB) and the Baseline Road Improvement and Extension Project (JICA) are examples. The Urban Development Authority (UDA) proposed development projects for the construction of administrative, commercial and industrial buildings, and industrial estates that required acquisition of private land. The new water supply schemes and expansion of existing facilities also required the acquisition of private lands and government lands of which were occupied by villagers or were under short-term lease out programs. During this period, two important factors have influenced land acquisition and resettlement: 1) the need to prepare an Environmental Impact Assessment under the National Environmental Act of 1980, and 2) the two donor agencies, World Bank and ADB insisted on adopting their involuntary resettlement policies in all projects that they financed. Divisional Secretaries at sub-district level were appointed as land acquiring officers under the Land Acquisition Act of 1950. They acquired land with the approval of the Ministry of Lands and Land Development.

### **III. National Laws and Policy Dealing with Resettlement Planning, Land Acquisition, Compensation and Relocation**

4. **National Environmental Acts of 1980 and 1988.** There are two national laws that deal with involuntary land acquisition and resettlement, namely, the National Environmental Act (NEA) No. 47 of 1980, and the Land Acquisition Act of 1950. The project screening and approval procedures for 'prescribed' projects are described under the regulations of NEA and published in the Government Gazette No. 772 of 24 June 1993. Under this gazette notification, large-scale development projects which include power, highways, hotels and manufacturing industries, and other projects located in environmentally sensitive areas are classified as requiring Environmental Impact Assessment (EIA) studies before forwarding a project for approval.. Also, resettlement impacts and mitigating measures were needed to be addressed in EIA. The legal provisions in NEA and the regulations of 1993 describe the requirements for project screening for social and resettlement impacts and project approval procedures. In addition, any development activity within the Coastal Zones listed under the Coast Conservation Act No. 57 of 1981 and its amendments in 1988 requires a permit from the Coastal

Conservation Department. The Flora and Fauna Protection and its amendments by Act No. 49 of 1993 provides for environmental impact assessment for any development within the declared boundaries. The North Western Province Environmental Statute No.12 of 1990 also requires an EIA for prescribed projects.

5. Sections 23AA and 23BB in Part IV C of NEA state that all prescribed projects should obtain approval under the Act prior to their implementation. Approvals can be obtained by submitting either an Initial Environmental Examination (IEE) Report or an Environmental Impact Assessment (EIA) Report. Involuntary resettlement of 100 or more project-affected families, other than those who are to be resettled because of an emergency situation is a 'prescribed' project and it requires approval under NEA. Item 12 of the Gazette notification, No. 859/24 of 23 May 1995 refers to projects with involuntary resettlement exceeding 100 families requiring the approval of the Central Environmental Authority. A list of prescribed projects was published in Part 1 of the Schedule of an Order under Section 23Z of the Gazette Extraordinary No.772/22 of 24 June 2003. The Central Environment Authority (CEA) is responsible for providing guidance for preparing social impact studies, reviewing and approving such studies, and monitoring social impacts and mitigating measures during project implementation. However, the CEA has so far not taken the responsibility for approving resettlement plans in prescribed projects. Bu it reviews and approves social assessments components in an EIA Report. . According to the guidelines issued by CEA, an EIA Report should examine whether or not any particular social group is more severely affected than others by a proposed project, and suggest how to avoid or minimize such adverse impacts on such a group. Additionally, the assessment of the impacts of relocating families and other community groups should be summarized in sufficient detail to adequately explain the situation arising from such relocation.

6. **Land Acquisition Act, No.9 of 1950 and its regulations.** The Land Acquisition Act (LAA) of 1950 provides powers to the Government to acquire private lands for a public purpose. It sets out procedures for acquiring lands and payment of compensation at market value for land, structures and crops, the way the affected persons are notified, handling of objections and claims, computing and determining the amount of compensation, rights of the affected persons in the process of land acquisition, and taking over of physical possession and registration of ownership with the government. The procedures relating to acquisition of land and servitudes for a public purpose are described under 7 parts in the said act (Table 1).

**Table 1: Legal Provisions in the Land Acquisition Act of 1950**

Sections and Provisions
Part I: Preliminary investigations and declaration of intended acquisition
Section 2 - Investigations for selecting land for public purposes
Section 4 - Notice of, and objections to intended acquisition
Section 5 - Declaration that a land or servitude is required for a public purpose
Section 6 - Survey of land
Section 7 - Notice to persons interested
Section 8 - Statements of persons interested
Part II: Inquiry into claims, reference to court, and acquiring officers award
Section 9 - Inquiry into claims for compensation
Section 10 - Establishment of land ownership

Section 17 - Declaration of compensation amount
Section 18 - Disputes to courts proceedings and procedures
Part III: Appeals to the Board of Review and appeals to the Court of Appeal on question of law – Section 19-28
Part IV: Payment – Section 29-37 - Payment of compensation
Part V: Possession and disposal – Section 38-45
Part VI: Assessment of compensation – Section 46-48
Part VI: General – Section 49-65

Source: Land Acquisition Act, No.9 of 1950

7. **New Regulations (2008) on the Application of LAA.** The National Policy on Payment of Compensation was approved by the Cabinet of Ministers on 3 January 2008 and new regulations to the LAA were enacted by Parliament on 7 March 2009. Types of compensation payments include (i) market value for land, (ii) market value and reinstatement value for structures, (iii) injurious affection and severance, and (iv) disturbances, and other payments. The new regulations replaced the “ex-gratia package for the People Affected by Highway Projects (2005)” and other Cabinet approved compensation packages which were implemented through the Land Acquisition and Resettlement Committee (LARC) from 2005 to 2008.

8. **National Involuntary Resettlement Policy (2001).** The Cabinet approved the National Involuntary Resettlement Policy (NIRP) in May 2001. The Policy applies to all development-induced land acquisition and involuntary resettlement or recovery of possession by the state, regardless of funding source. A comprehensive Resettlement Action Plan (RAP) is required where 20 or more families are affected as a result of land acquisition. Subsequently, the Ministry of Lands prepared guidelines on resettlement planning and implementation for use by project executing agencies. The first policy principle requires that involuntary resettlement should be avoided or reduced as much as possible by reviewing alternatives to the project as well as alternatives within the project. The second principle states that where involuntary resettlement is unavoidable, affected persons should be assisted to re-establish themselves and improve their quality of life. The Resettlement Action Plan (RAP) is required to be formulated under the NIRP.

#### IV. Equivalence Assessment

9. The Sri Lankan legal system framework is compared with the scope, objectives and 12 policy principles of ADB’ involuntary resettlement policy found in Safeguard Policy Statement of 2009.

10 **Scope.** The Land Acquisition Act of 1950 and its regulations in 2008 cover compensation for physical displacement and economic displacement resulting from involuntary land acquisition. Compensation as a result of temporary displacement is covered under different laws and these provisions display equivalence with ADB involuntary resettlement policy principles. There are no legal requirement which makes it mandatory for paying compensation to those affected by of the restrictions imposed on land use and access to legally designated areas and parks. However, there are legal provisions which direct environmental impact

assessment procedures to safeguard the rights of indigenous people including their access to parks and protected areas and their right to practice restricted land use in such locations.

11. **Project screening (Policy principle 1).** Environmental Impact Assessment (EIA) procedures and approval in respect of 'prescribed projects' are established in terms of the NEA of 1980 and its regulations. The scope of the assessment is determined through a scoping exercise, and usually includes social and resettlement impacts as part of EIA assessment according to the guidelines developed by the Central Environmental Authority. The LA Act of 1950 also requires the Minister of Lands to formulate an independent opinion regarding a request for land acquisition, and if there is a public agitation against land acquisition for a particular project. The National Involuntary Resettlement Policy (NIRP) gives clear policy direction to avoid and reduce involuntary resettlement and mandates the preparation of a resettlement plan. Full equivalence to ADB policy is evident in this directive.

12. **Consultation, information disclosure, participation, grievance redress, and attention to the needs of vulnerable groups (Policy principle 2).** Under NEA, EIA must be made available for public comments before public hearings are conducted. The LA Act provides a procedure to call for written objections from all affected persons prior to proceeding with land acquisition. However, the expedited process under the provision of Section 38 A by-passes this requirement. The LA Act also provides provisions for information disclosure during different stages of land acquisition, such as at the issuance of Sections 2 5 and 7 notices and when compensation awarding letters are ready. The law thus demonstrates partial equivalence with ADB SPS regarding the elements of consultation and grievance redress system.

13. **Improve or at least restore the livelihood of all affected persons (Policy principle 3).** Sections 45 (1) and 46 (1) of the LA Act describe legal provisions for assessing compensation and the amount of compensation to be paid for acquiring a private land parcel or a servitude. Regulations of the LA Act of 2008 prescribe the payment of compensation on the "value to owner" basis which has several components. Such a payment package under the LA Act and its regulations of 2008 provide for restoration or improvement of livelihoods of affected persons. This meets the equivalence criterion with the ADB Resettlement Policy of paying cash compensation at replacement value for land and structures acquired for a project. However, there is no legal provision which mandates that affected persons should be able to share benefits of development project that resulted in land acquisition.

14. Needed assistance to be provided to displaced persons (Policy principle 4). Section 9 of the Regulations of the LA Act in 2008 provides legal provisions to pay expenses incurred during attending an inquiry, expenses of alternative accommodation, cost incurred in change of residence, cost of advertising, re-fixing cost of fixtures and fittings, transport expenses, increased overhead expenses, and any other additional expenses for disturbances. Thus policy principle 04 of involuntary resettlement finds equivalence with the current legal provisions.

15. Improve the standard of living to at least national minimum standard (Policy principle 5). This policy principle requires that the displaced poor and other vulnerable groups, including women, must improve the standard of living to at least national minimum standard. The LA Act and its regulations have provisions to pay adequate compensation to improve living conditions



of affected persons. This principle is partially met in Sri Lankan legal system. However, 'adequate compensation' prescribed by law and regulations provides substantive assistance in maintaining standard of living at the national minimum standard or above.

16. Negotiated settlement (Policy principle 6). There is no legal provision or policy principle in NIRP for negotiated settlement. Hence, there is no equivalence with ADB policy.

17. Eligibility for resettlement assistance to non-titled persons (Policy principle 7). There are no legal provisions to mandate that persons without title or without recognizable rights should be provided with compensation and assistance. Therefore, there is no equivalence with ADB policy.

18. Prepare a resettlement plan (Policy principle 8) and disclose a draft resettlement (Policy principle 9). There is no legal provision that requires the preparation and disclosure of a resettlement plan. Hence, there is no equivalence with ADB policy. In case of foreign funded projects, RPs are prepared and implemented. Moreover, the detailed procedures prescribed in the LA Act and its various regulations meet most of the actions that are prescribed in a RP such as consultation, appeal, collection of information about income level of APs.

19. Conceive and execute involuntary resettlement as part of development activity (Policy principle 10) pay compensation before displacement (policy principle 11) and monitor and assess resettlement outcomes (Policy Principle 12). Legal provisions show that involuntary resettlement costs and benefits need to be included as part of a development project or a program. The general rule under LAA is that possession or use of land cannot be taken until compensation is assessed and an award has been made. Under Section 38 of the LAA, it is not required to pay compensation prior to displacement, and has partial equivalence with this requirement. Further, there are no legal provisions for a process whereby resettlement outcomes are monitored and assessed. Regarding these three policy principles, partial equivalence with SPS is found.

## **V. Acceptability Assessment**

20. Acceptability assessment is defined as the planning and implementation practices, institutional capacity, performance and commitment of project implementing agencies in implementing the applicable national laws and policies, regulations and other procedures in involuntary land acquisition, compensation and relocation, displacement support, income restoration and monitoring at national, sector or agency level.

21. The implementation practices, institutional capacity and performance of project activities in Southern Transport Development Project (STDP) and National Highway Sector Project (NHSP) were reviewed. These two projects were externally -funded projects and were based on social impact assessments, inventory losses survey and resettlement plans. However, social impact studies were not adequately planned to cover past, present and future resettlement impacts and risks. The Management Information Systems (MIS) of the projects were not

adequate to support monitoring and evaluation of the outcomes of resettlement operations of the projects. In case of STDP, there were several court cases challenging the adequacy of project screening, and the selection of the best project location in minimizing resettlement risks. However, there were good practices like compensation package for non-titled persons and vulnerable groups. Adequate resettlement planning also contributed quick recovery and restoration of income and livelihoods of APs.

22. In the two projects, the possession of land took place under section 38 A before the payment of full compensation to the land owners. This provision is mostly utilized by the land acquiring officers in order to acquire private land without allowing landowners to raise objections to land acquisition under Section 4 of the LAA. A significant delay in the payment of compensation was reported in some cases in the two projects. This is mainly due to the lack of coordination among the agencies involved in land acquisition and difficulties in getting finances for compensation payment.

23. The two case studies show that there are gaps between Sri Lankan Country Safeguard System (CSS) and ADB safeguard policy requirements. However, the CSS has met or at least partially met most of the safeguard policy requirements in the areas of providing special assistance to vulnerable households, resettlement planning and implementation, income restoration, and compensation payment at replacement cost. However, because of weaknesses in institutional arrangements to provide such compensation, resettlement assistance and income restoration support, APs cannot reap full benefit of the CSS. Poor monitoring and assessment of resettlement outcomes make it difficult to ascertain whether APs have regain their pre-project standards. But monitoring and assessment of RP impacts is a key principle of the NIRP.

## **VI: Identification of Gaps Between ADB Social Safeguard Policies and Country Legal Framework and Recommended “Gap Filling Measures” for Country Safeguard System Strengthening**

24. The following proposed recommendations were presented and discussed at a workshop conducted in May 2012 with stakeholders, some of which indicate the need for legal reforms.

1. **Scope** – There are no legal requirements that prescribe the payment of compensation to APs when land use is restricted or their access to legally designated park areas and parks are restricted. It is suggested to review legal provisions governing restricted land uses, and access to parks and protected areas in order to safeguard the rights of APs This issue is to be addressed under the environmental laws.
2. **Project screening (Principle 1)** – 1) Establish a legal framework for strategic environmental assessment and 2) incorporate resettlement impacts into the EIA by

revising NEA. As part of NEA, involuntary resettlement would receive legal recognition.

3. **Consultation (Principle 2)** – When the land is acquired under Section 38 (A) of LAA, as an ‘urgency’ requirement, consultations and inquiries which are held under the Section 4 are not followed. Therefore, it is necessary to establish criteria to determine whether an involuntary acquisition should be carried out in terms of the normal procedure with Section 4 provisions, or expedite procedure without giving adequate time for consultations..
4. **Grievance redress mechanism (Principle 2)** – 1) Objections in terms of Section 4 of the Act are to be directed to the Ministry of Lands, instead of to the relevant ministry to be inquired into and provide relief. It is recommended that such complaints should be examined and resolved by the agency which requires land acquisition in consultation with the land acquiring officer; 2) attention should be paid to the NIRP’s recommendation that a grievance redress system (GRS) should be built into the land acquisition and compensation process.
5. **Prompt payment of compensation (Principle 3)** – 1) The provisions pertaining to staggered compensation may be deleted, and when a portion of the compensation to be paid must be specified in the LAA law in case of an appeal to the Board of Review.
6. **Benefit sharing (Principle 3)** – Deletion of Section 47 of the LAA is recommended. It is also recommended that the formulation and implementation of a RIP should be made a legal requirement. The RIP should outline how project benefits are to be shared by APs.
7. **Compensation and assistance for persons without legal titles and rights – (Principle 7)** – The law may be amended to provide such assistance through planning and implementation of RIP.
8. **Prepare and disclose Resettlement Implementation (principles 8 and 9)** – Include appropriate provisions in the LAA, or promulgate new regulation mandated by ministry circulars.
9. **Pay compensation before displacement (Principle 11)** – Where a title is not in dispute, offer and pay compensation prior to displacement with legislative amendments enabling at least a part of the compensation to be accepted without prejudicing a person’s appeal right to the Board of Review.
10. **Monitor and assess resettlement outcomes (Principle 12)** – Incorporate legislative amendments mandating a comprehensive and transparent monitoring approach to

resettlement outcomes as part of the legal framework for resettlement planning and implementation.

## **VII. Recommendations for Strengthening Country Social Safeguard System and Action Plan Based on Acceptability Assessment**

25. The Government examined the legal framework required to achieve the objectives of the NIRP at the time of its development process in 2001. The Land Law Specialists from 2002 to 2007 examined the legal framework and proposed several amendments to the LAA, but they were not implemented. However, the Government adopted other administrative measures such as Cabinet papers and Ministry-level circulars, and institutional arrangements to implement the NIRP requirements, and as a result, implementing procedures of legal provisions have been improved during the past decade. Therefore, acceptability recommendations for consideration in the action plan proposed more recognized measures by key stakeholders to enhance institutional capacity, making implementing procedures more efficient, thereby improving the procedures, outputs and outcomes expected in the NIRP. Listed below are six key proposals toward achieving improved results.

1. It is proposed to recruit qualified persons with good field experience to carry out the EIA review and approval, and monitoring activities within the CEA. The specialist should have good knowledge of resettlement issues pertaining to projects.
2. It is recommended to improve the capacity of the Resettlement Division and Land Acquisition Division of the Ministry of Lands in reviewing RIPs. The Ministry should establish a user-friendly database on land acquisition and compensation by project, region and sector so that it could coordinate the activities of project implementing agencies and other stakeholders. Such a database at the Ministry would also help facilitating a large number of land acquisition proposals with resettlement impacts expeditiously.
3. The Valuation Department needs to formulate comprehensive guidelines on how replacement cost of an acquired property is assessed and communicated to the affected persons. It is proposed to educate valuation staff in preparing claims, and educating affected persons in attending inquiry, preparing condition reports, collecting information from field visits and presenting the case, as well as defining roles and responsibilities of officials involved in valuation of the affected persons.
4. Land laws and their regulations do not recognize displaced poor/vulnerable groups and non-titled holders as eligible for special assistance in addition to compensation. But the NIRP specifically state the need for such assistance. Therefore, it is recommended to clarify how the new compensation package under 2008 regulations will address these issues in the absence of LARC system, or in a project situation such as a non-prescribed project, in which the approved RIPs are not required.

5. The support for capacity building of implementing agencies by ADB should be continued.

## 1. INTRODUCTION

1. The Safeguard Policy Statement (SPS) of Asian Development Bank (ADB) in 2009<sup>1</sup> has recognized that developing member countries (DMCs) have developed their own systems for delivering safeguards in varying degrees and made efforts to strengthen and effectively use such systems. Such efforts will enhance country ownership, reduce transaction costs, and extend development impacts over the long term. ADB is committed to supporting the strengthening of effective application of the Country Safeguard System (CSS), defined as the legal and institutional framework of relevant laws, regulations, rules and procedures. At the same time, member countries need to ensure that application of Country Safeguard Systems in ADB projects does not undermine the achievement of ADB policy objectives and principles. Application of CSS in ADB-financed projects is not mandatory. However, ADB may consider application of a CSS, if the system is equivalent to ADB safeguard system based on the results of both equivalence assessment and acceptability assessment. Acceptability assessment indicates whether the country has the acceptable implementation practices, track record, and capacity and commitment to implement its laws, regulations, rules and procedures as well as the recommended safeguard measures after the review of country safeguard system (Page, 24, Safeguard Policy Statement, ADB, June 2009).

2. The SPS has made it mandatory for ADB to work with its member countries in policy development and technical assistance in order to strengthen a CSS, if the CSS is not equivalent to ADB safeguard policy objectives, scopes and principles, and the respective CSS has not been implemented in an “acceptable” manner. This country safeguard review study in Sri Lanka is a sub project of the Regional Technical Assistance (RETA) program for Strengthening and Use of Country Safeguard Systems (CSS)<sup>2</sup> in ADB member countries. It was undertaken in November 2010 to review involuntary resettlement safeguard system in Sri Lanka for supporting and strengthening its national level capacity. This study has completed the following tasks: 1) the review of the legal and regulatory framework and institutional arrangements in involuntary resettlement operations; 2) the description of national policy objectives and principles, legal provisions and non-legal instruments (Cabinet memoranda, ministry circulars and guidelines) relating to land acquisition, compensation, relocation and income restoration; 3) the review of recent practices and experience in project planning and implementation of involuntary resettlement activities such as land acquisition, compensation, relocation and displacement support, and income restoration in two road sector projects; 4) recommendations for an updated legal and regulatory framework for involuntary resettlement planning and better implementation practices; and 5) an action plan for institutional capacity building of the departments and

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<sup>1</sup> ADB. 2009. *Safeguard Policy Statement*. Manila.

<sup>2</sup> ADB. 2010. *Regional Technical Assistance for Strengthening and Use of Country Safeguard Systems* (TA 7566: REG); ADB. 2010. *SRI: Sub Project of Supporting and Strengthening National Level Capacity for a Country Involuntary Resettlement Safeguard System*. Manila.

agencies associated with resettlement planning, land acquisition, relocation, compensation payment and income restoration.

3. When determining equivalence of CSS with ADB SPS, it is required to consider the implementation of an action plan with specific measures to strengthen the CSS to meet the objectives of ADB SPS. Such measures are to be carried out before the borrower undertakes implementation of development project activities. The results of the equivalence assessment and acceptability assessment may qualify a country, sector or agency in one, two or all three safeguard areas (environmental, social and indigenous people's safeguards) to use the existing country safeguard system with or without improvements. ADB is responsible for assessing and determining the equivalence of the CSS and the adequacy of the borrower's implementation practice and capacity. The due diligence and review will be based on the requirements under the review procedures of CSS and the agreed action plan rather than ADB requirements. The borrower is responsible for achieving and maintaining equivalence, as well as developing acceptable implementation practices, track record, and capacity. For a specific project, the borrower identifies those provisions of the CSS that are necessary to ensure that the policy objectives and principles in SPS are adequately met (SPS, ADB, 2009).

4. The Government of Sri Lanka has taken a number of actions in recent years to establish a consistent and comprehensive national involuntary resettlement framework to avoid the application of different compensation packages and practices which do not meet requirements of social safeguard policies of multilateral donor agencies including ADB. In 2009, the Parliament approved a set of regulations to the land Acquisition Act of 1950 to pay compensation at market value for lost assets, injurious affection and other disturbances as a result of involuntary land acquisition. These provisions reflect the desire of the Government to implement its National Involuntary Resettlement Policy (NIRP) approved in 2001. ADB through several road projects during the last decade including Southern Transport Development Project (STDP) and technical assistance programs supported the formulation of resettlement implementation plans (RIPs) and closely monitored their implementation. These efforts have largely contributed to introduce several good international practices in resettlement operations: 1) compensation at replacement cost; 2) compensation payment for non-titled persons; 3) special assistance to vulnerable groups; 4) income restoration measures; and 5) establishment of grievance redress committees (GRCs). ADB also supported several capacity development programs in involuntary resettlement planning and implementation, particularly, for road projects. These government efforts and new legal provisions and institutional arrangements provide a useful framework to review land acquisition laws and regulations, and implementation practices relating to compensation, relocation and other resettlement activities in Sri Lanka.

## **1:1 Method of Analysis**

5. Guidance Note for Review of Country Safeguard Systems, ADB, November 2010<sup>3</sup> provides methodological guidelines to ADB staff and consultants in conducting equivalence

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<sup>3</sup> ADB. 2010. *Guidance Note for Country Safeguard Systems*. Manila.

assessment and acceptability assessment. The key task of equivalence assessment was to review all land laws, regulations and national policy to find out whether there are adequate legal provisions for land acquisition, compensation, relocation, displacement support and income restoration and to compare these legal provisions and regulations with ADB social safeguard policy objectives, scope and principles approved in 2009. This equivalence assessment was presented by legal experts and validated at the workshops conducted with key stakeholders, including the Ministry of Land, Department of Valuation, Legal Draftsmen Department, Attorney General Department, representatives of District Secretaries and Divisional Secretaries, Road Development Authority and other relevant government agencies. The equivalence assessment with its major findings (gaps and gap filling measures) is presented in this report as a matrix in Appendix 1. These proposed recommendations will be considered in formulating legal amendments, or in adopting other measures to effectively implement the NIRP.

6. The key elements of the methodology proposed for the acceptability assessment as a diagnostic tool in Guidance Note are implementation practices, institutional capacity and levels of performance (outputs and outcomes). Implementation practice means an assessment of the processes and procedures prescribed in legal and policy frameworks and how such requirements are actually implemented in project situations. The term capacity and commitment refers to the expertise and resources of implementing agencies to carry out the assigned roles and responsibilities as assigned by the legal and policy framework. Performance levels are indicated by achievement of targeted outputs and outcomes. Outputs are basically documents to be prepared, approved, and subject to consultation or review by higher authorities including courts as required, as well as how documents are delivered in time and used in decision making. Outcomes are whether policy and legal objectives are achieved or not. In addition, *Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Source Book*, (ADB, 2011<sup>4</sup>) focuses on good practices and weaknesses in involuntary resettlement with further technical guidance and recommendations on how to implement innovative approaches and good practices in involuntary resettlement.

7. The sub project study reviewed the implementation experiences of land acquisition, compensation, relocation, displacement support and income restoration of affected persons at the level of key project elements in two case studies of STDP and NHSP. These two case studies were selected to assess the implementation practices, institutional capacity and levels of performance (outcome and outputs) during resettlement planning and implementation and to understand how well both ADB involuntary resettlement policy principles (both were funded by ADB) and government legal provisions and polices were applied at project level. At local level in each project, documents of Divisional Secretariats and field offices of Road Development Authority (RDA) were reviewed to understand the processes and procedures of land acquisition, compensation payment, relocation, income restoration and resettlement monitoring. The findings of two case studies with a long history of project planning and implementation practices are applicable at sector level (transport sector). The outcome, outputs and procedures in each project were assessed considering the concerns and views of internal and external monitors,

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<sup>4</sup> ADB. 2011. *Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook – Draft Working Document*. Manila



NGOs and other stakeholders. The strengths and weaknesses of the country safeguard system were identified in both equivalence and acceptability assessments. Some recommendations were made based on these findings.

8. The sub project has completed four outputs: 1) sub project report with recommendations to update legal provisions and measures for effective implementation of the NIRP; 2) capacity development workshops conducted for the Ministry of Lands and Department of Valuation; 3) development of a user friendly Resettlement Manual in three languages. In addition, a Sub project Completion Report incorporating the processes, recommendations and the outcomes achieved during the TA implementation period will be prepared after completion of TA project.

## **1:2 Contents of the Report**

9. This report is divided into 7 Sections. Section I describes the purpose and methodology of the study. Section II provides an overview of land acquisition and resettlement experiences in Sri Lanka since its independence in 1948. Section III presents the review of national legal framework (National Environmental Act of 1980 and its regulations, and Land Acquisition Act of 1950 and its regulations) and national policy objectives and principles (NIRP, 2001) for resettlement planning, land acquisition, compensation and relocation. Section IV presents the comparison of ADB social safeguards policy and the legal framework and national policy requirements. Section V presents the “acceptability” of policy and legal framework as reflected in the government capacity and implementation practices and other methods and procedures adopted in development projects such as Cabinet memoranda, ministry circulars, guidelines and court judgments. It then reviews project planning and implementation experiences in land acquisition, compensation and other resettlement activities together with both strengths (good practices and innovative approaches), and implementation issues (assessment of outputs, outcomes and procedural requirements) during project preparation and implementation in two case studies. Section VI compares the legal provisions in involuntary resettlement operation with ADB social safeguards policies in 2009 and identifies gaps. Section VII presents recommendations for the measures required to develop effective Country Safeguard System with an action plan for capacity development. A set of reference material is provided at the end of the main text.

## **2. LAND ACQUISITION AND RESETTLEMENT EXPERIENCE IN SRI LANKA**

### **2:1 Construction of Major Reservoirs and Involuntary Resettlement in the 1970s**

10. The experience in resettlement programs in Sri Lanka dates from its independence in 1948. Government sponsored land settlement schemes, also known as peasant colonization schemes, in the dry zone of Sri Lanka were developed in the 1930s for the restoration of major irrigation schemes. These settlement schemes were aimed at providing lands for landless

people, particularly in the western parts of the country with employment opportunities as full-time farmers in irrigated lands with a view to increase agricultural production (paddy, vegetables and other highland crops), develop a peasantry class, and save foreign exchange from imports of rice and other agricultural products. These early settlers were provided with a package of services to assist them in resettlement in their new villages. In the 1960s the Mahaweli Development Project was designed for both hydropower generation and irrigated agriculture in the Mahaweli river basin in the dry zone of Sri Lanka. In 1977 the accelerated Mahaweli Program was implemented to construct major dams and reservoirs of Victoria, Kotmale, Randenigala and Rantambe and to provide irrigation water to about 128,000 hectares within a period of six years. The construction of reservoirs inundated some traditional villages in the Central Province and in the North Central Province. These affected traditional communities were offered a financial compensation package and alternate lands in downstream areas under major irrigation reservoirs. Some people who had previously made their living by cultivation of tea, highland crops and paddy in the wet zone (Central Province) had to adapt to cultivation practices of irrigated paddy cultivation and home garden crops in the dry zone.

11. Three categories of people were resettled in newly irrigated areas: 1) voluntary settlers of landless people selected from the wet zone, 2) re-settlers of traditional villagers in the dry zone with improved irrigation facilities, and 3) involuntary resettlement of people whose lands were acquired involuntarily for the construction of dams, reservoirs and power plants. They were given lands in newly developed areas of irrigation schemes and this was mainly land based involuntary resettlement. The Mahaweli program offered them alternate lands, cash compensation and other incentives to improve their living conditions as full-time farmers. However, some resettled families in the dry zone faced hardships in adapting to new livelihood methods and new living environments. There were large extents of government lands available in the dry zone to provide alternate lands for those whose lands were acquired.

## **2:2 Development of Infrastructure Facilities and Urban Housing Development**

12. In the 1980s and 1990s there was an increasing demand from a large number of government agencies for acquisition of private lands for the purposes of their planned development projects. These institutions included the newly established departments, ministries and authorities including Urban Development Authority, Housing Authority, the Coastal Conservation Department, Ceylon Electricity Board, Sri Lanka Land Reclamation and Development Corporation, National Housing Authority, hotels and industries. The main sectors that implemented development projects with land acquisition, relocation and resettlement effects were housing, water supply, power and energy, roads and coastal resource protection. Four highway construction projects were implemented in the 1990s, Colombo-Matara highway, Colombo-Katunayake highway, Colombo-Kandy Highway and Outer Circular road. The rehabilitation, widening and road improvements also demanded private lands to be acquired. For example, Road Development Authority (RDA) implemented donor funded projects in the 1990s including the Third Road Rehabilitation and Improvement Project (ADB), the Baseline Road Improvement and Extension Project (JICA) and the construction of Southern Expressway

(ADB and JAICA), and these required an expedited land acquisition program. The National Housing Development Authority implemented seven housing programs in the 1980s and 1990s. It was estimated that about 66,000 households were living in slums and shanties in the city of Colombo, occupying about 1000 acres. Under Sustainable Township Program it was intended to release all lands occupied by the settlers on voluntary basis, and some lands were used for the re-housing program. The other lands were used for commercial development. The Real Estate Exchange (Pvt) Ltd was established, and its first program was implemented to construct 687 housing units (Sahasapura) in 1999. The Urban Development Authority proposed development projects for the construction of administrative, commercial and industrial buildings, industrial estates and other buildings needing private land acquisition. It also worked with local authorities and Provincial Councils to implement such projects. The new water supply schemes and expansion of existing facilities also required the acquisition of private lands and other government lands occupied by the villagers.

13. In the process of planning and implementation of development projects in the 1990s different government agencies handled the problems of involuntary resettlement in an ad hoc manner. The Road Development Authority offered several incentive packages based on project requirements. The Urban Development Authority has been involved in urban development projects and the construction of houses for low income groups. It also introduced the concept of resettlement by providing the slum dweller with a freehold apartment, on condition that the land is released to its subsidiary company. The Sri Lanka Land Reclamation and Development Corporation worked with the National Housing Authority for the resettlement of encroachers living along canal banks and low lying areas. The Ceylon Electricity Board in developing hydropower projects offered some incentives based on demand from the affected persons. The Coastal Conservation Department has been legally entrusted to protect local areas and resettled encroachers on government lands. In the 1990s preparation of an Environmental Impact Assessment (EIA) was required for prescribed projects under the National Environmental Act of 1980 and 1988. The two donor agencies, World Bank and ADB insisted on adoption of involuntary resettlement policies for their projects. For example, a resettlement plan was prepared in 1998 for the Road Network Improvement Project and a number of incentives and entitlements were included in the compensation package.

14. Over the last 30 years, Sri Lanka's annual economic growth has averaged 5%, with an upward trend since 2003. The growth was achieved despite a civil conflict that started in 1983. Per capita income nearly quadrupled from \$431 in 1990 to \$1,600 in 2007. The national policies supported the promotion of international trade, privatization and infrastructure development which were largely responsible for the economic growth. However, a major bottleneck to economic growth continues to be the poor infrastructure development in the areas of transport (roads and railways), port development, power generation, water supply and urban development. The government has developed plans to focus on a combination of large infrastructure projects during the next ten year period including national highways and road improvements linking villages to urban centers, ports development, railway improvements, urban development, hotel expansion, tourism development and other measures to increase Sri Lanka's international competitiveness. The infrastructure development contributes to accelerate

economic growth and narrow regional disparities (Country Partnership Strategy, Sri Lanka, 2009-2011, ADB).

15. The National Road Master Plan (NRMP) proposed an investment program of Rs670 billion from 2008 to 2017 to improve 4900km of national roads and construction of 600km of expressways. The annual allocation for compensation for land acquisition was about Rs2,500 million from 2006 to 2009. It was estimated that the amount required for compensation will increase from Rs6,853 in 2009 to Rs9,457 million in 2011 (Note to the Cabinet, Ministry of Finance and Planning, Implementation of the Budget Proposals 2009 - Compensation for Acquisition of Land for Road Development, May 2009). These national infrastructure investment plans and proposed projects in the public and private sector need acquisition of private land and the use of government lands currently occupied by some private individuals. The people whose houses and commercial structures, home gardens, agricultural lands and other properties need to be acquired and some people have to move and resettle in new locations. Also, some development projects such as hotels, highways, and manufacturing industries should avoid the use of lands in environmental sensitive areas such as coastal areas, forests, wild life reserves, streams, tank reservations and wetlands. The availability of government lands for development projects is limited and private land acquisition has become a necessity to implement the proposed development projects. The development projects with resettlement impacts are handled by central ministries, departments, local administration and the private sector. The local administration of lands is handled by the Provincial Council, District administration under the District Secretary and Divisional Secretaries. The Divisional Secretaries are authorized as acquiring officers under the Land Acquisition Act of 1950. The Provincial Councils are given authority under the 13<sup>th</sup> Amendment to the Constitution to plan and implement development projects. However, if land acquisition is involved, the approval of the Ministry of Lands is required for all development projects.

### **3. NATIONAL LAWS AND POLICY DEALING WITH RESETTLEMENT PLANNING, LAND ACQUISITION, COMPENSATION AND RELOCATION**

16. There are two national laws that deal with involuntary land acquisition and resettlement, the National Environmental Act (NEA) No. 47 of 1980 and the Land Acquisition Act of 1950<sup>5</sup>. The project screening and approval procedures for prescribed projects are described under the regulations of NEA Act of 1980 and 1988 and published in the Government Gazette No. 772 dated 24 June 1993. Under this gazette notification, large scale development projects which include power, highways, hotels and manufacturing industries and other projects located in environmentally sensitive areas are classified as requiring environmental impact assessment (EIA) studies before approval of the project. Resettlement impacts and mitigating measures

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<sup>5</sup> However, Urban development projects (Special provisions) Act of No.2 of 1980 specifies that lands urgently required for carrying out development projects can be acquired by the President with recommendations from the Minister. Any action in court for remedy or relief in relation to such an acquisition is limited to compensation. Absolute power has been vested in the President as the acquiring officer to the extent of deviating from the established procedure under the Land Acquisition Act and compensation is paid only after submission of an application.

need to be addressed in the EIA. However, CEA is more involved in the development of pollution control strategies and promotion of environmental protection activities than in resettlement activities. Its four Deputy Director Generals largely handle subjects of environmental management, pollution control, human resource development and environmental education.

17. The legal provisions in the NEA of 1980 and its regulations in 1993 describe the requirements for project screening for social and resettlement impacts and legal approval procedures. In addition, any development activity within the Coastal Zone under the Coast Conservation Act No. 57 of 1981 and its amendments in 1988 requires a permit. This request was initially introduced by this Act and was applied in respect of the entire country in terms of the NEA of 1988. The Flora and Fauna Protection Ordinance and its amendments in 1993 requires EIA for any development within the declared boundaries. The North Western Province Environmental Statute, No.12 of 1990, also requires an EIA for prescribed projects.

### **3:1 Legal Requirements in Screening Social Impacts in Prescribed Projects under the National Environmental Act of 1980 and its Amendments**

18. The National Environmental Act (NEA), No. 47 of 1980 and its amendments in 1988 have some provisions relevant to screening of projects to identify involuntary resettlement impacts and project approval procedures.

**Table 2: Legal Provisions for Approval of Prescribed Projects under Part IV C of the National Environmental Act of 1980**

Legal provision	Section
The Minister shall by Order published in the Gazette determine the projects and undertakings (referred to as “prescribed projects”) in respect of which approval would be necessary under the provisions of this part of the Act.”	23Z
“All prescribed projects that are being undertaken in Sri Lanka by any government department, corporation, statutory board, local authority, company, firm or an individual will be required to obtain approval under this Act for the implementation of such prescribed projects.”	23AA (1)
“It shall be the duty of all project approving agencies to require from any government department, corporation, statutory board, local authority, company, firm, or individual who submit any prescribed project for its approval to submit within a specified time an initial environmental examination report or an environmental impact assessment report, as required by the project approving agency relating to such project and containing such information and particulars	23BB (1)

as may be prescribed by the Minister for the purpose.”	
“A project agency shall on receipt of an initial environmental examination report or an environmental impact assessment report, as the case may be, submitted to each project approving agency in compliance with the requirement imposed under sub section (1), by notice published in the Gazette and in one newspaper each in the Sinhala, Tamil and English languages, notify the place and times at which such report shall be available for inspection by the public and invite the public to make its comments, if any, thereon.”	23BB (2)
“Any member of the public may within thirty days of the date on which a notice under sub section 2 published makes his or her comments, if any thereon to the project approving agency which published such notice, and such project approving agency may, where it considers appropriate in the public interest afford an opportunity to any such person of being heard in support of his comments, and shall have regard to such comments and other materials if any, elicited at any such hearing in determining whether to grant its approval for the implementation of the prescribed project.”	23BB (3)
“Where approval is granted for the implementation of any prescribed project, such approval shall be published in the Gazette and in one newspaper each in the Sinhala, Tamil and English languages.”	23BB (4)
“The project approving agency shall determine the procedure it shall adopt in approving any prescribed project submitted to it for approval. Such procedure shall be based on the guidelines prescribed by the Minister for such purpose.”	23CC
“Where a project approving agency refuses to grant approval for any prescribed project for its approval, the person or body of persons aggrieved shall have a right to appeal against such decision to the Secretary to the Ministry.”	23DD (1)
“Where any alterations are being made to any prescribed project for which approval had been granted or where any prescribed project already approved is abandoned, the government department, corporation, statutory board, local authority, company, firm or individual who obtained such approval shall inform the appropriate project approving agency of such alterations or the abandonment as the case may be, and where necessary obtain fresh approval in respect of any alterations that are intended to be made to such prescribed project for which approval had already being granted. Provided however, where such prescribed project that is being abandoned or altered is a project approved with the concurrence of the Authority, the Authority should also be informed of it and any fresh approval that needs to be obtained should be given only with the concurrence of the Authority.”	23EE

Source: National Environmental Act of 1980, pp. 28-30.

19. Sections 23AA and 23BB in Part IV C of the NEA (Table 1) state that all prescribed projects should obtain approval under the Act prior to their implementation. Approvals can be obtained by submitting either an Initial Environmental Examination (IEE) report or an EIA report. Involuntary resettlement exceeding 100 project affected families, other than resettlement resulting from emergency situation in a prescribed project, requires approval under the Act. The Gazette notification, No. 859/24 of 23 May 1995 and item 12 refer to the projects with involuntary resettlement exceeding 100 families requiring the approval of the CEA. A list of prescribed projects was published in Part 1 of the Schedule of an Order under Section 23Z of the Gazette Extraordinary No.772/22 of 24 June 2003. For example, Southern Transport Development Project (STDP) is a prescribed project under item 7 (a national highway exceeding 10 kms), and item 12 (a project with involuntary resettlement exceeding 100 families other than resettlement effected under emergency situations).

20. The CEA is responsible for providing guidance for preparing social impact studies, reviewing and approving such studies, and monitoring social impacts and mitigating measures during project implementation. The management of the EIA process is assigned to the Environmental Management and Assessment Division. It also handles social and environmental aspects. The CEA is vested with powers by the NEA “to require the submission of proposals, for new projects and changes or abandonment of existing projects, for the purposes of evaluation of the beneficial and adverse impacts of such proposals to the environment.” The NEA requires that the approval is mandatory for “prescribed projects” and frames regulations under the Act (1993) to specify types of projects that should be submitted for approval. In the policy implementation process, CEA needs to coordinate with the Ministry of Lands to ensure that resettlement issues are adequately addressed in project implementation. The CEA has not yet approved resettlement plans in prescribed projects, but social impact assessments in the EIA study and some resettlement outlines are reviewed and approved.

21. The specific regulations made in 1993 provide specific instructions for project proponents regarding the procedures to submit project information and studies for approval (Table 3).

**Table 3: Regulations Made in 1993 under 23CC of the National Environmental Act**

Regulation	Regulation No.
1. Project screening for environmental and social impacts A project proponent of any prescribed project shall as early as possible submit to the Project Approving Agency preliminary information on the project requested by the appropriate Project Approving Agency (PAA).	5
The Project Approving Agency (PAA) shall acknowledge in writing receipt of such preliminary information within six days.	6 (i)
The PAA shall in consultation with the Authority subject such preliminary information to environmental scoping, in order to set the Terms of Reference (TOR) for the Initial Environmental Examination Report or Environmental Impact Assessment Report, as the case may be, and doing so the PAA, may take into consideration the views of the state and public agencies.	6 (ii)

The PAA shall convey in writing to the project proponent the Terms of Reference (TOR) referred to in paragraph ii above, within 14 days in the case of an IEE Report, and 30 days in the case of an EIAR from the date of acknowledging receipt of the preliminary information.	6 (iii)
When environmental scoping, the PAA considers that the preliminary information submitted by the project proponent, as required in regulation 5 above, is adequate to be an IEE or EIA, the approving agency shall proceed as specified hereinafter.	6 (iv)
2. Approval procedure of environmental impact assessment (EIA) Upon receipt of an EIAR the PAA shall, within 14 days determine whether the matters referred to by the TOR in regulation 6 (ii) are addressed, if the report is determined to be inadequate, the PAA shall require the project proponent to make necessary amendments and re-submit the report, together with the required number of copies.	10
3. Information disclosure and public consultation Upon receipt of an IEAR or EIAR, the PAA shall submit a copy to the Authority and by prompt notice published in the Gazette and one national newspaper published in the Sinhala, Tamil and English languages, and invite the public to make written comments, if any, to the PAA, within thirty days from the date of first appearance of the notice, either in the Gazette or in the newspaper.	7 (ii) and 11 (i) and Section 23BB (2) and (3) of the NEA
The notice referred to in paragraph ii above shall specify the times and places at which the report shall be made available for public inspection.	7 (iii) and 11 (ii)
The Project Approving Agency shall make available copies of the report to any person interested to enable him to make copies thereof.	7 (iii) and 11 (iii)
It shall be the duty of the PAA, upon completion of the period of public inspection, or public hearing, to forward to the project proponent the comments received from the public, for review and response, within six days from the date of completion of the period of public inspection.	8 (i)
The project proponent shall in writing respond to such comments to the PAA.	8 (ii)
4. Project approval and monitoring requirements Upon receipt of such responses referred to in regulation 8 (ii) above, the PAA shall within a period of six days, either grant approval for the implementation of the proposed project subject to specified conditions or refuse approval for the implementation of the proposed project with reasons for doing so.	9 and 13
It shall be the duty of all PAAs to forward to the Authority a report which contains a plan to monitor the implementation of every approved project, within 30 days from granting approval under regulation 9 (i) and 13 (i) by such agencies.	14
The PAA shall publish in the Gazette, and one national newspaper published in the Sinhala, Tamil and English languages, the approval of any project as determined under regulations 9 (i) and 13 (i) by such agencies.	15
The PAA shall specify a period within which the approved project shall be completed.	16 (i)
A project proponent may, within 30 days prior to the expiry of project completion, make an application in writing to the PAA for an extension of the time for the completion of proposed prescribed project.	16 (ii)
A project proponent shall inform the appropriate PAA of any alteration to a prescribed project under regulations 9 (i) and 13 (i), and/or the abandonment of such approved project.	17 (i)
5. Alterations and supplemental report	17 (ii)



<p>The project proponent shall where necessary obtain fresh approval in respect of any such alterations that are intended to be made to the project. The PAA in consultation with the Authority determine the scope and format of the supplemental report required to be submitted for such alterations.</p>	
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Source: Government Gazette Extraordinary No.772/22 of 24 June 2003.

22. The regulations under the NEA stipulate the process and action that are applicable when a project falls into the category of a prescribed project. In such a situation, the project executing agency, Ministry of Lands and the CEA have the responsibility for planning, approving and implementing resettlement action or implementation plans for the projects prescribed under the NEA. The project proponent is responsible for submitting the Environmental Impact Assessment Report (EIAR) for a prescribed project under Section 23CC, 33 and regulations in Gazette Extraordinary No.772/22 of 24 June 1993. According to Section 33 of the NEA, EIAR is legally required to contain a description of alternatives to the proposed project which is less harmful to the environment, together with reasons why such alternatives are rejected.

23. According to the guidelines issued by the CEA the EIA report should examine if any particular social group is more severely affected than others and suggest how to avoid or minimize the adverse impacts on such a group. The assessment of the impacts of relocating families and other community groups should be summarized in sufficient detail to adequately explain the situation arising from such relocation. This assessment should identify anticipated problems, proposed mitigation measures, cost estimates and an entitlement package. It should be clearly demonstrated that every possible action has been taken to avoid relocating households and businesses. Where relocation is found to be unavoidable, the following issues must be addressed in relation to each alternative action: 1) number of households to be relocated and their socio-economic profiles; 2) availability of comfortable, safe, sanitary and affordable housing for the displaced people; 3) anticipated loss of employment caused by acquisition of business, industrial or domestic premises necessitating relocation; and 4) actions taken to compensate affected parties and number of commercial and industrial ventures to be relocated and their descriptions and availability of sites for relocating those displaced and costs of relocation. It is required to make a statement that acquisition of property and relocation will be conducted in accordance with the existing laws and regulations and resources available for compensation. The social assessment should contain a discussion of the financial and other incentive programs and other assistance programs available to the displaced. The project proponent must consider the entire cost of the relocation program as an integral part of the project.

### **3:2 National Involuntary Resettlement Policy (2001) and its objectives and policy principles relating to Resettlement Planning**

24. The Cabinet approved the NIRP in May 2001<sup>6</sup> and the first objective is to avoid or reduce involuntary resettlement impacts by reviewing alternatives to the project as well as alternatives within the project. The policy applies to all development-induced land acquisition and involuntary resettlement or recovery of possession by the state, regardless of funding. A comprehensive Resettlement Action Plan (RAP) is required where 20 or more families are affected as a result of land acquisition. Subsequently, the Ministry of Lands prepared guidelines on resettlement planning and implementation for the use of project executing agencies (NIRP, May 2001).

25. The second principle of NIRP is that, where involuntary resettlement is unavoidable, affected persons should be assisted to re-establish themselves and improve their quality of life. The RAP can be formulated under the policy of NIRP.

### **3:3 Legal Provisions for Land Acquisition and Compensation under the Land Acquisition Act, No.9 of 1950 and its Regulations**

26. The Land Acquisition Act of 1950 provides powers to the Government to take over private lands for a public purpose in a particular locality. It sets out a procedure for taking over lands and payment of compensation at market rates for land, structures and crops, the way the affected persons are notified, handling of objections and claims, computing and determining the amount of compensation, rights of the affected persons in the process of land acquisition, and taking over of physical possession and registration of ownership with the government. The Act was revised with several amendments (1954, 1955, 1961, 1962 and 1964) and the latest being the amendments in 1986 and 2009.

