

BRIEFING NOTE: Rehabilitation of the Cambodian Railway Project: Status of Remedial Actions and Ongoing Concerns

August 31, 2015

More than five years after raising their initial concerns with ADB, three and a half years after submitting their first complaint to the ADB Accountability Mechanism, and 19 months since the ADB Board approved the Final Investigation Report of the Compliance Review Panel (CRP), many affected families remain worse off than they were before their lives were uprooted by the Rehabilitation of the Railway in Cambodia Project

After a 17-month investigation, the CRP found that ADB's "inadequate attention to addressing the resettlement, public communications and disclosure requirements of its own policies in a timely, adequate and responsive manner has led to significant yet avoidable adverse social impact on mostly poor and vulnerable people." The Panel found that affected families "suffered loss of property, livelihoods, and incomes, and as a result have borne a disproportionate cost and burden of the development efforts funded by ADB."¹

On January 31, 2014, the Board adopted, with minor modifications, six of the CRP's seven recommendations to bring the project into compliance and Management was given 60 days to prepare a remedial action plan in response to the Board decision. The Requesters were largely satisfied with the CRP recommendations, which they believed would represent an effective remedy if implemented satisfactorily.

Management did not consult with the Requesters and their representatives on the development of its action plan, denying affected households (AHs) the opportunity to influence the measures intended to remediate the harms that they themselves have experienced. Management submitted its action plan to the Board and it was disclosed to AHs after the fact on April 25, 2014. In response to complaints by affected communities regarding the lack of consultation on the plan, Management committed only to seek feedback from AHs on the remedial actions on which agreement with the Cambodian government has been secured.²

Inclusive Development International (IDI) and Equitable Cambodia (EC) submitted detailed comments on the action plan on behalf of Requesters.³ Our assessment was that the plan was wholly inadequate to give effect to the CRP recommendations. The CRP also evidently noted, in an April memo to the Board Compliance Review Committee, that the plan "fell

¹ CRP Final Report, Compliance Review Request on the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project Loans 2288-CAM and 2602-CAM, and Grant 0187-CAM.

² Letter to NGO Representatives from ADB Cambodia Country Director, Eric Sidgwick, 25 April 2015.

³ Requesters Comments on ADB Management's Action Plan to Implement the Board Decision on the Recommendations of the CRP Final Report: Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project, Inclusive Development International and Equitable Cambodia, 19 May 2014; available at: <http://www.inclusivedevelopment.net/wp-content/uploads/2014/05/Requesters-Comments-on-RAP-FINAL.pdf>

short of the Board-approved recommendations.⁴ IDI and EC, along with AHs, have met directly with the ADB Resident Mission in Cambodia on several occasions after the disclosure of the plan, and each time provided suggestions for bringing the action plan into line with the Board-approved recommendations. Regrettably, ADB did not incorporate these comments into a revised plan.

In its First Annual Monitoring Report, the CRP assessed progress made on the implementation of the Board decision and found that, as of 31 January 2015, ADB was only partially compliant with recommendations 1, 2, 3, 4 and 6, and not in compliance with recommendation 5. Seven months later, nearly all the concerns voiced previously by affected people, IDI and EC, and the CRP remain outstanding.

Our key concerns are outlined below:

1. Remedies for Inadequate Compensation for Loss of Assets and Appeal Mechanism: The Fourth Quarterly Progress Report on the ADB Management's Action Plan (April 2015) states that IRC has completed a document review of "past compensation documents" and completed computation of compensation deficits, which ADB has further verified, while AH consultations were underway. It further explains that, "the main contents for the house-to-house consultations are to explain to each AH in detail about (i) all computation and adjustments included in the draft amended contract, and (ii) GRM in case AH does not agree with the adjustments and computation."⁵

IDI and EC wrote to ADB on April 3, 2015 to request clarification about the methodology that is being used to compute their compensation deficits. ADB's Cambodia Resident Mission responded that the methodology consists of Inter-ministerial Resettlement Committee (IRC) review of the DMS and contracts between IRC and AHs, and the identification of mis-categorizations. ADB then verifies the results of IRC's review. Adjusted amounts are prepared due to mis-categorizations, which are adjusted for CPI inflation "as needed."⁶

As we noted in our comments on the action plan, and the CRP also observed in its First Annual Monitoring Report, this approach is flawed because it is based on a desk review that compares two documents (the DMS and the compensation contracts), which were each found to be deeply flawed.⁷ As AHs were never consulted upfront, there was no opportunity to identify and correct errors in the 2009 DMS that could not have been ascertained through a desk review.

