

Complaints Receiving Officer
Accountability Mechanism
Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550
Philippines
Email: cro@adb.org

August 30, 2015

Dear Complaints Receiving Officer,

We, the undersigned complainants, are representatives of families affected by the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia.¹ Our families are project affected households (AHs), living along the railway in Phnom Penh and Poipet, who are entitled to be resettled but have not been offered a resettlement assistance package in accordance with ADB's Involuntary Resettlement Policy.

As explained below, we have all suffered harm and anticipate further harm as a direct result of the Project, because of acts and omissions of ADB that violate ADB policies. We therefore request compliance review by the CRP.

The matters we are raising in this complaint have not previously been considered by the CRP. In addition, we are presenting new evidence of acts and omissions that was not yet available at the time the CRP was conducting its investigation or when it released its Final Report on the same Project in January 2014.

We fall into two groups of complainants:

- a) Project AHs living in our homes, in the railway right of way (ROW) in either Phnom Penh or Poipet, that now comprise less than 30 square meters because we were ordered by the IRC to remove part of our homes and other structures from the Corridor of Impact (COI). According to the Resettlement Plan, we should have been categorized as "fully affected" and offered resettlement assistance. Instead, we were treated as partially affected, and compensated only for the part of the structure that was removed. Our homes are too small for our families to live in with dignity and we lack security of tenure.
- b) Project AHs still living in the COI in Phnom Penh that were categorized as fully affected, but have refused to relocate to the Phnom Penh resettlement site because we were not consulted on resettlement options, and did not agree to move to the Trapeang Anhchanh resettlement site.

We all wish to resettle and we have the right to resettlement assistance. Those of us from Phnom Penh do not want to move to the Trapeang Anhchanh resettlement site, which is 20-30 kilometers away from our homes and places of work and business. We have strong

¹ Asian Development Bank Loan 2288 and 2602/Grant 0197 [Supplementary].

reason to believe that we will be impoverished and face other negative impacts on our lives if we have to move to this site, particularly given the lack of livelihood opportunities available and the meager assistance provided by the Project. Those of us from Poipet want to be provided with resettlement assistance so that we can move to the Poipet resettlement site.

Direct and Material Harms and Anticipated Harms

We are all living in an extremely precarious tenure situation because of the Project. We have no security of tenure and live under the persistent threat of eviction. Those of us who shifted back into the residual ROW have never been provided with any certificates guaranteeing our security of tenure for five years, as provided in the 2006 Resettlement Plan. Even if we had been given such certificates, this would be an inadequate guarantee that we will not be evicted without adequate resettlement assistance in the future due to the rehabilitation of the railway made possible by the ADB-financed Project. In addition, many of our families now live in homes that are too small by the Project's own standards to be considered viable, and that do not allow us to live in dignity, privacy and security.

We fear that that will be left in these precarious and untenable circumstances indefinitely, or eventually be forcibly evicted without the protections of the ADB Involuntary Resettlement Policy.

For those of us in Phnom Penh, we were promised an addendum to the Resettlement Plan to cover AHs that still need to be resettled for more than two years, but the addendum has not been prepared, despite our repeated requests. We have repeatedly requested information about our status and demanded to be consulted on the addendum to the Resettlement Plan, including on options for resettlement sites, but our requests have consistently been denied.

Previously, we were informed that our only resettlement option was to move to Trapeang Anhchhan, which we continue to believe will cause us grave and irreparable harm, as we have seen happen to our former neighbors who were forced to relocate there. We fear we will face the same risks of indebtedness and impoverishment because we will not be able to continue our jobs or find new ones.

The CRP documented the problems at the Trapeang Anhchhan resettlement site in its Final Report on the compliance review of the Project and subsequent Monitoring Report. In its Final Report, the CRP found people who had been resettled there to be impoverished and in distress.² It found that the drop in income was particularly significant at the Phnom Penh site, because of the distance from the AH's former homes.³ It found facilities, including the access road, waste disposal, health post and the primary school to be inadequate. When the CRP recently visited the site to monitor implementation of the action plan, it found a broken access road subject to flooding and the medical center locked with no staff and no schedule of operations.⁴

² CRP, Final Report on Compliance Review Panel Request No. 2012/2 on the Project, 14 January, 2014, para. 14.

³ Ibid, page vii.

⁴ CRP, First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Project, 6 April, 2015, para 24 and figure 7.