27. The procedures relating to acquisition of land and servitudes for a public purpose are described under seven parts in the Act as indicated in Table 4.

**Table 4 : Legal Provisions in the Land Acquisition Act of 1950**

Sections and Provisions
Part I: Preliminary investigations and declaration of intended acquisition
Section 2 - Investigations for selecting land for public purposes
Section 4 - Notice of, and objections to intended acquisition
Section 5 - Declaration that a land or servitude is required for a public purpose

<sup>6</sup> ADB provided technical assistance to develop a national involuntary resettlement from August 1999 to May 2001. A national policy on involuntary resettlement was required because the Land Acquisition Act of 1950 does not require project executing agencies to address key resettlement issues such as (a) exploring alternative project options that avoid or minimize impacts on people; (b) compensating those who do not have title to land; (c) consulting affected people and host communities on resettlement options; (d) social and economic rehabilitation of the affected people; and (e) income restoration. To ensure that the people affected by development projects are treated in a fair and equitable manner and they are not impoverished in the process, the need for a policy was justified.

Section 6 - Survey of land
Section 7 - Notice to persons interested
Section 8 - Statements of persons interested
Part II: Inquiry into claims, reference to court, and Acquiring Officers award
Section 9 - Inquiry into claims for compensation
Section 10 - Establishment of land ownership
Section 17 - Declaration of compensation amount
Section 18 - Disputes to courts proceedings and procedures
Part III: Appeals to the Board of Review and appeals to the Court of Appeal on question of law - (Section 19-28)
Part IV: Payment of compensation - (Section 29-37)
Part V: Possession and disposal - (Section 38-45)
Part VI: Assessment of compensation - (Section 46-48)
Part VII: General Section - (Section 49-65)

Source: Land Acquisition Act, No.9 of 1950.

28. The project implementing agency is responsible for preparing a land acquisition application approved by the Secretary of the relevant ministry and submitting it to the Minister of Lands for approval. According to Section 2 (1) “Where the minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice to be exhibited in some conspicuous places in that area.” The purpose of the Section 2 notice is to inform the public that investigations will be conducted to ascertain the suitability of the land for the intended public purpose, and to enter the land area for land surveys to set out the boundaries (Section 2 (3)).

29. According to Section 4 (1) “Where the minister considers that a particular land is suitable for a public purpose, or that a particular servitude over a particular land should be required for a public purpose, he shall direct the acquiring officer of the district in which that land is situated to cause a notice in accordance with subsection 3 to be given to the owner or owners of that land and to be exhibited in some conspicuous places on or near that land.” The notice also specifies a period of not less than fourteen days from the date on which such notice is given for making objection (Section 3 (d)). The relevant minister proposing the land acquisition can consider objections and make recommendations to the Ministry of Land for the intended public purpose with justification. The decision can be changed if the Minister decides to avoid or reduce impacts.

30. The declaration under Section 5 is to confirm that the land is needed for a public purpose. The publication in the Gazette “shall be conclusive evidence of the fact that such declaration was duly made” under Section 5 (3). After declaration, “if there is no plan of that land made by the Survey Department of the Government and a plan to be made by a Surveyor of the department” under Section 6, then, under Section 8 the acquiring officer invites all persons interested in the land to be acquired to submit their interests in the land by a statement with details of the names, nature of interest, and addresses of the persons interested and rent or incomes during the last three years. The Act considers persons other than owners of the land such as the co-owners, mortgagees, lessees and others entitled for compensation. However, a tenant on a monthly tenancy is excluded.

31. Part II of the Act deals with inquiry into claims, reference to Court, and acquiring officer's award. Section 9 (1) states, "Where a notice under section 7 in respect of land is published, the acquiring officer of the district in which the land is situated shall, on the date on which and at the time and place at which persons interested in that land are directed by that notice hold an inquiry into (a) the market value of that land or of the servitude which is to be acquired over that land; (b) such claims for compensation as may have been notified to him within the time allowed thereof by that notice; (c) the respective interests of the persons claiming compensation; and (d) any other matter which needs investigations for the purpose of making an award under Section 17."

32. Section 10 deals with establishment of land ownership. Section 10 (1) states, "At the conclusion of an inquiry held under section 9 make a decision on every claim made by any person to any right, title or interest ..." In the event of any dispute between claimants to any right, title or interest, the matter should be referred for determination to the court (Section 10 (3)). The proceedings in a court are the procedures provided by the Civil Procedure Code for civil suits (Sections 12, 13 and 14). After the final determination, the acquiring officer gives written notices of the award to the persons entitled to compensation, the total amount and the apportionment of the compensation among the persons under Section 17 (1). The person who is not satisfied with the amount of compensation awarded may appeal to the Board of Review as specified in Part III of the Act. The constitution of the Board of Review (Section 19) and other details including appeal procedures are given in Sections 19 to 28.

33. Part IV of the LA Act provides details about compensation payment including deductions and payments to a minor or a person of unsound mind, and interest on compensation (Sections 29 to 37). According to Section 38, "At any time after award is made under Section 17, the minister may by Order published in the Gazette can direct the acquiring officer to take possession of that land for and on behalf of the state." The Act provides opportunities for consultation, grievance redress, disclosure and appeals to the affected persons. Sections 45 and 46 of the Act provide assessment procedures of compensation, and the market value is "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 the publication of Section 7 notice (Section 45 (1))." The compensation is paid to any person interested in a land and shall be proportionate to his interest in that land. No additional compensation shall be allowed to him in consideration of the acquisition, but he shall be entitled to compensation for any damage sustained by reason of the severance of the land from his other land that occurred at the time of issue of Section 7 notice: injurious affection, loss of earnings from any business carried on the land, and expenses of effecting any change of residence caused by the acquisition of the land (Section 46).

### **3:4 Regulations to the Land Acquisition Act in 2008 - Introducing a National Compensation Package**

34. In response to a Cabinet memorandum submitted by the Minister of Land and Land Development on 25 July 2007 seeking approval (i) to set up a national policy on payment of compensation to affected persons (in addition to statutory compensation paid under the Land

Acquisition Act) whose land and other properties have been acquired for development projects; and (ii) to invalidate all other compensation schemes implemented by the ministries of highways, irrigation, and new railroad development and the National and Water Supply and Drainage Board, as well as other state institutions, the Cabinet Ministers, held a meeting on 2 August 2007, and directed the Minister of Land and Land Development to formulate and present a common policy for the payment of compensation. The proposed national policy presented by the minister was approved by the Cabinet on 3 January 2008. The regulations relating to the payment of compensation were enacted by the Parliament on 7 March 2009 and were published in the Government Gazette No. 158/7 on 20 January 2010<sup>7</sup>.

35. The types of compensation payments to be paid under new regulations include (i) market value for land, (ii) market value and reinstatement value for structures for land owners as well as encroachers, (iii) injurious affection and severance, and (iv) disturbances and other payments (Annex – Gazette notification). The new regulations replaced the “ex-gratia package for the People Affected by Highway Projects (2005) and other Cabinet approved compensation packages,” and implemented through the land acquisition and resettlement committee (LARC) from 2004 to 2008. The regulation made under Section 63(3)(f) of the Land Acquisition Act No.9 of 1950 are given below.

#### **1. Market Value should be assessed as follows:**

1.1 In the case of a land, where a part of the land is acquired, and when it is valued as a separate entity deems to realize a value proportionately lower than the Market Value of the main land, the compensation should be proportionate to the value of the main land.

1.2 Where, at the date of intention to acquire was published, the building is used for occupation and or business purposes, or is intended to be used for occupation and or business purposes, the difference between the cost of re-construction and the value of building, based for determination of Market Value under Section 1.1, should be paid as an additional compensation.

1.3 Value based on development potential could be considered for paddy lands acquired, where permission to fill such lands have been granted by the Agrarian Services Commissioner General.

1.4 When an acquired building is occupied by a tenant / statutory tenant protected under the provisions of the Rent Act, No. 7 of 1972 (as amended thereafter) the compensation should be ascertained in proportion having regard to the provisions of Rent (Amendment) Act, No. 26 of 2006.

#### **1. Injurious affection and severance:**

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<sup>7</sup> These new regulations were made under Section 63(2)(f) of Land Acquisition Act of 1950 and Section 63 (4) states, where a regulation made by the Minister under this section is approved by Parliament and notice of the approval is published in the Gazette, that regulation shall be valid and effected as if it were herein enacted. The national policy on payment of compensation is effective for any acquisition in respect of which a notice under Section 2 is published after 1 September 2009 and after this date any existing relief schemes for payment of additional compensation become null and void.

Damage caused by any severance and injurious affection should be allowed fully.

## **2. Payment of Disturbances and other Expenses:**

To fulfill the requirement of the definition of compensation, in addition to the compensation under Section 1 and 2 above, which are based on the “market value”, compensation for Disturbance based on the “value to owner” basis should be paid, after taking into consideration the written claims made, under the following sub-headings:

- 3.1 Expenses incurred for appearing for Section 9 inquiry;
- 3.2 Expenses for finding alternative accommodation;
- 3.3 Cost incurred in change of residence;
- 3.4 Cost of advertising for business establishments;
- 3.5 Re-fixing cost of fixtures and fittings;
- 3.6 Expenses incurred for transport;
- 3.7 Loss of earnings from business (within the limits given in prevailing Act);
- 3.8 Increased overhead expenses;
- 3.9 Double payments (Rent, Assessment Taxes);
- 3.10 All other expenses incurred by the owner of land / property due to the acquisition;
- 3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land; and
- 3.12 When an owner of a house or of an investment property is displaced, additional 10% payment based on market value.

## **3:5 National Involuntary Policy Principles Relating to Land Acquisition and Resettlement Implementation**

36. The NIRP (2001) is applicable to all development projects where resettlement is involved, regardless of the number of persons affected and funding sources. The following policy objectives and principles are relevant to land acquisition, compensation, relocation and income restoration measures.

### **Policy objectives**

- 1. Ensure that people adversely affected by development projects are fully and promptly compensated and successfully resettled. The livelihoods of the displaced persons should be re-established and the standard of living improved.

2. Ensure that no impoverishment of people shall result as a consequence of compulsory land acquisition by the state for development projects.
3. Assist adversely affected persons in dealing with the psychological, cultural, social and other stress caused by compulsory land acquisition.
4. Make all affected persons aware of processes available for the redress of grievances that are easily accessible and immediately responsive.
5. Have in place a consultative, transparent, and accountable involuntary resettlement process with a time frame agreed by the project executing agency and the affected persons.

### **Policy principles**

1. Gender equality and equity should be ensured and adhered to throughout the policy.
2. Affected persons should be fully involved in the selection of resettlement sites, livelihood compensation and development options at the earliest opportunity.
3. Replacement land should be an option for compensation in the case of loss of land; in the absence of replacement land, cash compensation should be an option for all affected persons.
4. Compensation for loss of land, structures, other assets and income should be based on full replacement cost and should be paid promptly. This should include transaction costs.
5. Resettlement should be planned and implemented with full participation of provincial and local authorities.
6. Participatory measures should be designed and implemented to assist those economically and socially affected to be integrated into the host communities.
7. Common property resources and community and public services should be provided to affected persons.
8. Resettlement should be planned as developmental activity for the affected persons.
9. Affected persons who do not have documented title to land should receive fair and just treatment.
10. Vulnerable groups should be identified and given appropriate assistance to substantially improve their living standards.
11. Project executing agencies should bear the full cost of compensation and resettlement.

#### **4. EQUIVALENCE ASSESSMENT - ADB INVOLUNTARY RESETTLEMENT POLICIES AND LEGAL PROVISIONS RELATING TO RESETTLEMENT PLANNING, LAND ACQUISITION AND COMPENSATION**

37. The Sri Lankan legal system and policy framework (NEA of 1980 and its regulations, the LAA of 1950 and its regulations in 2009) are compared with the scope, objectives and 12 policy principles of ADB safeguard policy (Annex 1 provides details). We have grouped the 12 ADB policy principles under three objectives: 1) project screening and resettlement planning and monitoring to minimize involuntary resettlement impacts; 2) at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and 3) improve the standards of living of the displaced poor and other vulnerable groups.

38. **Scope.** The Land Acquisition Act of 1950 and its regulations in 2008 cover payment of physical displacement and economic displacement as a result of involuntary land acquisition. Compensation as a result of temporary displacement is covered under requisition provisions where assets are taken over for a temporary purpose. These provisions are found in several laws and these provisions display equivalence with ADB policies (Annex 1). Permanent displacement as a result of involuntary land acquisition is covered under the LAA and its regulations and details are given under relevant policy principles, indicative of equivalence with ADB policies. There are no legal requirements mandatory for compensation to the affected people as a result of restrictions of land use and access to legally designated areas and parks. However, legal provisions relevant to EIA procedures and the rights of indigenous people to use some forest areas were not reviewed in this study. It is noted that NIRP policy does not refer to these requirements. Also, legal provisions in the LAA do not cover these aspects of compensation as a result of restricted land uses and access to a legally designated areas and parks. There is no equivalence evident here.

39. **Objective 1. Project screening and resettlement planning to minimize involuntary resettlement impacts.** The legal provisions in the NEA and LAA, its regulations as well as the NIRP are adequate for screening a project for identifying social impacts and resettlement planning. The major objective should be to avoid and minimize resettlement impacts as a result of involuntary land acquisition from the early stage of project planning. Resettlement is identified and stated as one of the mandatory items that needs to be addressed in the EIA process and in resettlement planning according to the NIRP. The procedures related to EIAR preparation, public participation and project approval are clearly stated in legal provisions, regulations and guidelines. The social impact assessment study is considered as a major component in the EIAR and forms an integral part in the selection process of the best alternative. However, project screening for social impacts assessment, consultation with affected people and preparation of RIPs are covered under EIA process which is governed under the provisions of NEA. These provisions demonstrate equivalence with ADB policies.



40. **Objective 2. At least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels.** Regarding the second objective of income restoration of all affected persons to pre-project level, the LAA and new regulations in 2008 provide compensation payment on the basis of replacement value for land and structures and other payments. All affected persons are eligible to receive compensation, relocation and livelihood restoration measures.

41. **Objective 3. Improve the standards of living of the displaced poor and other vulnerable groups.** The legal framework does not mandate the improvement of the displaced poor and other vulnerable groups, but NIRP principles state that “Affected persons who do not have documented title to land should receive fair and just treatment. Vulnerable groups should be identified and given appropriate assistance to substantially improve their living standards.”

#### **4:1 Project screening, resettlement planning and monitoring to minimize involuntary resettlement impacts**

42. **Project screening (Policy principle 1).** Environmental Impact Assessment (EIA) procedures and approval regarding ‘prescribed projects’ are established in terms of the NEA of 1980 and its regulations. The scope of the assessment is determined through a scoping exercise and usually includes social and resettlement impacts as part of EIA assessment according to the guidelines developed by the CEA. The LAA of 1950 also requires the Minister of Lands to formulate an independent opinion in relation to a request for land acquisition and during the period of public objections. The NIRP gives clear policy direction to avoid and reduce involuntary resettlement, and mandates the preparation of a resettlement plan. Equivalence with ADB policy is evident in this directive.

43. **Consultation, information disclosure, participation, grievance redress, and attention to the needs of vulnerable groups (Policy principle 2).** Under this policy principle there are 7 key elements: 1) consult with the affected persons, host communities and other relevant stakeholders; 2) inform all displaced persons of their entitlements and resettlement options; 3) participate in planning, implementation, and monitoring and evaluation of resettlement programs; 4) give attention to the needs of vulnerable groups; 5) establish a grievance redress mechanism; 6) provide support for social and cultural institutions, and 7) prepare a social preparation phase when resettlement impacts are complex and sensitive. Partial equivalence is indicated here.

44. **Consultation.** Under the NEA of 1980, EIA must be made available for public comments and when public hearings are conducted. The LAA provides a procedure for the calling of written objections from the affected persons prior to proceeding with acquisition under the regular acquisition procedure. However, the expedited process under the provision of Section 38A by-passes this requirement, which indicates partial equivalence with ADB policies.

45. **Grievance redress mechanism.** The LA Act provides limited grievance redress mechanism in the form of a Board of Review where decisions relating to the quantum of compensation can be appealed. It is not required to raise objections under Section 4 of the LAA when land is acquired under expedited land acquisition procedure under Section 38 A. Here, partial equivalence with ADB policies is evident.

46. The LAA of 1950 also has provisions for information disclosure during different stages of land acquisition such as Section 2 Notice, Section 5 and 7 Gazettes and compensation awarding letters. The NEA of 1980 and its regulations, LAA of 1950 and its regulations and NIRP provide that the affected persons should be consulted, informed, and participate during the project cycle. But there are no legal provisions that necessarily require that the affected persons, host communities and other stakeholders should be fully consulted, and informed of their entitlements, participate in planning, implementation, and monitoring and evaluation of resettlement programs. There is no legal framework to support the social and cultural institutions of displaced persons and host population. The extent of equivalence with ADB safeguards for these policy elements is partial.

47. **Negotiated settlement (Policy principle 6).** There is no legal provision or policy principle in NIRP to state that negotiated settlement has to be done in a transparent, consistent and equitable manner to ensure that those people who enter into negotiated settlement maintain the same or better income and livelihood status. Under the national laws, Public sector organizations do not normally engage in negotiated purchase of land, also there are no regulations or detailed guidelines how these transactions should take place, and if negotiated settlements fail, whether compulsory acquisition is required. Thus, no equivalence with ADB policies is noted.

48. **Prepare a resettlement plan (Policy principle 8).** There is no legal provision that requires preparation of a resettlement plan. The NIRP mandates that a resettlement plan is required where 20 or more families are displaced. Partial equivalence is noted here.

49. **Disclose a draft resettlement, final resettlement and its updates to affected persons and other stakeholders (Policy principle 9).** There is no legal provision for the disclosure of RIP. However, the NIRP mandates that the resettlement plan must be disclosed. Partial equivalence is noted here.

50. **Conceive and execute resettlement as part of a development project or program (Policy principle 10).** There are legal provisions to ensure that involuntary resettlement costs and benefits need to be included as part of a development project or a program. Thus, there is equivalence with ADB policies.

51. **Monitoring of resettlement impacts, outcomes and outputs on the standards of living of the affected persons (Policy principle 12).** There is no legal provision to prepare a resettlement plan with a time bound implementation schedule but NIRP requires the preparation of a resettlement plan, if more than 20 families are displaced and such projects need to be implemented under close supervision of project executing agencies, by external monitors and internal monitoring. The time frame, budgets and targets are monitored in the process of project

planning and implementation. There is no legally established procedure by which resettlement outcomes are fully and comprehensively monitored. Hence partial equivalence is evident here.

#### **4:2 Income Restoration of All Affected Persons**

52. **Improve or at least restore the livelihood of all affected persons (Policy principle 3).** Sections 45 (1) and 46 (1) of the LAA describe legal provisions for assessment of compensation and the amount of compensation to be paid for a land or servitude. The market value of a land should be paid and its amount is based on the value “the land might be expected to have realized if sold by a willing seller in the open market as a separate entity.” In determining the amount, “all such returns and assessment of income, severance of the land from his other land, injurious affection, any loss of earnings from any business carried on the land” must be considered. Regulations to the LAA in 2009 have recognized that compensation payment for disturbances must be based on the “value to owner.” These payments together under the LAA and regulations in 2008 provide for restoration or improvement of livelihoods. Thus, there is equivalence with ADB policies.

53. **Replacement value.** ADB policy principle requires that cash compensation at replacement value for land must be paid. NIRP policy principle requires that compensation for loss of land, structures and other assets should be based on replacement cost. The provisions in the LAA and its regulations in 2008 cover the payment of replacement value for lost properties. Therefore, equivalence is evident in these provisions.

54. **Prompt compensation.** A 1964 amendment to the LAA allows staggered payment of compensation in terms of certain types of lands. These provisions show partial compliance with ADB policies.

55. **Benefit sharing.** There are no legal provisions mandating that affected persons should share directly in the benefit of development activities resulting from involuntary land acquisition. Therefore, no equivalence is evident here.

56. **Needed assistance to be provided to displaced persons (Policy principle 4).** Regulations to the LAA in 2008 provide legal provisions to pay 1) expenses incurred for appearing for section 9 inquiry; 2) expenses for finding alternative accommodation; 3) cost incurred in change of residence; 4) cost of advertising; 5) re-fixing cost of fixtures and fittings; 6) expenses incurred for transport; 7) increased overhead expenses; and 8) any other additional expenses for disturbances. The NIRP requires provision of needed assistance to the physically and economically displaced persons, and such assistance includes secured tenure to relocation land, better housing at resettlement sites, integration of resettled persons into their host communities, extension of project benefits to host communities, transitional support such as land development, credit facilities, training, employment opportunities and community services. Therefore, legal provisions address the provision of assistance to displaced persons in the form of compensation, transitional support and development assistance. Thus, in this respect they are equivalent with ADB policies.

57. There are no legal provisions that require the provision of secured tenure to the relocated persons although the LAA does recognize exchange of land in lieu of compensation. There are also no legal provisions mandating the provision of better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities as well as civic infrastructure and community services, as required. Therefore, legal provisions do not demonstrate equivalence with ADB policies regarding these aspects.

58. **Compensation payment before physical or economic displacement (Policy principle 11).** The general rule under LAA is that possession or use of land cannot be taken until compensation is assessed and an award has been made. When compensation is not accepted the Acquiring Officer can refer the matter to a District Court. Order for immediate possession under Proviso Section 38 of the LAA is an exception though this has been practiced in recent years. There is partial equivalence in this requirement.

#### **4:3 Income Improvements for Vulnerable Groups**

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59. **Improve the standard of living of the poor and vulnerable groups to at least national minimum standard (Policy principle 5).** This policy principle requires that the displaced poor and other vulnerable groups, including women, must improve the standard of living to at least national minimum standard. There is no legal provision to identify vulnerable groups for additional compensation and assistance, but the act uses the term “person interested” with reference to a land, to mean a person having an interest in the land as owner, co-owner, mortgagee, lessee or other persons, but not on the basis of poverty or disability and any other vulnerable conditions. There is no equivalence with ADB policies.

60. **Eligibility for resettlement assistance to non-titled persons (Policy principle 7).** Section 7 (2) (c) of the LAA of 1950 provides for a notice directing ‘every person interested’ in the land or the servitude to be acquired to present the nature of the claim, and Section 65 defines ‘persons interested’ which does not include non-titled persons and persons without any recognizable legal rights to land. There is no legal provision which has equivalence with ADB policies. However, the NIRP principle 4 mandates fair and just treatment to persons who do not have documented title to land.

The detailed equivalence assessment is presented as Annexure 1 and the summary of equivalence assessment is presented in Table 5.

**Table 5: Equivalence Assessment of ADB Social Safeguards and Legal Provisions in the Land Acquisition Act of 1950**

ADB social safeguard policy objectives, scope and principles/elements	Level of equivalence (policy and Legal provisions)		
	Equivalence	Partial equivalence	No equivalence
<b>Scope</b>			
(i) Permanent physical displacement as a result of involuntary land acquisition	X		
(ii) Temporary economic displacement as a result of involuntary land acquisition	X		
(iii) Permanent or temporary physical and economic displacement as a result of involuntary restrictions on land use			X
(iv) Permanent or temporary physical and economic displacement as a result of involuntary restrictions on access to legally designated parks and protected areas			X
Total	2		2
Principle 1 – Project screening	X		
Principle 2 and key elements			
Consultation		X	
Grievance redress mechanism		X	
Principle 3 and key elements			
Improve or restore livelihoods	X		
Replacement value	X		
Prompt compensation		X	
Benefit sharing			X
Principle 4 – Displacement support	X		
Principle 5 – Improve the standards of living of the displaced poor and vulnerable groups			X
Principle 6 – Negotiated settlement			X
Principle 7 – Compensation for non-title holders			X

Principle 8 – Prepare a resettlement plan		X	
Principle 9 – Disclose a draft resettlement plan		X	
Principle 10 - Conceive and execute involuntary resettlement as part of a development project or program	X		
Principle 11 – Pay compensation before displacement		X	
Principle 12 – Monitor and assess resettlement outcomes		X	
Total	5	7	4

## **5: ACCEPTABILITY ASSESSMENT OF PLANNING AND IMPLEMENTATION PRACTICES, INSTITUTIONAL CAPACITY AND PERFORMANCE LEVELS IN INVOLUNTARY LAND ACQUISITION AND RESETTLEMENT IN TWO ROAD SECTOR PROJECTS**

61. The main objective of this section is to determine the effectiveness of application of legal provisions and policy requirements in project planning and implementation. The “acceptability” of legal framework and national policies is reflected in the government capacity and commitment to implement its laws, regulations, rules and other procedures at national, sector and project levels. In this context, government has approved Cabinet memoranda and circulars to provide specific guidelines, directions, clarifications and approval to implement its national policies. They also specify which projects and activities are subject to the decisions and requirements and the roles and responsibilities of implementers at different levels of the CSS. Court judgments indicate whether implementation of legal requirements is consistent with the prescribed procedures in legal framework, and the practices are transparent and consistent.

### **5:1 Cabinet Memoranda**

62. Strategic environmental impact assessment (SEIA) of 2006. In May 2006, the Cabinet of Ministers approved a Cabinet Memorandum submitted by the CEA recommending that all policies, plans, and programs should be subjected to a strategic environmental assessment during the planning of a policy, or a program, or a project. This assessment should incorporate cumulative effects of environmental, social and economic considerations into policies, plans and programs. It will help to identify most practical alternatives for implementation. It should also cover the process of identification and evaluation of best development alternatives. Similar to EIAs for projects, SEIA requires identification of potential negative impacts and mitigating measures as initial studies. To guide how to conduct a SEIA for a policy, or a plan or program, CEA has prepared, “A Simple Guide to Strategic Environmental Assessment” in 2008. Examples of SEIAs are regional development programs for Hambanthota and Trincomalee submitted to the CEA in 2010.

63. **Payment of compensation in Treasury Bonds.** The budget speech 2009 proposed that the compensation for acquisition of lands for road development over Rs1 million for a claim to be paid in cash and Treasury Bonds (first Rs1 million in cash and the balance amount over Rs1 million in Treasury Bonds). The balance is to be paid by Treasury Bonds by the Central Bank of Sri Lanka through Bank of Ceylon, with 1-2 year maturity period with the interest rate of 17 percent. The affected persons will receive interest every six months. However, in the case of complete demolition of a house, up to Rs5 million, is paid in cash. The Treasury Bonds are issued to the affected persons who are willing to accept them. The proposed system of compensation in Treasury Bonds was not yet implemented (Cabinet Paper 09/0838/306/051, A Note to the Cabinet by the Minister of Finance and Planning on “Implementation of the Budget Proposals 2009 – Compensation for Acquisition of Lands for Road Development” dated May 2009).

64. **Project specific compensation packages.** The Cabinet Memorandum of 9 April 2001 titled “Payment of Compensation to the Persons Affected by Acquisition of Property for the Construction of Southern Transport Development Project” (STDP) was approved by the Cabinet of Ministers on 3 October 2001 (Cabinet Paper 01/1778/017/002<sup>8</sup>). The following paragraphs in the memorandum provide details of the proposed changes.

“Confine the statutory compensation payable under Land Acquisition Act to the statutory limits as determined by the Chief Valuer” (Section C).

“The Road Development Authority to pay to the persons concerned all such payments and other benefits payable under the table annexed (Entitlement matrix, Chapter 3, RIP, 2002), and in consideration of any other adverse effects to such persons as decided by the land Acquisition and Resettlement Committee stated in para. g, in addition to the compensation stated in para. C in keeping with the understanding reached between the Government and the agencies providing financial assistance for the road project” (Section D).

“Payment of an advance by the implementing agency, based on the award of compensation under section 17 of the Act, to persons appealing to the Board of Review against the quantum of compensation determined by the acquiring officer, without prejudice to their right to appeal and to recover such advances when compensation is finally paid to such persons and to reimburse, to the implementing agency, such advance paid” (Section E).

“The establishment of a committee under the title of Land Acquisition and Resettlement Committee, comprising the following members at the level of the Divisional Secretariat to assist the implementation of the activities proposed; (i) the Divisional Secretary, (ii) District Superintendent of Survey or his representative, (iii) District Valuer or his representative, (iv) an officer nominated by the Road Development Authority, and (v) the affected person or a person nominated by him” (Section G).

65. **Ex-gratia package for the People Affected by Highway Projects (2005).** The payments for lands will be on the basis of replacement cost as determined by the Chief Valuer. The difference between the statutory compensation and the replacement cost is payable as an ex-gratia payment. All ex-gratia payments will be as determined by the Chief Valuer. The LARC will decide on administrative matters and disputes in relation to other factors arising out of the acquisition and not on matters pertaining to the quantum of payment.

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<sup>8</sup> The draft was further reviewed to see whether the proposed procedure could be accommodated within the existing legal provision and report back to the Cabinet. Regarding the first Cabinet Memorandum, a note to the Cabinet was submitted on 26 September 2001 and it was approved in September 2001 (Cabinet Paper 01/1778/017/002). This note was approved to amend the earlier Cabinet decision taken on 28 June 2001 and to implement the proposed administrative actions in paragraphs from (a) to (h) in the Memorandum in order to expedite the process of land acquisition and establishment of land Acquisition and Resettlement Committees (LARC) and payment of compensation at replacement cost.



**Table 6: Ex-gratia Package for the People Affected by Highway Projects in 2005**

Category	Entitlements
Private lands	The difference between the statutory compensation and the replacement cost is payable as an ex-gratia payment as determined by the Chief Valuer. LARC can consider acquiring/purchasing the remainder, making full payment of the total value.
Encroached state lands	No payment for land, but improvements of the land will be paid to the encroachers in occupation prior to 01-01-2205.
Encroached private lands	Encroachers on private land, which have not been contested in a court of law by the land owner, will be paid for the improvement carried out on the land, upon adequate proof that improvements have been made by such persons.
Paddy lands	The statutory compensation and 10% of the market value is determined by the Chief Valuer.
Land/structures falling within street lines or building lines	No compensation is paid for structures constructed after the date of imposition of street lines or building lines.
Unauthorized occupation of lands	No compensation is paid for any constructions made on lands owned by the Road Development Authority.
House, Buildings and other structures	<p>Replacement cost without depreciation as determined by the Chief Valuer:</p> <p>Small cottages: minimum payment will be Rs300,000</p> <p>For parts of structures: the floor area to be considered and the remaining portion can be considered for payment by LARC</p> <p>For Tombs and similar structures: Rs15,000</p> <p>Other public buildings, religious structures and utilities: RDA either constructs or pays cash compensation at replacement cost</p>
Rent controlled premises under the	Payments at replacement cost and the percentage of total payment to be paid to the owner and occupant will be based on the number of

Rent Act	years of occupancy.
Loss of business	Non-income tax payers will be paid Rs15,000 or six months income. Tax payers are paid Rs15,000 or average adjusted profits of three years.
Loss of livelihood	Self employed and temporary affected are entitled to a livelihood grant of Rs15,000.
Vulnerable families	Women headed families, families with disabled people and with very old people will be paid an extra allowance of Rs15,000.
Loss of wage employment	Persons who have lost their wage employments due to land acquisition will be entitled to an allowance of Rs15,000 or three months wage which ever is higher.
Handing over possession of properties before the deadline	Buildings and houses – 25% of the statutory payment under Section 17 subject to a minimum of Rs25,000 and a maximum of Rs500,000. Cultivated agricultural land – 5% of the statutory payment under Section 17 subject to a minimum of Rs10,000 and a maximum of Rs100,000.
Temporary accommodation	Rent allowance payable will be based on the prescribed date of handing over, the floor area of the house in occupation, and the rates applied by Municipal Council, Urban Council and Pradeshiya Sabha where the house is located. Houses are categorized into 4 categories, and the maximum is Rs100,000 and minimum is Rs20,000.
Shifting allowance	Will be based on the floor area of the house, the maximum is Rs15,000 and minimum is Rs 5,000.
Relocation	Title holders are entitled to a 20 perch block from a fully serviced resettlement site. Encroachers are entitled to 10 perches from a fully serviced resettlement site or cash grant as applicable to self relocation. A sub family living in the same house under the same or separate electoral list at least 3 years prior to the Section 2 notice is entitled to a block of 10 perches or cash grant of Rs100,000.

Self relocation	Those who wish to self relocate will receive in lieu of a plot of land:  Sub families – maximum Rs100,000, and  others, depending on the local authority area, will receive Rs150,000 in Pradeshiya Sabhas, Rs300,000 in Urban Council areas, and Rs500,000 in Municipal areas.
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Source: Ex-gratia Package for the People Affected by Highway Project, Road Development Authority, 2005.

## 5:2 Ministry Circulars

66. The following sample circulars show that the ministry guidelines and instructions can provide further information and clarifications as to how the legal provisions, policy principles and Cabinet decisions should be implemented at project level.

**Table 7: Ministry Circulars and their Contents**

Circular	Decisions/instructions
Ministry of Land – LD/05/D08, 6/10/2003 (4/2003)	Need to include information in the statement on the lands proposed to be acquired whether alternative lands can be provided for the displaced persons.
Ministry of Highways – MH/W/1/81, 2006/05	Composition of LARC and functions and responsibilities of members.
Ministry of Highways – MH/W/1/93, 2006/12/11	Procedures relating to purchase of land lots, less than 15 perches, outside the road trace in STDP.
Ministry of Highways – MH/W/1/93, 2007/01/10	The calculation of reinstatement cost and percentage of additional compensation.
Ministry of Highways – MH/W/1/93, 2007/05/22	Appointment of retired Valuation Officers for LARC meetings.
Ministry of Highways – MH/W/1/126, 2008/08/24	Instructions to the Divisional Secretary regarding the LARC decisions to be made for non-statutory payments.
Ministry of Urban Development and Water Supply – LA/1/2/5, 2006/06/19	Establishment of LARC and its role and responsibilities.

Note: Dates are given in the order of year, month and day.

Source: Ministry of Lands, Ministry of Highways and Ministry of Urban Development and Water Supply.

### **5:3 Guidelines for Preparation of Social and Environmental Impact Studies**

67. Central Environmental Authority prepared three guidelines: 1) General Guidelines for Planning and Implementation of Involuntary resettlement (May 2003); 2) Process Manual for the Implementation of the NIRP (May 2003); and 3) Guidelines for a Participatory Resettlement Process (May 2003). They were prepared under the Capacity Building Project for the NIRP under ADB TA 3792 assisted by the World Bank and published by the Ministry of Environment and Natural Resources, and Ministry of Lands. These are available to the officers involved in involuntary resettlement. Social Assessment and Involuntary Resettlement Compliance Manual was prepared under the technical Assistance project (TA 4736) for capacity Building of the Environmental and Social Division (ESD) of the RDA in July 2007. ADB also prepared “Designing and Implementing Grievance redress mechanisms: A Guide for Implementers of Transport Projects in Sri Lanka” in 2010. It clarifies the concept of grievance redress mechanisms and presents the rationale for their implementation.

68. The CEA has also published three types of guidelines related to EIAR which are of direct relevance to development projects: 1) Guidance for Implementing the Environmental Impact Assessment Process – A General Guide for Project Approving Agencies; 2) Public Participation Handbook (No.3), and 3) Environmental Guidelines for Road and Rail Development in Sri Lanka. The Environmental Guidelines for Road and Rail development in Sri Lanka was prepared by the CEA to identify and assess social impacts in development projects (pages 31-34) under three broad categories: 1) land use impacts, 2) impacts on agricultural lands, and 3) social impacts and relocation (resettlement) impacts. The changes in land use to be considered from project activities include the use of adjacent lands, current development trend, transportation and other public utilities, and housing and community services. The guidelines also refer to eight sub categories of social impacts due to a proposed project: 1) community severance, 2) generation of new economic activities such as housing construction and industries; 3) changes in property values, 4) changes in travel pattern and accessibility, 5) changes in accessibility to and demand for social infrastructure, 6) changes in accessibility and demand for administrative services; 7) impacts on other modes of transportation, and 8) broad social groups affected or benefited such as the elderly, the handicapped and the economically disadvantaged.

### **5:4 Judicial Review**

69. The courts have responded to the complaints made by the affected persons regarding the application of legal provisions in the LAA and NEA and have interpreted the decisions and actions taken by project authorities in implementing the laws. The following table provides a summary of judicial determinations on some complaints and the issues raised in courts and court decisions.

**Table 8: Judicial Decisions on the Complaints made in Land Acquisition and Compensation**

Case reference	Judicial decisions
<i>De Silva Vs Atukorale, Minister of Lands, Irrigation, and Mahaweli Development</i> <sup>9</sup>	The purpose of LAA is to take over private land in the exercise of its eminent domain, to be used for a public purpose, for the common good, and not to enable the state or state functionaries to take over private land for personal benefit or privilege.
<i>Sugathapala Mendis &amp; Others Vs Chandrika Bandaranayake Kumaratunga &amp; Others</i> <sup>10</sup> (Waters Edge Case)	<p>“...the public purpose requirement has for its primary object, the general interest of the community; though in achieving the public purpose the individual(s) may be benefitted; the benefits to such individual(s) must be indirect...”</p> <p>Discretion over the conveyance is an extremely important power; one so important that the Urban Development Authority must err on the side of caution and exercise only the utmost care in making its decisions where there may be questions as to feasibility of a proposed project and/or safety of the citizenry and environment posed by the same.</p> <p>A further important element to the concept of “public purpose” was added, stating that it is one that contemplates a benefit of a sufficiently direct nature. Referred to “high public purpose threshold” required when acquiring land of the citizenry.</p> <p>“... given the nature of the land as one acquired using the Land Acquisition Act ... the decision to implement such a project... involves an analysis of adequate depth to ensure the arrival at a decision that would be in furtherance of the trust that people have reposed in the Government...”</p> <p>The Court further held that the alleged beautification of an area (in this case developing a Golf Course) is simply too abstract and indirect a benefit to suffice as a reason to approve a project to alienate the land, in the light of the potential detriment that such beautification can bring, as well as the high public purpose threshold posed by the nature of this land as one being acquired from the citizenry, whose need for affordable housing is far greater than cosmetic improvements to the land.</p>

<sup>9</sup> 1993: 1 Sri Lanka Law Reports; page 283

<sup>10</sup> Unreported; S.C. (F/R) Application No. 352/2007; decided on 08.10.2008

<p><i>Fernandopulle V Minister of Lands</i><sup>11</sup></p>	<p>LAA gives two main powers to the Minister; (1) power to decide whether a land is required for a public purpose and to direct that it be acquired; and (2) to decide if there is a compelling urgency to take immediate possession and if so, direct that possession be so taken.</p>
<p><i>Manel Fernando &amp; others Vs. D.M. Jayarathna &amp; Others</i><sup>12</sup></p> <p>and</p> <p><i>Joseph Fernando Vs Minister of Lands</i><sup>13</sup></p>	<p>Section 2 must state the public purpose, because if not, investigation for the suitability of the land <i>for that public purpose</i> cannot be carried out. The investigations would include the assessment of the availability of alternative lands as well ... scheme of the Act requires a disclosure of the public purpose, as its objectives cannot be achieved without such disclosure. A section 2 notice must state the public purpose although exception may perhaps be implied in regard to purposes involving national security and the like.</p> <p>The test of a willing seller – “likely to receive prompt compensation of the market value.”</p>
<p><i>Amerasinghe &amp; Others Vs The Attorney General &amp; Others</i><sup>14</sup></p> <p>(Colombo - Katunayake expressway case)</p>	<p>Recognized the importance of consultation and stated that a hearing must apply not only to the affected persons but also those who are likely to benefit from the project.</p> <p>This case was a result of a declaration made under Urban Development Projects (Special Provisions) Act. The said Act provides for an order (under Section 2) to be made by the President, based on the recommendation of the Minister of Urban Development, that land is required for a urban development project; that the requirement is urgent; and the project would meet the just requirements of the general welfare of the people. Once the order is made, the Act does not allow relief other than compensation and to that effect specifically ousts judicial intervention. This case was filed on the basis that for the ouster to be valid, the President ought to have followed a due process, and the failure on the part of the authorities to give a reasonable opportunity for the affected parties to be heard, amounted to a failure to follow due process.</p> <p>Environmental Impact Assessments (EIA) required for prescribed</p>

<sup>11</sup> 1979: 79-2 New Law Reports 115

<sup>12</sup> 2000: 1 Sri Lanka Law Reports; Page 112

<sup>13</sup> 2003: 2 Sri Lanka Law Reports; page 294

<sup>14</sup> 1993: 1 Sri Lanka Law Reports; page 376

	<p>projects under the National Environment Act in the context that those statutory requirements have to be complied by the relevant agencies. The Court noted that the NEA “protects the public interest in regard to environmental considerations by preventing the implementation of a project until an EIA is submitted and approval obtained.” This, the Court felt, would give further opportunities for all interested persons to raise their objections as, in the opinion of the Court, environmental &amp; social cost – benefit analysis is wider in scope than an economic cost – benefit analysis.</p>
<p><i>Heather Theresa Mundy Vs Central Environmental Authority &amp; Others</i> (Southern Expressway Case)<sup>15</sup></p>	<p>The Court made a distinction between a “change” due to unforeseen circumstances and an “alteration” and stated that when there is a significant alteration (in this instance prior to the commencement of the project) the project proponent is under a duty imposed by the principles of natural justice to afford sufficient opportunities to affected parties to state their grievances.</p> <p>“...if it is permissible in the exercise of a judicial discretion to require a humble villager to forego his right to a fair procedure before he is compelled to sacrifice a modest plot of land and a little hut because they are of “extremely negligible” value in relation to a multi-billion rupee national project, it is nevertheless not equitable to disregard totally the infringement of his rights: the smaller the value of his property, the greater his right to compensation ... if a judicial discretion was exercised in favour of the State, <i>inter alia</i>, to save costs, it was only equitable that the Appellants should have been compensated for the injury to their rights...”</p>
<p><i>Bandula Vs Almeida &amp; Others</i><sup>16</sup></p>	<p>Land acquisition consequent to a declaration under Urban Development Projects (Special Provisions) Act – requires the relevant officials to brief the President on the “full facts” as well as the “true facts,” so that the President may be able to form an opinion necessary for a Declaration under Section 2. Right of hearing constitutes a minimum pre-requisite of natural justice, and therefore the duty of the relevant official of the Urban Development Authority (UDA), prior to making the recommendation to the President, to have at least informed the owners of lands and houses of the project and the consequent</p>

<sup>15</sup> 2004: S.C. Appeal No. 58/2003

<sup>16</sup> 1995: 1 Sri Lanka Law Reports; page 309

	need for acquisition of their properties, and formally call for observations and objections.
<i>Attorney General Vs R.B.Herath</i> , <sup>17</sup>	To claim ownership, the “owner” must establish the three attributes of ownership <sup>18</sup> ; (1) the right of possession and the right to recover possession; (2) the right of use and enjoyment; and (3) the right to alienate; although it was not necessary for all three attributes of ownership to be present in an equal degree at one and the same time.
<i>Edwin Vs Tillakaratna</i> <sup>19</sup>	A person who had been a lessee or tenant of a land prior to the land being acquired can be considered as a person having an “interest” in the land within the meaning of section 7 of the LAA.
<i>H.P.A.Jayawardena Vs D.M.Jayarathna &amp; Others</i> <sup>20</sup>	General rule under LAA is that possession cannot be taken until compensation is paid. Order for immediate possession under proviso (a) to Section 38 of the LAA (38(a) Order), is an exception to the rule. Although the Court upheld the acquisition and the Section 38(a) Order for immediate possession, the Court pronounced that people who are affected must be adequately compensated and without inordinate delay.
<i>K.A.Gunasekara Vs T.B.Werakoon</i> <sup>21</sup> and <i>Pieris Vs Divisional Secretary of Kollonawa and Others</i> <sup>22</sup>	“...when proprietary rights of a subject are impugned by compulsory acquisition compensation must be adequate, realistic and reasonable...”  An Acquiring Officer “with all the resources at his command, should not rely solely and entirely on a report sent by an officer of the Valuation Department, in ascertaining the market value of a land. Acquiring Officers should also explain to claimants (who are generally villagers ignorant of procedural matters), their right to challenge the Government Valuer’s valuation and lead further evidence, if they so desire, in support of their claims.”
<i>W. Suwarna Fernando Vs The Secretary,</i>	According to section 45 of the LAA, the compensation is assessed on the market value of the land which the land might

<sup>17</sup> 1960: 62 New Law Reports; page 145

<sup>18</sup> Lee, R.W. “Introduction to Roman Dutch Law”; 5<sup>th</sup> Ed.

<sup>19</sup> 2001: 3 Sri Lanka Law Reports; page 34

<sup>20</sup> 2001: Court of Appeal Application No. CA 378/99

<sup>21</sup> 1970: 73 New Law Reports; page 262

<sup>22</sup> 2003: 3 Sri Lanka Law Reports; page 189



<i>Ministry of Lands and Others</i> <sup>23</sup>	be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of the publication of notice under section 7 of the LAA.
<i>Marie Indira Fernandopulle &amp; Another Vs E.I.Senanayake, Minister of Lands &amp; Agriculture</i> <sup>24</sup>	“...an order by the Minister under the proviso to section 38 of the Land Acquisition Act can be made only in cases of urgency and an order made under this proviso can be reviewed by the Courts. It is however a matter for a petitioner who seeks the remedy by way of Certiorari, to satisfy the Court that there was in fact no urgency and his application cannot succeed should he fail to do so...”
<i>De Silva Vs Atukorale, Minister of Lands, Irrigation, and Mahaweli Development</i> <sup>25</sup>	Justification for the original acquisition, as well as the continued retention of acquired lands, can be reviewed. In this case, use of only three percent of a 19 acre land acquired, qualified to be divested, on the grounds that divesting too is held in trust for the public, to be exercised by the Minister “reasonably and in good faith and upon lawful and relevant grounds of public interest.”
<i>Rashid Vs Rajitha Senarathna, Minister of Lands &amp; Others</i> <sup>26</sup>	“...the entitlement for a divesting order springs primarily from the fact that after vesting, the land has not been used for the public purpose for which it had been acquired. Thus a claim under section 39A (of the LAA) does not depend on the validity or invalidity of the original vesting <sup>27</sup> ...”
<i>SmithKline Beecham Biological S.A. Vs. State Pharmaceutical Corporation of Sri Lanka &amp; Others</i> <sup>28</sup>	<i>Law</i> includes regulations, rules, directions, instructions, guidelines, and schemes that are designed to guide public authorities.

**Source:**

70. In the first case (*De Silva versus Athukorale*) the Supreme Court pronounced that the government or its functionaries should not acquire private lands for personal benefits and must be used only for a public purpose. This was reaffirmed in the 2008 case of *Sugathapala Mendis*

<sup>23</sup> 2011: Court of Appeal Application No. C.A. Application (Writ) 46/2007; judgment delivered on 21<sup>st</sup> Feb 2011.

<sup>24</sup> 1978: 79 ii New Law Reports; page 115

<sup>25</sup> 1993: 1 Sri Lanka Law Reports; page 283

<sup>26</sup> 2004: 1 Sri Lanka Law Reports; page 312

<sup>27</sup> Compare case of *De Silva Vs Dissanayake & Others* (2003: 1 Sri Lanka Law Reports; page 52) and *De Silva V Atukorale & Others*

<sup>28</sup> 1997: 1997 3 Sri Lanka Law Reports; page 20

*and others Vs Chandrika Bandaranayake Kumarathunga and others (Waters Edge Case)* and established the precautionary principle in private land acquisition and subsequent uses of such lands. This judgment introduced the public trust doctrine in the use and alienation of lands. In other court judgments such as *Joseph Fernando vs Minister of Lands*, the Court of Appeal stated that the public purpose must be disclosed. The court judgments in Table 7 dealt with several issues of consultation, approval for significant alterations to project locations, and opportunities for the affected people to have consultation under the principles of natural justice, rights of obtaining true information and adequate payment of compensation.

## **5:5 Good practices and innovative approaches in project planning and implementation in two road projects**

71. The following assessment is based on the review of project experiences in two road sector projects, STDP and NHSP, also with reference to experience in other road sector projects. Some good practices in project planning and implementation in a project may have long-term impacts on other development projects implemented. For example, experiences in establishment of LARC system in STDP have been influenced to make similar institutional arrangements in other development projects and sectors such as water supply, power, irrigation and urban development.