Moreover, as the CRP found, there was a "critical disconnect" between the timelines for the revision and amendment of the compensation contracts and the improvement of the Grievance Redress Mechanism (GRM): "consultations" with AHs on the amended contracts took place well before a reformed GRM was up and running. AHs were informed that they

⁴ Compliance Review Panel, First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia, (Asian Development Bank Loan 2288 and Asian Development Bank Loan 2602/Grant 0187 [Supplementary]), 6 April 2015, para 10.

⁵ Fourth Quarterly Progress Report On the ADB Management's Action Plan to Implement the Board Decision on the Recommendations of the CRP Final Report: Compliance Review Request on the GMS: Rehabilitation of the Railway in Cambodia Project, April 2015.

⁶ ADB response letter to NGOs, 11 June 2015.

⁷ CRP, First Annual Monitoring Report, op cit., para 20.

have a 30-day time limit to accept or reject the revised contracts, yet they were not given clear information about how they could appeal computation payments or the confidence that the process would be more credible than the previous local grievance mechanism.⁸

AHs were thus faced with a take-it-or-leave-it offer of additional compensation, which in some cases monitored by EC has been as low as 4 USD, and were not provided with a meaningful opportunity to appeal. No “oversight body, which can also act as a single-tier appeal body regarding computation and payment of compensation,” was ever created as required by the Board decision.⁹

Recommendation:

- **Once the improved GRM is fully operational, AHs should be informed and provided with an opportunity to lodge appeals regarding computation and payment of remedial compensation.**

2. Remedies for Inadequate Compensation for Loss of Income: Affected households have suffered extensive income losses for which they have not been compensated. As the CRP concluded in its Final Report, “the compensation for livelihood restoration did not adequately make up for the greater distance of some resettlement sites from the original place of residence, which made it impossible or very costly for AHs to continue working at the old location. The initial income restoration program was poorly designed and provided only training opportunities without capital support.” By the time the Enhanced Income Restoration Program (EIRP) started, twelve months or more after the households had been resettled, “many households had already experienced significant income losses” and “the income shocks resulting from these income losses contributed to increased indebtedness.”¹⁰

The action plan as it currently stands fails to: i) compensate people for their income losses; ii) address the indebtedness that vulnerable households outside of Phnom Penh are burdened with as a result of inadequate compensation and income restoration; and iii) strengthen, expand and sufficiently prolong the EIRP to ensure its effectiveness in restoring incomes on a sustained basis.

The Third Quarterly Progress Report states that IRC has agreed to provide additional CPI-indexed “living allowances under...the agreed Resettlement Plan, to compensate for additional hardship that relocated AHs may have experienced due to delays in the implementation of the income restoration program.”

Recommendation 1, however, states that the compensation deficit payment program “has to mitigate property, transitional **and income losses** suffered by AHs so that they are not made worse off as a consequence of the project” (emphasis added).¹¹ ‘Living allowances’ are for transitional losses. They are not the same as *compensation for actual income losses suffered by AHs*, which is required by ADB’s safeguards policy, procedures, loan covenants and the Board Decision of January 31, 2014. The reference to the “agreed Resettlement Plan” as the basis for calculating these allowances is also of concern. It is evident from the current situation of affected households that the Resettlement Plan failed to provide

⁸ CRP, First Annual Monitoring Report, op cit., paras 14 and 29.

⁹ Decision of the Board of Directors of the Asian Development Bank, 31 January 2014, para. 268(vii).

¹⁰ CRP Final Report, op cit, p. vii.

¹¹ Decision of the Board of Directors, op cit, para. 268(vi).

adequate measures to prevent impoverishment. The CRP found ADB non-compliant for approving this inadequate plan. It should not therefore form the basis of remedial actions.

It should be noted that the CRP suggested an innovative approach for the provision of lump sum compensation payments for income losses, based on the average estimated loss of income in each relocation area. In the CRP's overall calculations, this method would have provided more than three times the amount of remedial compensation provided to AHs in Battambang and Phnom Penh for asset losses (using a similar methodology for computation to that which has been applied by IRC). This would go a long way toward helping relocated families get back on their feet.