We are convinced that the Enhanced Income Restoration Program, which is based on “Self Help Groups” rather than the provision of alternative employment as recommended by CRP, will not prevent us from falling into poverty. Moreover, IRC intends to end the program by Q4 2015, which is too early for us to receive benefits – even if the program was more effective. Even if the program is extended to Q4 2016, as suggested by the ADB in its TA approved on 15 December 2014, CRP has warned that this is “unrealistically early” to restore the incomes of those who have been participating in the program since 2012, much less those who have yet to be resettled.⁵

We are also concerned that we will face other problems if we are forced to move to Trapeang Anhchhan, including lack of access to basic services and facilities. We hear from our former neighbours now residing at the resettlement site that they cannot afford to pay for connections to basic services, including electricity and piped water, and these issues are not addressed by ADB in its Management Action Plan.

Matters Not Yet Considered by the CRP and New Evidence Presented

The Accountability Mechanism Policy states that the CRP excludes complaints that are “about matters already considered by the CRP, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint.”⁶

The CRP conducted an extremely thorough review of most harms and areas of policy non-compliance relating to the Project after receiving a Request for Compliance Review in August 2012, and set out its findings in its Final Report, dated January 14, 2014. However, not all issues and grievances were addressed. The CRP did not address or make findings and recommendations relating to the specific situation described in this letter. We believe our situation was not addressed because at the time the CRP was conducting its investigation, RGC and ADB had committed to developing an addendum RP for the remaining AHs in Phnom Penh still to be resettled. In its final report, the CRP referred to the addendum RP as “pending”.⁷ However, to date, some 18 months after the CRP Final Report was published, the addendum RP has not been produced and we have never been consulted on its preparation. It is unclear why an addendum was never promised for the families in Poipet that face the same situation, and why this was not addressed by the CRP.

Because the matters raised in this complaint were not considered by the CRP, they were also not addressed in the Board’s final recommendations or the Management Action Plan and remain outstanding.

⁵ CRP, First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Project , 6 April, 2015, para 46.

⁶ Accountability Mechanism Policy 2012, para 148(v).

⁷ Para 105.

In addition, new evidence of non-compliance, in the form of an omission to produce addendum RPs in a timely manner for AHs still to be resettled, or to communicate a schedule to prepare the same, has led to the harm and anticipated harms, described above.

Policy Non-Compliance

We submit the omission to ensure the preparation of an addendum RP based on meaningful consultations with AHs, and other circumstances described above, amounts to non-compliance by the ADB with the Operations Manual F2/BP and F2/OP on Involuntary Resettlement, September 2006.

In particular, the ADB has failed to ensure that “specific opportunities [were] provided for [AHs] to participate in choosing planning and implementation options”⁸ and that “the views of the affected people are taken into account in formulating the compensation and rehabilitation measures.”⁹ ADB has failed to ensure that: “In preparing the resettlement planning documents,...the borrower... take into account the views of affected groups and civil society groups where relevant, including nongovernment organizations.”¹⁰

The ADB has failed to ensure “a revised resettlement plan resulting from a detailed technical design or change in scope of the project” has been made available to AHs¹¹ and/or it has failed to assist in the preparation of resettlement plan to address “unanticipated resettlement impacts” that have “become apparent during project implementation.”¹²

Furthermore, the omission to prepare and implement an addendum RP compliant with ADB policy is inconsistent with the involuntary resettlement policy objectives,¹³ and the requirement to ensure: “If individuals or a community must lose all or part of their land, means of livelihood, or social support systems, so that a project might proceed, they will be compensated and assisted through replacement of land, housing, infrastructure, resources, income sources, and services, in cash or kind, so that their economic and social circumstances will be at least restored to the preproject level.”¹⁴

The ADB did not properly execute its role of assisting and monitoring compliance with ADB’s policies as required by, inter alia, OM F2/OP, paras. 51, 53, 55, 56 and 57.

There may be other policies and procedures with which the ADB has failed to comply. We request that the CRP review all possible areas of non-compliance.

Efforts to Address the Problems with CARM

⁸ OM F2/BP, para. 4(v)

⁹ OM F2/OP, para. 44

¹⁰ Ibid, para. 58(iii).

¹¹ Ibid, para. 44(iii).

¹² Ibid, para 53.

¹³ OM F2/BP, para. 3.

¹⁴ Ibid., para 4(iii)).

We have raised these concerns with CARM in every meeting we have joined since ADB began meeting with us quarterly since the CRP investigation report was adopted by the Board, yet all we have ever been told for the past 18 months is that ADB will discuss our issue with the government.