72. Payment of replacement cost by establishment of LARC. The STDP introduced a system of payment of compensation at replacement cost for land and structures, and displacement support through establishment of a committee called “land acquisition and resettlement committee (LARC)” in each Divisional Secretary office area. The LARC was established comprised of the members of Divisional Secretary, District Superintendent of Surveys or his representative, District Valuer or his representative, an officer nominated by the RDA, and the affected person or a person nominated by the affected person. The Super LARC was established at project level with authority to determine final compensation amount for those who appealed to Super LARC for enhanced compensation. This Super LARC committee was established by a Cabinet decision in April 2003. The circular issued by the Secretary, Ministry of Highways set out the process of approval for LARC decisions. The Super LARC members were the Secretary of the Ministry of Highways, Chief Valuer, Survey General and Project Director of PMU and the affected person.

73. During the planning period of STDP, RDA and ADB decided that land acquisition would follow the LA Act procedures to pay statutory compensation for lands and structures under Section 17 of the LAA by the Valuation Department and additional compensation to be paid at replacement cost by the LARC. In addition, a special compensation package was proposed in the RIP for STDP and it was approved by the Cabinet of Ministers. There were two suggestions regarding payment of non-statutory compensation for lands and structures. One suggestion was to value and pay compensation as per the LA (Section 17 payment) and top this amount with a separate allowance of a percentage to be determined by the Valuation Department such as 25% of the compensation value of the affected property. The second option was to determine

the amount by a committee similar to LARC. The project followed the second suggestion. At each committee meeting the negotiation took place between the land owners and the committee. The seller's understanding of replacement value is reflected in the agreement reached and signed. The Cabinet memorandum approved in September 2001 stated: "Confine the statutory compensation payable under the Land Acquisition Act to the statutory limits as determined by the Chief Valuer and the RDA to pay all such benefits and other benefits to the affected persons as decided by the LARC in keeping with the understanding reached between the Government and the agencies providing financial assistance for the project."

74. The main function of the LARC is to determine non-statutory payments for land and structures and other entitlements. The statutory compensation is paid by the Divisional Secretary as Acquiring Officer. Resettlement Officers were responsible for payments of non-statutory payments, entitlements and other assistance after the vouchers signed by the affected persons. It is agreed that 'while conducting negotiations with the affected persons concerned, it is essential that the concerned affected person is present and other affected persons should not be present. LARC payments procedure was lengthy: 1) Divisional Secretary will submit a certified copy of the LARC decision to the Resettlement Officer; 2) Resettlement officer will get the affected person's signature on the payment voucher; 3) submit the voucher to the Director, Land Acquisition and Resettlement Division (LARD); 4) Officer in Charge will maintain a register of vouchers, compare the voucher with LARC decision, ascertain if the payments are to be deducted and submit the voucher to the Head, Management Information Systems (MIS) for observations; 5) If the voucher is in order MIS Head will refer to the Chief Clerk to check the voucher; 6) Chief Clerk will forward the voucher to the Staff Officer with recommendations; and 7) Director LARD will approve the payments and send them to the Chief Accountant, STDP and cheques will be issued from the Finance Division of STDP. The signed cheques have to be sent through the respective Resettlement Officers to the affected persons and acknowledgement has to be obtained.

75. The same committee (LARC) negotiated with the affected people for payment of ex-gratia payments: 1) loss of income from property; 2) inducement payment (25%); 3) house rent; 4) resettlement allowance for squatters or encroachers; 5) resettlement allowance; 6) loss of interruption of employment/income; 7) payment for poor families or disabled heads of households; 8) shifting cost; 9) loss of employment of sharecroppers (*Ande farmers*); and 10) other allowances. It was decided later to pay for connections to get basic facilities of telephone, water and electricity to the new houses and commercial structures. The self relocation allowance of Rs100,000 was paid. The details of the ex-gratia payments were explained to the affected people. The design of LARC has two important principles of payment of compensation at replacement value; an opportunity to be provided for the affected persons to participate during the compensation determination process.

76. The compensation package introduced in STDP played a major role in obtaining the consent of the people for land acquisition. The project introduced new institutional arrangements for payment of statutory compensation and ex-gratia payments with new administration guidelines. Its openness in dealing with the affected people was an important feature. Some have argued that the new system of compensation has exceeded the open market value of

property but it did not avoid the complicated procedure of land acquisition and payment of statutory compensation and other payments under two systems. The positive impact of LARC is the fair treatment to landless persons such as sub families, affected persons without documented title to their occupied lands, and the squatters who were recognized as ineligible for compensation. Such affected families received alternate lands in resettlement sites as well as other allowances and displacement support. The external monitoring agency, Center for Poverty Analysis (CEPA) in its final study in 2008 found that “the LARC meetings were mandatory for all affected persons and they were held for all the acquired lots eligible for compensation where claimants came forward. The fact that an LARC was held for everybody, not just those who requested for a meeting, is one of the strengths of LARC which has helped to provide an equitable outcome in STDP compensation” (Para. 102, Final Report, 2008). However, there were no clear guidelines about the decisions to be taken and basis for negotiations, except the limits to LARC decision to increase compensation amounts by ministry circulars. There was no documentation to understand variances in LARC payments. Therefore, some people believed that the LARC process was used to increase the compensation amount for those who are influential and known to the members of LARC. As shown in Table 9 LARC system provided a significant increase to compensation payments for land and structures.

**Table 9: Enhanced Compensation Payments made by Land Acquisition and Resettlement Committees for Land and Structures in Southern Transport Development Project and Nugegoda Flyover Project**

	STDP			Nugegoda flyover project		
Category of loss	Section 17 payment (Rs Million)	LARC payment (Rs Million)	% of LARC from total payment	Section 17 payment (Rs Million)	LARC payment (Rs Million)	% of total payment
Houses	537	515	49%	-	-	-
Home gardens	509	192	27%	-	-	-
Commercial structures	42	28	40%	499	345	41%
Commercial land	69	83	55%	NA	NA	-

NA =not available

Sources: Project Management units, STDP and RDA.

77. Relocation and displacement support. In the case of STDP, RDA paid a special allowance to displaced persons to find their own house plots after payment of Rs100,000 as an allowance for self relocation. Thirty two resettlement sites were selected close to the villages of affected persons, and 592 house plots were available in 32 resettlement sites. The affected business owners did not have the option to relocate in new interchanges because interchanges were not available until the highway opened. Therefore, the affected business establishments had to be re-established at locations suitable for such activities. However, in the long term the

affected businesses will have the option of relocating to the new interchanges after they are built (RIP, 2002, STDP, para. 5.1.3),

78. Resettlement sites in STDP were identified in consultation with the affected persons and about 237 acres were acquired. It was planned to allocate about 40 perches of land to each family and to select resettlement sites located within 1km of affected villages with easy access to facilities such as roads and schools. The affected persons were consulted about their opinions to ensure that these sites will meet their needs. According to CEPA study in 2008, affected persons from about 70 villages were resettled in 32 resettlement sites. A high degree of consultation had occurred. House plots were allocated by way of a lottery after households were separated into two categories – those who lived near a main road, and those who lived inside – using the system of raffle. This was considered as a fair method in allocation of house plots.

79. During the first two years of resettlement operations there was dissatisfaction among the resettled families regarding the quality of the utilities provided, such as poor access roads (steep gradient), poor drainage system, and water supply. The project management unit engaged contractors to carry out planning and infrastructure improvement works in resettlement sites. The improved housing situation has been achieved after a period of hardship; living in temporary accommodation for about six months or a year. The majority used the rental allowance for construction of the houses. Most displaced moved into a new location and took a longer period to construct their houses. The housing conditions of previous landless families have shown particular improvement.

80. The report prepared by International Resettlement Specialist (STDP) in August 2003 noted that the majority of affected persons moved to relocation sites were encroachers who would not have received a house plot and a suitable site on their own without moving too far away from their original villages. Despite these challenges the project has been successful in providing acceptable relocation sites. Compared to their previous houses, the houses were bigger and better, and housing conditions were improved. The self relocated families too constructed bigger and better houses than previous ones according to the survey conducted in 2003. Existing social relationships were not affected badly because the selected relocation sites were in the same villages or closer to their relatives' houses. The delays in completing the acquisition of relocation sites, and particularly in valuation of the lots, resulted in causing some hardships regarding the decisions of choice of the options available. There were significant delays in issuing title deeds to the affected persons in resettlement sites.

81. Displacement support. A special package was prepared as displacement support in the RIP, Chapter 3.10.8 and 9 (STDP) in addition to compensation for lost assets and the rehabilitation measures for the severely affected and vulnerable groups.

**Table 10: Displacement Support, Rehabilitation and Income Restoration Measures in Southern Transport Development Project**

Category	Displacement support to be provided (RIP, 2002)	Displacement support provided by the Project
Informal dwellers	<ol style="list-style-type: none"> <li>1. Allocation of 20 perch land on a resettlement site</li> <li>2. Compensation for the structure at replacement cost without depreciation or salvage materials</li> <li>3. Relocation allowance of Rs10,000</li> <li>4. Livelihood grant of Rs15,000</li> </ol>	<ol style="list-style-type: none"> <li>1. 10 perches for encroachers</li> <li>2. Encroachers of land were paid compensation for their structures without depreciation</li> <li>3. Relocation allowance of Rs10,000 was paid</li> <li>4. Livelihood grant of Rs15,000 was paid</li> </ol>
Displaced household and commercial structure owners	<ol style="list-style-type: none"> <li>1. Compensation for the structure at replacement cost without depreciation or salvage materials and the values will not be deducted from the compensation amount</li> <li>2. Rented accommodation of Rs50,000</li> <li>3. Shifting allowance of Rs1,500</li> <li>4. Ex-gratia payment of 25% of the compensation amount for the affected structures for vacating the premises at the stipulated time</li> <li>5. Temporary accommodation allowance until the resettlement sites are ready for occupancy</li> </ol>	<ol style="list-style-type: none"> <li>1. Compensation for the structure at replacement cost without depreciation and salvage materials</li> <li>2. Rented accommodation of Rs50,000</li> <li>3. Shifting allowance of Rs1,500</li> <li>4. Ex-gratia payment of 25% of the compensation amount for the affected structures for vacating the premises at the stipulated time</li> <li>5. Temporary accommodation allowance was paid</li> </ol>
Displaced commercial structure owners	<ol style="list-style-type: none"> <li>1. Compensation for the structure at replacement cost without depreciation or salvage materials and the values will not be deducted from the compensation amount</li> <li>2. Rented accommodation of Rs50,000</li> <li>3. Shifting allowance of Rs1,500</li> <li>4. Ex-gratia payment of 25% of the compensation amount for the affected structures for vacating the premises at the stipulated time</li> </ol>	<ol style="list-style-type: none"> <li>1. Compensation for the structure at replacement cost without depreciation was paid and the use of salvage materials were allowed</li> <li>2. Rented accommodation of Rs50,000 was paid</li> <li>3. Shifting allowance of Rs1,500 was paid</li> <li>4. Ex-gratia payment of 25% of the compensation amount for the affected structures for vacating the premises at the stipulated time was paid</li> </ol>

	<p>5. Registered business owners are entitled to three years future income determined by LARC</p> <p>6. Informal sector business owners are entitled to a livelihood restoration grant of Rs15,000</p>	<p>5. Registered business owners were entitled to pay three years future income determined by LARC</p> <p>6. Informal sector business owners were paid a livelihood restoration grant of Rs15,000</p>
Wage labourers and others who lost jobs in land acquisition	Employment allowance of Rs15,000	Some were paid employment allowance

Source: Resettlement Implementation Plan, Chapter 3, 2002 and Monthly Progress Reports, RDA.

82. All displaced households in STDP were paid a shifting allowance, house rent, resettlement allowance for squatters and encroachers, allowance for loss of employment of sharecroppers, *Ande farmers*, owners of informal sector businesses, an ex-gratia payment of 25% for vacating at the stipulated time, and other allowances. During implementation, the eligibility criteria or amount of some allowances were changed to benefit the affected persons. For example, the temporary rent allowance was to be paid based on the floor area, but in practice all payments were paid as a lump sum of Rs50,000. New categories of entitlements were introduced to cover the costs of obtaining water, electricity and telephone connections to new houses. Informal dwellers on state land were recognized as eligible for compensation in the RIP (3.10.3) and this category has been widened to include sub families living on private, family-owned land during project implementation. Informal dwellers were allocated house plots free of charge on resettlement sites. Households displaced from rented accommodation were entitled only to a temporary rent allowance and the shifting allowance, but these households have been considered eligible for all the displacement allowances entitled to title holders, such as shifting, temporary rent, electricity, water, self relocation allowance or house plot in a resettlement site (CEPA final report, 2008, page 60). Wage labourers employed in private or government companies, and unpaid family members working on private agricultural land or business, who lose their jobs are entitled to livelihood allowances under the RIP (3.10.7). Some were paid loss of employment allowance but there was no consistency or clear eligibility criteria. Some workers were not identified for payment.

## 5:6 Project implementation issues

83. Project screening documents and their quality and contents. In the case of STDP, six social impacts and environmental impact assessments studies<sup>29</sup> were conducted to design the

<sup>29</sup> From project feasibility stage to approval of the project, six social and environmental impact assessment reports were prepared: 1) EIA report in 1996; 2) EIA report in 1999; 3) initial social impact assessment for the RDA trace in economic feasibility study report in 1996, 4) A sample household survey

project and to take critical decisions during road trace selection process. These studies were first used to select the environmentally, economically and socially acceptable project alternatives. The final selection of the road trace was to be a compromise to minimize environmental and social impacts. However, the quality of social impact studies in the EIA was challenged in courts. The deficiencies in the EIAR in terms of evaluation of project alternatives, cost estimates and procedural matters were first challenged by a non-government organization (NGO) in October 1999 for the reasons that “the EIAR fails to provide proper, intelligible and adequate reasons why such alternatives were rejected. Consequently, the EIAR fails to satisfy the legal requirement established by the NEA in relation to environmental impact assessment.” Therefore, it was argued that any decision based on the EIAR is illegal. The EIAR withholds vital and relevant information which should have been included in the EIAR and made available to the CEA and the public. The Appeal Court and the Supreme Court dismissed the case. However, it is noteworthy that the judgment delivered in Appeal Court case in November 2000 referred to the issues of adequacy and quality of the EIA report prepared in March 1999.

The court is ill-equipped, in any event, to form an opinion on environmental matters – they being best left to people who have specialized knowledge and skills in such spheres. Even if a matter may seem to be preeminently one of public law, the Court may decline to exercise review because it is felt that the matter is not justiciable, i.e, not suitable to judicial determination. The reason for non-justiciability is that judges are not expert enough to deal with the matter.

84. **Adequacy of information.** Accurate information on the number of affected people in STDP and sub projects in NHSP from involuntary land acquisition was not available during the early stages of project feasibility because alternative road traces or road improvement requirements were not determined, surveyed and established on ground. However, sample social surveys were conducted to assess the degree of social impacts, and the results of these social surveys were used to justify the selection of the best alternative and the decision to recommend the final road trace or road alignment for engineering considerations. In STDP, the EIA team used the estimated number of affected families for its sensitivity analysis and cost estimates. These estimates (622 households) were low compared to the findings of the social survey conducted in March 1999 (810 households). These differences in estimates of the number of displaced families and cost estimates of resettlement impacts were highlighted in court cases, and by some members of the Technical Evaluation Committee (TEC) appointed by the CEA as indicated below.

In the EIA report total number of families to be displaced is not given due to lack of data. As a result, actual costs cannot be fully estimated. Resettlement sites are not identified, surveyed and evaluated for their acceptability and suitability. Non-availability of detailed and accurate information to the people in the project area has led to considerable mental pain, anxiety and uncertainty. Detailed information about the project should have been made available to the local people prior to the CEA approval. Comments made by a member of TEC, July 1999.

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in the EIAR for the RDA Trace in 1996, 5) Social impact assessment study in project feasibility study in 1998 and 6) social impact assessment study for the combined trace in March 1999.



EIAR has failed to develop reasonable alternatives to a comparable level of detail that permits an unbiased evaluation. The extended cost benefit analysis which incorporates broader social and environmental costs of the project is erroneous. NGO submission to the Appeal Court on 5 October 1999.

In Habarana – Kantale sub project in NHSP, it was estimated that about 50 households were affected and the number of households were found to be more than 200 during road construction.

85. No supplemental EIA after alterations to the road alignment in STDP. According to regulation 17 (i) (a) contained in the Government Gazette Extraordinary No.772/22 of 23 June 1993, the project proponent should inform the CEA and obtain fresh approval in respect of any alterations that are intended to be made to the project. The CEA will determine the scope of the supplementary report for such alterations (Regulation 17 (ii)). The CEA approval imposed three conditions in terms of determining the final road alignment. There were several arguments for and against the approval procedure for alterations and the expected outputs such as supplementary EIAR and other relevant documents and public hearings. There were several views and concerns expressed by the affected people, courts, CEA, RDA, ADB and other stakeholders on the issue of changes in the road trace after CEA approval in STDP, and whether such changes are alterations, or within the approved project corridor area. The formal process and procedures as mandated by law and regulations in terms of EIAR preparation, submission and approval of the EIAR and public hearings appear to some extent consistent with the objective of the legal requirement. However, the Supreme Court “held that the deviations proposed by the RDA were alterations requiring CEA approval after compliance with the prescribed procedures and the principles of natural justice and ... the appellants ought to have been compensated for the infringement of their rights under Article 12 (1) of the Constitution and the principles of natural justice.” Supreme Court judgment, 20 January 2004.

86. **Resettlement planning procedures.** In both STDP and NHSP, ADB required the government as a borrower to prepare a resettlement plan with time bound actions, and a budget based on assessment of social and resettlement impacts for the project to meet the requirements of ADB and government safeguard policies. There were significant delays in preparation, revision and approval of RIP for STDP and sub projects in NHSP because of inadequate information, revisions of the RIP due to some changes in engineering designs including the required width of road widening, and delays in approval procedures. According to ADB Involuntary Resettlement Policy, contracts for physical works of a sub project should be awarded only when a satisfactory RIP is approved by both ADB and the government based on a census of all affected persons. The RIP must be implemented at least to complete the payment of full replacement costs of acquired lands and structures. The second requirement was difficult to be fulfilled due to several reasons in both projects (STDP and NHSP). The land acquisition process takes at least one or two years to acquire lands, and remove structures, and pay compensation. Therefore, physical works can start only for the road sections where compensation and relocation activities are completed (known as resettlement impact free road sections). ADB approval was required to handover road sections to the contractor after payment of compensation and relocation activities. The identification of resettlement free road sections of

a sub project became a critical issue in STDP and NHSP with the delays in preparing survey plans (preliminary plans), property valuation, ownership verification and conducting of LARC meetings. It took nearly two to three years to prepare a satisfactory resettlement plan for the final road alignment in STDP and about two years were required to acquire lands and pay compensation in NHSP. As a result, RDA had to handover some road sections after payments for structures, and payment of some allowances (without payment for land), in order for the contractors to continue construction activities. Table 11 provides a chronology of major events leading to the preparation, revision and approval of the final resettlement plan for the STDP from 1999 to 2002.

**Table 11: Chronology of Events Leading to Preparation of the Final Resettlement Implementation Plan from July 1999 to October 2002 in Southern Transport Development Project**

Date	Event	Remarks
July 1999	Resettlement Plan was prepared for the combined trace recommended by project feasibility study team based on 50% of sample households	Alignment was not finalized and sets out Resettlement Plan principles
28 October 1999	Wilbur Smith Associates Inc. (WSA) in association with Resource Development Consultants were engaged to prepare preliminary and detail engineering designs and prepare a resettlement implementation plan (RIP) for the final trace from Kurundugaha Hatakma to Godagama in the ADB section. The preliminary design works commenced in January 2000	About 20 km was on the Combined Trace and 40 km was changed to new locations to meet CEA approval. The Galle Port Access road was included
29 March 2000	Pacific Consultants International (PCI) was engaged to prepare preliminary and detailed engineering designs and social impact studies for the final trace from Kottawa to Kurundugaha Hatakama in the JBIC section	About 5 months delay compared to ADB section progress and updated SIA report was not prepared
May to August 2000	WSA consultants prepared updated SIA for the ADB section	About 5km section in Akmeemana area was not covered due to the opposition

		of affected persons
November 2000	WSA consultants prepared the RIP in ADB section based on updated SIA and inventory losses survey of a 5km section	There were delays in preparing advanced tracings and conducting IOL surveys
January 2011	WSA prepared an Addendum to the November 2000 resettlement implementation plan	Additional information was included in the estimates of resettlement cost
February 2001	RDA submitted the final draft RIP to ADB for the entire length of the road	It was not acceptable to ADB and gaps were identified
April 2001	ADB commented on the RIP	Incomplete IOL data
14-20 May 2001	ADB review mission	Reviewed the progress of RIP preparation
June 2001	RIP was revised and submitted to ADB	Not acceptable to ADB
July 2001	Independent Monitoring Agency (IMA) submitted an inception report	IMA identified major deficiencies in resettlement planning
2-13 July 2001	ADB special project administration mission	Reviewed resettlement issues
11-14 September 2001	ADB special project administration mission	Reviewed resettlement issues and identified specific gaps to be filled
21-22 November 2001	ADB consultation mission to review resettlement issues	Reviewed resettlement issues
10-12 December 2011	ADB consultation mission	Further support to RDA in finalizing the RIP
June 2002	An addendum to the RIP was submitted to the ADB	
17-21 June 2002	ADB consultation mission to review the progress of RIP	Reviewed the draft RIP and provided comments
September 2002	ADB commented on the RIP	

10-14 October 2002	The revised RIP was reviewed and a consolidated RIP requested	
29 October 2002	ADB Chief Compliance Officer approved the RIP	

Sources: RIP, STDP, October 2002 and ADB Review Mission reports from 1999 to 2002

86. The above table 10 shows that ADB fielded many loan review missions to expedite the PMU staff to ensure that an resettlement implementation plan (RIP) is prepared covering disputed areas in consultation with all affected people in the project area. ADB played the leading role in 1999 as it was involved in both financing and requesting various studies required for the project, including environmental and social assessments which were the basis for the co-financer to support the project. The government agreed to pay compensation at replacement value. The Cabinet memorandum was prepared on the modality of payment to all affected persons specifying the mechanism for payment of replacement values for land and structures. The Cabinet paper was approved in April 2001 with a revised entitlement matrix and payment of replacement cost for all road projects. A separate Cabinet paper was also prepared for the STDP in April 2001 to reduce the time required for land acquisition, but it was necessary for it to be reviewed by the Attorney General. The new mechanisms of compensation payments have to be cleared by the Attorney General, and agreed upon by the Ministry of Lands and the Chief Valuer. The discussions took place between May and August and the final memorandum was submitted and approved in September 2001. The ADB loan review mission in September 2001 arranged a meeting with the Ministry of Highways, RDA, Ministry of Lands, Surveyor General, and Department of Valuation to discuss the issue of payment of compensation based on replacement value. It was agreed to consider the principles and modalities of payment of compensation to both titled and non-titled affected people through establishment of the LARC system.

87. Baseline information and data analysis for RIP preparation. An assessment is required of adverse impacts of the project on different social and occupational groups and the development of a computerized data bank, and a method that will allow easy disaggregating of data on the displaced persons by impact, age, gender, education, income, occupation skills, land holdings, preferred choices for relocation and income restoration. There was no such data base developed from the social survey conducted throughout this period (a social survey in final road alignment was conducted only in ADB section in STDP). Therefore, the social survey conducted for the Combined Trace in March 1999 by the University of Colombo to “provide a picture of the socio-economic situation of the project road and the impact, which people will sustain due to the implementation of the project” was included in the RIP (Chapter 2.2.4 in the RIP, October 2002). This data base did not represent the actual situation of the project area because nearly 75% of the Combined Trace was changed to the extent of about 2-4 km. The RIP also contained the information collected about 4 years ago. Since there was no social survey conducted in JBIC section, the October 2002 RIP used the result of March 1999 survey conducted for the Combined Trace to provide baseline information for subsequent monitoring of implementation of the RIP (para. 2.2.2. RIP, October 2002).

88. **Delays in land acquisition.** The implementation schedule of the RIP should be synchronized with the project schedule for construction including the award of contracts, commencement date of work and handing over of the cleared land area of road sections to the contractor after full payments of compensation and resettlement. The guiding principle is that all key resettlement activities such as land acquisition, compensation payment, and relocation of people to the new site, should be completed well in advance for the start of construction of the road. It was also proposed to hand over the lands on a phased program to the contractor and to reduce the pressure on compensation payment and relocation activities. The RIP also assured that the first road section would be cleared and handed over to the contractor as a condition of the first civil work contract and the balance area handed over after a specified time period agreed between the contractor and project implementing agency. It was expected to reduce the time required to 18 weeks by acquiring land under Section 38 (A) using all other procedures to be followed in STDP to acquire land and pay compensation. The Cabinet memorandum titled "Payment of Compensation to the persons Affected by the Acquisition of Property for the Construction of Southern Transport Development Project" was approved on 26 September 2001. It was decided to follow a new procedure for the following reasons:

In terms of the existing procedure and the legal provision for acquisition of land, the process of land acquisition running between the issues of notice under Section 2 of the Land Acquisition Act and the taking over of possession, will take a minimum of 72 weeks. Since this hinders the timely implementation of different development projects, the following administrative action is taken to complete the process within 18 weeks, within the existing legal provision.

89. The target of land acquisition in STDP was within 32 months from July 2000 to 28 February 2003 in ADB section, and 32 months from November 2000 to June 2003 in JBIC section (from issuing section 2 notice to handing over the ROW to the contractor). However, it was not possible to achieve the expected targets (Table 12).

**Table 12: Delays in Land Acquisition and Handing Over Road Sections to the Contractors in Southern Transport Development Project**

<b>Activity</b>	<b>2002</b>	<b>2003</b>	<b>2004 and 2005</b>	<b>2006</b>	<b>Delay (months)</b>
First priority section to be handed over to the contractor (ADB section)	30-11-2002 (RIP estimate)	Handed over in April 2003			5 months
Second priority section to be handed over (ADB section)	28 February 2003 (RIP)		LA activities completed in December 2005		45 months
Land acquisition for		30 June 2003 (RIP)	August 2005 but		25 months

the first package to be handed over to the contractor (JBIC section)			commenced from 19 September for 4 years		
Land acquisition for the second package to be handed over to the contractor (JBIC section)		30 March 2003 (RIP)		March 2006	35 months

Source: RIP, October 2002 and monthly Progress reports from 2000 to 2006.

90. When a large number of properties have to be acquired within a limited time period, financial and human resources are necessary to carry out different activities, such as preparation and publication of notices and gazettes, land surveys, conducting inquiries, valuation of properties, compensation payments and relocation of affected households. The affected people also faced difficulties in demonstrating their titles and supporting documents, contributing to delay in the land acquisition process. It was estimated that minimum 3 years was required to complete the process of land acquisition, compensation payment and relocation. The government also took special measures to expedite appointment of special Acquiring Officers and payment of incentives to officials of the Divisional Secretariats, Survey Department and Valuation Department. The compensation was paid on the basis of “replacement value” for land and structures, in conformity with the NIRP and ADB policies. Although the intention of the revised procedure was to reduce the time to 18 weeks in STDP, there were some problems to meet the expected targets due to 1) insufficient land acquisition staff; 2) delays in preparation and publications of Gazette notifications in three languages; 3) delays in surveying a large number of lots in a short time; 4) delays in preparing valuation reports; 5) inability of some affected persons to provide land ownership records and disputes of ownership; and 6) delays in payment of compensation. The following case study highlights the reasons for significant delays in land acquisition and compensation payment.

**Box 1: Land Acquisition Progress in the Contested area in ADB Section of Southern Transport Development Project**

The contested area was reduced to about 9 hectares of land (86 lots) in ADB section after Appeal Court judgment in February 2004. This area covered 5 Granama Niladhari areas and affected 36 persons (36 houses and home gardens) and 75 affected persons owning 31 agricultural lands and 19 paddy lands.

Section 2 notices were issued in the contested area in January 2001 based on the land surveys conducted during engineering designs. The Department of Surveys carried out land surveys to prepare Advanced Tracings with police protection due to strong objections and resistance from some affected persons, and Advanced Tracings were

prepared in September 2002. The Section 38 A Gazette was issued in June 2003 after judgment of Appeal Court.

A group of about 25 affected persons continued to object and resist land surveys after Supreme Court Judgment in January 2004. The Survey Department made written complaints to the police station and Divisional Secretary office and the regional office of the Survey Department that some affected people did not allow entry into their lands to conduct land surveys from February to December 2004.

After the Supreme Court judgment in January 2004, RDA, through the Ministry of Highways, instructed the Survey Department to complete the remaining survey works and submit preliminary survey plans required for issuing section 5 and 7 notices and 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 the newspaper on 14 November 2004 and 6 January 2005 requesting the affected persons 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 before 28 February.” There were no written responses from the affected persons declaring their willingness to cooperate with the RDA and Divisional Secretary office.

In addition, two groups of affected persons filed applications in the Court of Appeal seeking expeditious implementation of the land acquisition for construction of the highway. The Appeal Court judgment for the two cases was delivered on 16 December 2004 to “expeditiously take all steps available in the law” for taking possession of the lands. The Ministry of Highways also wrote to the Chairman of the committee appointed by the Prime Minister to inquire into grievances of the affected people on 2 February 2005 requesting to “conclude the proceedings and submit the final report before 15 February 2005.” The report was submitted on 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 RDA in consultation with the Divisional Secretary, Survey Department and Department of Valuation made special arrangements to conduct land surveys and property valuation in January 2005. A team of 4 police officers was present during the survey and the affected persons did not object to land surveys. From January to June 2005 preliminary survey plans were prepared, Section 7 Gazette was published, title inquiries were held under Section 9, valuation reports and Section 17 payment was awarded in August 2005. In the contested area it took more than 18 months to prepare preliminary plans after publication of the vesting order in June 2003. It was possible to complete all the steps from the preparation of preliminary plans to awarding of Section 17 within about 9 months.

91. **Grievance Redress Committees (GRCs).** Under the LAA, affected persons can submit complaints to the Board of Review and courts in relation to the decisions regarding land ownership, valuation and compensation. Section 4 of the act notifies land owners of the intention to acquire the land, and owners of such land have the right to make objections to the Secretary of the relevant ministry. Section 11 of the act states; if the affected person is in disagreement with the ownership decision given under Section 10, the person can present the grievance to the Appeal Board and Supreme Courts. Under Section 22.1 of the act, the person who is in disagreement with the compensation decided under Section 17 can present a complaint within 21 days to the Board of Review or can appeal to courts. In addition, it was mandatory to establish GRCs in projects to handle problems in the process of land acquisition and construction. A GRC is an extra-legal, semi-structured body to give judgments on disputes during implementation of the project. The objective was to resolve disputes at local level to avoid a lengthy and costly judicial process. However, it has no jurisdiction over the rate of compensation. In STDP, the GRC consisted of seven members – the Assistant District Secretary (Chairperson), District Valuation Officer, RDA District Engineer, and four other members appointed by the RDA chairman. Between 2002 and 2003 five GRCs covered the entire project area in STDP and they were not successful in resolving grievances.

92. The GRC system was re-structured in 2005, placing the GRCs within the Divisional Secretary area and 24 GRCs were established. The GRC meetings were chaired by Additional Divisional Secretary, and secretarial functions were handled by the Resettlement Assistant under the new system. The membership of the GRC was changed, including Resettlement Officer and representative of Mediation Board and community based organizations (CBOs). The committee has the right to request the Grama Niladhari or a representative of supervision consultant and other technical officers to attend, if required. Wide publicity was given through posters, news papers, and housing societies, and a system of recording information was introduced. As a result, a large number of affected persons have accessed the GRCs.

93. Public Complaints Resolving Monitoring System (PCRM) was introduced in STDP in order to resolve disputes related to land acquisition and construction by bringing together the RDA, supervision consultants, contractors and the affected persons. These meetings were organized and coordinated by management consultants of the project. The members of this committee were Additional Project Director, Team Leader of supervision consultants, Program Director or a representative of the contractor, Project Manager in ADB section, Deputy Project Directors and resettlement staff. The majority of complaints were due to road construction damages and the contractor was responsible to pay such damages. PCRM was established at regional level, with overlapping areas of responsibilities and poor monitoring of dispute resolution.

94. **Information disclosure and documentation.** The information disclosure and awareness creation, particularly regarding the resettlement planning and implementation, entitlements of affected persons and compensation payments in road projects had both negative and positive outcomes. Most aspects of resettlement planning and implementation procedures were communicated verbally by Resettlement Assistants and not recorded. The majority of the documents that affected persons have received are related to the process of land



acquisition such as notices and requests to attend ownership verification and LARC meetings, rather than the contents of decisions taken at LARC and Super LARC meetings and agreements. At the early stage, after discussions with the affected persons at LARC meetings the amount of compensation was reached, but no formal document was provided after the meeting. This has led to dissatisfaction and sometimes suspicion about the actual compensation amounts agreed, paid and received by the affected people.

95. The entitlement certificates with details of types of compensation payments were issued only after full payments of all the entitlements by the Regional office. There were delays in sending these certificates to the affected persons, but action was later taken as instructed by funding agencies to expedite the issue of entitlement certificates. Although there were few cases of payment discrepancies, the process was well accepted and followed. Compliance Review Panel (CRP), ADB in 2005 recommended that the project authorities must ensure relevant information should be provided in an appropriate language to each affected household rather than simply making it available at Divisional Secretary offices. The entitlement matrix was provided in Sinhala to each affected person. The English and Sinhala versions of the RIP were made available only after 4 years of project implementation in 2004 at Regional Offices of STDP and offices of Divisional Secretaries and at public libraries. CRP also recommended updating the project website and including full project information. The ADB website was also updated including the addendum to the RIP due to additional land acquisition.

96. **Management Information System (MIS).** The MIS contains a substantial amount of data collected from the stage of inventory losses survey to compensation payments, and information relating to lots, and the affected persons in STDP and NHSP. However, the data base was not properly updated; therefore, it was difficult to be used. One of the weaknesses was the incomplete and missing information for some variables. At the request of donor agencies, the data base was checked and updated but some discrepancies were not corrected. For example, compensation payments in STDP were recorded according to lots. There is no easily available data entry of the profile of affected persons and details of compensation payment, because many affected persons owned more than one lot and a list of affected persons was not prepared separately. There was no effective information system, and this was reported by both internal and external monitors and during the review of CRP. The limited use of MIS was highlighted and it was not made available to monitors, project steering committee and others for easy access to data and interpretation.

97. **Income restoration.** The RIP in STDP and NHSP included a separate chapter on income restoration with a budget. However, the income restoration program was not implemented after payment of compensation. For example, in STDP, RDA prepared a community welfare program and it was implemented by the Regional Offices. Two Business Development Officers and an Agricultural Extension Specialist were also recruited to support the RDA staff for implementation of the program. This initial income restoration program carried out the activities of home garden development, skills training, strengthening of housing societies in resettlement sites, and assistance to vulnerable groups. The main activities included: plants and seeds distribution, support for 84 members of affected families for skills training (computer awareness, driving, dress making, beauty culture and jewellery) in Vocational Training Centers.

Financial assistance was provided to vulnerable groups to complete the partly constructed houses.

98. Sarvodaya Economic Enterprise Development Services Limited (SEEDS), a national NGO, was selected to study and develop livelihood development plans for the affected persons in STDP in 2005. The income restoration program designed by SEEDS was implemented in September 2006 and included five major components. They were: (1) establishing and strengthening Housing Societies in resettlement sites; (2) implementing a micro-finance program through housing societies; (3) developing alternative income sources for 1050 affected persons; (4) promoting home gardens; and (5) creating employment opportunities for youth in the affected families. The objective of establishing and strengthening housing societies was to facilitate the affected persons to better manage their common infrastructure facilities, enhance participation in common activities, and enhance cohesiveness among the members of the housing society. It took more than 3 years in some road sections to inform the affected people about the program, and some were disappointed due to the delay. Out of 5,683 households affected in STDP, 1,557 including 1,315 displaced households and 151 commercial structures were eligible, but 1,050 (332 from resettlement sites and 728 were self relocated) showed some interest in the program. The estimated cost was Rs48 million. There were three categories: vulnerable (20%), economically poor (39%) and middle income group (41%).

99. The initial appraisals conducted by SEEDS in 2005 found that some of the poor households earlier identified for assistance had already graduated to a higher income level either with their own initiative or with the help of the compensation package they received. As such, they no longer required any further assistance. SEEDS however, identified 1,050 households as eligible for IRP. This figure was subsequently revised (2008) and reduced to 960 households. The program focused on creating self employment for about 800 people by promoting medium and small enterprises. During implementation of the program, SEEDS began to experience a number of constraints. Some people had a negative perception of the whole program. They were keen to get common facilities to their resettlement sites instead of income restoration. SEEDS attempted to mobilize and organize the beneficiaries around small groups, but this did not work well as their houses were scattered over a wider geographical area. It has been reported that training and other activities conducted by SEEDS were inappropriate to the local context, existing educational standards, skills and capacities of the poor families and their needs and aspirations; the program could not attract the participation of the target families; interventions failed to create any impact on the living conditions of the affected persons; and it suffered from poor planning, budgetary constraints and weak management (IRP Review Report 2010, p.13). Among the other failures were their inability to grasp sufficiently the qualified persons; not having information of those who restored their livelihoods; and not satisfactorily investigating the current status of the severely affected persons. However, SEEDS had overlooked such feedback and, as a result, the achievements under the program had been below expectation (Sumanasekera 2009, p.14). The starting of new self employment and small business enterprise was the most difficult task to get off the ground, and the majority could not proceed other than preparing business plans. It was not possible to get credit facilities from lending institutions for such small scale income generating activities without collaterals. After about a year only 30 applied for loans and 16 were approved. The skills training and vocational

training programs were not successful because a significant number of affected persons were not enrolled in the expected training course. In February RDA decided to terminate the contract. As a result, the contract with SEEDS was terminated by STDP/RDA in February 2008.

100. The Project management Unit in 2008 found that only 22 affected persons were interested in a new income restoration program because some had already restored their incomes and there was no demand for income restoration activities. Reducing the number of affected persons for IRP assistance to 22 however raised concerns of the CRP. The CRP in its Annual Monitoring Report 2007-2008 states 'However the Panel is concerned about the significant reduction in the number of people eligible for the income support program from 1,050, including 256 vulnerable female-headed households, to only 27. The Panel recognizes that for many affected persons, this support may no longer be relevant given that they have managed to re-establish or improve their livelihoods during the long period following their compensation or resettlement. However, during the Panel's site visits and consistent with some of the findings of the external monitoring consultant (CEPA), the CRP observed that in addition to female-headed households, several affected persons are poverty stricken, especially those who previously operated small businesses or who lost agricultural land. The Panel also heard complaints from affected persons that the prolonged delays in the completion of the Project had put their lives on hold and had worsened their situations' (Sumanasekera, 2009 p.1).

101. **Monitoring and evaluation (M&E).** There had been a large number of institutions engaged in the implementation process of the M&E systems in both STDP and NHSP. The key institutions involved were: 1) Project Management Unit (PMU) of the RDA which is responsible for conducting internal monitoring and evaluation with the assistance of Resettlement Units at the field level; 2) The Land Acquisition and Resettlement Division (LARD) of RDA; 3) The Environmental and Social Division (ESD) of RDA; 4) Chief Engineer's Office; 5) Construction Supervision Consultants; 6) Management Consultants; and 7) The Independent External Monitors. Key instruments of monitoring and data collection were: 1) monthly/quarterly progress reports submitted by the field staff; 2) weekly or monthly progress review meetings conducted with field staff at project level; and 3) regular field inspection/observation visits to resettlement sites. Each division has devised its own formats and frameworks for data gathering and reporting. Meanwhile, the ESD has devised a monitoring and evaluation instrument called Project Performance Management System that included a Performance Indicator Framework consisting of 37 indicators for measuring the outputs, outcomes and impacts of the project. The assessments against the identified criteria have been conducted regularly. The Management Consultants conducted their independent audits and monitoring on overall performance of the project. Their monitoring included tracking both physical and financial progress of the status of the construction work, operations and maintenance, environmental and safety aspects, land acquisition, resettlement, income restoration programs, resolving grievances, dispute adjudication and arbitration, and socio-economic surveys.

102. Centre for Poverty Analysis (CEPA) and The Centre for Environmental Studies at the University of Peradeniya played the role of the Independent External Monitor for the STDP and NHSP respectively. CEPA established a monitoring and analytical framework which evolved around six thematic areas: (a) verification (processes and outputs of the RIP implementation),

(b) restoration of living standards, (c) restoration of livelihoods, (d) levels of satisfaction, (e) effectiveness of resettlement planning in terms of achieving equitable resettlement outcomes and benefits to the affected persons, and (f) social and environmental impacts. The framework also characterized a mix of both quantitative and qualitative approaches such as household surveys, focus group discussions, key informant interviews, triangulation workshops and document reviews. The initial sample (2006/2007) included 400 lots and the sample was subsequently (2007/2008) turned into a purposive sample of 122 households spread over 15 resettlement sites.

103. **Reports on monitoring and evaluation outcomes:** Monitoring activities in both STDP and NHSP have resulted in the production of a large number of reports and two publications. The documents produced included progress reports, periodic updates, memoranda, review and evaluation reports, and reports of special studies. Center for Poverty Analysis produced 4 quarterly reports, 10 end of phase reports, 2 final reports and 3 reports of case studies. These documents referred to achievements, gaps and issues of project related activities such as land acquisition, payment of compensation, resettlement, livelihood and income restoration, grievance resolution and a set of recommendations for addressing the identified gaps and issues. The workshops served many purposes such as consultations with community groups and other secondary level stakeholders for dissemination, and sharing of monitoring and evaluation outcomes, and triangulation of monitoring results. The external monitor in NHSP has placed greater priority on monitoring the physical progress of land acquisition and handing road sections over to the contractors while placing less emphasis on the compensation and relocation issues of the project.

## **5:7 Institutional capacity**

104. **Institutional arrangements.** In this section we describe the roles of government and other agencies responsible for implementation of policy and legal provisions. The institutional structure for project preparation and approval, land acquisition, compensation, relocation and other resettlement activities required networking and effective coordination of a large number of organizations from the national level to village level. The Ministry of Lands, project executing agencies, and the CEA have the main responsibility for planning, approving and implementing resettlement implementation plans for prescribed projects. The role of the Ministry of Lands is crucial, extending to a number of activities including the implementation of the NIRP and coordinating land acquisition activities. It was proposed in 2003 to establish two divisions in the Ministry of Lands, Resettlement Division and Land Acquisition Division to handle both resettlement and land acquisition activities effectively.

105. The responsibility of land acquisition is mainly entrusted to the Ministry of Lands and the Divisional Secretary in the land area according to the provision of LAA. The Survey Department and Valuation Department are responsible for the land survey and the valuation of properties. Also, legal provision has been made to establish a Board of Review to appeal for an increase of compensation under the LA Act and provisions for appealing to the District Court and Supreme

Court on the grounds of ownership status and for the increase of compensation amount on legal grounds respectively. These ministries and government departments involved in implementing the land acquisition process are not responsible directly to a ministry or one institution. Therefore, the present system has caused delays in land acquisition due to lack of coordination among a number of institutions under different ministries. It has been observed that compensation has been paid to the owner of the land after a period of 5 to 10 years in some projects, even after immediate possession of the land.

106. **New institutional arrangements for resettlement implementation.** In many development projects after 2001 resettlement units were established at regional or field level to deal with daily responsibilities of resettlement implementation. In STDP each regional unit office was staffed with one Resettlement Officer (RO) and 6 to 8 Resettlement Assistants (RAs) while in other road improvement projects such as NHSP one or two RAs were assigned for a road section. Social science graduates were recruited as Resettlement Assistants in both projects and they assisted project management staff and Divisional Secretaries. RDA took several steps to mainstream social and environmental issues in road development projects and a new division, Environmental and Social Division (ESD) was established within RDA under the general manager. It is expected that this division will serve as the focal point for ensuring social and environmental safeguards compliance and monitoring.

107. **Findings of acceptability assessment.** Projects funded by donor agencies such as STDP and NHSP have conducted social impact assessments, inventory losses surveys to collect data and information to formulate resettlement plans. However, such studies were often not properly planned to cover past, present and future resettlement impacts and risks, and as result, the adequacy and quality of information and analysis found in such study reports have been challenged in courts. The MIS was not adequate in monitoring and evaluating the outcomes and objectives of resettlement operations. In recent years, several cases have been filed in the sphere of public and fundamental rights challenging the problems of project screening and the selection of the best project location to minimize resettlement risks in STDP. The entitlement matrix in resettlement plans identified non-titled persons and vulnerable groups to receive similar compensation payments offered to titleholders. Compensation must be paid before the relocation of the affected persons or using the land for development purpose but this was not achieved in many instances. Some projects provided lands for housing, and compensation rates were determined by LARC in several projects during the last decade. Adequate resettlement planning also contributed to provide displacement support and income restoration measures in STDP, but there were implementation delays.

108. The possession of the land was taken before the payment of full compensation to the land owners under 38A of LAA. This provision is mostly utilized by the officers in order to take over the private land without providing the opportunity to raise objections under Section 4 of the LAA. It has been observed that the land was not used until payment of statutory compensation due to the objections by some affected persons. The institutional mechanism is not sufficient to fulfill the above ADB policy requirements due to some reasons. A significant delay in the payment of compensation for other entitlements was reported in many projects due to lack of coordination among the agencies involved in land acquisition. There are differences in

institutional arrangements between donor funded projects and government funded projects which do not have separate offices and officers responsible for supporting the acquiring officers in land acquisition and compensation payment.

109. The Government has considered amending the LAA to implement the NIRP in order to conform to NIRP requirements between 2002 and 2005. The development of a national compensation packaged in 2008, as regulations to the LAA have been implemented in a few road sector projects. The new compensation package will be adequate to cover replacement costs and other expenses to be paid for displacement according to Department of Valuation. However, there is no legal provision to undertake any rehabilitation and income restoration measures outside this package, if required in a development project. Therefore, a resettlement plan will have to fill such gaps and differences between the country safeguard system and donor policies.

110. The implementation practices in two case studies show both positive and negative outcomes. However, full benefits to the affected people were not accrued when institutional capacity was weak in planning and implementation of resettlement plans as explained in pp. 76 to 85. Another gap is poor monitoring and assessment of resettlement outcomes on the standards of living of affected persons to understand if the objectives of NIRP have been achieved or not. Resettlement monitoring is mainly focused on physical progress of project activities and completion than actual evaluation of resettlement outcomes. Also highlighted were the procedural and process requirements in resettlement planning and implementation such as consultation, information disclosure, and public participation which have not received adequate attention during project planning and implementation, and sometimes these requirements were neglected in some projects. The summary of findings is presented in Table 13.

**Table 13: Gaps identified in Acceptability Assessment**

Indicators	Key elements of project planning and implementation						
	1	2	3	4	5	6	7
Has legal provisions	yes	no	yes	no	yes	no	no
Delivery of documents in time	S	NS	NS	S	NS	S	S
Contents and quality of documents	NS	S	S	S	NS	NS	NS
Significant delays in reviewing and approving documents	no	Yes	Yes	no	no	yes	Yes
Assessment of outcomes by the external monitor	S	S	S	S	NS	NS	S
Institutional capacity	Made new institutional arrangements although capacity						

	was weak
Commitment	High commitment and political will in planning and implementing both projects

S= satisfactory and NS= not satisfactory

1= project screening, 2 = resettlement planning and practices, 3= land acquisition and compensation, 4= displacement and relocation, 5= consultation and grievance redress mechanism, 6= income restoration and 7= monitoring

**6: IDENTIFICATION OF GAPS BETWEEN ADB SOCIAL SAFEGUARD POLICIES AND COUNTRY LEGAL FRAMEWORK AND RECOMMENDED “GAP FILLING MEASURES” FOR BOTH EQUIVALENCE AND CSS STRENGTHENING**

The following proposed recommendations were presented and discussed at a workshop conducted in May 2012 with stakeholders and indicate the need for legal reforms for some recommendations.

**Scope** – There are no legal requirements mandatory for compensation to the affected people as a result of restriction of land use and access to legally designated park areas and parks. It is suggested to review legal provisions governing restricted land uses and access to parks and protected areas to safeguard the rights of indigenous people, and use of common property resources in environmental impact assessment procedures, and other laws regarding social safeguards of indigenous peoples.

**Project screening (Principle 1)** – 1) Establish a legal framework for strategic environmental assessment, and 2) incorporate examination of resettlement impacts into the EIA provisions in the NEA.