Recommendation:

- **The ADB Board should enforce Section 4.01 of the Project Loan Agreement to ensure that AHs are compensated for their income losses, as required by the Involuntary Resettlement Policy and Recommendation 1.**

3. Addressing Project-Induced Indebtedness and Ensuring Income Restoration:

According to the Fourth Quarterly Progress Report, "a micro financing institution (Vision Fund) commenced a program in January 2015 to address over-indebtedness through refinancing loans of AHs in Phnom Penh and has collaborated with CUFA to conduct individual household assessments." While this may represent progress on Recommendation 5, which was contested by the Cambodian Government, there remain many questions about the scope and details of this program, as well as ADB's role. Questions we have posed to Management, which remain unanswered include:

- What are the terms (interest rates and maturity dates) for the refinanced loans?
- Will there be forgiveness of any portion of this odious debt?
- Who will be able to qualify for participation in this program?
- Will funds be disbursed to the indebted households or directly to creditors as recommended by CRP?
- Why is this only occurring in Phnom Penh and not in other areas throughout the country where resettlement-induced indebtedness is also an issue?

We also note that ADB has approved a TA to provide support and capacity building for the Enhanced Income Restoration Program into 2016. Like the CRP, we are concerned that Management's focus appears to be on "exit strategies" for this program rather than on effectively restoring incomes.

Recommendations:

- **A mid-term evaluation of the EIRP should be conducted to determine if it is succeeding in restoring incomes and livelihoods, or if additional resources and/or design changes are needed. There should not be an arbitrary timetable for ending the EIRP. Rather, the timetable and nature of support for these activities should be based on independently verified outcomes.**
- **ADB should commit to ensuring that incomes have been restored, consistent with its involuntary resettlement policy, before it discontinues support for the EIRP or other necessary programs.**

4. Improvement of Facilities at Resettlement Sites: In its First Annual Monitoring Report, the CRP found "that there is incomplete identification of infrastructure deficiencies; inadequate consultation with AHs on O&M arrangements; infeasible involvement of AHs in

responsibility for maintenance of facilities that should be ‘public facilities’ and the responsibility of public entities; and a failure to bring the medical center at the Phnom Penh resettlement site up to national operating standards.”¹²

The assessments of ADB’s Management in its quarterly progress reports are disconnected from the reality on the ground on this issue. While Management states that IRC has finalized the inventory list and assessment of the facilities in each site and nearly completed improvements, AHs expressed during meetings with CARM in March and June that there are numerous serious problems with the infrastructure and facilities provided at the resettlement sites. These problems – from heavily flooded access roads to lack of water during the dry season - have caused affected people enormous suffering. While Management claims in its Fourth Quarterly Progress Report that improvements at the Battambang site are 100% complete, AHs in Battambang continue to complain that there is still not enough water for household consumption. It is deplorable that 19 months after the CRP Report was approved by the Board, and five years after two children lost their lives in Battambang because of the failure to provide water at the resettlement site, affected people are still forced to fetch water from the same dangerous pond where the children drowned.

Recommendations:

- **ADB should require IRC to disclose the inventory and assessment of facilities and consult with AHs at each site regarding improvements that still need to be made. The facilities should be improved so that they meet the standards of ADB’s policies, and not merely “relevant national, provincial, or local authority standards” as set out in the action plan.**
- **ADB should provide an *ex gratia solatium* to the families of the children who died as a result of inadequate facilities at the resettlement sites in Battambang and Poipet, as recommended by the CRP.**

5. Consultation on resettlement options for affected households remaining along the railway: The families who remain in the corridor of impact (COI), and those who have moved back into the residual right of way (ROW) and have less than 30 square meters of space remaining in their house, have a right to be presented with meaningful resettlement options. The families in Phnom Penh have only been presented with one option, which is to move to a site that is more than 20 kilometers from their current residences and which has led to the impoverishment of most people who moved there.

At the time CRP conducted its investigation in 2013, Management stated that an Addendum Resettlement Plan would be prepared for these families and that they would be consulted on that plan. This has never occurred and requests from AHs for information and consultation have gone unanswered. As a result, 22 families remaining in the ROW submitted a new request for compliance review on August 31, 2015.¹³

Recommendation:

- **Support IRC to develop an Addendum Resettlement Action Plan for families in the COI or those in the residual ROW with less than 30 square meters of living space remaining, based on meaningful consultation with AHs on resettlement options, including a choice of resettlement sites.**

¹² CRP, First Annual Monitoring Report, op cit., para 25.

¹³ <http://www.inclusivedevelopment.net/families-threatened-by-cambodia-railway-development-again-seek-justice-from-the-asian-development-banks-accountability-mechanism/>