Most recently, some of us attended a meeting with CARM on June 12, 2015 regarding the Fourth Quarterly Progress Report on the Implementation of the Management Action Plan. During the meeting, we raised our grievances with CARM. A representative from Phnom Penh requested information about the addendum RP and specifically asked the ADB to facilitate a meeting with the IRC to discuss their resettlement entitlements and timeline.

The Country Director acknowledged that our issue has not been resolved, but was not able to say when it would be. In response to queries from a Phnom Penh representative, he said that he is seeking confirmation from the government that they understand that it is their responsibility to resolve the issue, but he does not think that the IRC would agree to a meeting with the AHs with the ADB as facilitator. In response to a representative from Poipet he said that the Grievance Redress Mechanism needs to work. We were not satisfied with these responses.

In addition, representatives of the Phnom Penh families wrote to CARM on 27 April, 2015 requesting that we be consulted on a solution. In its response on 6 May, ADB stated “We will be in touch shortly”. No one has been in touch with us. (See letters attached.)

Finally, in a letter to the Country Director of CARM, dated April 6, 2015 (also attached), IDI and EC enquired on behalf of Requesters about, inter alia, the status of the addendum to the Phnom Penh RP and whether the families still to be resettled in Phnom Penh will be presented with meaningful resettlement options “that will not make them worse off.”

IDI and EC received a letter from CARM on June 11, 2015. In the letter, CARM responded to the above query as follows: “Eligibility and entitlements of AHs ...eligible for assisted relocation in relevant sections of the project are indicated in the resettlement plan. ADB is in discussion with IRC on these matters.”

We have heard similar responses from the ADB for years, and firmly believe that our issue will not be resolved unless Management is required by the Board to enforce the contractual requirement to comply with ADB’s safeguard policies, as stipulated in the Project Loan Covenants, with respect to our situation.

Outcomes sought

All of us want to be promptly and meaningfully consulted on addendums to the RP (for Phnom Penh and Poipet, respectively), which should meet the standards of the ADB’s Involuntary Resettlement Policy. We have never been consulted on resettlement options in the past.

Those of us in Poipet want to be offered a plot at the Poipet resettlement site and other resettlement assistance, as long as the conditions at the site are improved as required by the Board’s earlier recommendations.

Those of us in Phnom Penh do not want to be impoverished, so we will not move 20-30 kilometers away from our current homes and livelihoods to the Trapeang Anhchhan resettlement site. However, we cannot remain in our current precarious and untenable situation either. The Project has left our families living in inadequate housing conditions and extremely vulnerable to displacement without application of safeguards that “ensure [we] will be at least as well off as [we] would have been in the absence of the project.”¹⁵ We have a right to be resettled to a location with ample economic opportunities, with security of tenure and with appropriate assistance so that we are not impoverished.

We have told the IRC and the ADB many times that we want to be resettled to Stung Meanchey, which is not so far away and where we can earn a living for our families. A site in Stung Meanchey was included in the original 2006 Resettlement Plan but was apparently dropped in the 2010 updated RP because it was too expensive to purchase. The result is that our families are being made to bear those costs by being forced out of the city and cut off from its economic opportunities. It is our expectation that rather than having to bear these costs, resettlement should be used as a development opportunity, as required by ADB’s Involuntary Resettlement Policy.

We urge the CRP to recommend that addendums to the RP for Phnom Penh and Poipet be prepared for all AHs still living along the railway, and that the addendums be prepared in full consultation with AHs and meet the standards of the ADB’s Involuntary Resettlement Policy, including the requirement to ensure that AHs’ “economic and social circumstances will be at least restored to the pre-project level.”¹⁶ We also urge the CRP to recommend a timeline for preparation, consultation, approval and implementation of the addendum RPs.

Correspondence and Contact Information

We are representing ourselves in this matter and do not seek anonymity. However, we have prepared this complaint with support from Equitable Cambodia (EC) and Inclusive Development International (IDI) and have asked them to continue to provide us with assistance and advice throughout the complaints process. We request that you address all correspondence on this matter to Mr. Eang Vuthy (vuthy@equitablecambodia.org), Mr. David Pred (david@inclusivedevelopment.net) and Dr. Natalie Bugalski (natalie@inclusivedevelopment.net), who will transmit the correspondence to us. We also request that you provide us with Khmer and English versions of written correspondence, where possible.

Sincerely,

[Requesters’ names and thumbprints attached herewith]

¹⁵ The Involuntary Resettlement Policy Objectives. OM F2/BP, para. 3

¹⁶ OM F2/BP, para. 4(iii)