**Consultation (Principle 2)** – When the land is acquired under Section 38 (A) Proviso as urgent requirement, Section 4 is not required. Therefore, define the criteria that determine if an involuntary acquisition should be carried out in terms of the normal procedure with Section 4 provisions, or the expedited procedure, without giving adequate time for raising objections.

**Grievance redress mechanism (Principle 2)** – 1) Objections in terms of Section 4 of the Act be directed to the Ministry of Lands than the relevant ministry for consideration, and the agency making recommendations can respond to both objections and reviews of the Ministry of Lands, 2) NIRP implementation mechanisms should consider other alternatives to develop a GRC.

**Prompt compensation (Principle 3)** – 1) Provisions pertaining to staggered compensation may be considered for deletion, and part of the compensation to be paid must be specified in the law when there is an appeal before the Board of Review.

**Benefit sharing (Principle 3)** – Recommended to delete Section 47 of the LAA and one of the requirements should be to include benefit sharing schemes in preparing a RIP as a legal requirement.

**Compensation and assistance for persons without legal titles and rights (Principle 7)** – The law may be amended to provide such assistance through the planning and implementation of RIP.

**Prepare and disclose a resettlement Implementation plan (Principles 8 and 9)** – Either include appropriate provisions in the LAA , or new regulation mandated by ministry circulars.

**Pay compensation before displacement (Principle 11)** – Where title is not in dispute offer and pay compensation prior to displacement with legislative amendments enabling at least a part of the compensation to be accepted without prejudicing one's appeal right to the Board of Review.



**Monitor and assess resettlement outcomes (Principle 12)** – Legislative amendments mandating a comprehensive and transparent monitoring approach for resettlement outcomes as part of the legal framework for resettlement planning.

## **7: RECOMMENDATIONS FOR STRENGTHENING COUNTRY SOCIAL SAFEGUARD SYSTEM AND ACTION PLAN BASED ON ACCEPTABILITY ASSESSMENT**

The Ministry of Lands reviewed the legal framework for achieving the objectives of NIRP after the Cabinet approved it. The Land Law Specialists proposed over five years (2002-2007) several amendments to the LAA from 2002 to 2007. However they were not implemented as the incorporation of those proposed amendments need to follow a a complex legislative procedures and required a strong political support. But the Cabinet adopted several other administrative measures such as Cabinet memoranda, Ministerial Circulars and several institutional arrangements to implement the NIRP.. As a result, implementing procedures of legal provisions have been improved during past ten years.

In order to take the momentum of accepting more and more international best practices in involuntary resettlement, we proposed several actions.

- It is proposed to recruit qualified persons with good field experience to carry out the EIA review and approval, and monitoring activities within the CEA. The specialist should have good knowledge of resettlement issues pertaining to projects.
- It is recommended to improve the capacity of the Resettlement Division and Land Acquisition Division of the Ministry of Lands in reviewing RIPs. The Ministry should establish a user-friendly database on land acquisition and compensation by project, region and sector so that it could coordinate the activities of project implementing agencies and other stakeholders. , Such a database at the Ministry would also help facilitating a large number of land acquisition proposals with resettlement impacts expeditiously.
- The Valuation Department needs to formulate comprehensive guidelines on how replacement cost of an acquired property is assessed and communicated to the affected persons. It is proposed to educate valuation staff in preparing claims, and educating affected persons in attending inquiry, preparing condition reports, collecting information from field visits and presenting the case, as well as defining roles and responsibilities of officials involved in valuation of the affected persons.
- Land laws and their regulations do not recognize displaced poor/vulnerable groups and non-titled holders as eligible for special assistance in addition to compensation. But the NIRP specifically state the need for such assistance. Therefore, it is recommended to clarify how the new compensation package under 2008 regulations will address these issues in the absence of LARC system, or in a project situation such as a non-prescribed project, in which the approved RIPs are not required.

- The support for capacity building of implementing agencies by ADB should be continued.

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## **NATIONAL LAWS AND POLICY DEALING WITH RESETTLEMENT PLANNING, LAND ACQUISITION, COMPENSATION AND RELOCATION**

1. There are two national laws that deal with involuntary land acquisition and resettlement, the National Environmental Act (NEA) No. 47 of 1980 and the Land Acquisition Act of 1950<sup>30</sup>. The project screening and approval procedures for prescribed projects are described under the regulations of NEA Act of 1980 and 1988 and published in the Government Gazette No. 772 dated 24 June 1993. Under this gazette notification, large scale development projects which include power, highways, hotels and manufacturing industries and other projects located in environmentally sensitive areas are classified as requiring environmental impact assessment (EIA) studies before approving the project. Also, resettlement impacts and mitigating measures need to be addressed in the EIA. However, CEA is mainly involved in the development of pollution control strategies and promotion of environmental protection activities than resettlement activities. Its four Deputy Director Generals largely handle subjects of environmental management, pollution control, human resource development and environmental education..

2. The legal provisions in the NEA of 1980 and its regulations in 1993 describe the requirements for project screening for social and resettlement impacts and legal approval procedures. In addition, any development activity within the Coastal Zone under the Coast Conservation Act No. 57 of 1981 and its amendments in 1988 requires a permit. This request was initially introduced by this act and was applied in respect of the entire country in terms of the NEA of 1988. The Flora and Fauna Protection Ordinance and its amendments in 1993 requires for EIA for any development within the declared boundaries. The North Western Province Environmental Statute, No.12 of 1990, also requires an EIA for prescribed projects.

### **A. Legal Requirements in Screening Social Impacts in Prescribed Projects under the National Environmental Act of 1980 and its Amendments**

3. The National Environmental Act (NEA), No. 47 of 1980 and its amendments in 1988 have some provisions relevant to screening of projects to identify involuntary resettlement impacts and project approval procedures.

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<sup>30</sup> However, Urban development projects (Special provisions) Act of No.2 of 1980 specifies that lands urgently required for carrying out development projects can be acquired by the President with recommendations from the Minister. Any action in court for remedy or relief in relation to such an acquisition is limited to compensation. Absolute power has been vested in the President as the acquiring officer to the extent of deviating from the established procedure under the Land Acquisition Act and compensation is paid only after submission of an application

**Table 1: Legal Provisions for Approval of Prescribed Projects under Part IV C of the National Environmental Act of 1980**

Legal provision	Section
“The Minister shall by Order published in the Gazette determine the projects and undertakings (referred to as “prescribed projects” in respect of which approval would be necessary under the provisions of this part of the Act.”	23Z
“All prescribed projects that are being undertaken in Sri Lanka by any government department, corporation, statutory board, local authority, company, firm or an individual will be required to obtain approval under this Act for the implementation of such prescribed projects.”	23 AA (1)
“It shall be the duty of all project approving agencies to require from any government department, corporation, statutory board, local authority, company, firm, or individual who submit any prescribed project for its approval to submit within a specified time an initial environmental examination report or an environmental impact assessment report, as required by the project approving agency relating to such project and containing such information and particulars as may be prescribed by the Minister for the purpose.”	23BB (1)
“A project agency shall on receipt of an initial environmental examination report or an environmental impact assessment report , as the case may be, submitted to each project approving agency in compliance with the requirement imposed under sub section (1), by notice published in the Gazette and in one news paper each in the Sinhala, Tamil and English languages, notify the place and times at which such report shall be available for inspection by the public and invite the public to make its comments, if any, thereon.”	23BB (2)
“Any member of the public may within thirty days of the date on which a notice under sub section 2 published make his or her comments, if any thereon to the project approving agency which published such notice, and such project approving agency may, where it considers appropriate in the public interest afford an opportunity to any such person of being heard in support of his comments, and shall have regard to such comments and other materials if any, elicited at any such hearing in determining whether to grant its approval for the implementation of the prescribed project.”	23BB (3)
“Where approval is granted for the implementation of any prescribed project, such approval shall be published in the Gazette and in one newspaper each n the Sinhala, Tamil and English languages”.	23BB (4)
“The project approving agency shall determine the procedure it shall adopt in approving any prescribed project submitted to it for approval. Such procedure shall be based on the guidelines prescribed by the Minister for such purpose.”	23CC

<p>“Where a project approving agency refuses to grant approval for any prescribed project for its approval, the person or body of persons aggrieved shall have a right to appeal against such decision to the Secretary to the Ministry.”</p>	<p>23DD (1)</p>
<p>“Where any alterations are being made to any prescribed project for which approval had been granted or where any prescribed project already approved is abandoned, the government department, corporation, statutory board, local authority, company, firm or individual who obtained such approval shall inform the appropriate project approving agency of such alterations or the abandonment as the case may be, and where necessary obtain fresh approval in respect of any alterations that are intended to be made to such prescribed project for which approval had already being granted. Provided however, where such prescribed project that is being abandoned or altered is a project approved with the concurrence of the Authority, the Authority should also be informed of it and any fresh approval that needs to be obtained should be given only with the concurrence of the Authority.”</p>	<p>23EE</p>

Source: National Environmental Act of 1980, pp. 28-30

4. Sections 23AA and 23BB in Part IV C of the NEA (Table 1) state that all prescribed projects should obtain approval under the act prior to their implementation. Approvals can be obtained by submitting either an Initial Environmental Examination (IEE) report or an EIA report. Involuntary resettlement exceeding 100 project affected families, other than resettlement resulting from emergency situation in a prescribed project, requires approval under the Act. The Gazette notification, No. 859/24 of 23 May 1995 and item 12 refers to the projects with involuntary resettlement exceeding 100 families requiring the approval of the CEA. A list of prescribed projects was published in Part 1 of the Schedule of an Order under Section 23Z of the Gazette Extraordinary No.772/22 of 24 June 2003. For example, Southern Transport Development Project (STDP) is a prescribed project under item 7 (a national highway exceeding 10 kms) and item 12 (a project with involuntary resettlement exceeding 100 families other than resettlement effected under emergency situations).

5. The CEA is responsible for providing guidance for preparing social impact studies, reviewing and approving such studies, and monitoring social impacts and mitigating measures during project implementation. The management of the EIA process is assigned to the Environmental Management and Assessment Division. It also handles social and environmental aspects. The CEA is vested with powers by the NEA “to require the submission of proposals, for new projects and changes or abandonment of existing projects, for the purposes of evaluation of the beneficial and adverse impacts of such proposals to the environment.” The NEA requires that the approval is mandatory for “prescribed projects” and frame regulations under the Act (1993) to specify types of projects that should be submitted for approval. In the policy implementation process, CEA needs to coordinate with the Ministry of Lands to ensure that resettlement issues are adequately addressed in project implementation. The CEA has not yet approved resettlement plans in prescribed projects but social impact assessments in the EIA study and some resettlement outlines are reviewed and approved.

6. The specific regulations made in 1993 provide specific instructions for project proponents regarding the procedures to submit project information and studies for approval (Table 2).

**Table 2: Regulations Made in 1993 under 23CC of the National Environmental Act**

<b>Regulation</b>	<b>Regulation No.</b>
<p><b>6. Project screening for environmental and social impacts</b>  A project Proponent of any prescribed project shall as early as possible submit to the Project Approving Agency preliminary information on the project requested by the appropriate Project Approving Agency (PAA).</p>	5
The PAA shall acknowledge in writing receipt of such preliminary information within six days.	6 (i)
The PAA shall in consultation with the Authority subject such preliminary information to environmental scoping, in order to set the Terms of reference for the Initial Environmental Examination Report (IEER) or Environmental Impact Assessment Report (EIAR), as the case may be, and doing so the PAA, may take into consideration the views of the state and public agencies.	6 (ii)
The PAA shall convey in writing to the project proponent the Terms of Reference (TOR) referred to in paragraph ii above within 14 days in the case of an IEER and 30 days in the case of an EIAR from the date of acknowledging receipt of the preliminary information.	6 (iii)
Where, if environmental scoping the PAA considers that the preliminary information submitted by the PP as required in regulation 5 above, is adequate to be an IEER or EIAR, the approving agency shall proceed as specified hereinafter.	6 (iv)
<p><b>7. Approval procedure of environmental impact assessment (EIA)</b>  Upon receipt of an EIAR the PAA shall, within 14 days determine whether the matters referred to by the TOR in regulation 6 (ii) are addressed, if the report is determined to be inadequate the PAA shall require the project proponent to make necessary amendments and re-submit the report, together with the required number of copies.</p>	10
<p><b>8. Information disclosure and public consultation</b>  Upon receipt of an IEAR or EIAR the PAA shall submit a copy to the Authority and by prompt notice published in the Gazette and one national newspaper published in the Sinhala, Tamil and English languages, and invite the public to make written comments, if any, to the PA, within thirty days from the date of first appearance of the notice, either in the Gazette or in the newspaper.</p>	7 (ii) and 11 (i) and Section 23BB (2) and (3) of the NEA
The notice referred to in paragraph ii above shall specify the times and places at which the report shall be made available for public inspection.	7 (iii) and 11 (ii)
The PAA shall make available copies of the report to any person interested to enable him to make copies thereof.	7 (iii) and 11 (iii)
It shall be the duty of the PAA, upon completion of the period of public inspection, or public hearing to forward to the project proponent the comments received from the public, for review and response, within six days from the date of completion of the period of public inspection.	8 (i)
The project proponent in writing respond to such comments to the PAA.	8 (ii)
<p><b>9. Project approval and monitoring requirements</b>  Upon receipt of such responses referred to in regulation 8 (ii) above, the PAA</p>	9 and 13



shall within a period of six days either grant approval for the implementation of the proposed project subject to specified conditions or refuse approval for the implementations of the proposed project with reasons for doing so.	
It shall be the duty of all PAAs to forward to the Authority a report which contains a plan to monitor the implementation of every approved project, within 30 days from granting approval under regulation 9 )i) and 13 (i) by such agencies.	14
The PAA shall publish in the Gazette and one national newspaper published in the Sinhala, Tamil and English languages, the approval of any project as determined under regulations 9 (i) and 13 (i) by such agencies.	15
The PAA shall specify a period within which the approved project shall be completed	16 (i)
A PP may within 30 days prior to the expiry of project completion, shall make an application in writing to the PAA for an extension of the time for the completion of proposed prescribed project.	16 (ii)
A PP shall inform the appropriate PAA of any alteration to a prescribed project under regulations 9 (i) and 13 (i) and or the abandonment of such approved project.	17 (i)
<b>10. Alterations and supplemental report</b> The PP shall where necessary obtain fresh approval in respect of any such alterations that are intended to be made to the project. The PAA in consultation with the Authority determine the scope and format of the supplemental report required to be submitted for such alterations.	17 (ii)

Source: Government Gazette Extraordinary No.772/22 of 24 June 2003

7. The regulations under the NEA stipulate the process and action that are applicable when a project falls into the category of a prescribed project. In such a situation, the project executing agency, Ministry of Lands and the CEA have the responsibility for planning, approving and implementing resettlement action or implementation plans for the projects prescribed under the NEA. The project proponent is responsible for submitting the Environmental Impact Assessment Report (EIAR) for a prescribed project under Section 23CC, 33 and regulations in Gazette Extraordinary No.772/22 of 24 June 1993. According to Section 33 of the NEA, EIAR is legally required to contain a description of alternatives to the proposed project which is less harmful to the environment, together with reasons why such alternatives are rejected.

8. According to the guidelines issued by the CEA the EIA report should examine whether any particular social group is more severely affected than others and suggest how to avoid or minimize the adverse impacts on such group. The assessment of the impacts of relocating families and other community groups should be summarized in sufficient detail to adequately explain the situation arising from such relocation. This assessment should identify anticipated problems, proposed mitigation measures, cost estimates and an entitlement package. It should be clearly demonstrated that every possible action has been taken to avoid relocating households and businesses. Where relocation is found to be unavoidable, the following issues must be addressed in relation to each alternative action: 1) number of households to be relocated and their socio-economic profiles; 2) availability of comfortable, safe, sanitary and affordable housing for the displaced people; 3) anticipated loss of employment caused by acquisition of business, industrial or domestic premises necessitating relocation; and 4) actions

taken to compensate affected parties and number of commercial and industrial ventures to be relocated and their descriptions and availability of sites for relocating those displaced and costs of relocation. It is required to make a statement that acquisition of property and relocation will be conducted in accordance with the existing laws and regulations and resources available for compensation. The social assessment should contain a discussion of the financial and other incentive programs and other assistance programs available to the displaced. The Project proponent must consider the entire cost of the relocation program as an integral part of the project.

## **B. National Involuntary Resettlement Policy (2001) and its objectives and policy principles relating to Resettlement Planning**

9. The Cabinet approved the NIRP in May 2001<sup>31</sup> and the first objective is to avoid or reduce involuntary resettlement impacts by reviewing alternatives to the project as well as alternatives within the project. The policy applies to all development-induced land acquisition and involuntary resettlement or recovery of possession by the state, regardless of funding. A comprehensive resettlement action Plan (RAP) is required where 20 or more families are affected as a result of land acquisition. Subsequently, the Ministry of Lands prepared guidelines on resettlement planning and implementation for the use of project executing agencies (NIRP, May 2001).

10. The NIRP (2001) is applicable to all development projects where resettlement is involved, regardless of the number of persons affected and funding sources. The following policy objectives and principles are relevant to land acquisition, compensation, relocation and income restoration measures.

**11. Policy objectives.** The NIRP policy objectives are listed below.

1. Ensure that people adversely affected by development projects are fully and promptly compensated and successfully resettled. The livelihoods of the displaced persons should be re-established and the standard of living improved.
2. Ensure that no impoverishment of people shall result as a consequence of compulsory land acquisition by the state for development projects
3. Assist adversely affected persons in dealing with the psychological, cultural, social and other stress caused by compulsory land acquisition

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<sup>31</sup> ADB provided technical assistance to develop a national involuntary resettlement from August 1999 to May 2001. A national policy on involuntary resettlement was required because the Land Acquisition Act of 1950 does not require project executing agencies to address key resettlement issues such as (a) exploring alternative project options that avoids or minimize impacts on people; (b) compensating those who do not have title to land; (c) consulting affected people and host communities on resettlement options; (d) social and economic rehabilitation of the affected people; and (e) income restoration. To ensure that the people affected by development projects are treated in a fair and equitable manner and they are not impoverished in the process, the need for a policy was justified.

4. Make all affected persons aware of processes available for the redress of grievances that are easily accessible and immediately responsive

5. Have in place a consultative, transparent, and accountable involuntary resettlement process with a time frame agreed by the project executing agency and the affected persons

**12. Policy principles.** The NIRP has listed 11 policy principles to be followed in resettlement operations.

1. Gender equality and equity should be ensured and adhered to throughout the policy

2. Affected persons should be fully involved in the selection of resettlement sites, livelihood compensation and development options at the earliest opportunity

3. Replacement land should be an option for compensation in the case of loss of land; in the absence of replacement land, cash compensation should be an option for all affected persons

4. Compensation for loss of land, structures, other assets and income should be based on full replacement cost and should be paid promptly. This should include transaction costs.

5. Resettlement should be planned and implemented with full participation of provincial and local authorities.

6. Participatory measures should be designed and implemented to assist those economically and socially affected to be integrated into the host communities.

7. Common property resources and community and public services should be provided to affected persons.

8. Resettlement should be planned as a developmental activity for the affected persons.

9. Affected persons who do not have documented title to land should receive fair and just treatment.

10. Vulnerable groups should be identified and given appropriate assistance to substantially improve their living standards.

11. Project executing agencies should bear the full cost of compensation and resettlement

**C. Legal Provisions for Land Acquisition and Compensation under the Land Acquisition Act, No.9 of 1950 and its Regulations**

12. The Land Acquisition Act of 1950 provides powers to the Government to take over private lands for a public purpose in a particular locality. It sets out a procedure for taking over lands and payment of compensation at market rates for land, structures and crops, the way the affected persons are notified, handling of objections and claims, computing and determining the amount of compensation, rights of the affected persons in the process of land acquisition and

taking over of physical possession and registration of ownership with the government. The Act was revised with several amendments (1954, 1955, 1961, 1962 and 1964) and the latest being the amendments in 1986 and 2009.

13. The procedures relating to acquisition of land and servitudes for a public purpose are described under seven parts in the Act as indicated in Table 3.

**Table 3: Legal Provisions in the Land Acquisition Act of 1950**

<b>Sections and Provisions</b>
<b>Part I: Preliminary investigations and declaration of intended acquisition</b>
<b>Section 2</b> - Investigations for selecting land for public purposes)
<b>Section 4</b> - Notice of, and objections to intended acquisition
<b>Section 5</b> - Declaration that a land or servitude is required for a public purpose
<b>Section 6</b> - Survey of land
<b>Section 7</b> - Notice to persons interested)
<b>Section 8</b> - Statements of persons interested
<b>Part II: Inquiry into claims, reference to court, and acquiring officers award</b>
<b>Section 9</b> - Inquiry into claims for compensation)
<b>Section 10</b> –Establishment of land ownership
<b>Section 17</b> - Declaration of compensation amount
<b>Section 18</b> - Disputes to courts proceedings and procedures
<b>Part III: Appeals to the Board of Review and appeals to the Court of Appeal on question of law – Section 19-28</b>
<b>Part IV: Payment of compensation (Section 29-37)</b>
<b>Part V: Possession and disposal (Section 38-45)</b>
<b>Part VI: Assessment of compensation (Section 46-48)</b>
<b>Part VI: General (Section 49-65)</b>

Source: Land Acquisition Act, No.9 of 1950

14. The project implementing agency is responsible for preparing a land acquisition application approved by the Secretary of the relevant ministry and submits it to the Minister of Lands for approval. According to Section 2 (1) “Where the minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice to be exhibited in some conspicuous places in that area”. The purpose of the Section 2 notice is to inform the public that investigations will be conducted to ascertain the suitability of the land for the intended public purpose and enter the land area for land surveys to set out the boundaries (Section 2 (3)).

15. According to Section 4 (1) “Where the minister considers that a particular land is suitable for a public purpose, or that a particular servitude over a particular land should be required for a public purpose, he shall direct the acquiring officer of the district in which that land is situated to cause a notice in accordance with subsection 3 to be given to the owner or owners of that land and to be exhibited in some conspicuous places on or near that land”. The notice also specifies a period of not less than fourteen days from the date on which such notice is given for making objection (Section 3 (d)). The relevant minister proposing the land acquisition can consider objections and make recommendations to the Ministry of Land for the intended public purpose

with justification. The decision can be changed if the Minister decides to avoid or reduce impacts.

16. The declaration under Section 5 is to confirm that the land is needed for a public purpose. The publication in the Gazette “shall be conclusive evidence of the fact that such declaration was duly made’ under Section 5 (3). After declaration “if there is no plan of that land made by the Survey Department of the Government and a plan to be made by a Surveyor of the department” under Section 6, then, under Section 8 the acquiring officer invites all persons interested in the land to be acquired to submit their interests in the land as a statement with details of the names, nature of interest and addresses of the persons interested and rent or incomes during the last three years. The Act considers persons other than owners of the land such as the co-owners, mortgagees, lessee and others entitled for compensation. However, a tenant on a monthly tenancy is excluded.

17. Part II of the Act deals with inquiry into claims, reference to Court, and acquiring officer’s award. Section 9 (1) states “ Where a notice under section 7 in respect of land is published, the acquiring officer of the district in which the land is situated shall, on the date on which and at the time and place at which persons interested in that land are directed by that notice hold an inquiry into (a) the market value of that land or of the servitude which is to be acquired over that land; (b) such claims for compensation as may have been notified to him within the time allowed thereof by that notice; (c) the respective interests of the persons claiming compensation; and (d) any other matter which needs investigations for the purpose of making an award under Section 17”.

18. Under Section 10 (1) “At the conclusion of an inquiry held under section 9 make a decisions on every claim made by any person to any right, title or interest to”. In the event of any disputes between claimants to any right, title or interest, the matter should be referred for determination to the court (Section 10 (3)). The proceedings in a court are the procedures provided by the Civil procedure Code for civil suits (Sections 12, 13 and 14). After the final determination, the acquiring officer gives written notices of the award to the persons entitled to compensation, the total amount and the apportionment of the compensation among the persons under Section 17 (1). The person who is not satisfied with the amount of compensation awarded may appeal to the Board of Review as specified in Part III of the Act. The constitution of the Board of Review (Section 19) and other details including appeal procedures are given in Sections 19 to 28.

19. Part IV of the LA Act provides details about compensation payment including deductions and payments to a minor or a person of unsound mind and interest on compensation (Sections 29 to 37). According to Section 38 “At any time after award is made under Section 17, the minister may by Order published in the Gazette can direct the acquiring officer to take possession of that land for and behalf of the state”. The Act provides opportunities for consultation, grievance redress, disclosure and appeals to the affected persons . Sections 45 and 46 of the Act provide assessment procedures of compensation and the market value is “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 the publication of Section 7 notice (Section 45 (1))”.

The compensation is paid to any person interested in a land and shall be proportionate to his interest in that land. No additional compensation shall be allowed to him in consideration of the acquisition but he shall be entitled to compensation for any damage sustained by reason of the severance of the land from his other land that occurred at the time of issue of Section 7 notice, injurious affection, loss of earnings from any business carried on the land and expenses of effecting any change of residence caused by the acquisition of the land (Section 46).

#### **D. Regulations to the Land Acquisition Act in 2008 - Introducing a National Compensation Package**

20. In response to a Cabinet memorandum submitted by the Minister of Land and Land Development on 25 July 2007 seeking approval (i) to set up a national policy on payment of compensation to affected persons (in addition to statutory compensation paid under the Land Acquisition Act) whose land and other properties have been acquired for development projects; and (ii) to invalidate all other compensation schemes implemented by the ministries of highways, irrigation, and new railroad development and the National and Water Supply and Drainage Board as well as other state institutions, the Cabinet Ministers, held a meeting on 2 August 2007, and directed the Minister of Land and Land Development to formulate and present a common policy for the payment of compensation. The proposed national policy presented by the minister was approved by the Cabinet on 3 January 2008. The regulations relating to the payment of compensation were enacted by the Parliament on 7 March 2009 and were published in the Government Gazette No. 158/7 on 20 January 2010<sup>32</sup>.

21. The types of compensation payments to be paid under new regulations include (i) market value for land, (ii) market value and reinstatement value for structures for land owners as well as encroachers, (iii) injurious affection and severance, and (iv) disturbances and other payments (Annex –Gazette notification). The new regulations replaced the - "ex-gratia package for the People Affected by Highway Projects (2005) and other Cabinet approved compensation packages" and implemented through the land acquisition and resettlement committee (LARC) from 2004 to 2008. The regulation made under Section 63(3)(f) of the Land Acquisition Act No.9 of 1950 are given below.

#### 2. Market Value should be assessed as follows:-

1.1 In the case of a land, where a part of the land is acquired and when it is valued as a separate entity deems to realize a value proportionately lower than the Market Value of the main land, the compensation should be proportionate to the value of the main land.

1.2 Where at the date of intention to acquire was published, the building is used for occupation and or business purposes or is intended to be used for occupation and or business purposes,

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<sup>32</sup> These new regulations were made under Section 63(2)(f) of Land Acquisition Act of 1950 and Section 63 (4) states where a regulation made by the Minister under this section is approved by Parliament and notice of the approval is published in the Gazette, that regulation shall be valid and effected as if it were herein enacted. The national policy on payment of compensation is effective for any acquisition in respect of which a notice under Section 2 is published after 1 September 2009 and after this date any existing relief schemes for payment of additional compensation become null and void.

the difference between the cost of re-construction and the value of building, based for determination of Market Value under Section 1.1, should be paid as an additional compensation.

1.5 Value based on development potential could be considered for paddy lands acquired where permission to fill such lands have been granted by the Agrarian Services Commissioner General.

1.6 When an acquired building is occupied by a tenant / statutory tenant protected under the provisions of the Rent Act, No. 7 of 1972 (as amended thereafter) the compensation should be ascertained in proportion having regard to the provisions of Rent (Amendment) Act, No. 26 of 2006.

3. Injurious affection and severance: -

Damage caused by any severance and injurious affection should be allowed fully.

4. Payment of Disturbances and other Expenses

To fulfill the requirement of the definition of compensation, in addition to the compensation under Section 1 and 2 above, which are based on the "market value", compensation for Disturbance based on the "value to owner" basis should be paid after taking into consideration of the written claims made, under the following sub headings:

3.1 Expenses incurred for appearing for Section 9 inquiry;

3.2 Expenses for finding alternative accommodation;

3.10 Cost incurred in change of residence;

3.11 Cost of advertising for business establishments;

3.12 Re-fixing cost of fixtures and fittings;

3.13 Expenses incurred for transport;

3.14 Loss of earnings from business (within the limits given in prevailing Act);

3.15 Increased overhead expenses;

3.16 Double payments (Rent, Assessment Taxes);

3.10 All other expenses incurred by the owner of land / property due to the acquisition;

3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land;

3.12 When an owner of a house or of an investment property displaced, additional 10% payment based on market value.

## Memoranda, Government Circulars and Case Law

### A. Cabinet Memoranda

**1. Strategic environmental impact assessment (SEIA) of 2006.** In May 2006, the Cabinet of Ministers approved a Cabinet Memorandum submitted by the CEA recommending that all policies, plans, and programs should be subjected to a strategic Environmental Assessment during the planning of a policy or a program or a project. This assessment should incorporate cumulative effects of environmental, social and economic considerations into policies, plans and programs. It will help identification of most practical alternatives for implementation. It should also cover the process of identification and evaluation of best development alternatives. Similar to EIAs for projects, SEIA requires to identify potential negative impacts and mitigating measures as initial studies. To guide how to conduct a SEIA for a policy, or a plan or program, CEA has prepared “A Simple Guide to Strategic Environmental Assessment (SEA)” in 2008. Examples of SEIAs are regional development programs for Hambanthota and Trincomalee submitted to the CEA in 2010.

**2. Payment of compensation in Treasury Bonds.** The budget speech 2009 proposed that the compensation for acquisition of lands for road development over Rs. 1 million for a claim to be paid in cash and Treasury Bonds (first Rs.1 million in cash and the balance amount over Rs.1 million in Treasury Bonds). The balance is to be paid by Treasury Bonds by the Central Bank of Sri Lanka through Bank of Ceylon, with 1-2 year maturity period with the interest rate of 17 percent. The affected persons will receive interest in every six months. However, in the case of complete demolition of a house, up to Rs. 5 million is paid in cash. The Treasury Bonds are issued to the affected persons who are willing to accept them. The proposed system of compensation in treasury bonds was not yet implemented (Cabinet Paper 09/0838/306/051, A Note to the Cabinet by the Minister of Finance and Planning on “Implementation of the Budget Proposals 2009 – Compensation for Acquisition of Lands for Road Development” dated May 2009).

**3. Project specific compensation packages.** The Cabinet Memorandum of 9 April 2001 titled “Payment of Compensation to the Persons Affected by Acquisition of Property for the Construction of Southern Transport Development Project (STDP)” was approved by the Cabinet of Ministers on 3 October 2001 (Cabinet Paper 01/1778/017/002<sup>33</sup>). The following paragraphs in the memorandum provide details of the proposed changes.

“Confine the statutory compensation payable under Land Acquisition Act to the statutory limits as determined by the Chief Valuer” (Section C)”.

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<sup>33</sup> The draft was further reviewed to see whether the proposed procedure could be accommodated within the existing legal provision and report back to the Cabinet. Regarding the first Cabinet Memorandum, a note to the Cabinet was submitted on 26 September 2001 and it was approved in September 2001 (Cabinet Paper 01/1778/017/002). This note was approved to amend the earlier Cabinet decision taken on 28 June 2001 and to implement the proposed administrative actions in paragraphs from (a) to (h) in the Memorandum in order to expedite the process of land acquisition and establishment of land Acquisition and Resettlement Committees (LARC) and payment of compensation at replacement cost.



“The Road development Authority to pay to the persons concerned all such payments and other benefits payable under the table annexed (Entitlement matrix, Chapter 3, RIP, 2002) and in consideration of any other adverse effects to such persons as decided by the land Acquisition and Resettlement Committee stated in para g, in addition to the compensation stated in Para C in keeping with the understanding reached between the government and the agencies providing financial assistance for the road project (Section D).”

“payment of an advance by the implementing agency, based on the award of compensation under section 17 of the Act, to persons appealing to the Board of Review against the quantum of compensation determined by the acquiring officer, without prejudice to their right to appeal and to recover such advances when compensation is finally paid to such persons and to reimburse, to the implementing agency, such advance paid (Section E).

“The establishment of a committee under the title of Land Acquisition and Resettlement Committee, comprising the following members at the level of the Divisional Secretariat to assist the implementation of the activities proposed; (i) the Divisional Secretary, (ii) District Superintendent of Survey or his representative, (iii) District Valuer or his representative, (iv) an officer nominated by the Road Development Authority, and (v) the affected person or a person nominated by him (Section G)”.

**4. Payment of replacement cost by establishment of LARC.** The STDP introduced a system of payment of compensation at replacement cost for land and structures, and displacement support through establishment of a committee called “land acquisition and resettlement committee (LARC)” in each Divisional Secretary office area. The LARC comprised of the members of Divisional Secretary, District Superintendent of Surveys or his representative, District Valuer or his representative, an officer nominated by the RDA, and the affected person or a person nominated by the affected person. The Super LARC was established at project level with authority to determine final compensation amount for those who appealed to Super LARC for enhanced compensation. This Super LARC committee was established by a Cabinet decision in April 2003. The circular issued by the Secretary, Ministry of Highways set out the process of approval for LARC decisions. The Super LARC members were the Secretary of the Ministry of Highways, Chief Valuer, Survey General and Project Director of project management unit (PMU) and the affected person.

5. During the planning period of STDP, RDA and ADB decided that land acquisition would follow the LA Act procedures to pay statutory compensation for lands and structures under Section 17 of the LAA by the Valuation Department and additional compensation to be paid at replacement cost by the LARC. In addition, a special compensation package was proposed in the RIP for STDP and it was approved by the Cabinet of Ministers. There were two suggestions regarding payment of non-statutory compensation for lands and structures. One suggestion was to value and pay compensation as per the LA (Section 17 payment) and top this amount with a separate allowance of a percentage to be determined by the Valuation Department such as 25% of the compensation value of the affected property. The second option was to determine the amount by a committee similar to LARC. The project followed the second suggestion. At each committee meeting the negotiation took place between the land owners and the

committee. The seller's understanding of replacement value is reflected in the agreement reached and signed. The Cabinet memorandum approved in September 2001 stated: "Confine the statutory compensation payable under the Land Acquisition Act to the statutory limits as determined by the Chief Valuer and the RDA to pay all such benefits and other benefits to the affected persons as decided by the LARC in keeping with the understanding reached between the Government and the agencies providing financial assistance for the project."

6. The main function of the LARC is to determine non-statutory payments for land and structures and other entitlements. The statutory compensation is paid by the Divisional Secretary as Acquiring Officer. Resettlement Officers were responsible for payments of non-statutory payments, entitlements and other assistance after the vouchers signed by the affected persons. It is agreed that 'while conducting negotiations with the affected persons concerned, it is essential that the concerned affected person is present and other affected persons should not be present. LARC payments procedure was lengthy: 1) Divisional Secretary will submit a certified copy of the LARC decision to the Resettlement Officer; 2) Resettlement officer will get the affected person's signature on the payment voucher; 3) submit the voucher to the Director, Land Acquisition and Resettlement Division (LARD); 4) Officer in Charge will maintain a register of vouchers, compare the voucher with LARC decision, ascertain if the payments are to be deducted and submit the voucher to the Head, Management Information Systems (MIS) for observations; 5) If the voucher is in order MIS Head will refer to the Chief Clerk to check the voucher; 6) Chief Clerk will forward the voucher to the Staff Officer with recommendations; and 7) Director LARD will approve the payments and send them to the Chief Accountant, STDP and cheques will be issued from the Finance Division of STDP. The signed cheques have to be sent through the respective Resettlement Officers to the affected persons and acknowledgement has to be obtained.

7. The same committee (LARC) negotiated with the affected people for payment of ex-gratia payments: 1) loss of income from property; 2) inducement payment (25%); 3) house rent; 4) resettlement allowance for squatters or encroachers; 5) resettlement allowance; 6) loss of interruption of employment/income; 7) payment for poor families or disabled heads of households; 8) shifting cost; 9) loss of employment of sharecroppers (*Ande farmers*); and 10) other allowances. It was decided later to pay for connections to get basic facilities of telephone, water and electricity to the new houses and commercial structures. The self relocation allowance of Rs100,000 was paid. The details of the ex-gratia payments were explained to the affected people. The design of LARC has two important principles of payment of compensation at replacement value; an opportunity to be provided for the affected persons to participate during the compensation determination process.

**8. Ex-gratia package for the People Affected by Highway Projects (2005).**The payments for lands will be on the basis of replacement cost as determined by the Chief Valuer. The difference between the statutory compensation and the replacement cost is payable as an ex-gratia payment. All ex-gratia payments will be as determined by the Chief Valuer. The LARC

will decide on administrative matters and disputes in relation to other factors arising out of the acquisition and not on matters pertaining to the quantum of payment.

**Table 5: Ex-gratia Package for the People Affected by Highway Projects in 2005**

<b>Category</b>	<b>Entitlements</b>
Private lands	The difference between the statutory compensation and the replacement cost is payable as an ex-gratia payment as determined by the Chief Valuer. LARC can consider acquiring/purchasing the remainder, making full payment of the total value.
Encroached state lands	No payment for land, but improvements of the land will be paid to the encroachers in occupation prior to 01-01-2205).
Encroached private lands	Encroachers on private land which have not been contested in a court of law by the land owner will be paid for the improvement carried out the land, upon adequate proof of that improvement have been made by such person.
Paddy lands	The statutory compensation and 10% of the market value is determined by the Chief Valuer.
Land/structures falling within street lines or building lines	No compensation is paid for the structures constructed after the date of imposition of street lines or building lines.
Unauthorized occupation of lands	No compensation is paid for any constructions made on lands owned by the Road Development Authority.
House, Buildings and other structures	Replacement cost without depreciation as determined by the Chief Valuer: Small cottages: minimum payment will be Rs.300,000/ For parts of structures: the floor area to be considered and the remaining portion can be considered for payment by LARC For Tombs and similar structures: Rs.15,000/ Other public buildings, religious structures and utilities: RDA either constructs or pays cash compensation at replacement cost.
Rent controlled premises under the Rent Act	Payments at replacement cost and the percentage of total payment to be paid to the owner and occupant will be based on the number of years of occupancy.
Loss of business	Non-income tax payers will be paid Rs.15,000 or six months income. Tax payers are paid Rs.15,000/ or average adjusted profits of three years.

Loss of livelihood	Self employed and temporary affected are entitled for a livelihood grant of IRs.15,000/.
Vulnerable families	Women headed families, families with disabled people and with very old people will be paid an extra allowance of Rs.15,000/.
Loss of wage employment	Persons who have lost their wage employments due to land acquisition will be entitled to an allowance of Rs.15,000/ or three months wage which ever is higher.
Handing over possession of properties before the deadline	Building and houses- 25% of the statutory payment under Section 17 subject to a minimum of Rs.25,000/ and a maximum of Rs.500,000/ Cultivated agricultural land- 5% of the statutory payment under Section 17 subject to a minimum of Rs.10,000/ and a maximum of Rs.100,000/.
Temporary accommodation	Rent allowance payable will be based on the prescribed date of handing over, the floor area of the house in occupation, and the rest applied by Municipal Council, Urban Council, and Pradeshiya Sabha where the house is located. Houses are categorized in to 4 and the maximum is Rs.100,000/ and minimum is Rs.20,000/.
Shifting allowance	Will be based on the floor area of the house and maximum is Ra.15,000/ and minimum is Rs.5,000/.
Relocation	Title holders are entitled to a 20 perch block from a fully serviced resettlement site. Encroachers are entitled to 10 perches from a fully serviced resettlement site or cash grant as applicable to self relocation. A sub family living in the same house under the same or separate electoral list at least 3 years prior to the Section 2 notice is entitled to a block of 10 perches or cash grant of Rs.100,000.
Self relocation	Those who wish to self relocate will receive in lieu of a plot of land- Sub families -maximum Rs.100,000/ and others depending on the local authority area, will receive Rs.150,000/ in Pradeshiya Sabhas, Rs.300,000/ in Urban Council areas and Rs.500,000/ in Municipal Council areas.

Source: Ex-gratia Package for the People Affected by Highway Project, Road Development Authority, 2005

## B. Ministry Circulars

9. The following sample circulars show that the ministry guidelines and instructions can provide further information and clarifications as to how the legal provisions, policy principles and Cabinet decisions should be implemented at project level.

**Table 6: Ministry Circulars and their Contents**

<b>Circular</b>	<b>Decisions/instructions</b>
Ministry of Land – LD/05/D08, 2003/6/10/2003	Need to include information in the statement on the lands proposed to be acquired whether alternative lands can be provided for the displaced persons.
Ministry of Highways – MH/W/1/81, 2006/05/05	Composition of LARC and functions and responsibilities of members.
Ministry of Highways – MH/W/1/93, 2006/12/11	Procedures relating to purchase of land lots, less than 15 perches, outside the road trace in STDP.
Ministry of Highways – MH/W/1/93, 2007/01/10	The calculation of reinstatement cost and percentage of additional compensation.
Ministry of Highways – MH/W/1/93, 2007/05/22	Appointment of retired Valuation Officers for LARC meetings.
Ministry of Highways – MH/W/1/126, 2008/08/24	Instructions to the Divisional Secretary regarding the LARC decisions to be made for non-statutory payments.
Ministry of Urban Development and Water Supply-LA/1/2/5, 2006/06/19	Establishment of LARC and its role and responsibilities.

Source: Ministry of Lands, Ministry of Highways and Ministry of Urban Development and Water Supply

### **C. Guidelines for Preparation of Social and Environmental Impact Studies**

10. CEA prepared three guidelines: 1) General Guidelines for Planning and Implementation of Involuntary resettlement (May 2003); 2) Process Manual for the Implementation of the NIRP (May 2003; and 3) Guidelines for a Participatory Resettlement Process (May 2003). They were prepared under the Capacity Building Project for the NIRP under ADB TA 3792 assisted by the World Bank and published by the Ministry of Environment and Natural Resource and Ministry of Lands. These are available to the officers involved in involuntary resettlement. Social Assessment and Involuntary Resettlement Compliance Manual was prepared under the technical Assistance project (TA 4736) for capacity Building of the Environmental and Social Division (ESD) of the RDA in July 2007. ADB also prepared “Designing and Implementing Grievance redress mechanisms: A Guide for Implementers of Transport Projects in Sri Lanka” in 2010. It clarifies the concept of grievance redress mechanisms and presents the rationale for their implementation.

11. The CEA has also published three types of guidelines related to EIAR which are of direct relevance to development projects: 1) Guidance for Implementing the Environmental Impact

Assessment Process – A General Guide for Project Approving Agencies; 2) Public Participation Handbook (No.3) and 3) Environmental Guidelines for Road and Rail Development in Sri Lanka. The Environmental Guidelines for Road and Rail development in Sri Lanka was prepared by the CEA to identify and assess social impacts in development projects (pages 31-34) under three broad categories: 1) land use impacts, 2) impacts on agricultural lands and 3) social impacts and relocation (resettlement) impacts. The changes in land use to be considered from project activities including the use of adjacent lands, current development trend, transportation and other public utilities and housing and community services. The guidelines also refer to eight sub categories of social impacts due to a proposed project: 1) community severance, 2) generation of new economic activities such as housing construction and industries; 3) changes in property values, 4) changes in travel pattern and accessibility; 5) changes in accessibility to and demand for social infrastructure, 6) changes in accessibility and demand for administrative services; 7) impacts on other modes of transportation, and 8) broad social groups affected or benefited such as the elderly, the handicapped and the economically disadvantaged.

#### D. Judicial Review

12. The courts have responded to the complaints made by the affected persons regarding the application of legal provisions in the LAA and NEA and have interpreted the decisions and actions taken by project authorities in implementing the laws. The following table provides a summary of judicial determinations on some complaints and the issues raised in courts and court decisions.

**Table 7: Judicial Decisions on the Complaints made In Land Acquisition and Compensation**

Case reference	Judicial decisions
<i>De Silva Vs Atukorale, Minister of Lands, Irrigation, and Mahaweli Development</i> <sup>34</sup>	The purpose of LAA is to take over private land in the exercise of its eminent domain, to be used for a public purpose, for the common good, and not to enable the state or state functionaries to take over private land for personal benefit or privilege
<i>Sugathapala Mendis &amp; Others Vs Chandrika Bandaranayake Kumaratunga &amp; Others</i> <sup>35</sup> (Waters Edge Case)	<p>“...the public purpose requirement has for its primary object, the general interest of the community; though in achieving the public purpose the individual(s) may be benefitted; the benefits to such individual(s) must be indirect...”.</p> <p>Discretion over the conveyance is an extremely important power, one so important that the Urban Development Authority must err on the side of caution and exercise only the utmost care in making its decisions where there may be questions as to feasibility of a proposed project and/or safety of the citizenry and environment</p>

<sup>34</sup> 1993: 1 Sri Lanka Law Reports; page 283

<sup>35</sup> Unreported; S.C. (F/R) Application No. 352/2007; decided on 08.10.2008

	<p>posed by the same.</p> <p>A further important element to the concept of “public purpose” was added stating that it is one that contemplates a benefit of a sufficiently direct nature. Referred to “high public purpose threshold” required when acquiring land of the citizenry.</p> <p>“.... given the nature of the land as one acquired using the Land Acquisition Act... the decision to implement such a project... involves and analysis of adequate depth to ensure the arrival at a decision that would be in furtherance of the trust that people have reposed in the Government...”.</p> <p>The Court further held that the alleged beautification of an area (in this case developing a Golf Course) is simply too abstract and indirect a benefit to suffice as a reason to approve a project to alienate the land, in the light of the potential detriment that such beautification can bring as well as the high public purpose threshold posed by the nature of this land as one being acquired from the citizenry, whose need for affordable housing is far more greater than cosmetic improvements to the land.</p>
<p><i>Fernandopulle V Minister of Lands</i><sup>36</sup></p>	<p>LAA gives two main powers to the Minister; (1) power to decide whether a land is required for a public purpose and to direct that it be acquired; and (2) to decide if there is an compelling urgency to take immediate possession, if so, direct that possession be so taken.</p>
<p><i>Manel Fernando &amp; others Vs. D.M. Jayarathna &amp; Others</i><sup>37</sup></p> <p>and</p> <p><i>Joseph Fernando Vs Minister of Lands</i><sup>38</sup></p>	<p>Section 2 must state the public purpose, because if not investigation for the suitability of the land <i>for that public purpose</i> cannot be carried out. The investigations would include the assessment of the availability of alternative lands as well.... scheme of the Act requires a disclosure of the public purpose, as its objectives cannot be achieved without such disclosure. A section 2 notice must state the public purpose although exception may perhaps be implied in regard to purposes involving national security and the like</p> <p>The test of a willing seller - “likely to receive prompt compensation of the market value”</p>
<p><i>Amerasinghe &amp; Others</i></p>	<p>Recognized the importance of consultation and stated that a</p>

<sup>36</sup> 1979: 79-2 New Law Reports; page 115

<sup>37</sup> 2000: 1 Sri Lanka Law Reports; Page 112

<sup>38</sup> 2003: 2 Sri Lanka Law Reports 294

<p><i>Vs The Attorney General &amp; Others</i><sup>39</sup> (Colombo - Katunayake expressway case)</p>	<p>hearing must apply not only to the affected persons but also those who are likely to benefit from the project.</p> <p>This case was a result of a declaration made under Urban Development Projects (Special Provisions) Act. The said Act provides for an order (under Section 2) to be made by the President, based on the recommendation of the Minister of Urban Development, that land is required for a urban development project; that the requirement is urgent; and the project would meet the just requirements of the general welfare of the people. Once the order is made the Act does not allow relief other than compensation and to that effect specifically ousts judicial intervention. This case was filed on the basis that for the ouster to be valid, the President ought to have followed a due process, and the failure on the part of the authorities to give a reasonable opportunity for the affected parties to be heard, amounted to a failure to follow due process.</p> <p>Environmental Impact Assessments (EIA) required for prescribed projects under the National Environment Act in the context that those statutory requirements have to be complied by the relevant agencies. The Court noted that the NEA “protects the public interest in regard to environmental considerations by preventing the implementation of a project until an EIA is submitted and approval obtained”. This, the Court felt, would give further opportunities for all interested persons to raise their objections as, in the opinion of the Court, environmental &amp; social cost – benefit analysis is wider in scope than an economic cost - benefit analysis.</p>
<p><i>Heather Theresa Mundy Vs Central Environmental Authority &amp; Others</i> (Southern Expressway Case)<sup>40</sup></p>	<p>The Court made a distinction between a “change” due to unforeseen circumstances and an “alteration” and stated that when there is a significant alteration (in this instance prior to the commencement of the project) the project proponent is under a duty imposed by the principles of natural justice to afford sufficient opportunities to affected parties to state their grievances.</p> <p>“...if it is permissible in the exercise of a judicial discretion to require a humble villager to forego his right to a fair procedure before he is compelled to sacrifice a modest plot of land and a little hut because they are of "extremely negligible" value in relation to a multi-billion rupee national project, it is nevertheless not equitable to disregard totally the infringement of his rights: the smaller the value of his property, the greater his right to compensation... if a judicial discretion was exercised in favour of the State, <i>inter alia</i>, to save</p>

<sup>39</sup> 1993: 1 Sri Lanka Law Reports; Page 376

<sup>40</sup> 2004: S.C. Appeal No. 58/2003



	costs, it was only equitable that the Appellants should have been compensated for the injury to their rights...”
<i>Bandula Vs Almeida &amp; Others</i> <sup>41</sup>	Land acquisition consequent to a declaration under Urban Development Projects (Special Provisions) Act - requires the relevant officials to brief the President on the as well as “true facts”, so that the President may be able to form an opinion necessary for a Declaration under Section 2. Right of hearing constitutes a minimum pre requisite of natural justice and therefore the duty of the relevant official of the Urban Development Authority (UDA), prior to making the recommendation to the President, to have at least informed the owners of lands and houses of the project and the consequent need for acquisition of their properties, and formally call for observations and objections
<i>Attorney General Vs R.B.Herath</i> , <sup>42</sup>	To claim ownership, the “owner” must establish the three attributes of ownership <sup>43</sup> ; (1) the right of possession and the right to recover possession; (2) the right of use and enjoyment; and (3) the right to alienate; although it was not necessary for all three attributes of ownership to be present in an equal degree at one and the same time.
<i>Edwin Vs Tillakaratna</i> <sup>44</sup>	A person who had been a lessee or tenant of a land prior to the land being acquired can be considered as a person having an “interest” in the land within the meaning of section 7 of the LAA.
<i>H.P.A.Jayawardena Vs D.M.Jayarathna &amp; Others</i> <sup>45</sup>	General rule under LAA is that possession cannot be taken until compensation is paid. Order for immediate possession under proviso (a) to Section 38 of the LAA (38(a) Order), is an exception to the rule. Although the Court upheld the acquisition and the Section 38(a) Order for immediate possession, the Court pronounced that people who are affected must be adequately compensated and without inordinate delay.
<i>K.A.Gunasekara Vs T.B.Werakoon</i> <sup>46</sup> and <i>Pieris Vs Divisional</i>	“...when proprietary rights of a subject are impugned by compulsory acquisition compensation must be adequate, realistic and reasonable...”  An Acquiring Officer “with all the resources at his command, should not rely solely and entirely on a report sent by an officer of the

<sup>41</sup> 1995: 1 Sri Lanka Law Reports; Page 309

<sup>42</sup> 1960: 62 New Law Reports; Page 145

<sup>43</sup> Lee, R.W. “Introduction to Roman Dutch Law”; 5<sup>th</sup> Ed.

<sup>44</sup> 2001: 3 Sri Lanka Law Reports; page 34

<sup>45</sup> 2001: Court of Appeal Application No. CA 378/99

<sup>46</sup> 1970: 73 New Law Reports; page 262

<i>Secretary of Kollonawa and Others</i> <sup>47</sup>	Valuation Department, in ascertaining the market value of a land. Acquiring Officers should also explain to claimants (who are generally villagers ignorant of procedural matters), their right to challenge the Government Valuer's valuation and lead further evidence, if they so desire, in support of their claims”.
<i>W. Suwarna Fernando Vs The Secretary, Ministry of Lands and Others</i> <sup>48</sup>	According to section 45 of the LAA, the compensation is assessed on the market value of the land 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 the publication of notice under section 7 of the LAA.
<i>Marie Indira Fernandopulle &amp; Another Vs E.I.Senanayake, Minister of Lands &amp; Agriculture</i> <sup>49</sup>	“...an order by the Minister under the proviso to section 38 of the Land Acquisition Act can be made only in cases of urgency and an order made under this proviso can be reviewed by the Courts. It is however a matter for a petitioner who seeks the remedy by way of Certiorari, to satisfy the Court that there was in fact no urgency and his application cannot succeed should he fail to do so...”.
<i>De Silva Vs Atukorale, Minister of Lands, Irrigation, and Mahaweli Development</i> <sup>50</sup>	Justification for the original acquisition, as well as the continued retention of acquired lands, can be reviewed. In this case use of only three percent of a 19 acre land acquired, qualified to be divested, on the ground that divesting too is held in trust for the public, to be exercised by the Minister “reasonably and in good faith and upon lawful and relevant grounds of public interest”.
<i>Rashid Vs Rajitha Senarathna, Minister of Lands &amp; Others</i> <sup>51</sup>	“...the entitlement for a divesting order springs primarily from the fact that after vesting, the land has not been used for the public purpose for which it had been acquired. Thus a claim under section 39A (of the LAA) does not depend on the validity or invalidity of the original vesting <sup>52</sup> ...”
<i>SmithKline Beecham Biological S.A. Vs. State Pharmaceutical Corporation of Sri Lanka &amp; Others</i> <sup>53</sup>	Law includes regulations, rules, directions, instructions, guidelines, and schemes that are designed to guide public authorities

<sup>47</sup> 2003: 3 Sri Lanka Law Reports; Page 189

<sup>48</sup> 2011: Court of Appeal Application No. C.A. Application (Writ) 46/2007; judgment delivered on 21<sup>st</sup> Feb 2011

<sup>49</sup> 1978: 79 ii New Law Reports; Page 115

<sup>50</sup> 1993: 1 Sri Lanka Law Reports; page 283

<sup>51</sup> 2004: 1 Sri Lanka Law Reports; Page 312

<sup>52</sup> Compare with the case of *De Silva Vs Dissanayake & Others* (2003: 1 Sri Lanka Law Reports; Page 52) and *De Silva V Atukorale & Others*

<sup>53</sup> 1997: 1997 3 Sri Lanka Law Reports; Page 20

13. In the first case (*De Silva versus Athukorale*) the Supreme Court pronounced that the government or its functionaries should not acquire private lands for personal benefits and must be used only for a public purpose. This was reaffirmed in the 2008 case of *Sugathapala Mendis and others Vs Chandrika Bandaranayake Kumarathunge and others* (Waters Edge Case) and established the precautionary principle in private land acquisition and subsequent uses of such lands. This judgment introduced the public trust doctrine in the use and alienation of lands. In other court judgments such as *Joseph Fernando vs Minister of Lands* the Court of Appeal stated that the public purpose must be disclosed. The court judgments dealt with several issues of consultation, approval for significant alterations to project locations and opportunities for the affected people to have consultation under the principles of natural justice, rights of obtaining true information and adequate payment of compensation.

**EQUIVALENCE ASSESSMENT FOR SUPPORTING AND STRENGTHENING NATIONAL-LEVEL CAPACITY FOR INVOLUNTARY RESETTLEMENT SAFEGUARD SYSTEM IN SRI LANKA**

The legal framework pertaining to the acquisition of private land in Sri Lanka is over a hundred years old. The present Land Acquisition Act No. 9 of 1950 has been built upon the foundations of the Land Acquisition Ordinance of 1876 which it repealed. The Act provides for a regular procedure for the acquisition of land which sets out a transparent procedure with several in-built safeguards. An expedited process is also provided in the event it becomes necessary to take immediate possession of land on the ground of emergency. The safeguards include screening and calling for objections prior to acquisition.

The National Environmental Act of 1980 and its amendments in 1988 require environmental impact assessment reports (EIAR) in prescribed projects. The criteria for prescribed projects requiring EIAR include the projects with resettlement impacts.

The National Involuntary Resettlement Policy (NIRP) was approved by Parliament in 2001 and this is a major development in the policy framework. The principles in the NIRP are similar to ADB Involuntary Resettlement Policy and there are specific legal provisions are required for implementation of the policy.

The Land Acquisition regulations of 2008 provides an important step towards the harmonizing the legal framework with the NIRP. These regulations provided for the assessment of compensation on the basis of replacement cost in the form of 'value to owner' as wells a payment of disturbance and other relocation impacts.

In 2006 the Cabinet approved a memorandum on Strategic Environmental Assessments and can be considered as a policy documents for the need of assessment of social and environmental impacts in a more systematic manner.

The individual property rights are well established in legal provisions but the concept of common property and community rights have received little attention except settlement of people as a community. The approach in the Land Acquisition Act is to treat the individual for assessment of lost property values and the process is to treat as an individual even in the case of co-ownership and shared ownership. The resettlement of people as a community has not been mandated by the law.

ADB Safeguard Policy Element	Comparison with Country Safeguard System	Comments	Recommendations
<p>Scope and Triggers: The involuntary resettlement safeguards covers physical displacement (relocation, loss of residential land, or loss of shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) as a result of (i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas. It covers them whether such losses and involuntary restrictions are full or partial, permanent or temporary.</p>			
<p><b>Temporary Displacement</b></p>			
	<p>Compensation as a result of temporary displacement is covered under requisition provisions where assets are taken over for a temporary purpose and returned back to the owner or occupier when the need no longer exists. These provisions are found in several laws and the approach is not identical though they have similarities.</p> <p><u>Generic laws provide for the requisition of movable and immovable property</u></p> <p>A. Requisition and Acquisition of Lorries Law (1973) – Provides for the temporary requisition of Lorries for a public purpose. Although it does not result in a displacement per-se it does restrict access to resources. The period of requisition is limited to sixty days in a year. The law also provides for the acquisition by vesting of Lorries for public purpose. In the event of requisitioning or acquisition of a Lorry the registered owner thereof</p>	<p><b>Full Equivalence.</b></p> <p>Temporary displacement in terms of requisition does not appear to be a common occurrence. The relevant laws place a time limit to the temporary displacement. The compensation in respect of a lorry takes into account the rate of hire or imported value of the vehicle. The compensation in respect of agricultural equipment similarly takes into account the rate of hire thereof. The compensation scheme proposed under the law in respect of land is based on rent, the cost of making good any damage caused</p>	

	<p>becomes entitled to compensation. The compensation is determined as follows:</p> <p><i>11. (1) Upon the receipt of any claim ... as to the compensation payable under this Law, the competent authority shall make a determination as soon as may be convenient as to the amount payable in respect of any such claim and shall give written notice of such determination made by him.</i></p> <p><i>(2) The determination under subsection (1) as to the amount of compensation payable shall be made-</i></p> <p><i>(a) in respect of any lorry requisitioned for temporary use for a public purpose, having regard to the rate of hire payable by the Government in respect of such lorry in the district and the period for which such lorry has been requisitioned; and</i></p> <p><i>(b) in respect of any lorry vested in the Government, having regard to the imported cost of the lorry to the registered owner, the depreciation in value for the period of its use and the condition of the lorry at the time of taking possession thereof.</i></p> <p><b>B. Requisition of Motor Vehicles and Agricultural Equipment Act (1971) –</b>  The Act provides for the requisition of motor vehicles and agricultural equipment collectively defined as ‘equipment’, for an agricultural purpose. The period of requisition may not exceed thirty days in a calendar year.</p>	<p>and in the case of agricultural land, an additional sum which might reasonably have been expected to be payable by an incoming tenant, in addition to rent, in respect of things previously done for the purpose of the cultivation of the land and in respect of seeds, cultivation, growing crops and other similar matters. In the event of electoral laws, a special consideration has been made where a person in actual possession is compelled to change his residence or place of business. No upper limits have been placed in respect of compensation for such requisition.</p>	
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	<p>The compensation is payable to the owner. If on the date of the requisitioning a person other than the owner was entitled to possession by virtue of a contract then the owner is deemed to receive the compensation as a trustee for the person entitled to possession. The compensation is determined as follows:</p> <p><i>6. (1) Upon the receipt of any claim ... to the compensation payable under this Act, the competent authority shall make a determination as soon as may be convenient as to the amount payable in respect of such claim and shall give written notice of such determination made by him.</i></p> <p><i>(2) The determination under subsection (1) as to the amount of compensation payable shall be made having regard to the rate of hire payable by the Government in respect of such equipment in the district and the period for which such equipment has been requisitioned.</i></p> <p>C. Requisitioning of Land Act (1950) – This law provides for the requisitioning of land for essential purposes. The requisitioning may only be carried out with the approval of the President. The objects of the requisitioning are for the purpose of the maintenance of supplies or services essential to the life of the community, for the purpose of</p>		
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	<p>implementing a scheme approved by the President for the importation, storage or distribution of essential commodities by any Government department, local authority, corporation or co-operative society, or for the purposes of use or occupation by the armed forces or any visiting force. The compensation is determined as follows:</p> <p><i>6. (1) The amount of the compensation payable ... shall be-</i></p> <p><i>(a) a sum equal to the rent which might reasonably be expected to be payable by a tenant in occupation of the land, during the period for which possession of the land is retained by virtue of this Act, under a lease granted immediately before the beginning of that period, whereby the tenant undertook to pay all usual rates and taxes and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the land in a state to command that rent; and</i></p> <p><i>(b) a sum equal to the cost of making good any damage to the land which may have occurred during the period of which possession thereof is so retained (except in so far as the damage has been made good during that period by a person acting on behalf of the competent authority) ; and</i></p> <p><i>(c) in a case where the land is agricultural land, a sum equal to the amount (if any) which might reasonably have been expected</i></p>		
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*to be payable in addition to rent by an incoming tenant, in respect of things previously done for the purpose of the cultivation of the land, and in respect of seeds, cultivation, growing crops and other similar matters, under a lease of the land granted immediately before possession thereof was taken; and*

*(d) a sum equal to the amount of any expenses reasonably incurred, otherwise than on behalf of the competent authority, for the purpose of compliance with any directions given by the competent authority in connexion with the taking of possession of the land.*

Electoral laws

- D. Presidential Elections Act (1981)
- E. Parliamentary Elections Act (1981)
- F. Referendum Act (1981)
- G. Provincial Council Elections Act (1988)
- H. Local Authorities Elections Ordinance (1946)

– These laws provide for the temporary requisitioning of premises for the purpose of an election for a period not exceeding four weeks and provides for compensation in respect of same. The compensation regime envisaged in these laws is similar. What are set out below are the provisions from the Presidential Elections Act.

*113. (1) Where any premises are requisitioned under section 112, the Commissioner shall pay, out*

	<p><i>of moneys provided for the purpose by Parliament, compensation for such requisition to the person who was in actual possession of those premises immediately before the requisition or, where no person was in such actual possession, the owner of those premises, and shall make good any damage done to those premises during the period of the requisition.</i></p> <p><i>(2) The amount of compensation payable under subsection (1) in respect of any premises shall be determined by taking into consideration-</i></p> <p><i>(a) the rent payable in respect of those premises, or where no rent is so payable, the rent payable for similar premises in the locality, and</i></p> <p><i>(b) if, in consequence of the requisition of those premises, the person who was in actual possession of those premises immediately before the requisition was compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.</i></p> <p><i>(3) Where any person entitled to compensation under this section is aggrieved by the decision of the Commissioner in regard to the amount of the compensation, that person may appeal in writing to the Court of Appeal from that decision.</i></p>		
<b>Permanent Displacement</b>			
	<p>Permanent Displacement as a result of 'involuntary acquisition of land' is covered under several laws as described below with reference to the 'policy</p>		

	principles’.		
1. Screen the project early on to identify past, present, and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through a survey and/or census of displaced persons, including a gender analysis, specifically related to resettlement impacts and risks.			
Project Screening	<p>A. National Environmental Act (1980) – Establishes an Environmental Assessment (EA) procedure in respect of ‘prescribed projects’. The procedure is applicable irrespective of the project proponent. These provisions apply in respect of the entire country other than in respect of projects wholly located within the Coastal Zone and other than within the North Western Province which has its own statute.</p> <p><i>23AA. (1) ... all prescribed projects that are being undertaken in Sri Lanka by any Government department, corporation, statutory board, local authority, company, firm or an individual will be required to obtain approval under this Act for the implementation of such prescribed projects.</i></p> <p><i>23BB. (1) It shall be the duty of all project approving agencies to require from any Government department, corporation, statutory board, local authority, company, firm or individual who submit any prescribed project for its approval to submit within a specified time an initial environmental examination report or an environmental impact assessment report as required by the project approving agency</i></p>	<p><b>Full Equivalence</b></p> <p>The EA processes established in terms of the National Environmental Act and the Provincial Statute are in respect of ‘prescribed projects’. The scope of the assessment is determined through a scoping exercise which determines the TOR and usually includes an assessment of persons displaced.</p> <p>The Fauna and Flora Protection Ordinance and the Coast Conservation and Coastal Resource Management Act enable EA in respect of ‘development activities’.</p> <p>The Land Acquisition Act requires the Minister of Lands to formulate an independent opinion vis-à-vis a request for</p>	<p>a) Establish a legal framework for Strategic Environmental Assessment.</p>

	<p><i>relating to such project, and containing such information and particulars as may be prescribed by the Minister for the purpose.</i></p> <p>B. Coast Conservation and Coastal Resource Management Act (1980) – Applicable in respect of the Coastal Zone. Any ‘development activity’ within the Coastal Zone requires a permit and in considering an application for a permit, the Director-General may require an environmental impact assessment (EIA).</p> <p><i>16. (1) Upon receipt of an application for a permit to engage in a development activity within the Coastal Zone, the Director may require the applicant to furnish an environmental impact assessment relating to such development activity and it shall be the duty of the applicant to comply with such requirement. Every environmental impact assessment furnished under this section shall contain such particulars as may be prescribed.</i></p> <p>C. Fauna and Flora Protection Ordinance (1937) – The Ordinance provides for environmental assessment in respect of any development activity within one mile of the boundary of a National Reserve.</p> <p><i>9A. (1) ... no person or organization ... shall within a</i></p>	<p>acquisition prior to initiating the acquisition process.</p>	
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	<p><i>distance of one mile of the boundary of any National Reserve ... carry out any development activity ... without obtaining the prior written approval of the Director-General.</i></p> <p><i>(2) Upon receipt of an application for a permit to carry out a development activity or trade or business within the area specified in subsection (1), the Director-General may require the applicant to furnish an Initial Environmental Examination Report or an Environmental Impact Assessment Report, as the case may be ...</i></p> <p>D. Environmental Statute of the North Western Province (1990) – Establishes an Environmental Assessment (EA) procedure in respect of ‘prescribed projects’. The provisions are similar to those in the National Environmental Act.</p> <p>E. Land Acquisition Act (1950) – The Act provides for the acquisition of land for a ‘public purpose’ through the Ministry of Lands. However, notwithstanding the application for acquisition from another Ministry, prior to initiating the acquisition process, the Minister of Lands is required to decide for himself that land in any area is required for a public purpose.<sup>54</sup></p>		
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<sup>54</sup> See also Manel Fernando and Another v. D .M. Jayaratne, Minister of Agriculture and Lands and Others, 2000 (1) Sri.LR 112 where it was held that the Minister should have a public purpose in mind in issuing a section 2 notice.

	<p>2. (1) <i>Where the Minister decides that land in any area is needed for any public purpose, ...</i></p> <p>F. National Involuntary Resettlement Policy (2001) – The policy principles require that involuntary resettlement should be avoided or reduced.</p> <p>4. <i>Policy Principles</i></p> <p><i>Involuntary resettlement should be avoided or reduced as much as possible by reviewing alternatives to the project as well as alternatives within the project.</i></p> <p>G. Cabinet Paper on Strategic Environmental Assessment (May, 2006) – Mandates Strategic Environmental Assessment</p>		
<p>2. Carry out meaningful consultations with affected persons, host communities, and concerned nongovernment organizations. Inform all displaced persons of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs. Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and Indigenous Peoples, and those without legal title to land, and ensure their participation in consultations.</p> <p>Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns.</p> <p>Support the social and cultural institutions of displaced persons and their host population. Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.</p>			
<p>Meaningful Consultation with affected</p>	<p>A. National Environmental Act – The Act provides for EA in the form of an Initial</p>	<p><b>Partial Equivalence</b></p>	<p>a) Make legal provision introducing</p>

<p>persons, host communities and concerned nongovernment organisations</p>	<p>Environmental Examination (IEE) or an Environmental Impact Assessment (EIA). Where the project approving agency decides that an EIA is required for project approval, the EIA report is made available for public comment. It may also result in a public hearing.</p> <p><i>23BB (2) A project approving agency shall on receipt of an environmental impact assessment report ... invite the public to make its comments, if any, thereon.</i></p> <p><i>(3) ... such project approving agency may, where it considers appropriate in the public interest afford an opportunity to any such person of being heard in support of his comments ...</i></p> <p>B. Coast Conservation and Coastal Resource Management Act – Applicable in respect of the Coastal Zone. Any development activity within the Coastal Zone requires a permit and in considering an application for a permit, the Director may require an EIA which report is made available to the public for review and comment.</p> <p><i>16. (2) The Director shall, on receipt of an environmental impact assessment ... -</i></p> <p><i>(b) ... notify the place and times at which such assessment will be available for inspection by the public, and invite the public to</i></p>	<p>The EIA process in terms of the National Environmental Act and the EA process in terms of the Environmental Statute of the North Western Province provide the affected public and others an opportunity to comment on the assessment report. Where a resettlement action plan is prepared and has been appended as part of the EIA, this allows the public to comment on same and also to participate at a public hearing where such a hearing is held.</p> <p>The provisions of the Land Acquisition Act usually consider the affected persons interests and claims individually for the purpose of compensation.</p> <p>The regular acquisition procedure in terms of the Land Acquisition Act has made available a process for objections and</p>	<p>resettlement planning in involuntary resettlement which includes consultation on resettlement options etc, and provides for the participation of the affected persons in planning, implementation, monitoring and evaluation of resettlement programs.</p>
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	<p><i>make its comments, if any, thereon.</i></p> <p>C. Fauna and Flora Protection Ordinance – The environmental impact assessment includes the procedure under the NEA including public comment and public hearing.</p> <p><i>9A. (3) The Director-General shall, on receipt of an Environmental Impact Assessment Report or an Initial Environmental Examination Report, as the case may be, ...</i></p> <p><i>(b) by notice published in the Gazette, notify the place and time at which such assessment or examination ... will be available for inspection by the public and invite the public to make comments, if any, thereon.</i></p> <p>D. Environmental Statute of the North Western Province – The provisions are similar to those in the NEA.</p> <p>E. Land Acquisition Act – The LAA provides a regular procedure and an expedited procedure for land acquisition. In terms of the regular procedure, there is provision for the calling of objections from the public prior to proceeding with the acquisition. The expedited procedure may not require same.</p> <p><i>4. (1) Where the Minister</i></p>	<p>consultation with the affected public and others.</p> <p>The Ministry of Lands even at present requires justification of an application for acquisition.</p>	
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	<p><i>considers that a particular land is suitable for a public purpose, or that a particular servitude should be acquired for a public purpose, he shall direct the acquiring officer ... to cause a notice ... to be given ...</i></p> <p><i>(3) The notice referred to in subsection (1) shall-</i></p> <p><i>(c) state that ... written objections to the intended acquisition may be made to the Secretary to such Ministry as shall be specified in the notice ... and</i></p> <p><i>(d) specify a period within which such objections must be made, such period being not less than fourteen days from the date on which such notice is given.</i></p> <p><i>(4) ... When such objections are considered every objector shall be given an opportunity of being heard in support thereof. ...</i></p>		
<p>Grievance Redress Mechanism</p>	<p>A. Land Acquisition Act – The Act provides a limited grievance redress mechanism in the form of a Board of Review where decisions relating to the quantum of compensation can be appealed.</p> <p><i>22. (1) A person to whom compensation is allowed ... and who has notified his claim for compensation to the acquiring officer within the time allowed therefor by this Act, may appeal to the board against that award on the ground that the amount of the compensation allowed to him</i></p>	<p><b>Partial Compliance</b></p> <p>The objection procedure in terms of section 4 of the Land Acquisition Act may not apply in respect of expedited acquisition.</p>	<p>a) Develop a legal mechanism whereby the concerns of the affected public can be addressed.</p> <p>b) Consider a mechanism where an affected person may present grievances notwithstanding the expedited process of acquisition.</p> <p>c) The acquisition in terms of the Land Acquisition Act is</p>

	<p><i>is insufficient ...</i></p> <p>B. Land Acquisition Act – The Act also provides under the regular acquisition procedure a mechanism where objections to an acquisition can be made.</p> <p>4. (3) The notice referred to in subsection (1) shall –</p> <p>(c) state that the Government intends to acquire that land or servitude for a public purpose, and that written objections to the intended acquisition may be made to the Secretary to such Ministry as shall be specified in the notice (hereinafter in this section referred to as the “appropriate Secretary”); and</p> <p>(d) specify a period within which such objections must be made, such period being not less than fourteen days from the date on which such notice is given.</p> <p>(4) Where a notice relating to the intended acquisition of a land or of a servitude over a land is exhibited under subsection (1) and objections to such acquisition are made to the appropriate</p>		<p>carried out by the Minister of Lands. Hence the Minister of Lands must decide that the acquisition is necessary. Therefore it is recommended that the objections in terms of section 4 of the Act be directed to the Minister of Lands for consideration and that the State agency that makes the recommendation for acquisition also gets an opportunity to respond to the objections.</p>
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	<p>Secretary by any of the persons interested in the land within the time allowed therefor by the notice, the appropriate Secretary shall consider such objections or direct an officer to consider such objections on his behalf and to make recommendations to him. When such objections are considered every objector shall be given an opportunity of being heard in support thereof. After the consideration of the objections the appropriate Secretary shall make his recommendations on the objections to the Minister in charge of the Ministry specified in the notice (hereafter in this section referred to as the "appropriate Minister"), and such Minister shall, after considering such recommendations, make his own recommendations on the objections to the Minister.</p> <p>(5) When the time allowed by a notice under this section for making objections to the intended acquisition of the land or servitude referred to in the notice has expired and, where any such objections have been made within such time, after the Minister has considered the appropriate Minister's recommendations on those objections, the Minister shall, subject to the provisions of subsection (6), decide whether that land or servitude should or should not be acquired under this Act.</p>		
<p>3. Improve, or at least restore, the livelihoods of all displaced persons through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods, (ii) prompt replacement of assets with access to assets of equal or higher value, (iii) prompt compensation at full replacement cost for assets that cannot be restored, and (iv)</p>			

additional revenues and services through benefit sharing schemes where possible.

4. Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.

<p>Improve or restore livelihoods</p>	<p>A. Land Acquisition Act – The LAA provides for livelihood compensation. Such livelihood compensation is limited to three times the average annual net profit. However, where the business is the sale of produce from the land to be acquired, no compensation may be paid under this clause. In such an instance, the value of the produce is computed with the value of the land.</p> <p><i>45 (1) ... in determining that amount, all such returns and assessments of income from ... that land ... shall be taken into consideration.</i></p> <p><i>... where it is the land which is to be acquired,</i></p> <p><i>he shall be entitled to-</i></p> <p><i>(iii) compensation for any ... loss of earnings from any business carried on the land on the aforesaid date as may be caused by the acquisition of the land ; and</i></p> <p><i>(b) the amount of the compensation under paragraph (iii) of this subsection shall not exceed three times the average annual net profits from the</i></p>	<p><b>Full Equivalence.</b></p>	
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*business, as shown by the books of accounts, for the three calendar years immediately preceding the date on which the notice under section 7 in respect of the land is published in the Gazette ; and*

*(c) no compensation shall be allowed under paragraph (iii) of this subsection if the business is the sale or disposal of the produce of the land to be acquired.*

**B. Land Acquisition Regulations, 2008 –**  
These regulations recognize livelihood compensation in terms of determining the quantum of compensation.

*(3) Payment of Disturbances and Other Expenses—*

*To fulfill the requirement of the definition of compensation, in addition to the compensation under Section 1 and 2 above, which are based on the “market value”, compensation for Disturbance based on the “value to owner” basis should be paid under following Sub-headings, after taking into consideration the written claims made.*

...

*3.4 Cost of advertising;*

*3.5 Refixing cost of fixtures and fittings;*

*3.6 Expenses incurred for*

	<p><i>transport;</i></p> <p><i>3.7 Loss of earnings from business (within the limits given in prevailing Act);</i></p> <p><i>3.8 Increased overhead expenses;</i></p> <p><i>3.9 ...</i></p> <p><i>3.10 All other expenses to the owner due to the acquisition;</i></p> <p><i>3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land ;</i></p> <p><i>3.12 When an owner of ... an investment property displaced, additional 10% payment based on market value.</i></p>		
<p>Improve, or at least restore, the livelihood through land-based resettlement strategies.</p>	<p>A. Land Acquisition Act – The Land Acquisition Act provides for the exchange of land.</p> <p>36. (1) Any person to whom compensation for the acquisition of any land is payable under this Act may enter into a written agreement with the acquiring officer of the district in which that land is situated to accept, in lieu of the whole or any part of such compensation, a transfer of any other land which is the property of the State. Such agreement shall be signed by that person and by that acquiring officer. The amount of compensation in lieu of which the transfer is accepted shall be specified in such agreement</p>	<p><b>Full Equivalence</b></p>	

	<p style="text-align: center;">B. Land Acquisition Regulations 2008.</p> <p>(3) Payment of Disturbances and Other Expenses—</p> <p>To fulfil the requirement of the definition of compensation, in addition to the compensation ... based on the “market value”, compensation for Disturbance based on the</p> <p>“value to owner” basis should be paid under following Sub-headings, after taking into consideration the written claims made.</p> <p>...</p> <p>3.2 Expenses for finding alternative accommodation;</p> <p>3.3 Cost incurred in change of residence;</p> <p>3.4 Cost of advertising;</p> <p>3.5 Refixing cost of fixtures and fittings;</p> <p>...</p> <p>3.7 Loss of earnings from business (within the limits given in prevailing Act);</p> <p>...</p> <p>3.10 All other expenses to the owner due to the acquisition;</p> <p>3.11 Any other additional expenses for disturbance or compensation not connected under any other</p> <p>Sub-section of this Act which is directly not connected to market value of the land;</p> <p>3.12 When an owner of a house or of an investment property</p>		
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	displaced, additional 10% payment based on market value.		
Replacement value	<p>A. Land Acquisition Act – The Land Acquisition Act refers to compensation based on ‘market value’.</p> <p>45. (1) ... 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 on the date of publication of that notice in the Gazette ...</p> <p>46. (1) <i>The amount of compensation to be paid under this Act to any person interested in a land shall –</i></p> <p><i>(a) where the compensation is for the acquisition of that land, be based on the market value of that land, or</i></p> <p><i>(b) where the compensation is for the acquisition of a servitude over that land, be based on the market value of that servitude.</i></p> <p>B. Land Acquisition Regulations, 2008 – These regulations seek to eliminate the inequity arising from the traditional methods of valuation and determining ‘market value’.</p> <p><i>The basis of assessing the market value of any land or the compensation for any injurious affection caused by the acquisition of any land under this Act.</i></p>	<p><b>Full Equivalence</b></p> <p>The provisions in the Land Acquisition Regulations 2008 could be further clarified and strengthened by introducing appropriate provisions to the Land Acquisition Act.</p>	



	<p><i>(1) Market Value should be assessed as given under :-</i></p> <p><i>1.1 In the case of land where part of a land is acquired and when its value as a separate entity deems to realize a value proportionately lower than the Market Value of the main land the compensation should be proportionate to the value of the main land.</i></p> <p><i>(3) Payment of Disturbances and Other Expenses—</i></p> <p><i>To fulfill the requirement of the definition of compensation, in addition to the compensation under Section 1 and 2 above, which are based on the “market value”, compensation for Disturbance based on the “<u>value to owner</u>” basis should be paid under following Sub-headings, after taking into consideration the written claims made.</i></p> <p><i>3.1 Expenses incurred for appearing for Section 9 inquiry;</i></p> <p><i>3.2 Expenses for finding alternative accommodation;</i></p> <p><i>3.3 Cost incurred in change of residence;</i></p> <p><i>3.4 Cost of advertising;</i></p> <p><i>3.5 Refixing cost of fixtures and fittings;</i></p> <p><i>3.6 Expenses incurred for transport;</i></p> <p><i>3.7 Loss of earnings from business (within the limits given in prevailing Act);</i></p> <p><i>3.8 Increased overhead</i></p>		
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	<p><i>expenses;</i></p> <p><i>3.9 Double payments;</i></p> <p><i>3.10 All other expenses to the owner due to the acquisition;</i></p> <p><i>3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land ;</i></p> <p><i>3.12 When an owner of a house or of an investment property displaced, additional 10% payment based on market value.</i></p> <p>C. National Involuntary Resettlement Policy – The Policy requires payment of full replacement costs as compensation.</p> <p>4. Policy Principles</p> <p>Compensation for loss of land, structures, other assets and income should be based on full replacement cost ...</p>		
<p>Prompt Compensation</p>	<p>A. Land Acquisition Act – The Act sets out the manner in which compensation is to be paid. It also places a restriction on appeal to the Board of Review where a person had accepted compensation as per the initial award.</p> <p><i>29. Where an award is made ... the acquiring officer of the district</i></p>	<p><b>Partial Equivalence.</b></p> <p>A 1964 amendment to the Land Acquisition Act allows staggered payment of compensation in respect of certain limited types of land. However, the general</p>	<p>a) Enable a person to proceed with an appeal before the Board of Review notwithstanding the fact that a part of the compensation (to be specified in the law) has been accepted.</p> <p>b) The provisions pertaining to</p>

	<p><i>... shall tender to each person who is entitled to compensation ... the amount of compensation allowed to him by that award or, if in lieu of that amount a new amount has been allowed as compensation ... by a final decision on an appeal to the board or by a decision on an appeal to the Court of Appeal tender that new amount to him, and shall pay the tendered amount to him if he consents to receive it:</i></p> <p><i>Provided however that, where,-</i></p> <p><i>(a) the total amount of compensation payable to all the persons entitled to compensation in respect of such land, exceeds twenty-five thousand rupees, and</i></p> <p><i>(b) such land is not situated within the administrative limits of any Municipal Council, Urban Council or Town Council, and</i></p> <p><i>(c) such land does not, on the[relevant] date ... have on it any building which is used for any residential or business purpose,</i></p> <p><i>then, the acquiring officer shall, except where the Minister otherwise directs in the national interest, tender and make payment of compensation in the following manner :-</i></p> <p><i>(i) forthwith after the said award is made, a sum of twenty-five thousand rupees shall be divided among and paid to the persons who are entitled to compensation in respect of such land in the same proportion as that in which compensation has been apportioned among such persons in such award; and</i></p> <p><i>(ii) thereafter the balance</i></p>	<p>practise is to give effect to prompt payment of compensation irrespective of value.</p> <p>There is a restriction on appeal to the Board of Review where a person has received full or part compensation prior to appeal or pending the appeal.</p>	<p>staggered compensation may be considered for deletion.</p>
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	<p><i>compensation shall be divided among and paid to the said persons in the said proportion but in not more than ten equal installments, so however that the entire balance compensation is paid before the lapse of ten years from the date of payment of the said sum of twenty-five thousand rupees ...</i></p> <p><i>22. (1) A person to whom compensation is allowed by an award ... may appeal to the board against that award on the ground that the amount of the compensation allowed to him is insufficient :</i></p> <p><i>Provided that-</i></p> <p><i>(a) where, before such person prefers an appeal ... the whole or any part of the compensation allowed to him ... is tendered to him ... and he does not decline to receive the amount so tendered, he shall not have the right to prefer an appeal against such award, and</i></p> <p><i>(b) where, after he has preferred an appeal ... and before such appeal is decided by the board, the whole or any part of such compensation is tendered to him ... and he does not decline to receive the amount so tendered, the board shall dismiss such appeal.</i></p>		
Benefit sharing	<p>A. National Involuntary Resettlement Policy – The Policy defines a resettlement action plan as including the ‘entitlements’ of affected persons while the definition of entitlement includes benefits due to affected persons.</p>	<p><b>No Equivalence.</b></p> <p>No legal provisions mandate that affected persons should share directly in the benefits of development activities resulting</p>	<p>a) Where Resettlement Plans are mandated by legislative amendment or new law in support of same, benefit sharing could be achieved through</p>

	<p><i>Resettlement Action Plan – a time-bound action plan with budget setting out resettlement strategy, objectives, options, entitlements, actions, approvals, responsibilities, monitoring and evaluation.</i></p> <p><i>Entitlements – a variety of measures including compensation, income restoration and interim support, transfer assistance, relocation and other benefits that are due to affected people, depending on the nature of their losses, to improve their economic and social base.</i></p>	<p>from the acquisition.</p> <p>On the contrary, section 47 of the LAA mandates that where a part of the land is acquired and the value of the remaining part of the land is likely to increase as a result of such acquisition, then an amount not exceeding twenty percent of the market value may be deducted from the compensation. However, it appears that such deductions do not take place, even though the provisions remain in the law.</p>	<p>such planning.</p> <p>b) It is also recommended that section 47 of the LAA be considered for deletion.</p>
<p>Provide needed assistance</p>	<p>A. Land Acquisition Regulations, 2008 – The regulations mandate the provision of assistance in the form of enhanced compensation to affected persons.</p> <p><i>(3) Payment of Disturbances and Other Expenses—</i></p> <p><i>... compensation for Disturbance ... should be paid under following Sub-headings, after taking into consideration the written claims made.</i></p> <p><i>3.1 Expenses incurred for appearing for Section 9 inquiry;</i></p>	<p><b>Full Equivalence.</b></p>	<p>a) The regulations of 2008 could be strengthened through appropriate provisions in the Land Acquisition Act.</p>

	<p><i>3.2 Expenses for finding alternative accommodation;</i></p> <p><i>3.3 Cost incurred in change of residence;</i></p> <p><i>3.4 Cost of advertising;</i></p> <p><i>3.5 Refixing cost of fixtures and fittings;</i></p> <p><i>3.6 Expenses incurred for transport;</i></p> <p><i>3.8 Increased overhead expenses;</i></p> <p><i>3.9 Double payments;</i></p> <p><i>3.10 All other expenses to the owner due to the acquisition;</i></p> <p><i>3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land ;</i></p>		
<p>5. Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.</p>			
<p>Improve standards of living.</p>	<p>A. Land Acquisition Act</p> <p>17. (1) The acquiring officer who holds an inquiry under section 9 shall, as soon as may be after his decisions under section 10 have become final as provided in that section or after the final determination of any reference made under that section and subject to the other provisions of this section, make an award under his hand determining"</p>	<p><b>Full Equivalence.</b></p> <p>The Act provides for the assessment of compensation and payment thereof on an individual basis. Thus the law provides for claims, evaluation</p>	

	<p>(a) the persons who are entitled to compensation in respect of the land or servitude which is to be acquired;</p> <p>(b) the nature of the interests of those persons in the land which is to be acquired or over which the servitude is to be acquired ;</p> <p>(c) the total amount of the claims for compensation for the acquisition of the land or servitude ;</p> <p>(d) the amount of the compensation which in his opinion should, in accordance with the provisions of Part VI of this Act, be allowed for such acquisition; and</p> <p>(e) the apportionment of the compensation among those persons.</p>	<p>of claims, award and payment.</p>	
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6. Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.

<p>Negotiated Settlement</p>	<p>No legal or policy provisions exist in the law for negotiated settlement. Negotiated settlement is addressed in terms of the law of contract and other written law which provides adequate safeguards thereon.</p>	<p><b>Full Equivalence.</b>          ‘Public corporations’ which are recognized as ‘legal persons’ do on occasion engage in negotiated purchase; the seller agreeing to sell only if the terms are acceptable.</p>	<p>No legislative amendment required in this regard.</p>
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7. Ensure that displaced persons without titles to land or any recognizable legal rights to land

are eligible for resettlement assistance and compensation for loss of non-land assets.

<p>Compensation and resettlement assistance for displaced persons without title to land or any recognizable legal rights to land.</p>	<p>A. National Involuntary Resettlement Policy – The policy mandates fair and just treatment to persons who do not have documented title to land.</p> <p><i>4. Policy Principles</i></p> <p><i>Affected persons who do not have documented title to land should receive fair and just treatment.</i></p> <p>B. Land Acquisition Act – Section 7(2)(c) provides for a notice directing every ‘person interested’ in the land to be acquired or over which a servitude is to be acquired to present the nature of the interest and the claim. Section 65 defines ‘person interested’ as follows:</p> <p>“person interested “, with reference to a land, means a person having an interest in the land as owner, co-owner, mortgagee, lessee or otherwise, whether absolutely for himself or in trust for any other person or for any charitable, religious or other purpose; or a person having a servitude over the land; but does not include a tenant on a monthly tenancy.</p> <p>Person fitting the definition may get in through the threshold and</p>	<p><b>Full Equivalence.</b></p> <p>Although the relevant provisions do not directly refer to resettlement assistance for displaced persons without title to land or any recognizable legal rights to land, it appears that the relevant provisions of the Land Acquisition Act together with those of the Land Acquisition Regulations 2008 are interpreted in a manner to facilitate recognition of the rights of such persons.</p>	<p>It is recommended that clear and unambiguous provisions be introduced to the law recognising the concerns of displaced persons without title or recognizable legal rights to land.</p>
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	<p>become eligible for compensation<sup>55</sup></p> <p>C. Land Acquisition Regulations, 2008 – The regulations mandate the provision of assistance in the form of enhanced compensation to affected persons.</p> <p>(3) Payment of Disturbances and Other Expenses—</p> <p>To fulfil the requirement of the definition of compensation, in addition to the compensation ... based on the “market value”, compensation for Disturbance based on the “value to owner” basis should be paid under following Sub-headings, after taking into consideration the written claims made.</p> <p>...</p> <p>3.11 Any other additional expenses for disturbance or compensation not connected under any other Sub-section of this Act which is directly not connected to market value of the land;</p> <p>...</p>		
<p>8. Prepare a resettlement plan elaborating on displaced persons’ entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.</p> <p>9. Disclose a draft resettlement plan, including documentation of the consultation process in a timely manner, before project appraisal, in an accessible place and a form and language(s) understandable to affected persons and other stakeholders. Disclose the final resettlement plan and its updates to affected persons and other stakeholders.</p>			
Prepare resettlement Plan and	A. National Involuntary Resettlement Policy – The NIRP mandates that a	<b>No Equivalence.</b> There are no	Legislative amendment or the introduction of new

<sup>55</sup> As to ‘person interested’ see Edwin v. Tillekeratne,

disclose draft resettlement plan.	comprehensive Resettlement Action Plan is required where 20 or more families are affected.	legislative provisions which mandate the preparation of Resettlement Plans.  This is partly due to the fact that the primary compensation approach is to treat displaced persons as individuals and to compensate for losses individual.	law in support of mandatory resettlement plans to be prepared in a transparent and participatory manner.  At present resettlement planning is mandated in terms of Government circulars. This could be strengthened by incorporation of appropriate provisions in the Land Acquisition Act or new legislation.
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10. Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component of the project as a stand-alone operation.

Conceive and execute involuntary resettlement as part of development activity	<p>A. Land Acquisition Act – Section 29 provides that after award has been made the relevant ‘acquiring officer’ shall tender the compensation. The acquiring officer is the relevant officer of the Government. Since acquisition is an act of the State, this makes it the responsibility of the State to provide the compensation.</p> <p>29. Where an award is made under section 17, the acquiring officer of the district in which the land to which that award relates is situated shall tender to each person who is entitled to compensation according to that award the amount of compensation allowed to him by that award or, if in lieu of that</p>	<b>Full Equivalence.</b>	
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	<p>amount a new amount has been allowed as compensation to that person by a final decision on an appeal to the board or by a decision on an appeal to the Court of Appeal tender that new amount to him, and shall pay the tendered amount to him if he consents to receive it:</p> <p>“acquiring officer”, with reference to any land, means the Government Agent or Assistant Government Agent of the administrative district in which that land is situated, or any other prescribed officer;</p> <p>B. National Environmental Act – Where the development activity as a consequence of which acquisition is mandated is required to go through the environmental assessment process, a resettlement action plan may be part of the EA report and thus part of the development project.</p> <p>C. Environmental Statute of the North Western Province – Provisions similar to the National Environmental Act.</p>		
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11. Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.

Pay compensation before displacement	<p>A. Land Acquisition Act – The Act provides a regular approach and an expedited approach for acquisition. Under the regular acquisition process displacement can be affected after the award has been made. The payment of</p>	<p><b>Partial compliance.</b></p> <p>The expedited approach to acquisition does not enable the payment of compensation prior to</p>	<p>Consider the introduction of provisions where, under the expedited process, compensation be offered prior to displacement where title is not in dispute.</p>
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	<p>compensation may get delayed where the affected person appeals against the compensation awarded.</p> <p>Under the expedited approach displacement can occur prior to compensation being assessed and/or paid.</p> <p>38. At any time after an award is made under section 17, the Minister may by Order published in the Gazette-</p> <p>(a) where the award relates to the acquisition of any land, direct the acquiring officer of the district in which that land is situated, or any other officer authorized in that behalf by such acquiring officer, to take possession of that land for and on behalf of the State, or</p> <p>(b) where the award relates to the acquisition of any servitude, declare that the land over which that servitude is to be acquired shall be subject to that servitude:</p> <p>Provided that the Minister may make an Order under the preceding provisions of this section-</p> <p>(a) where it becomes necessary to take immediate possession of any land on the ground of any urgency, at any time after a notice under section 2 is exhibited for the first time in the area in which that land is situated or at any time after a notice under section 4 is exhibited for the first time on or near that land, and</p> <p>(b) where it becomes necessary immediately to acquire any servitude on the ground of any</p>	<p>displacement.</p>	
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	urgency, at any time after a notice under section 4 is exhibited for the first time on or near the land over which that servitude is to be acquired.		
12. Monitor and assess resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring. Disclose monitoring reports.			
Monitor and assess resettlement outcomes	A. National Environmental Act – Where the resettlement is as a result of a ‘prescribed project’, and a EA report is prepared including a resettlement action plan, the resettlement may be monitored as a result of the overall project monitoring.	<b>Partial Equivalence.</b> There is no process whereby resettlement outcomes are fully and comprehensively monitored.	Legislative amendments mandating a comprehensive and transparent monitoring approach for resettlement outcomes as part of the legal framework for resettlement planning.
<b>Permanent Displacement as a result of involuntary restrictions on land use or on access to legally designated parks and protected areas.</b>			
	A. Fauna and Flora Protection Ordinance B. Forest Ordinance C. National Heritage Wilderness Areas Act	<b>No Equivalence.</b> There are no legislative provisions that mandate compensation in the event of displacement as a result of restrictions pertaining to legally designated parks and protected areas.	Examine the possibility of introducing ‘planning compensation’ to Sri Lanka.

## Cases study of Southern Transport Development project

### A. Introduction

1. The Southern Transport Development project (STDP) was approved by ADB in 1999 and declared effective in October 2002 with the approval of a resettlement implementation plan (RIP). It has two components: 1) the construction of a new highway linking Colombo with Galle and Matara (128 km) and 2) the road safety, policy and institutional reforms in highways management. The main objectives of STDP were to: 1) construct a new highway from Kottawa to Matara (128 km) for development of the southern region by linking Colombo Capital city, with the two district capitals of Galle and Matara on the Country's south coast; 2) reduce poverty with improved access to services and generation of employment opportunities; and 3) reduce the high rates of road accidents. The project displaced 1338 families and affected about 4000 families due to acquisition of about 1,100 ha. of homesteads, commercial lands and agricultural lands.

2. The total estimated project cost was \$292 million in 1999 to be funded by: 1) the Government of Sri Lanka (\$78.2 million); 2) Asian Development Bank (ADB) (\$ 90 million); 3) Japan Bank for International Cooperation (JBIC) (\$120 million); 4) Nordic Development Fund (NDF) (\$6.7 million) and 5) Swedish International Cooperation Agency (SICA)(\$1 million). The Government of Sri Lanka provided cost of land acquisition, resettlement and project administration while ADB and JBIC provided construction of the highway (60 km and 68 km respectively). NDF and SICA provided project management consulting services, and road safety equipment cost. The Ministry of Highway and Road Development Authority (RDA) were the project executing agencies. The original project completion date of 31 December 2005 was extended several times due to delays in land acquisition and civil works. The highway (Kottawa to Galle road portion funded by JBIC) was opened in 2011.

3. The STDP was selected as a case study for the review of land acquisition, compensation, relocation, and income restoration processes in a new highway construction project. The project is nearing completion (to be completed in 2013). ). The project introduced a number of good resettlement practices including the preparation and implementation of a resettlement implementation plan (RIP), payment of compensation at replacement values and development of resettlement sites. Also, it has a long history of project planning and implementation issues such as delays in conducting land surveys, land acquisition, and construction activities due to objections from some affected persons and weak institutional arrangements. Some issues related to the violation of human rights and national involuntary resettlement policies of the government and ADB were addressed and resolved in Appeal Courts and by the ADB's Compliance Review Panel (CRP). The planning and implementation of this project from 1996 to 2010 shows the strengths and weaknesses of application of both country social safeguard system and ADB involuntary resettlement policies as well as good practices in resettlement operations.

4. This case study adopted the methodologies proposed for project reviews in Guidance Note for Review of Country Safeguard System, ADB, November 2010 and A Planning and Implementation Good Practice Sourcebook, ADB, 2011. The first document provides methodological guidance based on the findings of case studies under RETA 6285. The second document focuses on safeguard requirements pertaining to involuntary resettlement and good practices in the implementation processes. The key elements in Guidance Note are: 1) legal requirements; 2) outcome assessment; 3) outputs assessment; 4) implementation processes and procedures; and 5) institutional capacity to implement the applicable laws, policies, regulations, rules and procedures. This assessment can be done at project elements level: 1) project preparation; 2) resettlement planning; 3) land acquisition and compensation; 4) consultation and information dissemination; 5) relocation and displacement support; 6) income restoration and 7) monitoring and evaluation. The performance of project activities at each project element level can be examined under categories of: 1) legal and policy requirements; 2) outcomes; 3) outputs; 4) the procedures and processes followed in achieving the outcomes and outputs and 5) institutional capacity. For the transformation of inputs (funds, equipment and staff etc.) into outputs, it is required to carry out certain activities/mandatory requirements at each project element level.

5. There are key milestones/ completion dates of major activities indicating the implementation schedule and targets. Project funding and implementing agencies normally use such indicators for measurement of project progress and completion and achievement of the project outcomes and outputs. In addition, the views and perceptions of different stakeholders such as the affected people, NGOS and external motors regarding the achievement of outcomes and outputs are good indicators of project success or failures. Finally, there are internal and external events which may influence the delay in carrying of activities according to the schedule of completion. This format is used in this case study to present the project planning and implementation experiences of the new highway construction project.

## **B. Project Elements**

### **1. Screening social impacts –legal and policy requirements**

6. STDP was classified as a “Prescribed Project” by the Central Environmental Authority (CEA) under the National Environmental Authority Act, No. 47 of 1980 as amended by Act no. 56 of 1988. CEA approval was necessary for a prescribed project and a list of prescribed projects was published in Part 1 of the Schedule of an Order under Section 23Z of the Gazette Extraordinary No.772/22 of 24 June 2003. Accordingly, the project is a prescribed project under item 7 (a national highway exceeding 10 kms) and item 12 (a project with involuntary resettlement exceeding 100 families).

7. The Road Development Authority as the project proponent was responsible for submitting the Environmental Examination Assessment Report (EIAR) under Section 23CC and regulations made and published in Gazette Extraordinary No.772/22 of 24 June 1993. According to Section 33 of the NEA, EIAR is legally required to contain a description of alternatives to the proposed project which is less harmful to the environment, together with

reasons why such alternatives are rejected. The regulations made in Gazette extraordinary No.772/22 of 24 June 2003 describe the procedures to be followed for approval of a prescribed project. A Project Proponent must prepare and submit the EIAR (Regulation 2) and the Project Approving Agency (CEA) shall grant its approval or rejection with reasons (Regulation 3). EIAR is required under Section 33 of the NEA for a prescribed project.

8. The EIA report should examine if any particular social group is more severely affected than others, and suggest how to avoid or minimize the adverse impacts on this group. The assessment of the impacts of relocating families and other community groups, should be summarized in sufficient detail to adequately explain the situation arising from such relocation. This assessment should identify anticipated problems, proposed mitigation measures, cost estimates and an entitlement package. It should be clearly demonstrated that every possible action has been taken to avoid relocating households and businesses. Where relocation is found to be unavoidable, the following issues must be addressed in relation to each alternative action: 1) number of households to be relocated and their socio-economic profiles; 2) availability of comfortable, safe, sanitary and affordable housing for the displaced people; 3) anticipated loss of employment caused by acquisition of business, industrial or domestic premises necessitating relocation, actions taken to compensate affected parties, number of commercial and industrial ventures to be relocated, availability of sites for relocating displaced, and costs of relocation, A statement needs to be made that acquisition of property and relocation will be conducted in accordance with the existing laws and regulations, and resources available for compensation. The social assessment should contain a discussion of the financial and other incentive programs and other assistance programs available to the displaced. The Project proponent must estimate the entire cost of the relocation program as an integral part of the project.

9. The Cabinet approved the National Involuntary Resettlement Policy in May 2001 and one of its major objective is to avoid or reduce involuntary resettlement impacts by reviewing alternatives to the project as well as examining alternatives within the project. The policy also applies to all projects with involuntary land acquisition irrespective of funding. A comprehensive resettlement action Plan is required where 20 or more families are affected as a result of land acquisition. Resettlement is identified and stated as one of the mandatory items that need to be addressed in the EIA process. The procedures related to preparation of the environmental impact assessment report (EIAR), public participation and project approval are clearly stated in legal provisions, regulations and guidelines. The social impact assessment (SIA) study is considered as a major component in the EIAR and formed an integral part in the selection process of the best alternative road trace and the final road alignment. In the case of STDP, several social impacts assessments studies together with EIAR and engineering considerations were required to design the project. The critical decisions were taken during different stages of the project cycle based on the findings of these social and environmental impact studies such as the selection of the environmentally, economically and socially acceptable alternative and rejection of different alternatives available to the project. The final selection of the road trace is a compromise to minimize environmental impacts as well as social impacts as a result of involuntary land acquisition. It appears that the above legal provisions in the NEA, its regulations and guidelines as well as



the policies of NIRP in 2001 were adequate for screening the project to identify social impacts during the planning and construction stages of the project. The major outcome was the avoidance and minimization of resettlement impacts as a result of involuntary land acquisition from the early stage of project planning and implementation.

## 2. Process and procedures in project screening

10. The following activities are mandatory in conducting environmental impact assessment study and assessment of social impacts as part of the process after ADB involvement in 1997.

**Table 1: Major activities completed during the EA process in 1998 and 1999**

Activity	Status of completion
RDA submits preliminary information on the project to the CEA and The CEA acknowledge in writing receipt of such preliminary information within six days	Preliminary information was submitted to CEA and the CEA acknowledged the receipt of the information within six days
The CEA in consultation with RDA and other relevant agencies reviews preliminary information to set the Terms of reference (TOR) for the Environmental Impact Assessment Report and If preliminary information is adequate, CEA informs in writing to the RDA the TOR within 30 days from the date of acknowledging receipt of the preliminary information and ask to prepare the EIAR	CEA and RDA discussed about the scope of the EIAR and The TOR was issued within 30 days
CEA within 14 days determine whether the matters referred to by the TOR are addressed. If the report is inadequate, RDA makes necessary amendments and re-submit the report, together with the required number of copies	University of Moratuwa prepared the EIAR and RDA submitted the EIAR to the CEA on 4 May 1999 and opened for comments from 5 May 1999 for 30 days
The notice is published in the Gazette and in newspapers in the Sinhala, Tamil and English languages and invite the public to make written comments, if any, to the CEA, within thirty days from the date of first appearance of the notice, either in the Gazette or in the newspaper.	The notice was published on 6 March 1999 in the newspapers in the languages of Sinhala, English and Tamil
The notice specifies the times and places at which the report will be made available for public inspection	The Notice for public hearing was published in the news papers on 25

	June 1999
CEA, upon completion of the period of public hearing sends the comments received from the public, for review and response from the RDA, within six days from the date of completion of the period of public inspection	Public hearings were held at Panadura and Galle on 3 July and 10 July 1999
The RDA responds to such comments to the CEA in writing	Responses to public comments by RDA on 18 July 1999
CEA within a period of six days after comments either grant approval for the implementation of the proposed project subject to specified conditions or refuse approval for the implementations of the proposed project with reasons of doing so.	The Technical Evaluation Committee was appointed and it met at CEA on six occasions from 21 May 1999 to 20 July 1999. CEA approved the project on 23 July with conditions.
RDA must prepare and send a report which contains a plan to monitor the implementation of the approved project, within 30 days from granting approval.	The report was not prepared
RDA must publish in the Gazette and in three newspapers in the Sinhala, Tamil and English languages, the approval of the project.	The notice was published in the news papers on 16 August 1999
The CEA specifies a period within which the approved project shall be completed	Three years from 23 July 1999
RDA must inform alterations to the project or the abandonment of the project	The road trace change in January 2000 was informed but there was no reply from the CEA.
RDA must obtain fresh approval in respect of alterations that are intended to be made to the project and CEA determines the scope and format of the supplemental report required to be submitted for such alterations. RDA within 30 days prior to the expiry of project completion, can make an application in writing to the CEA for an extension of the time for the completion of the project	The approval for alterations was not required according to the CEA by its letter dated 31 May 2004 because the new trace is within a 3 km corridor

Source: National Environmental Act of 1980 and its regulations and progress review reports in 1999

11. The formal process and procedures as mandated by law and regulations in terms of EIAR preparation, submission, public hearings, and approval of the EIAR appear to be consistent with legal requirements. These procedures followed were coherent and transparent to the stakeholders based on the views of stakeholders except the approval for alterations to the road trace in 2000. In this regard, the informal and non-transparent procedure was adopted to get CEA approval for the alterations made to the road trace in January 2000.

### **3. Environmental and social impact studies delivered as per legal and policy requirements**

12. The assessment of environmental and social impacts was an ongoing feature in the project until the final decision to determine the road alignment. RDA as project proponent have prepared two EIARs, one for the RDA Trace in 1996 and the other for the Combined Trace in 1999. The Environmental Monitoring Report (EMR) was also required, but it was not prepared according to the schedule. From project feasibility stage to CEA approval of the project, four social impact assessment reports were prepared: 1) initial social impact assessment for the RDA trace in economic feasibility study report in 1996; 2) A sample household survey in the EIAR for the RDA Trace in 1996; 3) Social impact assessment in project feasibility study in 1998; and 4) social impact Assessment study for the Combined trace in March 1999. The results of first three studies were used to evaluate project alternatives and to finalize the road trace for conducting engineering designs. The fourth study was a social impact study of the recommended trace in project feasibility study. It was the basis for preparing the Report and Recommendation of the President (RRP) to ADB for approval in December 1999. A draft resettlement plan was also prepared in 1999. ADB engaged a private non-profit organization to quantify and analyze socio-economic benefits to the affected people and advantages for private sector industries and public services. This study was carried out in May and June in 1999. The study findings were incorporated in the RRP (as a supplementary appendix to the RRP). Finally, an updated SIA report was prepared in October 2000 during detail engineering design stage in ADB section, but a similar study was not completed in JBIC section.

### **4. Quality of environmental and social impact studies**

13. The accurate information on the number of affected people and social impacts from involuntary land acquisition were not available during the early stages of project feasibility because alternative road traces were not surveyed and established on ground except the RDA trace for 113 km in 1996. However, sample social surveys were conducted in assessing the degree of social impacts in both final road traces, RDA Trace in 1996 and Combined Trace in 1999. The results of these two social surveys were used to justify the selection of the best alternative, and the decision to recommend the final road trace for engineering designs. Nevertheless, EIA team in 1999 did not have access to the results of a social survey (50% sample) conducted for the Combined Trace which was recommended by the project feasibility study team in 1998. Therefore, EIA team used the estimated number of affected population from secondary data sources (622) in project feasibility study for its

sensitivity analysis and cost estimates. This estimate was low compared to the findings of the social survey conducted in parallel in March 1999 (810 households). These differences in estimates of the number of displaced families and cost estimates of resettlement impacts were highlighted in court cases, and in the Technical Evaluation Committee appointed to review the EIAR in March 1999.

“ In the EIA report total number of families to be displaced is not given due to lack of data. As a result, actual costs cannot be fully estimated. Resettlement sites are not identified, surveyed and evaluated for their acceptability and suitability. Non-availability of detailed and accurate information to the people in the project area has led to considerable mental pain, anxiety and uncertainty. Detailed information about the project should have been made available to the local people prior to the CEA approval”. TEC Final Report, July 1999.

“EIAR has failed to develop reasonable alternatives to a comparable level of detail that permits and unbiased evaluation. The extended cost benefit analysis which incorporates broader social and environmental cost of the project is erroneous” (the submission of a complaint by the NGO to the Appeal Court on 5 October 1999).

14. Except for a sample survey of 100 households in 1996 for the RDA trace, there was no social impact assessment study based on a field study in evaluating other alternate traces during the project preparation stage. In addition, there was no baseline information available on socio-economic conditions of the affected people, income levels, vulnerable groups and other socio-economic data. The sample household survey was used to estimate only the number and costs of properties affected and perceptions of the people on their willingness to support the project. The differences in estimated number of displaced households show that the actual counting of displaced population is a difficult task in the absence of land survey maps at reasonable scale and the markings of the centerline of the road trace.

15. The deficiencies in the EIAR in terms of evaluation of project alternatives, cost estimates and procedural matters were first challenged by a NGO in October 1999 for the reasons that “the EIAR fails to provide proper, intelligible and adequate reasons why such alternatives were rejected. Consequently, the EIAR fails to satisfy the legal requirement established by the NEA in relation to environmental impact assessment”. Therefore, it was argued that any decision based on the EIAR is illegal. The EIAR withheld vital and relevant information which should have been included in the EIAR, and made available to the CEA and the public. However, the Appeal Court and Supreme Court dismissed the case filed by the NGO.

16. According to regulation 17 (i) (a) contained in gazette Extraordinary No.772/22 of 23 June 1993, in respect of any alterations that are intended to be made, the project proponent should inform the CEA to obtain a fresh approval. The CEA will determine the scope of the supplementary report for such alterations (Regulation 17 (ii)). The CEA approval imposed three conditions in terms of determining the final road alignment. The final road trace was developed to meet the requirements of CEA approval during engineering design stage. The final road trace in 2000 and 2001 was different significantly from the CEA

approved trace in 1999. There were several arguments for and against the need for approval of alterations through the EIA process, and the expected outputs such as supplementary EIAR, economic analysis, updated SIA and other relevant documents, and public hearings for the deviated road sections. There were several views and concerns expressed by the affected people, courts, CEA, RDA, ADB and other stakeholders on the issue of changing the road trace without a public hearing process and additional environmental and social impacts studies required for alterations following the process of public hearings and CEA approval as per legal requirements in the NEA (regulations 17 (i)).

## **5. Institutional capacity in preparing environmental and social impact studies**

17. The CEA and RDA were legally responsible for ensuring project screening for social impacts in the process of conducting an EIAR prior to commencement of a prescribed project. At the early stage of project design and planning, the RDA as the project executing and implementing agency heavily relied on the expertise and capacity of local and foreign consulting firms and universities. The project management unit (PMU) was responsible for selecting and engaging the consultants in conducting project feasibility studies, social impact assessments and the EIAR. It was argued that the project feasibility study done by the international consultancy firm in association with a local consultancy firm was inadequate to justify the project economic feasibility and therefore, regional social impact assessment was conducted in August 1999. For the EIA and social impact studies, two local universities were engaged and adequacy and quality of their studies were challenged in courts. It is interesting to note the judgment delivered in Appeal Court case on 20 November 2000 which addressed the issues of adequacy and quality of the EIA prepared in March 1999.

“The court is ill-equipped; in any event, to form an opinion on environmental matters- they being best left to people who have specialized knowledge and skills in such spheres. Even if a matter may seem to be pre-eminently one of public law, the Court may decline to exercise review because it is felt that the matter is not justifiable, i.e., not suitable to judicial determination. The reason for non-justifiability is that judges are not expert enough to deal with the matter”.

## **6. Outcome of project screening for social impacts**

18. Social impacts are identified, predicted and evaluated in conjunction with other factors such as environmental impacts and engineering considerations in order to minimize involuntary resettlement impacts. In many SIAs conducted for the STDP social impacts are considered to be changes in population characteristics, changes in travel pattern and some characteristics of social groups in the affected population. It is likely that these impacts are assessed because secondary information was readily available and some impacts are easy to quantify. It was costly and difficult to collect primary information about the affected communities and groups because of some protests and the road alignment and adjacent area were not demarcated. However, the EIAR provided the opportunity to get the views of different affected groups and stakeholders. The sample survey of at least 25% of affected

families for both final road traces (RDA Trace and Combined Trace) could have been conducted to evaluate and select the best alternative in the EIAR.

19. The government decided to acquire some abandoned paddy lands before CEA approval in 1996 and many affected persons were not paid compensation until 2000. These activities were not in conformity with safeguard requirements, and such actions created reputational risks of the government. The road alignment caused community severance in many locations because only some people were affected in a village. Those who do not lose land or structures were left behind, and were not surveyed and consulted. The SIA did not include information about such groups and impacts from the project. The host communities were not consulted in field surveys. There was inadequate information on assessment of the potential impacts on vulnerable groups. The loss of community owned facilities and loss of access to the use of natural resources and cultural properties were not adequately assessed.

20. The outputs of consultants were not properly assessed based on the TORs provided and expected outputs. A large number of studies were carried within a short period, and there was no consistent coordination and feed back in regular interactions between the RDA and consultants. There were no seminars or workshops conducted to clarify these issues.

## **C. Resettlement Planning Experience**

### **1. Legal and policy requirements**

21. Under the provisions of Part IV C of the National Environmental Act (as contained in Gazette (Extra-Ordinary) No 772/22 of 24 June 1993 and No 859/14 of 23 February 1995, the CEA approval is required of a resettlement plan for a project causing involuntary resettlement exceeding 100 families other than resettlement effected under emergency situations (Regulation 12). However, these provisions do not adequately address the issues in relation to resettlement planning and approval of resettlement plans. The Guidelines for Road and Rail Development in Sri Lanka, Section 4, 1997 provide details to be included in social impact assessment of such a project. However, CEA approves only the EIA and as part of EIA social and resettlement impacts and mitigation measures are included. There is no legal requirement for the CEA to approve a resettlement plan and also, land acquisition activities in a prescribed project can commence without the approval of a resettlement plan..

22. The Cabinet Memorandum dated 9 April 2001 titled "Payment of Compensation to the Persons Affected by Acquisition of Property for the Construction of Southern Transport Development Project" was further reviewed to see whether the proposed procedure could be accommodated within the existing legal provision and report back to the Cabinet. The second Cabinet Memorandum was titled as "Providing Special Assistance to Persons Affected by the Acquisition of Land and Properties for the Construction of Road

Projects by the Road Development Authority” dated 27 April 2001. It was approved by the Cabinet. Regarding the first Cabinet Memorandum, a note to the Cabinet was submitted and it was approved in September 2001 (Cabinet Paper 01/1778/017/002). This note was to amend the earlier Cabinet decision taken on 28 June 2001 to implement the proposed administrative actions in paragraphs from (a) to (h) in the Memorandum in order to expedite the process of land acquisition and establishment of Land Acquisition and Resettlement Committees (LARC) for payment of compensation at replacement cost. The following paragraphs in the Memorandum provide details of the proposed changes.

“The establishment of committee under the title of Land Acquisition and Resettlement Committee, comprising the following members at the level of the Divisional Secretariat to assist the implementation of the activities proposed; (i) the Divisional Secretary, (ii) District Superintendent of Survey or his representative, (iii) District Valuer or his representative, (iv) an officer nominated by the Road development Authority, and (v) the affected person or a person nominated by him (Para. g)”.

“Confine the statutory compensation payable under Land Acquisition Act to the statutory limits as determined by the Chief Valuer” under Para. C.

“The Road development Authority to pay to the persons concerned all such payments and other benefits payable under the table annexed and in consideration of any other adverse effects to such persons as decided by the Land Acquisition and Resettlement Committee stated in para g, in addition to the compensation stated in Para C in keeping with the understanding reached between the government and the agencies providing financial assistance for the road project (Para. d).”

23. The regulations under the NEA stipulate the process and action that are applicable when a project falls into the category of a prescribed project. In such a situation, the project executing agency, Ministry of Lands and the CEA have responsibilities for planning, approving and implementing resettlement action plans for the projects prescribed under the NEA. The National Involuntary Resettlement Policy was approved in May 2001. Under this policy it is required to prepare a resettlement plan if the affected families in a project are more than 20.

## **2. Processes and procedures followed in resettlement planning**

24. The loan agreement signed between ADB and the Government in December 1999 contained five conditions: 1) JBIC loan has to be executed; 2) a satisfactory RIP acceptable to ADB has to be prepared by the borrower; 3) allocation of sufficient funds for RIP implementation; 4) regulations on national highways and road safety and 5) a draft National Highways Act to be submitted to the Parliament. The submission of final RIP has to be confirmed by international resettlement consultant that it has been prepared in accordance with ADB involuntary policy. The JBIC loan agreement with the government was signed on 30 March 2001, and the JBIC loan was effective from 1 May 2001.

25. ADB required the Government to prepare a resettlement plan with time bound actions and a budget based on assessment of social and resettlement impacts for the project to meet the requirements of ADB policies and NIRP in 2001. It took about nearly two years to prepare a satisfactory resettlement plan for the final road alignment. The following table provides chronology of major events leading to the preparation, revision and approval of the final resettlement plan for the STDP.

**Table 2: Chronology of events leading to preparation of the final resettlement implementation plan from July 1999 to October 2002**

Date	Event	Remarks
July 1999	Resettlement Plan was prepared for the combined trace recommended by project feasibility study team based on 50% of sample households.	Alignment was not finalized and sets out RP principles.
28 October 1999	Wilbur Smith Associates (WSA) Inc. in association with Resource Development Consultants (RDC) were engaged to prepare preliminary and detail engineering designs and preparation of a resettlement implementation plan (RIP) for the final trace from Kurundugaha Hatakma to Godagama in the ADB section (about 60 km). The preliminary design works commenced in January 2000.	About 20 km was on the Combined Trace and 40 km was changed to new locations to meet CEA approval requirements. The Galle Port Access road was also surveyed.
29 March 2000	Pacific Consultants International (PCI) was engaged in preparing preliminary and detailed engineering designs and social impact studies for the final trace from Kottawa to Kurundugaha Hatakma in the JBIC section (about 68 km).	About 5 months after ADB consultants' work engineering designs started, but updated SIA report was not prepared for the final trace.
May to August 2000	WSA consultants prepared updated SIA for the ADB funded section.	About 5km section in Akmeemana area was not covered due to the opposition of affected persons.
November 2000	WSA consultants prepared the RIP in the ADB section based on updated SIA and inventory losses survey of a 5km section.	There were delays in preparing advanced tracings and conducting IOL surveys.
January	WSA prepared an Addendum to the	More analysis on



2011	November 2000 resettlement implementation plan.	resettlement budget was required.
February 2001	RDA submitted a RIP to ADB for the entire length of the road (128 km and Galle Port access road.	The revised RIP was not acceptable to ADB and gaps were identified.
April 2001	ADB commented on the RIP.	It was required to complete IOL survey and data analysis.
14-20 May 2001	ADB conducted a review mission.	The ADB mission Reviewed the progress of RIP preparation and identified gaps.
June 2001	RIP was revised and submitted to ADB for approval.	ADB provided further comments to revise the RIP.
July 2001	Independent Monitoring Agency (IMA) submitted an inception report.	IMA identified major deficiencies in resettlement planning.
2-13 July 2001	ADB special project administration mission visited the project.	The mission reviewed the progress of resettlement related activities.
11-14 September 2001	ADB special project administration mission visited the project.	The mission identified specific gaps to be filled in the RIP.
21-22 November 2001	ADB consultation mission visited the project.	The mission discussed with project management staff.
10-12 December 2011	ADB consultation mission visited the project.	The mission provided further support to RDA in finalizing the RIP
June 2002	An addendum to the RIP was submitted to the ADB	
17-21 June 2002	ADB consultation mission visited the project to review the progress of RIP	The mission provided comments to finalize the RIP
September 2002	ADB commented on the RIP.	

10-14 October 2002	ADB reviewed the revised RIP and requested to prepare a consolidated RIP	
29 October 2002	ADB Chief Compliance Officer approved the RIP	

Source: Resettlement Implementation Plan, October 2002 and project records

25. The above table shows that ADB fielded many loan review missions to provide comments and advice to PMU staff in finalizing the RIP after conducting IOL surveys and consultations with all the affected persons including the disputed areas in Akmeemana and Banadaragama. ADB played the leading role in 1999 in both financing various studies required for the project, including environmental and social impact assessments which were the basis for the co-financer to support the project. The RIP presented to the ADB for approval covered the entire project, although the engineering designs and construction activities were divided between ADB and the co-financer, JBIC.

26. The final RIP addendum included summary record of IOL, summary record of consultations, preliminary livelihood restoration plan, approved cabinet papers regarding payment of replacement costs and modalities of compensation payment by RDA according to the revised RIP implementation schedule. The final RIP was to be submitted to ADB after confirmation from international resettlement consultant by 15 November 2001. The memorandum of understanding (MOU) was signed on 14 September 2001 regarding the agreed actions and key targets for RIP preparation.

27. The government requested to extend the loan effective date to 31 October 2002 with a justification and to exclude the disputed areas in preparing the RIP but ADB did not agree. The government provided a draft addendum to the RIP, dated June 2002. It reported 5359 affected households (19,340 persons), consultations were complete, about 96% had consented and only 94 households opposed to land acquisition in the JBIC section and 136 in the ADB section. However, about 200 detailed measurement surveys remained to be carried out in the ADB section and about 700 in the JBIC section. ADB informed that if some continue to oppose then the mediation should be conducted before the RIP could be finalized. The timing of such a mediation exercise must be taken into account.

28. The RIP covered the entire project area and agreed that no differentiation would be made between the ADB and JBIC sections. It is also agreed to hire management consultants to assist the RDA in implementing the RIP in both sections. There were two conditions that delayed the preparation of the RIP at the early stage. One was the completion of engineering designs in the JBIC section and the other was the conducting inventory of losses (IOL) surveys. The preparation of advanced tracings had to be completed before undertaking IOL surveys. The ROW drawings and monuments guided in identifying property boundaries. The Grama Niladharees (local administrative officers under the Divisional Secretaries) needed the AT drawings with property boundaries marked before proceeding with the IOL survey. The IOL survey started in August 2000 in the ADB section

and completed in 2002. After completion of engineering designs in both sections it was found that about 1300 families need to be re-settled. The project was almost treated as two projects after ADB approval in 1999 with ADB and JBIC having their detailed design and supervision consultants and administrative responsibilities in two road sections. .

29. ADB conducted a consultation mission in November 2001 led by the Deputy Director, Programs Department (West), ADB. This mission was to hold discussions in connection with the request for ADB inspection of the project. It conveyed the seriousness of the complaints and the risks associated with the delays in loan effectiveness declaration. RDA reported that the majority accepted the final road alignment and 243 affected persons accepted compensation payments by end of November 2001. It gave reasons to the Mission for the difficulty in changing the alignment in the disputed areas because of the amounts of work done in design, land surveys and land acquisition procedures in addition to engineering considerations. The design consultants had minimized resettlement impacts and any change to the final alignment would give rise to new opposition from the people affected by such changes. RDA agreed to establish a task force comprising Secretary of the Treasury, Director General of External Resource Department (ERD), Secretary of Ministry of Highways and Chairman, RDA to meet weekly and report the progress of land acquisition. The priority was to increase the number of people accepting compensation, an action plan to address problems in disputed areas including establishing third party mediation and an information dissemination campaign.

30. **Complaints for ADB inspection.** Gama Surakeeme Sanvidanaya (GSS) had submitted a request for inspection under ADB's inspection policy. The United Society for Protection of Akmeemana (USPA) and the Organization of Victims of Colombo -Matara Highway and Entrance Ways (OVCM) had submitted complaint letters. USPA was represented by 15 persons and GSS and OVCM by 106 persons. The complainant requested to change the alignment and were reluctant to discuss the matters related to compensation and expressed a lack of confidence and distrust of RDA for further negotiation. A consultation mission held discussions with project management staff and the complainants from 10-12 December 2001. It was proposed to engage a mediator to understand the concerns, and explore possible solutions to these concerns.

31. There was an extensive process of consultation with the affected persons, led by Government ministers, Members of Parliament and other politicians. The Minister of Lands confirmed that the Section 2 notices were issued for the entire length. This allows the surveyors to prepare advanced tracings. If there were small pockets of remaining hardcore opposition and unwilling to cooperate with the detailed measurement surveys, such small numbers can be contacted for mediation. After third party confirmation a report had to be submitted to ADB for verification and approval of the RIP. ADB and RDA agreed to engage Arthacharya Foundation (NGO) to identify mutually agreeable means of solution with respect to the 32 people objecting to the project and ADB discussed with the NGO before finalization of the RIP.

32. **Third party mediation.** In October 2002 ADB review mission discussed the progress of third party confirmation and finalization of the RIP. According to RDA the detailed measurement surveys for 5359 families had been completed, 99% consented, five in the JBIC section and 26 in the ADB section did not agree. Since the numbers are small the third party confirmation exercise to be done as the final opportunity for mediation. The Arthacharya Foundation was expected to commence mediation from 21 October and to attach a third party confirmation as an appendix to the RIP. The final RIP and addendum had to be confirmed by the international resettlement specialist with a written confirmation. The actual time taken to complete the preparation of advanced tracing and IOL surveys was about 18 months from April 2001 to October 2002 in the JBIC section. The development of involuntary resettlement policy during the RIP preparation also contributed to increase the awareness of resettlement issues.

33. **TA supporting development of NIRP.** ASB provided technical assistance to develop a national involuntary resettlement policy from August 1999 (TA was approved in August 1999) for about 18 months until May 2001. TA consultants reviewed: 1) the existing legislation on land acquisition to identify gaps between ADB involuntary policies and the Government procedures; 2) mechanisms for including resettlement plans in project preparation; 3) assessment of institutional capacity; 4) provided training on NIRP implementation; 5) emphasized on the need for adequate compensation, entitlements for vulnerable groups, information disclosure, gender analysis; and 5) monitoring and evaluation of resettlement impacts. Two international consultants (resettlement and legal/policy expert) were engaged for 4 months and four domestic consultants in the areas of resettlement, gender, environment and land law were recruited for five months. They provided inputs for the special studies required to develop a national policy. A number of consultative workshops with stakeholders were conducted. The first national workshop was held in June 2000 at the time of conducting the social survey in ADB section. The process adopted including coordinating meetings with the government agencies and workshops helped to educate and increase the awareness of resettlement impacts and mitigation measures.

34. **Experience in two road projects prior to STDP.** There were two ADB funded projects approved and implemented before the STDP with resettlement plans. The Third Road Improvement Project was approved on 15 September 1994 with the loan closing date of 31 December 2001. The Road Network Improvement Project was approved on 8 December 1998. The RIP for the Road Network Improvement Project (NIRP) was prepared in September 1998 based on a socio-economic survey of four sample roads and it refers that "RDA has recently approved a Special Compensation Package providing benefits to non-titled persons such as squatters and encroachers, transfer allowance for relocation and income restoration assistance". RDA agreed to provide special benefits to female headed households and affected families with disabled members. The RP contained eight compensation categories: 1) compensation for land; 2) compensation for crops and tress; 3) compensation for houses; 4) compensation for loss for commercial structures; 5) transport or shifting allowance, 6) relocation support; and 7) income restoration and assistance and 8) house plots for squatters and encroachers in resettlement sites. It also proposed to establish

local resettlement committees (LRC). The Grama Sevaka Niladharis were authorized to organize the committee consisting of affected persons and other stakeholders such as community based organizations and community leaders. LRC can take decisions including verification of land acquisition, assessment of compensation rates for houses to be relocated, resettlement site selection and relocation schedules. Grievances Redress Committees (GRCs) were formed for each road section with the Executive Engineer, RDA as Chair (RIP, NIRP, September, 1998, page 24).

### **3. Assessment of quality and delivery process of resettlements documents**

35. Three resettlement plans were prepared from 1999 to 2002. The first resettlement plan was prepared in July 1999 for the combined trace. It was based on a sample survey of 50% of the estimated number of households affected. The second RIP was prepared in November 2000 for the final trace in the ADB section based on a 30% sample of the affected population and an inventory losses survey of a 5 km section (km 9+200 to km 14+100). The time taken to prepare the final RIP (from November 2000 to October 2002) was about 2 years, but the comprehensive RIP was finally prepared and approved by funding agencies. The consultations and approval of a compensation package to pay compensation at replacement cost with the Cabinet approval demonstrate the concerted efforts of the government and funding agencies in preparing a satisfactory RIP to meet requirements of the NIRP and ADB and JBIC involuntary resettlement policies.

36. The final RIP both substantively and qualitatively addresses the requirements of the country legal provisions, guidelines and NIRP. The Government had to prepare two resettlement plans, one for the project approval in 1999 and the other for loan effectiveness and implementation in 2002. This does not normally happen in a project cycle unless the physical location of the project has been changed significantly requiring re-appraisal. As a result of significant change in the location of final road alignment after project appraisal and approval, somewhat different approach was adopted in resettlement planning and approval of the RIP. This was a more time consuming and difficult task for ADB and the borrower as explained in the previous sections of the processes and procedures followed. However, there was no data base developed to assess adverse impacts of the project on different social and occupational groups. The data base does not allow easy disaggregating of data on the displaced persons by impact, age, gender, education, income, occupation skills, land holdings, preferred choices for relocation and income restoration. There was no such data base developed from the social survey conducted in the entire length (A social survey in final road alignment was conducted only in the ADB section) and therefore, the social survey conducted for the Combined Trace in March 1999 by the University of Colombo was used to “provided a picture of the socio-economic situation of the project road and the impact, which people will sustain due to the implementation of the project” (Chapter 2.2.4 in the RIP, October 2002). This data base does not represent the actual situation of the project area because nearly 75% of the Combined Trace was changed to the extent of about 2-4 km. Since there was no social survey conducted in the JBIC section, the October 2002 RIP used the result of March 1999 survey conducted for the Combined Trace to provide baseline

information for subsequent monitoring of implementation of the RIP. (Para 2.2.2. RIP, October 2002).

37. **Identification of vulnerable groups.** The IOL survey data was used to identify 214 vulnerable households. The groups identified are the elderly, disabled, women headed households, households without legal titles and the poor. There are no details regarding the number, location and other information about these groups. It appears that IOL survey has not provided adequate information on their social and economic conditions.

38. The 2002 October RIP adequately cover the details and analysis of information required in the RIP, but lacks some information as indicated in the following table.

**Table 3: Coverage in the RIP and the level of adequacy**

<b>Elements</b>	<b>Assessment of information requirements</b>
1. Project description	Not adequate
2. Land acquisition and resettlement impacts	Adequate
3. Socio-economic information of the affected people	Not adequate
4. Information disclosure, consultation and participation	Adequate
5. A grievance redress mechanism	Adequate
6. Legal framework and gaps identified	Adequate
7. Entitlements, assistance and benefits	Adequate
8. Relocation of housing and settlements	Adequate
9. Income restoration and rehabilitation	Not adequate because of lack of socio-economic data on actual affected persons and households
10. A resettlement budget and financing plan	Adequate
11. Institutional arrangements	Adequate
12. An implementation schedule	Adequate
13. Monitoring and reporting	Adequate

Source: RIP, October, 2002 and review of progress reports

39. About two years were required to complete the inventory losses survey in the 128 km section and the Galle Port Access road. Instead of hiring an independent agency to undertake the inventory losses survey Land Acquisition and Resettlement Division (LARD) of RDA commissioned Grama Niladharis to undertake the IOL of all households affected by land acquisition in the ROW as the basis for resettlement planning. WSA consultants in November noted that Grama Niladharis did not use the AT drawings and missed some properties. The important lesson was that the IOL survey should be undertaken only for sections for which the survey of property boundaries and advance tracings were completed. The IOL properties must be consistent with the AT and data must be complete and accurate (Chapter 1-9, RIP, November, 2000). The consultants prepared 4 questionnaires for the IOL survey (household, commercial, agricultural and non-agricultural) and used them for the first 5 km section in ADB as trail survey (Annex 3, RIP, November 2000). Because of the problem of data tabulation and analysis or missing data the October 2002 RIP used the socio-economic survey data collected in March 1999 for the Combined Trace.

40. In Chapter 2 in the RIP, (October 2002) the relevancy of information was highlighted as “the 1999 University of Colombo socio-economic survey collected a wide range of data on demographic, ethnic religion, lost of assets etc and this data base provides a picture of the socio-economic situation of the project and a profile of affected people. It did not accept the fact that the actual number of affected communities, socio-economic profiles of actual APs cannot be presented because the change in road alignment is more than 2-4 km distance and categories of APs are different.

#### **4. Institutional Capacity**

41. ADB proposed a number of actions to be taken to complete the RIP preparation process. The Government took extra-legal measures to pay compensation at replacement cost and worked out the modality of payment through establishment of committees (LARC). A Cabinet paper was approved in April 2001 with a revised entitlement matrix and payment of replacement cost for all road projects. A Cabinet paper also prepared for the STDP in April 2001 was to reduce the time required for land acquisition. These new institutional mechanisms were approved by the Attorney General, Ministry of Lands and the Department of Valuation. The discussions and memoranda were the key instruments used to resolve the issues of payment of compensation based on replacement cost, and the principles and modalities of payment of compensation to both titled and non-titled affected people through LARC system. During the RIP preparation RDA faced several challenges to meet the requirements of a comprehensive RIP and all the required institutional changes were introduced including establishment of LARCs to determine replacement values by Cabinet memorandum, consultations with affected persons, particularly in disputed areas and recruitment of resettlement staff at local level. Within the legal framework, the Ministry of Land, Department of Valuation, Divisional Secretaries and Survey Department were responsible for land acquisition and payment of statutory compensation. The project introduced a new institutional arrangement, establishment of Land Acquisition and Resettlement Committees (LARCs) by a cabinet memorandum to pay additional compensation and other entitlements agreed under entitlement package.

42. Within the RDA institutional changes were made to implement the RIP. The Land Acquisition and Resettlement Division (LARD) was created to coordinate with relevant agencies for land acquisition and compensation payment. In addition, RDA established four project specific resettlement units at field level at Banadaragama, Mathugama for the JBIC section and Kurundugahahatakma and Pinnaduwa for the ADB section to deal with daily responsibilities of resettlement implementation. Each Field unit office was staffed with one Resettlement Officer (RO) and 6 to 8 Resettlement Assistants (RA). The RIP proposed to establish Community Consultative Groups (CCGs) for assisting affected persons to submit their claims and grievances, and resettlement site selection, and verification of valuation and compensation rates for structures. These groups were not formed.

43. The Project Coordinating Committee (PCC) facilitated coordination among the relevant project agencies in land acquisition, compensation, relocation and other resettlement activities and regular progress monitoring activities. ADB provided capacity building assistance during resettlement planning and implementation of the RIP. The international resettlement consultant helped the RDA staff team. Land acquisition process was expedited by providing additional staff and a special incentive schemes to expedite land surveys, valuation of properties and conducting LARCs. Twenty graduates were recruited on 29 May 2001 as Resettlement Assistants. The Cabinet approved appointment of two resettlement officers and a special allocation of funds to pay compensation was made. The non-government organization (NGO) was appointed as the external monitoring agency, and the first report of the independent monitoring agency was submitted for the month of June 2001.

## **5. Outcome assessment**

44. ADB supported RDA to prepare a satisfactory RIP. This is the first road project which prepared a RIP after completion of IOL survey, census of affected persons, consultations with the affected persons including those in disputed areas through mediation and with the income restoration program, and payment of compensation at replacement cost through LARC system. ADB did not approve the final RIP until all the requirements of the procedures were followed in resettlement planning. However, there were weak institutional arrangements in terms of collection of baseline information through engagement of Grama Niladharis and development of a computerized data base without proper supervision and verification of data. In the absence of accurate and tabulated data base to provide baseline information it became difficult to verify the key objective of whether the affected people had restored their incomes and improved the standards of the poor and other vulnerable groups. The results of socio-economic surveys were not used for the RIP because there was no socio-economic survey conducted in about 50% of the road length. The procedure and processes in resettlement planning indicates the key tasks and the responsible persons necessary to prepare a resettlement plan but ADB as the lending agency heavily supported the borrower to follow the direction necessary for the preparation of the RIP.

### **Land acquisition, Valuation and compensation**

#### **1. Legal basis for land acquisition and compensation under the Land Acquisition Act**



45. The National Involuntary Resettlement Policy (NIRP) was developed and approved during the RIP preparation in STDP from 2001 to 2002. Some inadequacies of the land acquisition procedures under the LA Act were identified during the national policy development process and also, the RIP identified gaps between the existing legal provisions and ADB involuntary resettlement policies outlined in the Handbook on Resettlement: A Guide to Good Practice, ADB, 1998. Some inadequacies and proposed improvements were; 1) Affected persons are ill equipped in preparing documents to prove land ownership and therefore, Community consultative groups were suggested to guide and assist them in getting information; 2) improvements in coordination with several agencies involved in resettlement activities by appointment of resettlement staff at local level and assist the land acquiring officer (Divisional Secretary ) and the affected persons in submitting their claims to newly established LARCs; 3) support the Survey Department and Valuation Department in land surveys and property valuations in their field surveys and payment of incentives. The proposed improvements were to reduce the time required for claiming ownership, clearing land ownership issues, land surveys, property valuation and payment of compensation in time.

46. The Cabinet approved three significant changes in the process of land acquisition and payment of compensation under the LAA: 1) adopt an accelerated program of land acquisition to reduce the time required for land acquisition and payment; 2) use Section 38 (a) order after issuing Section 2 notice for immediate possession of land; and 3) establishment of LARC for payment of replacement value for land and structures, and other support for relocation and income restoration.

47. **Accelerated program of land acquisition.** The following procedures were proposed to expedite the process of land acquisition (RIP, October 2002). The Cabinet memorandum titled “Payment of Compensation to the persons Affected by the Acquisition of Property for the Construction of Southern Transport Development Project” was approved on 26 September 2001. It was decided to follow a new procedure of the following reasons.

“ In terms of the existing procedure and the legal provision for acquisition of land, the process of land acquisition running between the issues of notice under Section2 of the Land Acquisition Act and the taking over of possession, will take a minimum of 72 weeks. Since this hinders the timely implementation of different development projects, the following administrative action is taken to complete the process within 18 weeks, within the existing legal provision’.

48. Table 14 shows the proposed accelerated program for land acquisition.

**Table 4: Proposed accelerated program on the acquisition of lands and compensation in the Resettlement Plan (RIP)**

Activity	Action by	Time (weeks)
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Publish section 2 notice and issue of survey requisition	Divisional Secretary	01
Survey the land and preparation of the plan to issue Section 5 notice	Superintendent of Survey	04
Issue Section 38 A order immediately after receiving the survey plan	Land Ministry	03
Issue Section 5 notice immediately after issue of Section 38 A gazette	Land Ministry	01
Issue Section 5 Gazette	Divisional Secretary	01
Issue section 7 notice	Divisional Secretary	02
Commence valuation, ownership and compensation inquiries and issue of ownership determination under Section 10	Valuation department	04
Payment of compensation under section 7 award	Divisional Secretary	02
<b>Total</b>		<b>18</b>

Source: RIP, STDP, October 2002, Appendix I

49. In order to reduce the time required to 18 weeks, it is proposed; 1) to improve coordination amongst the Ministry of Land, Divisional Secretaries and the government printer; 2) to expedite the process of printing gazettes; 3) to deal with land title issues; and 4) to identify alternate land with assistance from RDA and resettlement staff. In addition, there were suggestions to reduce the time by preparing land ownership documents to prove ownership with assistance from Community Consultative Groups, appointment of additional land surveyors and valuation Officers or private surveyors and Valuation Officers to reduce delays in land acquisition.

50. **Immediate acquisition of land.** It was proposed to acquire private land under the provision of LAA in Section 38 (a) and this legal provision for immediate acquisition is stated in the LAA that “where it becomes necessary **to take immediate possession of any land on the ground of any urgency**, at any time after a notice under section 2 is exhibited for the first time in the area in which the land is situated or at any time after a notice under Section 4 is exhibited for the first time on or near that land (Part V: Possession and Disposal, LAA of 1950 and its amendments). It was necessary to issue Section 4 order under the normal acquisition process for calling for objections and investigations of complaints. This is skipped. The section 5 order is used to declare land acquisition and the Gazette is to be published in three languages. Then the Survey Department is requested with the Gazette

publication to prepare preliminary plans as final survey plans under section 6 for demarcation of boundaries of the acquired properties.

51. **Establishment of LARC for additional compensation.** Under the LAA procedures compensation payment was paid under Section 17 as statutory compensation. The Valuation Department prepares the report and submits to the Divisional Secretary for issuing section 17 award to the affected person. If the owner agrees to obtain the compensation amount, Divisional Secretary can send the request to the Ministry of Highway through RDA (LARD), and then the Ministry of Highways issues the cheque in favor of the Divisional Secretary through LARD, RDA for payment of compensation (funds are obtained through the Treasury). The interest rate of 7% was paid for the period from the date of publication of Section 38 (a) to the date of compensation payment. Under the normal procedure Section 38 order is issued after the payment of compensation under Section 17 and the Gazette notification instructs the Divisional Secretary to take over possession of land. The acquired land is handed over to RDA and vesting of land under section 44 and registration of landownership with the government.

52. **Cabinet approval for establishment of LARC to pay additional compensation.** The LAA specifies to pay compensation according to market value, that is the amount that the land or structure that might be expected to have realized, if sold by a willing seller in the open market as a separate entity on the date of the publication of the notice in the Gazette. For structures, this means the depreciated value of the structure, and this is decided by the Valuation Officer. Since the LAA does not meet the requirements of ADB policy on involuntary resettlement to pay market value for land and replacement cost for structures, the project proposed to establish LARCs. These requirements of payment of replacement value were met through the establishment of LARC and also, Cabinet approved entitlements proposed in the RIP for payment for non-title holders and other payments as assistance for relocation and income restoration. LARC is expected to decide a compensation package for each affected person in addition to the compensation paid under Section 17 of the LA Act by the Valuation Department for the acquisition of land and structures.

53. The LARC comprised the Divisional Secretary (Chair Person), District Superintendent of Survey or his representative, District Valuer or his representative, an officer nominated by the Road Development Authority and the affected person or a person nominated by him. Some improvements were suggested to expedite the activities of LARC such as assistance of a lawyer to clear the titles, payment of a daily allowance to the affected person, appointment of private surveyors for the perimeter survey approved by the Survey Department, and clearing land ownership through assistance of Resettlement Assistants. Although the government can use the LAA and its powers to acquire lands and pay statutory compensation, it approved a system of committees (LARC) to negotiate with the affected people for payment of ex-gratia payments: 1) difference or enhancement payment between the replacement cost and the amount of statutory compensation for land and structures; 2) payment for cultivation and trees; 3) payment for other structures and improvements; 3) loss of income from property; 4) inducement payment (25% of statutory

compensation); 5) house rent; 6) resettlement allowance for squatters/encroachers; 7) resettlement allowance for land owners; 8) loss of interruption of employment/income; 9) payment for vulnerable/disabled heads of households; 10) shifting cost of movable properties; 11) loss of employment of sharecroppers (*Ande farmers*/informal sector commercial activities) and other allowances. It was decided later to pay the cost of connections to get basic facilities of telephone, water and electricity to the new houses and commercial structures. The self relocation allowance of Rs.100,000/ was also paid. Such additional compensation is the key feature of the framework of compensation under the project. The details of the ex-gratia payments were explained to the affected people.

### **3. Outputs expected**

54. The implementation schedule of the RIP should be synchronized with the project schedule for the award of contracts, commencement date of work and handing over the cleared land area of road sections to the contractor after full payments of compensation. The guiding principle is that all key resettlement activities such as land acquisition, compensation payment, and relocation of displaced people should be completed well in advance of the start of construction of the road. It is also proposed to hand over the lands on a phased program to the contractor to reduce the pressure on compensation payment and relocation.

55. According to the RIP in October 2002 it was planned to acquire 951.7 ha (8745 lots), and to pay compensation payment for 5683 households which include 1315 houses and 151 commercial establishments. It was expected to acquire lands using Section 38 (a) of the LAA with some improvements to the existing procedures in reducing the time to determine land ownership claims and the incentives paid to the land surveyors and valuation officers. The resettlement plan implementation schedule identified key activities with the dates of completion of each activity. The RIP also assured that the first 50% of ROW in ADB section (about 32kms) will be cleared and hand over to the contractor as a condition of the first civil work contract in the project by 30 November 2002, and then hand over the balance area after 12 months after the award of the contract. The same condition was applicable to contracts in JBIC section. The land area for the first package was to be handed over was by 30 March 2003 and the second package by 30 June 2003.

56. RDA agreed to several conditions to comply with ADB requirements of project implementation: 1) all compensation payments to be paid prior to their relocation, 2) vulnerable groups are provided with an adequate entitlement package, 3) a special compensation package was made available to untitled land users and squatters, 4) project affected persons who are operating commercial enterprises were provided with assistance to re-establish their business activities, if cash compensation is insufficient, and 5) RDA to recruit an independent monitoring agency acceptable to the Bank, no later than 30 June 2000 until the completion of all compensation payment and relocation activities. According to Section 8.3.13 in the RIP RDA should not take possession of any private property prior to the full payment of entitlements, and relocation arrangements are made. Certificates of

payment of compensation will be issued to each entitled person. The affected persons will be fully compensated and resettled before the site can be handed over to the contractor.

57. According to the implementation schedule in the RIP the first 50% of road section in ADB section (from 1+500 to 21+500 km and 48+400 to 61+050 km) was to be handed over to the contractor by 30 November 2002 and the balance area to be handed over by 28 February 2003. ADB section was divided into two sections, first priority section and second priority section. The disputed locations were included in the second priority section. The construction period was from December 2002 to December 2005. JBIC section was divided into four sections, Section 1A, Section 1B, Section 2A and Section 2B) with two contract packages for road construction. The first priority section was from 35 to 55km and handing over date was 30 March 2003. The balance area to be handed over to the second contractor by 30 June 2003. The target of land acquisition in the RIP was within **32 months** from July 2000 to 28 February 2003 in ADB section and 32 months from November 2000 to June 2003 in JBIC section (from issuing section 2 notice to handing over the ROW to the contractor).

### **Outputs delivered**

58. **Progress of land acquisition from August 2000 to February 2004 in ADB section.** The initial Land acquisition activities in ADB section commenced in July 2000 with issuing Section 2 notices and conducting IOL surveys from August 2000. After changing road alignment in January 2000 WSA consultants prepared advanced tracings and RDA commissioned the Grama Niladharis to undertake the IOL survey. A 5 km section from 9+200 to 14+100 was completed by December 2000. From October 2000 Survey Department was responsible for preparing Advanced Tracings and RDA arranged the IOL survey. It was necessary to complete the Advanced Tracings with the boundaries of properties demarcated to identify the affected properties and owners/occupants for conducting the IOL surveys. From January 2001 to October 2002 RDA prepared advanced trainings and IOL surveys were completed in both ADB and JBIC sections by October 2002. The section from Km 56 to 61 was acquired in the 1990's when the government first decided to build the road with the government financing. Compensation was paid to some affected persons and required to acquire additional land. The grievances against the amounts of compensation were settled in courts.

59. The land acquisition process was divided into two sections in ADB section; 1) first priority section (Km 1+500 to 21+500 and Km 48+400 to 61+050 and hand over the area to the contractor by 30 November 2002 and the balance 50% to be handed over by 28 February 2003 (RIP, Figure 9.1). The contract was signed on 13 January 2003 and the notice to commence work was issued on 24 April 2003. According to Monthly Progress Report No, 13 (February 2004) the contractor commenced work in the sections from 1+500 to 21+500, Km 50 to 61, Km 34 to 50 in April 2003. There were considerable delays in handing over the sections from Km 27 to 34 Km 21+500 to 25+000 km (deviations) and Gall Port Access road (Km 5+500).

**Table 5: Progress of compensation payments in ADB section as at 23 February 2004**

<b>KM section</b>	<b>No. of lots</b>	<b>Number of lots paid Section 17 compensation</b>	<b>Number of lots paid LARC payments</b>
4+500 to 21+600 and 51+200 to 61+050 (first priority)	2117	2117 (100%)	1723 (81.4%)
1+500 to 4+700, 24+600 to 26+300, 34+880 to 42+800 and 48+400 to 51+200	1716	1511 (82%)	1486 (87%)
Road deviation (Km 21+600 to 24+600)	114	0%	0%
Akmeemana section (Km 26+300 to 34+880)	823	77 (9.4%)	137 (16.6%)
Galle Port Access (km 5+500)	378	70 (18.5%)	78 (20.6%)
<b>Total</b>	<b>5148</b>	<b>3775 (73%)</b>	<b>3424 (66%)</b>

Source: Monthly Progress Report, February 2004

60. The progress report in February 2004 shows that out of 5148 lots in ADB section, only 3424 lots were paid LARC entitlements, and others were partly paid and not paid. Out of the total number of lots 114 lots in deviated section (from 21+600 to 24+600) and about 80% of lots in Galle Port Access road (about 5.5 km) and 83% of lots in Akmeemana area were not compensated. There were delays in valuations and payment of compensation. The actual monthly output of valuation was 324 lots against the planned lots of 648 from May 2003 to February 2004. The actual monthly outputs of compensation payments were 340 against 1649 for the same period.

61. **Progress of land acquisition in JBIC section from 2000 to February 2004.** It was originally planned to complete 50% of land acquisition for the first package (km 3+800 to 17+500) by 30 June 2003 and for the second package (Km 35 to 55) by 30 March 2003 in JBIC section. The actual progress was very slow. Two loan covenants were not complied in the project, namely, handing over of the balance area by no later than 12 months after the award of the first civil work contract, and full payment of compensation to all affected persons prior to relocation before handing over the road section. Table 6 provides details of compensation payment in JBIC section by February 2004.

**Table 6: Progress of compensation payments in JBIC section as at 23 February 2004**

<b>KM section</b>	<b>No. of lots</b>	<b>Number of lots paid Section 17 compensation</b>	<b>Number of lots paid LARC payments</b>
Kottawa – Dodangoda (first priority)	1828	203 (11%)	175 (9.6%)
Kottawa-Dodangoda	1161	20 (1.7%)	86 (7.4%)
Dodangoda- Kurundugaha Hatakma	2014	828 (35.7%)	794 (36.5%)
<b>Total</b>	<b>5003</b>	<b>1051 (21%)</b>	<b>1055 (21%)</b>

Source: Monthly Progress Report February 2004

62. **A special program to expedite land acquisition in April 2004.** Management Consultants prepared a special program to expedite land acquisition process in April 2004. Management Consultants reported that “most of the activities are behind the scheduled dates and targets cannot be achieved. It is now evident that the loan covenant to complete all payments in ADB section within one year of the contract will not be fulfilled”. It is suggested to improve valuation program and to increase payments by 4 times. Management Consultants identified four areas for improvements: 1) outsourcing to private surveyors and valuers; 2) increase the capacity of payment of compensations; 3) timely release of Treasury funds; and 4) relocate staff to the officers with more resettlement work. The action plan was prepared for the completion of the remaining activities in ADB sections (need 110 days for ADB section from 31 March to July 2004 and 220 days in JBIC section from 1 March to 31 December 2004. It was estimated to require Rs. 2657 million (Rs.648 million for ADB section and Rs. 2009 million for JBIC section) to complete all the remaining activities from 1 March to 31 December 2004. The targeted monthly capacity was about Rs.300 million. The remaining land acquisition and payment activities in ADB section and JBIC section are indicated in Table 7.

**Table 7: The remaining land acquisition activities in ADB and JBIC section by February 2004**

<b>Activity</b>	<b>ADB section (lots)</b>	<b>JBIC section (lots)</b>
Section 38A	58	-
Preliminary plans	578	20
Section 7	378	212

Title inquiries	548	1,077
Valuation	684	1,711
Compensation payments (Section 17)	1,149	3,528
LARC payments	1,077	3,501

Source: LAR External Monitoring Report, No.9, February 2004, Appendix 2

63. **Land acquisition progress from April 2004 to December 2005.** The land acquisition activities in ADB and JBIC sections were to be completed by December 2005. The contract from Dodangoda to Kurundugahahatakma (31.7Km) as the second contract was awarded to Taisei Corporation in March 2006, and the completion of works was scheduled for March 2010. The contract (package 1) from Kottawa to Dodangoda (34.9 Km) was handed over to China Harbour Engineering Company in August 2005, and the completion of the works was scheduled for September 2009. JBIC conducted a review mission in January 2005 and found that there was a delay of completion of targeted activities for about 2 years. On 16 December 2005 Appeal Court judgment directed RDA to take actions to acquire lands for road construction. However, about 60 APs in Akmeemana area continued to object land surveys. Therefore, it was notified that the final date for compensation payment and handing over of lands should be before 28 February 2005. The progress of land acquisition is indicated in Table 8.

**Table 8: Progress of land acquisition in JBIC section as of 31 December 2004**

Road section/Lots	Number of lots	Land survey	Title inquiries	Valuations	Statutory compensation (Section 17)	LARC payments	Number of houses to be removed
1A	1723	6	16	78	123	376	137
1B	1244		8	28	40	112	144
2A	962		4	0	53		33
2B	1046			1	22		25
<b>Total</b>	<b>4975</b>	<b>6</b>	<b>28</b>	<b>106</b>	<b>238</b>		<b>339</b>

Source: JBIC Mission report on land acquisition and resettlement in JBIC section, 15 February 2005

64. A total of 973 lots were in different stages of land acquisition and estimated that 5 months are required to complete payments. There were three steps in compensation



payment, statutory compensation, LARC payments for land and structures, and LARC payments for rent and other ex-gratia payments after demolishing the structures. In addition, they were entitled to receive interests of 7% of statutory compensation. It is also reported as of January 2005 only 40% of houses were removed out of 568 and 48 commercial and other structures to be removed (76%) out of a total of 63 structures. Out of 339 houses 193 are to be resettled in resettlement sites. Table 9 indicates the delays of conducting land acquisition related activities from 2002 to 2006.

**Table 9: Delays in land acquisition and handing over road sections to the contractors**

Activity	2002	2003	2004	2005	2006	Delay
First priority section to be handed over to the contractor (ADB section)	30-11-2002 (RIP estimate)	Handed over in April 2003				5 months
Second priority section to be handed over (ADB section)	28 February 2003 (RIP)			LA activities completed in December 2005		45 months
Land acquisition for the first package to be handed over to the contractor (JBIC section)		30 June 2003 (RIP)		August 2005 and commenced from 19 September for 4 years		25 months
Land acquisition for the second package to be handed over to the contractor (JBIC section)		30 March 2003 (RIP)			March 2006	35 months

Source: Progress reports

65. This compensation package played a major role in obtaining the consent of the people for land acquisition, and also to reduce the time required in land acquisition. The payment of statutory compensation and ex-gratia payments required more efficient and effective system of administration guidelines. Its openness in dealing with the affected people was an important feature. Some have argued that the new system of compensation has exceeded the open market value of property, but it did not avoid the complicated

procedure of land acquisition and statutory compensation. However, as described in case study I in Box 1 the completion of land acquisition, compensation and other resettlement activities in disputed areas took more than 5 years due to court cases and continued objections for land surveys.

**Case study 1: land acquisition progress in the contested area (28 to 32 Km)**

The contested area was about 9 hectares of land in Akmeemana DS area by February 2004 (reduced from about 250 to 86 lots after Appeal Court judgment). This area covered 5 GN areas and 86 lots were to be acquired (36 APs owned 36 houses and home gardens and about 75 affected persons owning 31 agricultural lands and 19 paddy lands). A group of about 25 affected persons continued to object and resist land surveys from February to December 2004 after Supreme Court Judgment in January 2004. The Survey Department made written complaints to the police station and Divisional Secretary Office at Akmeemana and the regional office of the Survey Department in Galle that some affected people did not allow to enter their lands to do land surveys from February to December 2004.

Section 2 notices were issued in the contested area in January 2001 based on the land surveys conducted by the consultants during engineering designs. The department of Surveys carried out land surveys in preparing Advanced Tracings with police protection (strong objections and resistance from some affected persons) and Advanced Tracings were prepared in September 2002. Some affected persons in this area filed two Appeal Court case in 2002 (1339/2002 and 1447/2002) and 42 affected persons appealed to the Supreme Court in July and August 2003 seeking a court order to change the road trace. The Appeal Court judgment was delivered on 30 May 2003 and dismissed with costs. The Section 38 (a) Gazette was issued in June 2003 after judgment of Appeal Court.

The request was made to the Compliance review Panel (CRP) in November and December 2004 and the Board authorized a CRP in January 2005. After the Supreme Court judgment in January 2004 RDA through the Ministry of Highways instructed the Survey Department to complete the remaining survey works and submit preliminary survey plans required for issuing section 5 and 7 notices, and the valuation of properties. The Ministry of Highways decided in November 2004 to acquire lands and avoid further delays in handing over the road section to the contractor. It published two special notices in the newspaper on 14 November 2004 and 6 January 2005 requesting the affected persons 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 before 28 February”. There were no written responses from the APs declaring their willingness to cooperate with the RDA and Divisional

Secretary.

In addition, two groups in Akmeemana area filed applications in the Court of Appeal seeking expeditious implementation of the land acquisition for construction of the highway. The Appeal Court for the two cases were delivered on 16 December 2004 to “expeditiously take all steps available in the law” for taking possession of the lands. The Ministry of Highway also wrote to the Chairman of the Prime Minister’s Committee appointed to inquire into grievances of the affected people on 2 February requesting to “conclude the proceedings and submit the final report before 15 February 2005”. The report was submitted on 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 RDA in consultation with the Divisional Secretary, Survey Department at Galle and Department of Valuation in Southern Province made special arrangements to do land surveys and property valuation in January 2005. A team of 4 police officers were present during the survey and the affected persons did not object. From January to June 2005 preliminary survey plans were prepared, Section 7 Gazette was published, title inquiries were held under Section 9, valuation reports were prepared, and Section 17 payment was awarded in August 2005. In the contested area it took more than 18 months to prepare preliminary plans after publication of the vesting order (38 (a) Gazette) in June 2003. It was possible to complete all the steps from the preparation of preliminary plans to award of Section 17 within about 9 months.

**Table 1: Progress of land acquisition in the contested area**

<b>Step</b>	<b>Progress</b>
Section 2 notice	24 January 2001
Advanced tracings	September 2002
Section 38 (a) order	23 June 2003
Section 5 notice	23 March 2004
Preliminary plans	January and February 2005
Section 7 notice	4 March 2005
Section 9 inquiries	April and May 2005
Valuation report	June 2005
Section 17 award	August 2005

	LARC payments	September 2005	
	Super LARC payments	October 2005	

### Output assessment

65. **Establishment of LARC system.** RDA decided that land acquisition would follow the LAA procedures, but payment of compensation at replacement cost would require a change in legislation. This has to be agreed by the Ministry of Finance. One suggestion was to value and pay compensation as per the LA and top this amount with a separate allowance of a percentage to be determined by the Valuation Department such as 25 % of statutory compensation value of the affected property. The second option was to determine the amount by a committee. The negotiation with the land owners was based on the both buyer and seller's understanding of replacement value, obtaining an agreement from the land owner according to a formula to be determined and not according to the statutory compensation paid under the Act. The formula should be determined by a committee consisting of the Chief Valuer, secretary of Ministry of Land and RDA Chairman. The Cabinet Paper approved in September 2001 stated that "confine the statutory compensation payable under the LAA to the statutory limits as determined by the Chief Valuer, and the RDA to pay all such benefits to the affected persons as decided by the LARC in keeping with the understanding reached between the government and the agencies providing financial assistance for the project".

66. The main function of the LARC is to determine the market value for land and replacement cost of structures and other entitlements. The Resettlement Officer should prepare vouchers and the vouchers to be signed by the APs. It is stated that 'while conducting negotiations with the AP's concerned, it is essential that the concerned AP is present and other APs should not be present. LARC payments procedure was lengthy: 1) DS will submit a certified copy of the LARC decision to the Resettlement Officer; 2) Resettlement officer get the affected persons' signature on the payment voucher; 3) submit the voucher to the Director, LARD; 4) officer in charge maintain a register of vouchers, compare the voucher with LARC decision, ascertain whether the payments to be deducted and submit to the head, MIS for observations; 5) If the voucher is in order MIS Head refers to the Chief Clerk to check the voucher; 6) Chief Clerk forward the voucher to the Staff Officer with recommendations; and 6) Director LARD approve the payments and sent to the Chief Accountant, STDP. Ccheques are issued from the Finance Division of STDP. The signed cheques were sent through the respective RO to the affected persons and acknowledgement is obtained.

67. The external monitoring agency, Center for Poverty Analysis in its final study in 2008 found that "the LARC meetings were mandatory for all affected persons, and it was held for all the acquired lots eligible for compensation where claimants came forward. The

fact that a LARC was held for everybody, not just those who requested for a meeting, is one of the strengths of LARC which has helped to provide an equitable outcome in STDP compensation” (Para, 102). The composition of the LARC was to enable representation of specialized technical knowledge. There were no clear guidelines about the decisions to be taken, basis of negotiations, except the limits to LARC increase by circulars, and reasons to understand variances in payments. This situation helped some people to believe that the LARC process helped some people to increase more compensation without a systematic process. The Super LARC was instituted at the level of the Ministry of Highways with authority to determine final compensation. About 4% appealed to Super LARC for more compensation. This committee was outside the process of LAA and was established by a Cabinet decision in April 2003. The circular issued by the Secretary, Ministry of Highways set out the process of approval for LARC decisions. Approval of the Secretary, Ministry of Highways was required if the compensation negotiated for land (structures excluded) at the LARC exceeds 25% of the statutory compensation under Section 17 of the LA Act.

68. LARC system was not equipped to handle large number of payments within a short period. The project followed the normal surveying and valuation procedures and these officials had other assignments and found difficult to meet the targets of tight implementation schedule of preparation of preliminary land survey plans and valuation reports in addition to regular attendance in LARC meetings. Finally, the total budget for land acquisition program was increased from Rs.2,862 million in the RIP to about Rs.4,500 million in 2006. There were delays in releasing the money in the Treasury when land acquisition procedure was expedited and payments need to be paid within a short period.

### **Institutional capacity**

69. Notification of the intention to acquire land is done through government notices and gazettes. The process can get delayed at different stages. When a large number of properties has to be acquired within a limited time period, the financial and human resources are necessary to publish notices and gazettes, carry out land surveys, conduct inquiries, value properties, pay compensation and relocation of affected households. The affected people also faced difficulties in demonstrating of their titles and supporting documents, and this also may contribute to delay the land acquisition process. It was estimated that minimum 3 years are required to complete the whole process. The government also took special measures such as appointment of special Acquiring Officers and payment of incentives to officials of the Divisional Secretariats, Survey Department and Valuation Officers. Although the intention of the revised procedure is to reduce the time to 18 weeks, there were some impediments: 1) insufficient land acquisition staff 2) delays in preparation and publications of gazette notifications in three languages; 3) delays in surveying a large number of lots in a short time; 4) delays due to shortage of valuation staff; 5) inability of some affected persons to provide land ownership records; 6) disputes of ownership; and 7) delays in payment of compensation.

70. There are specific institutions and their roles are defined in the land acquisition, valuation and compensation payment process. Under Section 22 of the Road Development

Authority Act land acquisition for road development is recognized as a public purpose. The land Acquisition and Resettlement Division (LARD) of RDA is the division that deals with land acquisition and payment of compensation. The project management unit (PMU) was established for a specific project to coordinate with LARD for land acquisition and compensation related activities. The Ministry of Land has the overall responsibility to review land acquisition proposal submitted by the RDA and approve them. Divisional Secretaries are responsible for land acquisition and the processing of compensation payments using funds provided by the project executing agency. Grama Niladharis under respective DSs are involved in supporting the LARC, resettlement staff in land acquisition and payment of compensation.

71. The Survey Department prepared the survey plans for the land to be acquired and the Valuation Department was responsible for valuation of the acquired properties. The Department of Government Printing published official gazette notifications. In addition to LARD and PMU RDA had two other units to support land acquisition and payment of compensation, namely, Chief Engineer's office in each district and RDA's Accounts division. The Chief Engineer's office in respective districts was also involved in implementing and monitoring activities of land acquisition plans. The Accounting Unit at RDA released payments to APs. The Central Finance Division of RDA received treasury funds for compensation. Land Acquisition and Resettlement Committees were established at the Divisional Secretarial level to determine replacement values and paid other rehabilitation support.

72. International Resettlement Specialist in his review report in 2003 and 2004 identified a number of issues to be addressed: 1) delays in establishment of GRCs; 2) problems in resettlement sites (water supply and access); 3) the income restoration program was not prepared; 4) construction related issues; 5) MIS is not updated to generate essential information; 6) delays in compensation payments; 7) squatters were paid inadequate compensation for construction of their houses; 8) delays in holding LARC meetings; and 9) managerial problems including employment conditions of resettlement staff. Management Consultants prepared a special program to expedite land acquisition process in April 2004. Some improvements to the organizational structure were proposed in increasing the capacities of the regional officers to complete the land acquisition process. Two local resettlement consultants managed operational functions, one for land acquisition and the other for resettlement with the arrangement for all regional officers were under their supervision. RDA appointed a Senior Engineer as Project Manager in Galle office. Some Resettlement Offices were assigned to work as environmental and social impact monitoring officers because of construction related problems.

73. Management Consultants reported that "most of the activities are behind the scheduled dates and targets cannot be achieved. It is now evident that the loan covenant to complete all payments in ADB section within one year of the contract will not be fulfilled". It is suggested to improve valuation program and to increase payments by 4 times. Management Consultants identified four areas for improvements: 1) outsourcing to private surveyors and valuers; 2) increase the capacity of payment of compensations; 3) timely

release of Treasury funds and 4) relocate staff to the officers with more resettlement work. The action plan was prepared for the completion of the remaining activities in ADB sections (need 110 days for ADB section from 31 March to July 2004 and 220 days in JBIC section from 1 March to 31 December 2004. The remaining land acquisition and payment activities in ADB section and JBIC section are indicated in Table 5.

## Outcome assessment

### Relocation and displacement support and income restoration measures

#### Legal and policy provisions

74. There are no legislative provisions which mandate the preparation of relocation plans and displacement support. However, NIRP policy objectives state that resettlement should be planned, replacement land should be an option and affected persons should be fully involved in the selection of resettlement sites. According to entitlement policy in RIP (Chapter 3) 1315 houses and 151 commercial structures and other structures such as fences and sheds are compensated in cash at full replacement cost without deduction for depreciation or salvageable materials. Chapter 3.10.8 and 9 describe the provision of displacement support as summarized in Table 10.

**Table 10: Displacement support**

Category	displacement support
<b>informal dwellers</b>	5. Allocation of 20 perch land on a resettlement site 6. Compensation for the structure at replacement cost without depreciation or salvage materials 7. Relocation allowance of Rs.10,000 8. Livelihood grant of Rs.15,000
<b>Displaced household and commercial structure owners</b>	6. Compensation for the structure at replacement cost without depreciation or salvage materials and the values will not be deducted from the compensation amount 7. Rented accommodation of Rs.50,000 8. Shifting allowance of Rs.1,500 9. Ex-gratia payment of 25% of the compensation amount for the affected structures for vacating the premises at the stipulated time 10. Temporary accommodation allowance until the resettlement sites are ready for occupancy
<b>Displaced commercial structure owners</b>	7. Compensation for the structure at replacement cost without depreciation or salvage materials and the values will not be deducted from the compensation amount 8. Rented accommodation of Rs.50,000 9. Shifting allowance of Rs.1,500

	<ul style="list-style-type: none"> <li>10. Ex-gratia payment of 25% of the compensation amount for the affected structures for vacating the premises at the stipulated time</li> <li>11. Registered business owners are entitled three years future income determined by LARC</li> <li>12. Informal sector business owners are entitled to a livelihood restoration grant of Rs.15,000</li> </ul>
<b>Wage labourers and others lost jobs in land acquisition</b>	Employment allowance of Rs.15,000
<b>Vulnerable groups and severely affected</b>	<ul style="list-style-type: none"> <li>1. Counseling regarding project impacts, risks and resettlement options</li> <li>2. Counseling on savings scheme and cash management</li> <li>3. Assessment of current economic activities and future improvements</li> <li>4. Facilitate to start small scale income generating schemes for severely affected</li> <li>5. Assistance to gain access to poverty alleviation and credit schemes</li> <li>6. One person in each severely affected household is entitled to skills training</li> <li>7. Preferential access to project construction employments</li> </ul> <p>Extension services for agricultural lands</p>

75. All displaced households were paid a shifting allowance, house rent, resettlement allowance for squatters/encroachers, allowance for loss of employment of sharecroppers, *Ande farmers*, owners of informal sector businesses, ex-gratia payment of 25% for vacating at the stipulated time, and other allowances. Table 11 shows the proposed rehabilitation measures for vulnerable groups in the RIP. A community welfare program was implemented. Two Business Development Officers and Agricultural Extension Specialist were also recruited to support the RDA staff for implementation of the program. This initial income restoration program was carried out the activities of home garden development, skills training, strengthening of housing societies in resettlement sites, and assistance to vulnerable groups. The main activities included the plants and seeds distribution and support for 84 members of affected families for skills training (computer awareness, driving, dress making, beauty culture and jewellery) in Vocational Training Centers. The financial assistance was provided to the poor and vulnerable groups to complete the partly constructed houses. About Rs. 6 million was allocated for this program.

#### 1. Self relocation and resettlement sites selection process



76. Households displaced from their own houses were entitled to find their own relocation sites or resettle them in resettlement sites. At the time of preparation of RIP in 2002 out of 1315 houses 993 affected persons (75%) requested resettlement sites and 32 resettlement sites were identified. However, some affected persons decided later to find their own house plots after receiving Rs.100,000/ as an incentive for self relocation. Thirty two resettlement sites were selected closer to the original villages of affected persons, and also closer to the road trace. Although 592 house plots were available in resettlement sites only 364 (28%) were resettled. Resettlement sites were selected in consultation with the affected persons and about 237 acres were acquired. It was planned to allocate about 40 perches of land to each affected person losing homestead. It was also planned to select resettlement sites located within 1km of affected villages with easy access to facilities such as roads and schools. The affected persons were consulted about their opinions to ensure that the sites will meet their needs. According to CEPA study in 2009 affected persons from about 70 villages were resettled in 32 resettlement sites. A high degree of consultation had occurred. In some cases RDA made the final decision. In allocating house plots a lottery system was offered to settlers in all resettlement sites. House plots were allocated by way of a lottery after households were separated into two categories – those who lived near a main road and those who lived inside. The raffles were used. This was considered as a fair method.

77. The affected business owners did not have the option to relocate in new interchanges because interchanges are not viable for commercial development until the highway is open. Therefore, the affected businesses were re-established at locations which are suitable for such commercial activities.

### **Outputs expected and delivered**

78. During the first two years there were dissatisfaction among the resettled families regarding the quality of the utilities provided such as poor access roads and drainage system, and lack of water supply. RDA under different contracts engaged local contractors to carry out planning and development of resettlement sites. The plot allocation was done in consultation with the affected persons. It was planned that affected persons will build their houses and RDA will assist to build houses for vulnerable groups, if required.

79. The improved housing situation has been achieved after an initial period of hardship in temporary accommodation. On average affected persons lived in temporary housing for just over one year. Only few used the rental allowance to find alternate accommodation while others used the rental allowance for construction of the houses. Most displaced moved into a new location took a longer period to construct their houses and some were not completed after about 5 years. The settlers in resettlement sites received more assistance in relocation than those who opted for self relocation. The housing conditions of previous landless families have shown particular improvement. Only 9% of displaced persons built their houses on purchased land. Nearly 30% used lands in resettlement sites and others had their own lands.

### **Output assessment**

80. The report prepared by International Resettlement Specialist in August 2003 noted that the majority of affected persons in resettlement sites were encroachers. With comparison of previous houses the houses were bigger and better and housing conditions were improved. The self relocated families also constructed bigger and better houses than old ones. Some decided to move to temporary accommodation adjoining the new building site, so that they can manage the construction activities. Existing social relationships were not affected badly because the selected relocation sites were in the same villages or closer to the relatives' houses. A recommendation was made that some encroachers should be assisted in house construction because they received inadequate compensation. A decision was made in late 2002, to offer additional compensation of Rs.100,000/-. Some affected persons who originally opted for resettlement sites later selected the option of self relocation. As a result, some resettlement sites are partly occupied. The delays in completing the acquisition of resettlement sites, and particularly in valuation of the lots, resulted in causing some hardships regarding the decisions of selection of resettlement sites. There were significant delays in issuing title deeds in resettlement sites.

### **Consultation, participation, information dissemination and grievances redressal system in STDP**

#### **Legal and policy requirements for Consultation and participation during resettlement planning**

81. The ADB Policy and the NIRP state that affected people should be fully informed, and closely consulted on resettlement and compensation options during resettlement planning and implementation. During preliminary and detail engineering design stage from May 2000 to January 2001 and during further review of designs the affected people were consulted regarding the adjustments to the road trace. Chapter 10 in the RIP provides a description of public consultation experiences including the nature of complaints/objections, discussions and decisions taken by the project authorities to minimize resettlement impacts during the preparation of Resettlement Implementation Plan (RIP) from June 2000 to October 2002.

82. The disputes and objections arose in some locations after May 2000. Several meetings were arranged to discuss with the affected people regarding their concerns and suggestions to minimize resettlement impacts. A summary of such consultations, concerns and responses from relevant agencies is included in Chapter 10.6. in the RIP. There was a specific group of affected persons which complained that the proposed alignment was not within the area studied by the EIA study and therefore, requested to shift the alignment. Some affected persons at these meetings requested to change the alignment to reduce the number of houses to be affected at specific locations. The difficulties in changing the alignment were explained by project officials such as technical reasons, demolition of more houses in the proposed location or extra rock excavation/filling works, and increased construction costs. The field visits were arranged with the participation of local politicians, project officials, representatives of village communities, affected persons, CEA officials and design engineers in several locations where deviations to the alignment were proposed. As

a result of such consultation meetings the number of affected persons protesting for land acquisition was reduced. The section on summary consultation provides the details of the number and categories of stakeholders attended at these meetings. The section 10.6 in the RIP provides a summary of consultation and the issues discussed at meetings.

**Table 11: Summary of consultations and the issues discussed**

<b>Date</b>	<b>Complainants/groups</b>	<b>Representing organizations</b>	<b>Issues</b>
03-03-2002	Kahathuduwa-group in JBIC section	RDA and JBIC	Interchange requires more house to be demolished
03-03-2002 and 06-02-2002	Two affected persons from Rerurkana, Gelanigama in JBIC section	RDA and JBIC	Alignment is not within the approved EIA area
03-30-2002	A group from Undugoda village in JBIC section	RDA	To change the alignment to save some houses
03-03-2002	Gama Surakeme Sanvidanaya of Kolamediriya in JBIC section	RDA	To shift the interchange
03-30-2002	A group of APs from Mahadeniya village in JBIC section	RDA	To shift the trace to save 7 houses
03-03-2002	A group from Pelpola village in JBIC Section	RDA	To shift the alignment
03-03-2002	A group from Punsiripura village	RDA and JBIC	To change the alignment to save some houses
03-03-2002	A group from Dodamulla village in JBIC section	RDA and local MPs	To shift the alignment to save houses
03-03-2002	A group from Gomagoda village in JBIC section	RDA officers, Secretary to the Ministry of Highways	To shift the alignment to save few houses
03-03-2002	A group from Thudugala East village in JBIC section	Minister of Lands and Secretary of	To shift the alignment

		Highways and officials of RDA	
03-03-2002	A group from Dodangoda village	RDA and JBIC	To change the alignment to avoid agricultural lands
29-04-2002	A group from Karandeniya village in ADB section	MP, Secretary to the Ministry of Highways and RDA officials	Inadequate compensation and resettlement sites
29-04-2002	A group from Baddegama village in ADB section	RDA officials	To change the trace to original RDA trace
29-04-2002	A group from Akmeemana and Bope-Poddala areas	RDA officials	To change the trace
06-02-2002	Gama Surakeme Sanvidanaya, Gelanigama village in JBIC section	RDA, JBIC and Secretary of Ministry of Highways	Gelanigama village has not been covered under the EIA study
19-02-2002	A group from Bandaragama and Millaniya villages	Minister of Lands, Secretary of Ministry of Highways and RDA officials	EIA has wrong information and the number of houses to be demolished
25-02-2002	A group from Bandaragama and Millaniya villages	Secretary of Ministry of Lands and Secretary, Ministry of Highways and RDA officials and CEA officials	EIA did not include the final alignment area
05-03-2002	A group from Bandaragama and Millaniya villages	Chairman and DG, CEA, MPs and RDA officials	CEA followed all procedural and legal requirements

Source: Section 10.6, RIP, October, 2002

83. The awareness programs about the project and compensation package was conducted and relevant information was disclosed among the affected people by Resettlement staff. The awareness meetings were chaired by the respective Divisional Secretaries and attended by Grama Niladharis, Viharadhipathis (Chiels of temples),

community leaders and the affected people. These meetings were attended by about 2000 APs and local community leaders (Chapter 10, RIP). The information about the project implementation, affected persons and loss of properties were first disseminated through Grama Niladharis after preparation of advanced tracings and demarcation of boundaries for land acquisition with monuments. The social impact assessment survey and IOL surveys were conducted to collect information about the affected population. These studies also documented the concerns and preferences of the affected people. The entitlements and compensation package and relevant information were also disseminated to the affected persons. The meetings, interviews and surveys during this time period provided the opportunity to voice their concerns and get their support and cooperation.

84. Most aspects of resettlement planning and implementation procedures were communicated verbally by Resettlement Assistants and not recorded. The majority of the documents that affected persons have received are related to the process of land acquisition such as notices, requests to attend ownership verification, and LARC meetings rather than to the contents of decisions taken at the LARC and Super LARC meetings and agreements. At the early stage, after discussions with the affected persons at LARC meetings, the amount of compensation was reached but no formal document was provided after the meeting. This has led to dissatisfaction and sometimes suspicion about the actual compensation amounts agreed and received by the affected people. The entitlement certificates with details of types of compensation payments were issued only after full payments of all the entitlements by the Regional office. There were delays in sending these certificates to the affected persons but the actions were taken later with the instruction of funding agencies to expedite the issue of entitlement certificates. Although there were few cases of payment discrepancies the process was well accepted and followed.

85. Compliance Review Panel, ADB in 2005 recommended that the project authorities must ensure relevant information should be provided in an appropriate language to each affected household rather than simply making it available at Divisional offices. The entitlement matrix was provided in Sinhala to each AP. The English and Sinhala versions of the RIP were made available in 2004 at Regional Offices of the project, offices of Divisional Secretaries and at public libraries. It is also recommend to update the project web site, and include full project information. The ADB website was also updated including the addendum to the RIP due to additional land acquisition.

86. The management information system (MIS) contains a substantial amount of data collected from the stage of inventory losses survey, compensation payments and information relating to lots and the affected persons. The data base was not properly updated and therefore, it was difficult to be used. One of the weaknesses was the incomplete and missing information for some variables. With the request of donor agencies data base was checked and updated but some discrepancies were not corrected. For example, compensation payments were recorded according to lots. There is no easily available data entry of the profile of APs and details of compensation payment because many APs owned more than one lot and a list of APs was not prepared separately. There was no effective information system and this was reported by both internal and external

monitors and during the review of ADB Compliance Review Panel. The limited use of MIS was highlighted and it was not made available to monitors, project steering committee (PSS) and others for easy access to data and interpretation.

87. Considerable efforts had gone into consultations and information disclosure in the project. The role of Resettlement Assistant and particularly, his/her daily contacts with the affected persons in each village reflects the efforts in public consultation and information disclosure. The RIP further provides details of consultations undertaken during RIP preparation from 2000 to 2002. However, it appears that there were significant delays in consultation and information disclosure during RIP implementation, including the unavailability of copies of the RIP in Sinhala at Divisional Secretary's office until 2004. Significant changes in road trace during the review of engineering designs were not effectively communicated to the affected people as indicated in court cases. The updated information was not available to some affected people to make decisions regarding the cultivation of lands and construction of houses. After recommendation of Compliance Review Panel, ADB early actions were taken to rectify the weaknesses but it was late to correct some other mistakes.

88. **Grievance redress committees (GRCs).** According to Chapter 8 in the RIP it was mandatory to establish grievance redress committees (GRCs) to solve problems/disputes in the process of land acquisition. A GRC is an extra-legal semi-structured body to give judgments on disputes during implementation of RIP. The objective is to resolve disputes at the grass root level to avoid lengthy and costly judicial process. It has no jurisdiction over the rate of compensation. The GRC consisted of seven members - the Assistant District Secretary presided over the committee, District Valuation Officer, RDA District Engineer, and four other members appointed by the RDA chairman. Between 2002 and 2003 five GRCs were established and covered the entire project area. Resettlement Specialist in his report No. 3 in February 2005 found that GRCs were established in October 2003 but they did not function. There were several reasons such as lack of publicity, as a district level committees without easy access to the affected persons, Resettlement officers were not members in GRCs, creation of Super LARC, and lack of support to function GRCs at district level.

89. The GRC system was re-structured in 2005. The new structure placed the GRCs within the Divisional Secretary area and 24 GRCs were established. The change from district level system to Divisional Secretary S level system allowed the committee meetings to be chaired by Additional Divisional Secretary and secretarial functions were handled by the Resettlement Assistant. The membership of the GRC was changed including Resettlement Officer and representative of Mediation Board and community based organizations (CBOs). The committee has the right to request Grama Niladhari or a representative of supervision consultant, and other technical officers to attend if required. A wide publicity was given through posters, news papers and housing societies, and a system of recording information was introduced. As a result, a large number of APs have accessed

the GRCs. The LARC system was not established to resolve disputes, but it helped to redress some grievances related to valuation and compensation. Where the decisions of the LARC were not agreed they were referred to Super LARC

90. Under the LAA dissatisfaction of affected persons in relation to the decisions regarding land ownership, valuation and compensation is reported through the Mediation Board and the judicial system. Section 4 of the LAA were not applicable for making objections because of the use of Section 38 (a) order. Section 11 of the LAA states that if the affected person is in disagreement with the decision given under section 10 regarding land ownership, he/she can present the grievance to Appeal Court and Supreme Court. Under section 22.1 of the LAA an affected person who is in disagreement with the amount of compensation determined under Section 17 can present a complaint within 21 days to the Board of Review.

91. Public Complaints resolving Monitoring System (PCRM) was introduced (not included in the RIP) in order to bring together the RDA, supervision consultants, the contractor and the affected persons to resolve construction related problems. The main objective was to resolve environmental and social issues related to land acquisition and construction. The majority of complaints were due to road construction and the contractor was responsible to pay damages. PCRM meetings were organized and coordinated by management consultants of the project. The members of this committee are Additional Project Director, STDP, Team Leader of supervision consultant, Program Director or a representative of the contractor, Project Manager in ADB section, Deputy Project Directors and resettlement staff.

92. Center for Poverty Analysis (CEPA) did an assessment of grievance redress mechanisms used in the STDP in November 2009. The grievance is an issue, concern, problem or claimed (perceived or actual) that an individual or community group wants a company or contractor to address and resolve. Grievance redress channels are developed by organizations to enable stakeholders to file complaints, and to ensure such complaints are properly reviewed and acted upon. The STDP had different types of grievances related to trace changes, land acquisition process, construction related issues, resettlement sites allocation and development, and other resettlement impacts. There were three mechanisms available to file complaint/grievances. The first is the legal system. The second is the public administration system and the third system is the mechanism and processes set up specifically for the STDP. Complaints were made as individuals or groups. There were also other groups like NGOs and community organizations either made complaints about the project or assisted the affected persons in preparing and making complaints to relevant organizations. Many affected people first accessed the political representatives. These complaints were sent back to the institutions for solutions.

## **Legal and policy requirements for the preparation of Income restoration programs**

93. The RIP in 2002 identified 1430 households as 'poor', which was 23% of the affected households requiring assistance to restore their incomes and livelihoods. The poor households had been defined as families drawing an average monthly income of less than Rs.3,000. This income threshold had been calculated taking into account the official poverty line of Rs.3,000/ in 2002. This income was used for monitoring purposes despite the fact that it was increased to Rs.5700/ per household (having two income earners) in 2008. RIP also identified 214 households as 'economically vulnerable' households and another 244 households belonging to the category of non-titled persons (squatters, encroachers and informal dwellers). The number of estimated affected employments was 556 and most were unskilled workers.

94. The categories of households identified in the RIP as eligible to receive income restoration assistance were: (a) farmers who lost their agricultural lands; (b) farmers who owned less than one acre of agricultural land or home gardens; (c) small-scale businessmen; and (d) vulnerable households. The proposed activities in the RIP for income restoration included: 1) increasing awareness of APs about employment opportunities available in the region; 2) developing managerial and entrepreneurial skills among APs; and 3) improving and promoting their leadership qualities. The key elements of the income restoration program (IRP) in the RIP were: 1) skills development training (driving, dress-making, carpentry, masonry, welding, motor mechanism and computer training) for 1557 persons, at least for one person from each affected family; 2) establishing a revolving loan fund (Rs.10 million) to provide credit facilities in support of small and medium scale income generating activities; 3) access to the services available from institutions to get subsidies and assistance for cultivation of tea, rubber, and coconut; and 4) home garden improvements.

95. A non-Government Organization (NGO) was recruited to prepare an income restoration program in 2005. It was implemented from September 2006. The expected outputs were the creation of new jobs/self employments, development of micro finance programs and home garden improvements. It was targeted to restore the incomes of 1050 affected families including 266 vulnerable families, and creation of 800 self employments by promotion of small scale income generating activities. The program was not properly implemented as expected and RDA terminated it in February 2008. There was no active support from the affected persons for the selected activities because of constraints such as obtaining credit, poor demand for products and services, and lack of confidence about the field staff. RDA Project management Unit found that only 22 APs were interested in a new income restoration program in 2008 because some have already restored their incomes, and there was no demand for income restoration activities.

## **Process and procedures followed**

96. The Project Management Unit (PMU) of the STDP was responsible for the implementation of the IRP since 2002. 'According to RIP time schedule, the IRP was planned to be implemented from 4<sup>th</sup> quarter 2002 and continued through 2005. Initially the



implementation of the IRP was restricted to support the APs settled in resettlement sites. However, a comprehensive IRP was not implemented during the period 2002-2005 since the authorities responsible were directing their time and resources for land acquisition and payment of compensation. The livelihood restoration interventions implemented during this early period were limited to home garden development, skills trainings, and a career guidance program. Furthermore, agitations and resistance from some affected persons from 2002 to 2005 against land acquisition further delayed the implementation of the income restoration program. The Resettlement Officers and Resettlement Assistants were engaged in some activities such as home garden improvements and skills training.

97. The Compliance Review Panel in 3005 suggested to take immediate measures to implement the IRP. The Sarvodaya Economic Enterprise Development Services Limited (SEEDS), a national NGO, was recruited to develop the IRP. The initial appraisals conducted by SEEDS in 2005 found that some of the poor households earlier identified for income restoration assistance had already graduated to a higher income level either with their own initiative and/or with the help of the compensation package. As such, those APs no longer required any further assistance under an IRP. SEEDS however identified 1050 households as eligible for IRP. This figure was subsequently (2008) revised by SEEDS and brought down to 960 households as families that should receive support under IRP.

98. The income restoration program designed by SEEDS included five major components. They were (1) establishing and strengthening 25 Housing Societies in 25 resettlement sites; (2) implementing a micro-finance program through these 25 housing societies; (3) developing alternative income sources for 1050 APs; (4) promoting home gardens; and (5) creating employment opportunities for youth in the affected families. The objective of establishing and strengthening housing societies was to better manage their common infrastructure facilities, enhance participation in common activities, and enhance cohesiveness among members. The key activities proposed to be implemented under each of these five components were as follows:

99. During its first year, SEEDS conducted basic awareness programs, social mobilization programs, and training. It experienced a number of constraints. The affected persons were not keen to participate in the IRP and had a negative perception of the whole program. They were keen to get common facilities to their resettlement sites instead of income restoration. SEEDS' attempted to mobilize and organize the affected persons around small groups, but the living places of the self related persons were scattered over a wider geographical area.

100. **IRP Interventions by PMU/STDP since 2008.** The PMU took over the responsibility of implementing the IRP in 2008. The objectives of the IRP were to: 1) identify the affected persons who need income restoration assistance; 2) identify and close files of those who did not need further assistance; 3) extend the home garden development program; 4) strengthen housing societies to carry out maintenance activities in cooperation with local authorities; 5) ensure women's participation in building their capacities through training programs; and 6) build capacity of Resettlement Officers (ROs) through training and

social mobilization. These 960 households were revisited and their profiles were reviewed in 2008. This review found that 36 affected persons in the JBIC section needed income restoration assistance and only 22 persons were entitled for assistance under IRP. They further observed that all other households have graduated to a higher level and moved out of the poverty line. Not a single family was found within the ADB section that required further assistance under IRP.

101. The CRP was concerned about the significant reduction in the number of people eligible for the income support program from 1050 to 22. It recognized that for many affected persons, income restoration assistance may no longer be required because they have managed to re-establish or improve their livelihoods after compensation payments. However, CRP field observations confirmed that there were some affected persons who reported the decrease of their incomes after acquisition of properties such as small businessmen, owners of paddy lands, and vulnerable families.

### **Output assessment**

102. A survey conducted with a sample of 92 affected persons found that only 11 affected persons had problems that required interventions for income restoration while others did not require any further support. The majority of the affected persons have been assisted by project staff during the period of 2002-2005, although there was no formal income restoration program implemented until 2006. Some have recovered by themselves using their compensation and assistance provided by the relatives. The field staff had mainly considered several factors such as low income, impacts from loss of properties, vulnerability of family members and sources of income. It was also revealed that sufficient time had elapsed for the affected persons, particularly in the ADB section from the acquisition process had taken place from 2000 to 2003, except in disputed areas. In 2010, only 20 households required further support to restore their living standards and they were categorized into three distinct groups. The first category was identified as those who needed social welfare and further resettlement assistance; the second category was the affected persons who required direct assistance from the project to improve their incomes; and the last category was the affected persons who required facilitation/coordination for linking them with other relevant service providing agencies to improve their incomes (Completion Report, August 2010).

103. A review of the IRP conducted in 2010 also observed that 'Between 2005 and 2008, 865 (90%) of poor households improved their income levels and rose above the poverty threshold level of the project from careful investment of compensation payments. This Review further remarked that 'there is a satisfactory improvement in livelihoods and income sources of poor households.

### **Outcome assessment**

104. Interventions to restore incomes and livelihoods of the displaced poor and vulnerable families should be designed, planned and implemented as early as possible and prior to their displacement. Families should be extended with necessary support along with their displacement. A time bound Action Plan with clearly defined targets should be

prepared and implemented for restoring the incomes and livelihoods of the displaced poor families.

### **Mandatory requirements for monitoring and evaluation**

105. The legitimacy for establishing a monitoring and evaluation system for ADB funded road sector projects stems from three sources: 1) NIRP; 2) ADB involuntary resettlement policy; 3) and the RIP approved by both the government and ADB in 2002. While the NIRP and the ADB set the policy guidelines for establishing monitoring and evaluation systems, the RIP provides an operational framework for monitoring and evaluation. The key elements of this operational framework are: 1) establishing an internal and external monitoring systems; 2) delineating the roles and functions of internal and external monitoring; 3) outlining the subject matter to be covered in monitoring including a set of indicators that could be applied; 4) proposing a range of methodologies and tools that could be applied in monitoring including participatory methodologies and data collection; 5) setting the targets for expected outputs; and 6) determining mechanisms for dissemination of results and remedial actions.

106. The specific tasks and methodology for external monitoring include: (i) review of pre-displaced baseline data on affected persons; (ii) identification and selection of an appropriate set of indicators for information collection and analysis on resettlement impacts, (iii) use of various formal and informal surveys for impact analysis; and (iv) assessment of resettlement efficiency, effectiveness, impact and sustainability.

### **Process and activities carried out in monitoring**

107. The Project Management Unit (PMUs) is responsible for conducting internal monitoring and evaluation with assistance from the Resettlement staff at the field level, the Land Acquisition and Resettlement Division (LARD), 3) the Environmental and Social Division (ESD), 4) Chief Engineer's Office, 5) Construction Supervision Consultants, 5) Management Consultants and 6) Independent External Monitors (IEM). Key instruments monitoring area monthly/quarterly progress reports, weekly/monthly progress review meetings conducted with field staff, and regular field inspection/observation visits to resettlement sites. The formats and frameworks for data gathering and reporting are decided and the Environmental and Social Division, RDA also devised a monitoring and evaluation instrument called Project Performance Management System (PPMS) that included a Performance Indicator Framework consisting of 37 indicators for measuring the outputs, outcomes and impacts of the project. Information from both primary and secondary sources was collected. The output, outcome and impact indicators selected for monitoring are presented in Table in the following table.

**Table 12 : Project Performance Management System (PPMS)**

<b>Output Indicators</b>	<b>Outcome indicators</b>	<b>Impact Indicators</b>
1. Highway from Kottawa to Matara (126km) and the Galle access road (4.285 km) are operational	1. Decrease in travel time between Colombo and Matara	1. Increases in the contribution from the southern province to national GDP
2. Basic Road safety equipment in place	2. Increases in traffic volume	2. Increases in the provincial GDP
3. Emergency response booths/posts are available at each interchange	3. Decreases in the rate of fatal accidents along A2 Colombo-Matara road	3. Decrease in unemployment rate for men and women in the southern province
4. Staff for maintenance posts, rescue and emergency posts in place	4. Increases in the industrial enterprises in the southern region	4. Decrease in provincial poverty level
5. Zoning and guidelines for zoning in interchange development areas formulated	5. Increases in the commercial establishments within Pradehiya Sabhas along the highway	5. Increases in land value within Pradeshiya Sabhas along the highway
6. At least 3 interchange development plans (IDPs) as centers of growth completed	6. Improved socio-economic conditions of households [in four sample villages in terms of their access to education, health services, social services, transportation and employment]	6. Increases in the occupancy rate of hotel rooms by tourists in the southern province
7. All interchange development plans completed	7. Improved standard of living of APs in the resettlement sites	7. Increases in the prices received by the producers for agricultural products in the southern province
8. Resettlement of	8. Improved levels of	8. Environmental noise at

affected households completed	livelihoods of APs in resettlement sites	permissible level
9. Payment of compensations to Affected Persons (APs) completed	9. Improved levels of livelihoods of households living adjacent to highway	9. Ambient air quality at permissible level
10. Income Restoration Programme (IRP) for APs completed	10. Increases in the number of establishments at interchanges of the highway	10. Surface and ground water quality at permissible level
11. All resettlement sites handed over to local authorities.		
12. Public awareness campaign on "what to do and not to do on the highway" launched		
13. Motor Traffic Act becomes operational		
14. Thoroughfares Act (previously known as National Highway Act) becomes operational		
15. Operations & Maintenance (O & M) Plan available		
16. Operations & Maintenance contracted out and operational		
17. Expressway Authority established		

108. The Management Consultants to the project conducted independent audits and monitoring on overall performance of the project. Their monitoring included tracking both physical and financial progress of a wide range of project activities such as the status of the construction work, operations and maintenance, environmental and safety aspects, land acquisition, resettlement, income restoration programs, resolving grievances, dispute adjudication and arbitration and compliance with the recommendations of the ADB compliance review panel. Furthermore, the Management Consultants have also conducted independent socio-economic surveys to ascertain project's impact on affected communities.

109. **External monitoring process.** Centre for Poverty Analysis (CEPA) was the Independent External Monitor (IEM) for the project from April 2006 to December 2010. It established a monitoring framework. The affected populations selected for monitoring was initially based on a stratified random sample selected from a Management Information System. The initial sample (2006/2007) included 400 lots belonging to affected households relocated in 32 resettlement sites. This sample was subsequently (2007/2008) turned into a purposive sample of 122 households spread over 15 resettlement sites. During the final stage of monitoring (2009/2010), sampling included a purposive sample of 16 households, a random sample of 32 households whose commercial properties were affected, 42 households receiving assistance for income restoration and 97 households affected by additional land acquisition during project construction. Information required for monitoring has been elicited through multiple sources such as from the affected persons, project staff and records maintained by management consultants, supervision engineers, Divisional Secretaries and others.

## **Outputs**

110. Monitoring activities have resulted in the production of a large number of reports and publications such as monthly/quarterly/bi-annual progress reports, short notes, case studies, periodic updates, memoranda, review and evaluation reports and reports of special studies. Depending on the objectives and the terms of reference assigned for each monitoring and evaluation work, the documents prepared refer to project progress and achievements, project implementation issues related to land acquisition, payment of compensation, resettlement, livelihood and income restoration, grievance resolution etc. and a set of recommendations for addressing the identified gaps and issues. It is however not possible to track the exact number of reports produced over the years by other actors as there had not been a central registry system of those reports.

111. There had been a large number of workshops conducted by those engaged in monitoring and evaluation activities. These workshops served many purposes such as consultations with community groups and other secondary level stakeholders, dissemination and sharing of monitoring and evaluation outcomes with relevant stakeholder groups, and triangulation of monitoring results. The workshops had been held either at regional or national level and workshop outcomes had been documented in English language or Sinhala language.

## **Outcome assessment**

112. It was reported that feedback received from monitoring activities had been useful for the project administrators in 'trouble-shooting' and taking timely action to address the issues raised through the monitoring processes. Issues and grievances raised had been intervened either by individual officers concerned and their respective units or by taking them over to other institutional structures set up for problem solving such as GRCs or PCRCs. A review of the GRC and PCRC grievance resolution data points to a large number of affected persons receiving support to resolve their problems. A large number of actors in different capacities were engaged in both internal and external monitoring. Involvement of such a multitude of actors is one of the strengths of a monitoring system as it can bring out diverse perspectives, issues and concerns and can help data triangulation and validation as well as addressing areas that have been sometimes ignored by either party. However, it is important that a well-designed coordinating mechanism is in place for coordinating the monitoring activities of different actors, avoiding duplication of work and resources, communicating monitoring outcomes to different parties and consolidating monitoring results coming from different sources. There was no such a dynamic coordinating body in the project. Secondly, different actors have taken the initiative to devise monitoring frameworks, methods and tools adding variety and richness to monitoring and evaluation approaches, processes and their outcomes. Thirdly, the documentation capacity was poor among some monitoring groups.

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## Cases study of National Highways Sector Project (NHSP)

### 1. Introduction

1. The National Highway Sector project (NHSP) was designed in 2005 as a sector project with several sub projects. At the time of its appraisal the recommendations and lessons learned from the compliance review panel for the Southern Transport Development Project in 2005 were available to consider safeguard requirements in the project design and planning process. During the project appraisal stage ADB also provided technical assistance for capacity building of the Environmental and Social Division (ESD) of RDA in preparing safeguard documents and in supervising and monitoring safeguard measures during project planning and implementation. There was a separate project component to strengthen RDA institutional framework, re-organization of RDA activities, project management improvements and coordination, phasing out separate project management units, and preparation of standard project documents. Given the sensitivity of resettlement issues in 2005 ADB management requested the RDA to ensure the disclosure of the resettlement plans to the affected people and adequate institutional arrangements for land acquisition, compensation payment and income restoration.

2. The ADB Board approved the project on 15 December 2005 for \$150 million. The loan agreement was signed on 14 December 2006 and became effective on 20 February 2007 with the loan closing date as 31 December 2011. ADB approved a major change in scope and reallocation of loan proceeds on 1 April 2008 with a revised scope change for financing about 193 km of national roads and reducing the number of roads to be rehabilitated to four sub projects: 1) A 12- Puttalam to Anuradhapura (50 km), A26-Udathenna-Mahiyanganaya road (41 km), A5 -Nuwaraeliya-Badulla, (58 km) and A6 - Habarana-Kantale road (44 km).

3. The contract for the Puttalama – Nochiyagama (50km) road (sub project) was awarded in June 2008 with the contract completion date of 30 April 2011. The contract for Udathenna-Mahiyanganaya road was awarded on 8 August 2008 and the notice to proceed was given on 1 November 2008. The expected date of completion was 30 April 2011. The contract for the Nuwaraeliya-Badulla road was awarded on 24 September 2004 and civil works commenced on 28 November 2008. This sub project was expected to be completed by 31 May 2011. The contract for the Habaraba-Kantale road was awarded on 24 April 2008 and this contract was to be completed by 10 July 2010.

### 2. Legal provisions, regulations and guidelines for screening social impacts

4. ADB involuntary resettlement policy, National Environmental Act (NEA) and guidelines prepared by the Central Environmental Authority (CEA), National Involuntary Resettlement Policy (NIRP) in 2001 provided guidelines and requirements for social and environmental impacts screening during planning stage. However, unlike the EIA studies and

approval procedures followed for prescribed projects, i.e., STDP with significant environmental and social impacts, the CEA approval was not required for the NHSP, but initial environmental examination studies( IEEs) were required for sub projects. Therefore, only public consultations were necessary in screening environmental and social impacts instead of a public hearing process and public comments required in EIA studies and approval. The approval of a resettlement plan was not legally required in the approval of EIA or IEE study, but ADB insisted the RDA, Ministry of Lands and CEA to endorse each RIP for a sub project.

5. In the case a sub project which requires to have its road alignment change or revise environmental classification or a supplementary IEE study is required, CEA will prepare the TOR to carry out the supplementary study. IEEs should be available to the public and posted on ADB's web site before the approval of the sub project. It is noted in Udathenna-Mahiyangana sub project, RDA submitted preliminary information to the CEA in June 2005 and environmental clearance was given in January 2006 with terms and conditions. The approval was valid for one year from the date of issues of the clearance. The final IEE was submitted to the ADB in September 2007. Thereafter, it was necessary to obtain all necessary regulatory clearances and permits before commencement of civil works on a sub project. The project must also ensure that the mitigation measures are included in the bidding document and monitor both the environmental management and monitoring plans.

### **3. Project outputs expected and delivered for screening social impacts**

6. A resettlement framework (RF) and two sample resettlement plans for sub projects were prepared during planning stage in 2005 as a guide to prepare resettlement plans for each sub project during project implementation. RDA engaged consultants to prepare resettlement plans for four sub projects by carrying out sample surveys in 2005 and inventory of losses surveys were completed in 2008. Separate social impact assessment reports were not prepared for sub projects, but social impact assessments were conducted as an integral part of each resettlement plan. CEA classified all sub projects requiring IEES which contained both environmental and social impacts and mitigation measures.

### **4. Output assessment**

7. It was not possible to carry out a detailed inventory of losses survey during the project feasibility stage in subprojects and instead, sample surveys were conducted. Therefore, resettlement plans had to be revised and updated with the changes of detail engineering designs and land surveys. As a result, the number of affected households were reduced in some sub projects and others the number of affected households was increased. The increase of number of affected people and new categories of affected people resulted in additional resettlement costs and more time required for land acquisition and compensation. The following table shows the decrease and decreases of affected households in two sub projects during the project cycle.

**Table 1: Number of affected households in Nuwaraeliya-Badulla road and Habarana-Kantale road**

<b>Sub project</b>	<b>Project feasibility study – number of households</b>	<b>Before commencement of civil works –number of households</b>	<b>After final engineering designs and construction – number of households</b>
Nuwaraeliya-Badulla roa (A05) (54.9 km)	1982	1401	508
Habarana-Kantale road (41 km)	68	68	250

Source: Records of project management unit and resettlement plans, 2005 and 2008, National Highway Sector Project

8. ADB approved resettlement plans at the time of loan negotiations were not based on final engineering designs and findings of inventory losses surveys. The road improvements included a combination of widening for some lengths of the road sections, pavement and drainage works, curve correction, and realignment where improvements to the existing alignment are not possible. In two sub projects in hilly areas, the road is narrow, the existing ROW was not adequate to do any widening and therefore, road widening was necessary. The development of the existing road to a standard two lane status with improvements to payment, drainage, reconstructing bridges and culverts required additional land acquisition. Sometimes such decisions for additional land acquisition were taken during the construction period in consultation with affected people. This process took a long time from 2005 to 2008 in some sub projects. The following example shows the good practices in social impact screening and the experiences in a sub project.

**Table 2: Good practices in social impact screening and the experience in Udathenna-Mahiyangana Road (A26) sub project**

<b>Good practices</b>	<b>Project experience</b>
1. Inventory of lost assets of the all affected people (census) before project approval	No inventory losses survey conducted in preparing the RIP before project approval
2. 20% to 25% of sample survey of all affected households	20% sample selected but no details of sample selection process documented

3. Entitlement matrix for categories of affected people	Entitlement matrix was prepared
4. Income restoration program	Not adequately prepared and budgeted for 211 business premises affected and severely affected people of home gardens and agricultural lands
5. Income levels of a representative sample as baseline information	Income data was collected only 9% of total affected households (100 HHs) –Table 4.14
6. Analysis of vulnerable groups	122 affected persons identified without the study of potential impacts and mitigation measures
7. Resettlement impacts and risk analysis	Not focused on risks associated with social impacts
8. Adequate consultation of the affected people	Workshops and meeting and interviews were conducted with relevant agencies, politicians, CBOs and NGOs and distribution of information booklets and planned consultations with the affected persons (Table 5.1) and the RP was not disclosed
9. Gender disaggregated information	Available as socio-economic profiles
10. Relocation plan	40 house, 72 business premises and 27 structures used for both residential and commercial activities were affected and no relocation plan was prepared assuming that they will be self relocated
11. Impacts on common property, host communities and access to public resources	Adequate information

Source: resettlement Plan, 2008, Udathenna-Mahiyangana road (A26) sub project

## 5. Processes and procedures followed

9. The project feasibility study was completed in May 2005 and ADB fact Finding Mission visited Sri Lanka from 4 to 20 May 2005 to review the project feasibility study documents prepared by PPTA consultants. The mission reviewed: 1) technical approach and design standards; 2) summary economic analysis, 3) summary poverty reduction strategy, 4) environmental impact assessment frame work, 5) resettlement framework, 6) two sample resettlement plans (sub projects), 7) draft initial environmental assessment reports, 8) entitlement matrix for two sample sub projects, and 9) assessment of institutional capacity of RDA. In terms of the NIRP and ADB's Policy on Involuntary Resettlement , it was

mandatory for the project executing agency to prepare a Resettlement Action Plan (RAP) for approval of both the government and ADB prior to project implementation. A Resettlement Framework (RF) was first prepared in September 2005 with the purpose of guiding the process of preparing the RAPs for all the four sub projects.

10. Consultations with the affected people took place during the field work in preparing the IEEs for three sub project reports during September and November 2004, in conjunctions with social and poverty assessment. The focus was the participants' perceptions and concerns about sub projects. The consultations were carried out in May and July 2005. It was planned to review the IEEs and environmental management plan (EMP) during the detailed design stage. The two criteria used to select road sections for improvements were to avoid passing through any designated wild life sanctuaries, national parks, and cultural heritage sites. An environmental screening checklist was used to classify sub projects requiring EIAs or IEES, the TOR for the study, the need for public consultations or public hearings and disclosure, and obtaining necessary permits from relevant government agencies, It was necessary to ensure Forest Department clearance, and all regulatory clearances were obtained before civil works begins on a sub project.

11. It was also required to translate the RF and the summaries of sample resettlements into local languages and disclose to the local people. These resettlement plans must be submitted to the Ministry of Lands and the CEA to obtain their approvals and they were updated during design stage. The resettlement framework and sample RPs were to be translated and posted on the ADB web site and submit to the Ministry of Lands and CEA for clearance. The same procedures to be followed for other sub projects.

12. The Cabinet approved a new entitlement package (ex-gratia package) in June 2005 for all road development projects of the RDA. ADB found that that new compensation package excludes those who built structures between street lines and building lines after the date of imposition of street lines or building lines and unauthorized occupants of RDA land. The Government also informed ADB that . Land Acquisition and Resettlement Committees (LARC) system has provided subjective results that vary from case to case depending on the bargaining power of the affected person. Therefore, under the new compensation package only the Valuation Department determines the amount of compensation, and the role of LARC will be to assist in the process to resolve grievances. These new arrangements will also minimize delays in payment of compensation.

## **6. Institutional capacity**

13. The project was implemented through the project Management Unit headed by the Project Director. At sub project level there were project implementation units with the staff assigned to deal with resettlement matters. The LRCS were also established at Divisional Secretary level to asst in determining the replacement cost and in mediating grievances. The Supervision Consultant also hired resettlement specialists to resettlement staff. The land acquisition and resettlement activities were monitored both internally by PMU and externally by an independent agency. The Environmental and Social Division (ESD),



RDA assisted the project in preparing resettlement planning documents and resettlement monitoring.

## **7. Outcome**

14. It was necessary to conduct census of all affected properties before the submission of the final resettlement plan for ADB approval in each sub project. The census is also required to provide baseline information, to establish management information system and to prepare an accurate list of affected people and their entitlements. This target was not achieved in expected time frame because of frequent design changes. The adequacy and quality of social impacts studies were affected as a result of frequent design changes and delays in land surveys.

## **8. Resettlement planning experience**

15. It was planned to implement land acquisition and resettlement activities over a 3 year period from January 2006 to December 2008. However, there were significant delays in finalizing engineering designs and preparation of resettlement implementation plans (RIPs) for 4 sub projects. ADB approved RIPs in May and June 2008. ADB management had serious concerns about social safeguard issues after approving a Compliance Review for STDP in 2005 and its recommendations to comply with ADB policies. The new sector project was designed at this time of implementation of specific recommendations. It was required to strictly follow ADB social safeguard requirements in resettlement planning and implementation. The Schedule 6 in Loan agreement included resettlement related conditions: 1) consult all affected people during preparation of the RPs and disclose the RPs to the affected persons before land acquisition and RIPs are posted in the ADB's website; 2) all the RIPs are updated on the basis of detailed design and final alignment of the relevant project road; 3) all RIPs will be submitted to ADB for approval prior to an award of any relevant civil works contract; 4) submit all RIPs to the Ministry of Land and CEA for clearance; 5) ensure that all draft RIPs, revised RIPs and final RIPs are made available to affected people immediately upon completion; 6) RIPs are posted in ADB website and the information should be translated into local languages; 7) compensation should be paid in full at replacement cost, including any financial assistance prior to taking possession of land, and within three months from the date of the relevant valuation; and 9) public infrastructure to be replaced appropriately and expeditiously. Two conditions for award of civil works contracts were; 1) RDA ha to obtain ADB approval on related RIPs and IEES or EIAs and 2) RDA had to acquire or made available the land and rights in land free from any encumbrances, and cleared any obstruction from the related section, required to be handed over to the contractor for commencement of construction in accordance with the work schedule as agreed under the related civil works contract.

## **9. Processes and procedures followed in preparing resettlement framework and resettlement plans for sub project**

16. RDA was responsible for the preparation of RIPs for sub projects. It was proposed to carry out sample socio-economic surveys and undertake census of affected

population, inventory of lost assets after detailed measurement surveys for each sub project. The RIP includes measures to ensure that socio-economic conditions, needs and priorities of women were identified, and that the process of land acquisition and resettlement would not disadvantage women. If there were new categories of affected persons during the process of land acquisition, types of losses for new categories were to be identified, and paid compensation in accordance with the RF. RIPs were to prepare in close consultations with the affected persons, and also disclose the RIPs. All RIPs should be approved by ADB and disclosed on ADB resettlement website after approval.

17. It was expected that detailed engineering designs to be completed by July 2006, but the progress was only 10% as of July 2006. The road condition surveys, geotechnical investigation, and topographic surveys had not been completed as planned. Since the detailed measurements can only be done after engineering designs RIPs were not prepared as planned and commencement of civil works was delayed by 10 months. Contract awards for the first two packages were expected in July 2007, but the first three contracts were signed in August and September 2008. The slow progress in detailed designs of sub projects resulted in delays in preparing and approval of RIPs. RIPs for sub projects were approved in May and June 2008. External monitor agency was engaged from 23 March 2009.

#### **10. Outputs expected and delivered to meet the requirements of the Government and ADB**

18. As a sector project the RF was prepared in 2005. It was revised due to a new compensation package (ex-gratia package) approved by the Cabinet for all road projects in June 2005. After changes in project scope and loan reallocation In 2008 RIPs for four subprojects were approved in May and June 2008 and they were disclosed: 1) A5: Nuwaraeliya-Badulla road (May 2008 and updated RIP in October 2009); 2) A26:Udathenna-Mahiyangana road (May 2008 and Updated RIP in October 2009); 3) A6: Habarana-Kantale road (May 2008 and updated RIP in October 2009); and 4) A12: Puttalama-Nochchiyagama road (September 2008 and updated RIP in September 2009).

#### **11. Output assessment**

19. The RF included 15 policy principles to meet the requirements of the government and ADB policies on involuntary resettlement : 1) minimize or avoid resettlement impacts by alternative designs; 2) identify all the losses and the affected people; 3) the effected people are compensated at replacement cost; 4) APs are eligible for rehabilitation assistance irrespective of tenure status and social status; 5) rehabilitation measures are based on types of losses; 6) relocation of displaced people to the land that is closer; 7) restoration of community properties and payments for temporary impacts; 8) complete compensation payments and rehabilitation activities of the first road section before approving the civil work contract; 9) institutional arrangements are made to ensure timely design, planning, consultation, land acquisition, compensation, resettlement and rehabilitation program; 10) respect and preserve cultural and religious places affected; 11) adequate budgetary allocations; 12) special measures to improve the living conditions of

vulnerable groups; 13) effective mechanisms for grievance address mechanisms; 14) information dissemination to the affected persons; 15) reporting, monitoring and evaluating mechanisms are identified for resettlement management (RF, Para 5, September 2005).

20. The Environmental and Social Division (ESD) of RDA was established during the project to improve capacity of RDA in resettlement planning and monitoring. It was also responsible for supporting PMU for the preparation of RIPs for sub projects. It was also planned to establish land acquisition and resettlement committees (LARCs) to assist with resettlement process and payment of compensation at replacement cost. The RF also proposed to establish a GRC, chaired by the District Secretary and respective Divisional Secretaries, RDA officials and community leaders.

## 12. Eligibility of compensation

21. The cutoff date for eligibility of compensation for the title holders is the date of notification under the LA Act and for the non-title holders is the detailed measurement survey for each subproject. The demarcation of project area for land acquisition was frequently changed in sub projects and therefore, it was not possible to inform all the affected people in advance and adequately consult them regarding design changes during planning and implementation.

**Table 3: Number of affected households in sub projects during planning and implementation**

Sub project	RIP (approved in 2008)	Updated RIP in 2009	Increase/decrease of affected HHs/population
A6: Habarana-Kantale road	57 (HHs) 238 (affected people)	179 (HHs) 656 (affected people)	214% (HHs) - increase 177% (population) - increase
A5: Nuwaraeliya-Badulla road	1401 (HHs) 7050 (affected people)	1634 (HHs) 8160 (affected people)	16.7% (HHs) - increase 15.7% (population) - increase
A26: Udathenna-Mahoyangana road	927 (HHs) 3986 (affected people)	884 (HHs) 3801 (affected people)	4.6% (HHs) decreased 4.6% (population) decreased

A12: Puttalama- Nochchiyagama road	50 (HHs)  165 (affected people)	48 (HHs)  174 (affected people)	4% (HHs) –decrease  4.5% (population)- increase
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Sources: 1) A6: Habarana-Kantale road (RIP, May 2008); 2) A6:Habarana-Kantale road (updated RIP in October 2009); 3) A5: Nuwaraeliya-Badulla road (RIP, May 2008); 4) A5: Nuwaraeliya-Badulla road (updated RIP, October 2009); 5) A26:Udathenna-Mahiyangana road RIP, (May 2008); 6) A26:Udathenna-Mahiyangana road ( Updated RIP, October 2009); 7) A12: Puttalama-Nochchiyagama road (RIP, September 2008); and 8) A12: Puttalama-Nochchiyagama road (Updated RIP, September 2009).

22. The resettlement planning activities began in 2005 during the feasibility study and continued through the final design in 2008. According to Table 3 engineering design changes in two sub projects (A5: Nuwaraeliya-Badulla road and A6: Habarana-Kantale road) have increased the number of affected households requiring more land acquisition, more disruption of livelihoods, and increased cost of resettlement impacts. It may be that road alignment had to be altered to increase road capacity and safety of road construction, but the affected population had increased significantly in two sub projects.

### **13. Baseline information for resettlement plan preparation**

23. It was necessary to do the inventory losses survey to prepare the RIP after completion of engineering designs and a representative sample survey need to be conducted to collect other socio-economic information. The sample survey was conducted to collect information on total income of affected households and sources of income but the sample size was small. For example, only about 9% of affected households were selected to obtain income data in Udathenna-Mahiyangana road (A26).The results of such surveys are insufficient to use as baseline information to represent the total affected population. An important aspect of data analysis is to calculate the lost assets such as agricultural lands in terms of the percentage of the total size of land holding and the loss income from the source. Such analysis is useful to provide information to the income restoration and relocation planning.

### **14. Resettlement plan updating during detailed design**

24. The finalization of RIP and approval from ADB took a longer period than planned. The inventory losses survey was conducted in July 2007 in sub projects and its approval was given after about one year (May/June 2008). One of the reasons was the poor quality of final RIP submitted in January 2008. ADB recruited an international resettlement specialist to re-write the two RIPs using the updated data base. There was contradictory information on the number of affected households. The consultant hired to conduct a due diligence report found that 120 households will be affected in A6: Habarana-kantale road sub project while the RIP submitted for ADB approval in January 2008 reported only 57 HHs. This may be due to the reason that the final survey plans were not available to check the accuracy of

information and subsequently the land acquisition width of the road from the centerline was changed, i.e., from 14 to 20 meters after ADB approval of the RIP. The updated RIP for the sub project confirmed that the total number of affected households as 179 (198 lots) and not 58 HHs stated in the approved RIP in May 2008. In this case it appears significant that number of affected persons were not consulted until the complaint made to ADB in August 2009. The external monitor was also not aware of the increased number of households in the last 5km section at Kantale. ADB appointed a mediator to work out a facilitation strategy to address the concerned issues. The submission, re-submission and approval process in sub projects have taken about three years and some approved RIPs were of poor quality and lack baseline information.

## **15. Institutional capacity**

25. The sub project implementation units were established and land acquisition and resettlement staff was appointed. Land Acquisition and Resettlement Committees (LARCs) were established at Divisional Secretary level to assist with the land acquisition and compensation process and particularly, to help in determining the rates to be used in compensation and to mediate any grievances. These committees comprised the RDA officials, Divisional Secretary, representatives of valuation Departments, Survey Department, Grama Niladharis as ex-officio members and the affected persons. A GRC was established and chaired by the District Secretary and the Divisional secretaries, staff of the Provincial Director, RDA and community leaders representing AP groups. An independent external monitoring agency was selected for independent review of resettlement implementation to determine whether the expected objectives are achieved or, if not, what corrective actions are needed. It also updated baseline information of each project.

## **16. Outcome**

26. A resettlement framework and two sample RIPs were prepared prior to loan appraisal. RIPS for 4 sub projects were prepared and updated following detailed engineering design for each sub project. This shows the adopted procedures for the preparation, submission, review and approval of the RIPs for each sub project were followed. However, there is no documentation how the road design team explored all viable options to minimize resettlement impacts and to reduce the requirements of land acquisition and the number of structures affected. RF expected that ESD with support from the consultants will prepare RIPs based on a detailed census and the inventory losses survey as well as a sample socio-economic baseline surveys for 10% of APs and 20% of severely affected APs. However, the sample size was not adequate to obtain information for important indicators such as income levels and relocation impacts. There is no clear evidence to prove that inventory losses data was collected in a participatory process suggested in the RF. The purpose of the socio-economic survey was to provide baseline data on affected persons to design income restoration measures and internal and external monitoring.

## **17. Land acquisition and compensation process**

27. Demolition of any structures built in road sections identified for road widening in the form of houses, shops, or other business premises have affected the living conditions and livelihoods of the owners and occupants of such properties. Filling up of some lands also affected the users of agricultural lands. Some people have constructed temporary structures within and adjacent the Row, mainly for selling their produce or provision of services and they were also affected with the removal of such structures. Other than these many front end walls, fences, gates and other structures had to be removed due to land acquisition for road widening. In a sector project contracts for physical works can be awarded only when a satisfactory RIP is approved by the ADB and the Government based on full census of all affected persons. The RIP was implemented at least to complete the payment of full replacement costs of acquired lands and structures. It was decided in 2008 to start physical works only in road sections where relocation activities are completed and compensated for lost assets. These were identified as resettlement impact free road sections. This project adopted a fast track approach, but ADB approval was required to handover road sections to the contractor after payment of compensation and relocation activities. The identification of resettlement free road sections of a sub project became a critical issue with the delays in preparing survey plans, property valuation, ownership verification and conducting of LARC meetings.

28. The status of compensation paid for families affected by the Nuwaraeliya-Badulla road sub project was reviewed in February 2012. A total of 20 households were selected for the survey in the Nuwara-Eliya-Badulla road. Twelve received compensation under LARC and eight families received statutory compensation under the Land Acquisition Act. The sample of households represented a cross-section of the households, house owners, co-owners of lands, female headed households, owners of agricultural land, and owners of commercial buildings. Information on compensation was verified from the records available at the regional office of the sub project office at Welimada.

## **18. Compensation under LARC in the Nuwaraeliya-Badulla road sub project**

29. Of the twelve families, three claimed having *sinnakkara* titles to their land; six were in possession of deeds such as Jayaboomi and Swarnaboomi; one family had obtained land on annual permits issued by the divisional secretary; and two families did not have any legitimate title to the land they occupied. One affected family received statutory compensation in early 2012 [almost 3 years since acquisition], and other were not paid compensation. The main reason for the non-payment of statutory compensation was the delays in the submission of valuation reports.

30. Table 4 shows the details of the compensation estimated by the valuer for acquired properties and the compensation paid under LARC.

### **Table 4: Estimated compensation by the Valuer and compensation paid under LARC in a sample of affected families**

Value's assessment [Rs]			LARC compensation [Rs.]		Other allowances (Rs.)		Total
Land	House & other buildings	Total	Land	House & other buildings	Loss of incomes	Other	
434,338	310,000	<b>744,338</b>	434,338	371,700	77,350	79,600	<b>962,988</b>
325,000	1,235,000	<b>1,560,000</b>	195,000 [60% of the value]	1,235,000	70,000	80,000	<b>1,580,000</b>
	315,000	<b>315,000</b> <b>[1,875,000]</b>		315,000	16,000	10,000	<b>341,000</b>
-	61,000	<b>61,000</b>	-	100,000	60,000	35,000	<b>195,000</b>
Rights not established	1,123,000	<b>1,123,000</b>	-	1,288,000	5,000	112,500	<b>1,405,500</b>
154,000	1,230,000	<b>1,384,000</b>	123,200	1,350,000	15,000	107,500	<b>1,595,700</b>
-	1,295,000	<b>1,295,000</b>	-	1,315,000	-	195,750	<b>1,510,750</b>
-	1,173,000	<b>1,173,000</b> <b>[2,468,000]</b>	-	1,193,000	-	286,250	<b>1,479,250</b> <b>[2,990,000]</b>
Not decided	-	-	-	-	18,000	27,500	<b>45,500</b>
82,000	155,000	<b>237,000</b>	103,000	155,000 [temporary building]	25,000	157,500	<b>440,500</b>

Source: Field survey, February 2012

31. All the affected families in the sample have received compensation from LARC. Under normal procedures statutory compensation is paid first and then LARC payments are made. This procedural change is may be due to the urgency of clearing the ROW for road construction work. compensation was paid within less than three months after the LARC inquiries were held. However, several APs could not produce their entitlement certificates during the interviews. Some could not recall receiving such a document while others reported having displaced their documents. Loss of income was paid as a separate allowance. Other compensation payments included house rent, transportation, allowance for vulnerable families, supply of water and electricity to new structures, cost of preparation of relevant documents for inquiries, incentive payments for handing over the property on or

before the stipulated date. In addition, the access roads, concrete steps and fences were re-constructed.

### 19. Compensation under 2008 Regulations

32. Table 5 presents the details of compensation received the sample families (8) under 2008 land regulations.

**Table5: Compensation payments under 2008 Land Acquisition Regulations**

Extent acquired [perches]	Statutory compensation [Rs]	Compensation under 2008 regulations [Rs]	house	Income loss	Other	Total [Rs.]
25.77 [3 lots]	698,000	358,700	1,500,000	30,000	479,000	<b>3,065,700</b>
17.34 [7 lots]	467,100	476,900	-	-		<b>944,000</b>
11.30 [2 lots]	1,151,200	991,800	806,700	-	-	<b>2,949,700</b>
4.46 [2 lots]	637,000	907,000	-	-	-	<b>1,544,000</b>
7.62 [with two houses & agri. land]	535,000	750,500	-			<b>1,285,500</b>
	535,000	750,500	-			<b>1,285,500</b>
10.10 [3 lots]	402,200	233,300	-	-	-	<b>635,500</b>
	402,200	233,300	-	-	-	<b>635,500</b> <b>[1,271,000]</b>
23.83 [3 lots]	503,000	292,000	-	-	-	<b>795,000</b>
3.04 [2 lots]	151,700	154,000	-	-	-	<b>305,700</b>

Source: Field survey, February 2012

33. The sample affected families (8) reported that they were legal owners of land and compensation was paid under three different categories. The first category was the statutory compensation entitled under section 17 of the Land Acquisition Act and the accrued interests. There was no delays in payment of compensation. The second category was the compensation determined and paid under 2008 regulations to the LAA. The breakdown of compensation payments under 2008 regulations was not disclosed to the affected persons. It is only the total amounts that was indicated in the certificate of payment. The third



category constitutes the compensation determined and paid by a 'special committee'. The composition of which is quite similar to the LARC. The members of the special committee included the Divisional Secretary and the representatives of RDA, Valuation Department and the Survey Department. The compensation payments recommended by the special committee were paid in situations where acquisitions can cause potential injury or disturbance to the lives of the affected persons. For example, if the remaining land is not suitable for any productive purpose or not secure to occupy the remaining part of the house, the special committee paid compensation for the remaining portion of the land or part of the house. Other allowances included shifting allowances and other cost of moving into the new house. The project Director must approve the recommendation of special committee.

34. Under the new compensation package introduced under 2008 regulations, there is no need to pay compensation as three separate categories, Section 17 payments, LARC payments and the payments approved by a special committee. The second question is why a special committee is required to determine additional compensation when there is legal provision under the 2008 regulations to pay compensation for 'disturbance' and 'injurious affection'.

35. A majority of sample families had used government lands earmarked for road expansion for vegetable cultivations, building construction or commercial activities. However, such lands were not compensated, but compensation was paid only for crop losses and loss income from commercial activities. Their visits to the Divisional Secretariat for inquiries did not exceed more than 3 visits. None of the affected persons reported having difficulties in getting compensation and there was no major disagreement on the compensation received from the LARC. Except for one affected person who appealed to the Review Board [ withdrew after receiving compensation from LARC ], no other sample affected families engaged either in an appeal process or any protest campaigns against land acquisition. Generally, those who have lost their houses or business premises used compensation to build better houses/commercial structures compared to the old houses/structures.. As a result, compensation was not sufficient to complete the construction work of their new houses/structures. Some have obtained bank loans to supplement the costs of their construction work.

36. Several affected persons reported losing incomes from their livelihood activities as a result of land acquisition. However, it was not possible to assess the exact loss of income because they were not prepared to assess the lost income. The loss of income is reported from cultivation of vegetables, closing down commercial activities such as retail groceries, cement block manufacturing and losing regular clientele for their business activities and the difficulties of regaining their customer base in new locations. Mismanagement of funds received was also observed among some affected persons while other were satisfied with the incomes they received from other supplementary sources. In the case of vegetable cultivators, their existing home gardens did not provide extra space to replace the lost vegetable plots and paid compensation was not adequate to purchase or lease new land. In the case of a garage owner whose garage was earlier built on a road

reservation has not been able to re-establish his business because of his inability to find alternate land by the road side. Having lost his own enterprise, he now works under other garage owners whenever work is available in such places. The support extended by the project field staff to avoid delays in compensation and to provide additional assistance in the form of constructing culverts or access roads to their compounds of the homesteads was appreciated. Meanwhile, a large number of APs reported having cracks on their walls which they believed was causing from vibration of the heavy machinery used for road construction work.

37. Compensation payments reasonably covered the losses of properties and income losses. However, delays to pay statutory compensation and interests should be minimized as much as possible. Possibilities of integrating the three different categories of compensation practices explained earlier to be paid as a package. It is recommended that formal mechanisms and procedures are established to facilitate consultation, participation and disclosure of relevant information to the affected persons. The implementation of livelihood restoration plan of the project should receive due recognition.

## **20. Income and Livelihood Restoration**

38. The Resettlement Framework of 2005 clearly spelt out its strategy for income restoration of the affected families (p.36-37). The strategy encompassed the following: 1) a livelihood restoration grant to offset lost income not directly compensated for and to assist as seed money for re-establishing a business at a new location or setting up a new business if an affected person has to change their livelihood; 2) Vocational or skills training for those who will suffer major livelihood losses will also be entitled to training for up to two members of their households and subsistence allowance during the training period and entrepreneurial development training, basic skills training and household budgeting and assistance in accessing existing micro-credit facilities; 3) Agricultural extension assistance to improve the productivity of the remaining agricultural land; 4) severely affected and vulnerable groups will be given priority for project-related employment opportunities 5) a special assistance grant for APs that are vulnerable (i.e. the poor, elderly, ethnic minority households, female headed households, the disabled with little or no other means of support).

39. The IRP identified 180 affected households spread over 9 villages who required assistance for their income restoration. A socio-economic survey identified 55 families (31%) deriving incomes less than Rs.5,000 a month (very poor families). There were another 94 families (52%) identified as 'poor' families who had monthly incomes ranging from Rs.5,000-10,000. The 31 families (17%) were receiving monthly incomes over and above Rs.10,000/ as 'middle income' category which comprised family members employed in the government sector, families engaged in livestock farming etc. Based on this survey results, the latter middle income category was excluded from the beneficiary list of IRP. The final beneficiary group thus included 149 families (IRP Final Report 2011, p. 9). However, the External Monitor noted that income restoration strategies were linked to three socio-economic groups; 1) linking the affected *high income earning families* with relevant service

organizations that provide technical, financial, or marketing support for income restoration and home garden developments; 2) organizing the affected *low income earning families* into Self-Help Groups (5-8 families as recipients of micro credit), and 3) organizing *vulnerable families* into self help groups to receive skills training.

40. The activities implemented under the IRP are presented in Table 1.

**Table 6: IRP Interventions**

No	IRP Intervention	No. of targeted Beneficiaries	Outcome
1.	Home garden development training with three modules on land management, cultivation practices and crop management	110	Not reported
2.	Distribution of planting materials (mango, papaya, orange, cashew, coconut and jak) to the value of Rs.1500/- per family	110	Not reported
3.	Agricultural production training with three modules on cultivation of paddy, big onions and vegetables using environmentally friendly methods	180	Not reported
4.	Vocational training for youth in AP families in light vehicle driving, garment production and beauty culture (over a period of 6 months)	10 members	Not reported
5.	Self-Help Group (SHG) Management training with the main objective of linking the SHGs with financial institutions/programs		Bi-monthly meetings conducted with SHGs
6.	Establishing SHGs	Affected persons	11 SHGs established in 11 villages with a total membership



	assistance	building	training	trainings	training	ce	trainings
Hingurakkoda	35	10	35	3	4	-	6
Kantalai 1	24	8	24	4	4	1	10
Kantalai 2	23	4	23	-	4	-	6
Kantalai 3	21	8	20	2	7	-	8
<b>Total</b>	<b>103</b>	<b>30</b>	<b>102</b>	<b>9</b>	<b>19</b>	<b>1</b>	<b>30</b>

Source: Progress report, external Monitoring, September 2010, p. 26-34

42. The regulations of the banks that were linked to the self help groups to benefit from the micro credit programs prevented accessing immediate credit from the banks. For example, banks would consider extending credit facilities only after three months of opening savings accounts with the respective banks. A proposal by the Mediator (February 2010) in Habarana-Kantale sub project to establish a micro-finance program to support livelihood restoration with a capital fund of Rs.1,000,000 was not realized. Some of the training programs conducted under IRP suffered from its inability to find qualified and competent local trainers, limited funding available for the IRP and the inability of the APs to attend the training programs continuously as they were dependent on daily wages/seasonal agricultural activities. The heavy rains and the major flood that occurred in the first two months of the year 2011 not only destroyed the minor irrigation tanks and other irrigation systems but also the cultivations of the farmers.

43. In August 2009 a complaint was made to the Compliance Review Panel, ADB that some APS in Agbopura 84 area in Habarana-Kantale sub project was not paid full compensation. PMU made arrangements to pay compensation immediately and ADB appointed a mediator to identify issues and remedial actions to resolve them. The mediator proposed a micro finance program to support income restoration. The IRP implemented for the Habarana-Kantalai sub project encountered a number of specific issues as well as challenges. There is no dearth of evidence for one to conclude on the real outcomes and impacts of the IRP. On one hand, very little is documented on the IRP process. The process has not been monitored adequately. The relatively short and rigid timeframe assigned for the implementation of the IRP (presumably less than a year) would have prevented the realization of tangible and visible results in the short-run. There are several unanswered questions: 1) has the agriculture training provided resulted in improving agriculture productivity; 2) has the training motivated the farmers to adopt better farming practices; 3) has the vocational skills development training helped the youth to find employment; 4) have the affected persons been able to obtain bank loans; 5) have the affected persons been able to invest to restore their livelihoods and incomes; 6) have they been able to generate incomes from their new enterprises; and 7) have vulnerable families restored the incomes after the IRP.

44. The External Monitor also reports that ‘Yet there may be instances where the compensation itself had not being able to restore or improve the status of the displaced, in such instances; the displaced need extra help/intervention from the executing agency. What was initially required was to link the affected persons with government agencies to obtain loans and to get extension services. The elaborate training programs, seminars and surveys do not achieve the objectives although such activities provide useful advice and training. The IRP implemented in 3 sub projects was considered to less relevant and timely actions. (External monitoring report, March 2011)

45. There is a need for an IRP to set a realistic time frame, allocate sufficient resources, and establish an effective and rigorous monitoring system that would facilitate the realization of its objectives. Providing training, setting up of SHGs or linking them with credit or technology related institutions alone cannot ensure the restoration of livelihoods and incomes. It is also important that implementation of an IRP begins prior to displacement and not at the tail end of a project. It is important that proper and accurate records are maintained, details of interventions and their outcomes. An IRP should clearly identify the exact nature of the adverse effects of the project on the affected population and their livelihoods and incomes. There was no such a comprehensive assessment and a detailed operational plan spelling out specific interventions and time frames to address those adverse effects. An IRP should set up an efficient and systematic monitoring and evaluation system to assess its processes, outcomes and impacts

## **21. Monitoring and evaluation**

46. The RF and RIPs in sub projects provide a comprehensive operational framework for monitoring and evaluation. Key elements of this operational framework are: 1) establishing an internal and external monitoring systems; 2) delineating the roles and functions of internal and external monitoring ; 3) outlining the subject matter to be covered and a set of indicators that could be applied in monitoring; 4) proposing a range of methodologies and tools that could be applied including participatory methodologies for consultations and data collection; 5) identifying the actors who should be involved in monitoring and evaluation processes; 6) setting the targets for expected outputs in terms of documentation, timeframes, mechanisms for dissemination of results after monitoring, and remedial actions.

## **22. Internal Monitoring**

47. project management unit (PMU) and Environmental and Social Division (ESD) of RDA were responsible for internal monitoring of resettlement plan implementation. PMU submitted progress reports to the Ministry of Highways and senior management of RDA and Sri Lanka Resident Mission of ADB. The monitoring and evaluation indicators in progress reports are in Table 8.

### **Table 8: Monitoring and Evaluation Indicators**

Type	Indicator	Examples of variables
<b>Process Indicators</b>	Staffing	Number of RDA staff on project, by subproject, job function & gender, assignment of Land Acquisition Officers to subprojects, training received, number of other line agency officials available for tasks
	Consultation, Participation, & Grievance Resolution	Number of consultation and participation programs held with various stakeholders on entitlements, valuation as per replacement value, etc. Grievances by type and resolution, number of field visits by RDA staff, LARC members, staff from Chief Valuer's office, number of NGOs/civil society organizations participating in project
	Procedures in Operation	Joint IOL and asset verification/quantification procedures in place, effectiveness of compensation delivery system, number of land transfers effected, coordination between RDA and other line agencies
<b>Output Indicators</b>	Acquisition of Land	Area of cultivation/paddy land acquired by subproject, area of other private land acquired, area (and type) of state land acquired
	Structures	Number, type and size of structures acquired, community property structures and government structures acquired
	Trees and Crops	Number and type of crops and trees affected in government owned land, crops and trees in community managed lands, and number of owners
	Compensation and Rehabilitation	Number of households affected, Number of owners compensated by type of loss, Number and amount of allowances paid, number of replacement houses and, commercial structures constructed by owners, number of owners requesting assistance with purchasing replacement land, number of replacement land purchased, number of poor and vulnerable APs requesting assistance and assistance provided
<b>Impact Indicators</b>	Household earning capacity	Employment status of economically active members, land holding size, area cultivated and production volume, changes to livestock ownership, changes to agricultural income-earning activities, changes to off-farm income-earning activities, income and expenditure
	Status of	Participation in training programs, construction activities

	women and children	and commercial activities and school attendance rates (male/female)
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Source: Resettlement Framework, P. 39. 7

48. The first two types of indicators mentioned in Table 8 are related to process and immediate outputs and impacts. The land acquisition officers, resettlement assistants and project management staff collected information from the project site and assimilated those in the form of a monthly progress report to assess the progress of RIP implementation. The methods used to carry out field level monitoring are: 1) interviews; 2) In-depth case studies; 3) sample surveys; 4) Key informant interviews; and 6) public meetings.

### **23. External Monitoring**

49. The main role of independent review of resettlement implementation activities of each subproject was to determine whether the objectives of resettlement are achieved; and if not, what corrective actions are needed. The key objectives of the independent monitoring agency were to: 1) verify that resettlement program has been implemented in accordance with the approved RF and RIPs in each sub project and time framework; 2) ensure that affected persons have restored at least their incomes and living standards; and 3) to conduct social audits (on a quarterly basis) of land acquisition and resettlement activities. The findings of the external monitoring reports were submitted on a quarterly basis to the PMU and ESD of RDA and ADB.

50. The Project Management Units (PMU) was responsible for conducting internal monitoring and evaluation with the assistance of field offices and relevant agencies, I.e., Divisional Secretary Offices. The monitoring process was facilitated by a number groups; 1) Resettlement Units at the field level constituted by Resettlement Officers and Resettlement Assistants; 2) Land Acquisition and Resettlement Division (LARD); 3) Environmental and Social Division (ESD); 4) Chief Engineer's Office; and 5) Construction Supervision Consultants. The Centre for Environmental Studies at the University of Peradeniya conducted external monitoring.

51. The Centre for Environmental Studies at the University of Peradeniya monitored the project progress from 2009. Its terms of reference (ToR) included the following: 1) collection of baseline information on affected persons before land acquisition; 2) selection of a set of indicators for gathering and analyzing information on resettlement impacts; 3) conducting of sample surveys for impact analysis; 4) assessment of resettlement efficiency and effectiveness; 5) satisfaction of the affected persons on the valuation of assets and entitlements; 6) timing of payments; 7) funds availability; and 8) funds disbursement (Monitoring and Evaluation Report, December 2010, p.8).The methodology adopted included: 1) review of data and documents of the project; 2) reconnaissance survey and a rapid appraisal<sup>3</sup> and a formal survey covering a sample of 572 APs in four sub projects. The first sample survey was conducted in September-October 2009 while the second survey, administering the same questionnaire to the same sample, was conducted in May 2010. The survey questionnaire consisting of 53 questions covered socio-economic status



of the affected persons, level of awareness on land acquisition and resettlement, measured via attendance at project meetings, number of complaints and participation in protests, stage of house construction, and problems in land acquisition, compensation payment, and non-monetary assistance received.

## **24. Outputs**

52. The monitoring processes adopted in NHSP have also produced a variety of formats and frameworks for reporting and documentation of monitoring and evaluation outcomes. However, they too remain in isolation and sometimes go unnoticed. Attempts should be made to collate those reporting formats together so that they could be consolidated into a uniform framework and develop a more systematic and comprehensive reporting frame for the use of future projects.

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