

Remedy Derailed:

Briefing Note on the Status of Remedial Actions in the Rehabilitation of the Cambodian Railway Project

April 25, 2016

Thousands of families displaced from their homes and livelihoods by the Asian Development Bank (ADB)-backed project to rehabilitate Cambodia's railway remain in dire conditions more six years after being relocated and 27 months after the ADB Compliance Review Panel (CRP) concluded its investigation into the resettlement disaster.

After investigating a 2012 complaint submitted by Inclusive Development International and Equitable Cambodia on behalf of affected families, 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."¹ According to the CRP, the policy breaches left a substantial number of affected households worse off and impoverished.

On January 31, 2014, the Board adopted six of the CRP's recommendations to bring the project into compliance, and Management was given 60 days to prepare a remedial action plan to implement the Board decision. The complainants were largely satisfied with the CRP's recommendations, which they believed would constitute an effective remedy if implemented satisfactorily. However, Management did not consult complainants on the development of its action plan, denying affected households the opportunity to influence the measures intended to remediate the harms that they had experienced. Management disclosed its plan to affected households after it was submitted to the Board as *a fait accompli*.

Inclusive Development International and Equitable Cambodia submitted detailed comments on the action plan, arguing that it was wholly inadequate to give effect to the CRP recommendations.² The CRP also noted in a memo to the Board Compliance Review Committee that the plan "fell short of the Board-approved recommendations."³

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

¹ Compliance Review Panel, CRP Final Report, Compliance Review Request on the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project, 14 January 2014, para. 259.

² Requesters Comments on ADB Management's Action Plan to Implement the Board Decision on the Recommendations of the CRP Final Report: GMS: Rehabilitation of the Railway in Cambodia Project, 19 May 2014; available at: <http://www.inclusivedevelopment.net/wp-content/uploads/2014/05/Requesters-Comments-on-RAP-FINAL.pdf>

³ Compliance Review Panel, First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the GMS: Rehabilitation of the Railway Project in the Kingdom of Cambodia, 6 April 2015, para 10.

affected people and the CRP remain outstanding. Our key concerns are outlined below.

1. Remedies for Inadequate Compensation for Loss of Income: Affected households (AHs) 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.”⁴

ADB’s remedial action plan fails to compensate people for their actual income losses.

The Seventh Quarterly Progress Report states that 384 of 861 relocated households have received “additional living allowances to compensate for additional hardship of relocated AHs for time gap between relocation and the implementation of the expanded income restoration program.” The report falsely indicates that only 405 AHs are “entitled” to these payments, neglecting to include the 53% of relocated households that abandoned their plots at the resettlement site due to their inability to cope there.

The payments provided to less than half of the displaced households are based on USD \$25 / person / month – the transitional allowance provided in the original resettlement plan, adjusted for inflation. The Board-approved 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).⁵ These allowances, characterized by ADB as “income loss payments,” are not in fact compensation for the actual income losses suffered by AHs, which is what is required by ADB’s safeguards policy, procedures, loan covenants and the Board Decision of January 31, 2014. The transitional allowances provided in the resettlement plan were never intended to cover income losses, but merely to provide a safety net during the transition to the resettlement sites. Moreover, the CRP found that the original resettlement plan was inadequate and the base transitional allowance too low. It is therefore misleading and inappropriate for these allowances to be characterized by ADB as compensation for loss of income.

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. 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 the Board Decision - Recommendation 1.**

⁴ CRP Final Report, op cit, p. vii.

⁵ Decision of the Board of Directors, op cit, para. 268(vi).

2. Addressing Project-Induced Indebtedness: According to the Seventh Quarterly Progress Report, a micro financing institution (Vision Fund) is implementing a program to address over-indebtedness by refinancing the loans of AHs in Phnom Penh, and this was expanded to assist other eligible households in Pursat, Battambang and Poipet from November 2015 to January 2016. Once again, ADB's progress report is misleading. The Vision Fund was not contracted and is not managed by ADB or IRC. Reportedly, Vision Fund was only able to sign 35 contracts after screening indebted households against its criteria, and the organization does not intend to continue the project. Recommendation 5 on the establishment of a debt workout scheme thus remains unfulfilled.

Recommendation:

- **ADB should “establish a debt workout scheme to help highly indebted families repay their accumulated debts through a dedicated credit line and a debt workout facility,” consistent with the Board Decision - Recommendation 5.**

3. Restoring Incomes and Livelihoods: ADB's last four quarterly progress reports focus entirely on the “exit strategy” for the Enhanced Income Restoration Program (EIRP), which “revolves around consolidating the self-help groups (SHGs) organizationally and standardizing their financial system and operation.”⁶ ADB has not conducted an evaluation on the *effectiveness* of EIRP in actually restoring incomes. The affected households remaining at the resettlement sites report that the program has not been effective because SHGs are focused on promoting savings, rather than providing access to credit, and there is very low participation in the groups. Vocational trainings provided under the EIRP have not been coupled with technical support for developing business plans, provision of capital for starting businesses, or assistance finding employment. As a result, more than 50% of those who were relocated have abandoned the resettlement sites in search of employment.

Recommendations:

- **An independent evaluation of the EIRP should be conducted to determine how effective it has been at restoring incomes and livelihoods, and if additional resources and/or new livelihood support strategies are needed. The timetable and nature of support for these activities should be based on independently verified outcomes rather than arbitrary timetables.**
- **ADB must commit to ensuring that incomes are 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 [operation & management] 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.”⁷

The assessments of ADB's Management in its quarterly progress reports are once again

⁶ ADB, Seventh Quarterly Progress Report, ADB Management's Action Plan to Implement the Board Decision on the Recommendations of the CRP Final Report: Rehabilitation of the Railway in Cambodia Project, p. 2.

⁷ CRP, First Annual Monitoring Report, op cit., para 25.

disconnected from the reality on the ground on this issue. While Management states that all site improvement works have been completed, affected people continue to complain about serious problems with the infrastructure and facilities provided at the resettlement sites. These problems – from heavily flooded access roads during the rainy season to lack of water during the dry season - have caused affected people enormous suffering. While Management claims that improvements at the Battambang site are 100% complete, resettled families in Battambang continue to face a lack of potable water for household consumption.

ADB's Water Policy states "...the delivery of basic services (such as safe drinking water) matters most to the poor, and requires accountable institutional structures and participation by the poor."⁸ We couldn't agree more. It is deplorable that six 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.

Recommendation:

- **ADB should conduct its own assessment of facilities at each resettlement site, in consultation with AHs, and provide support to bring the sites into compliance with the standards of ADB's involuntary resettlement policy.**

5. Fair and participatory resettlement of affected households remaining along the railway: Families that were considered "partially-affected" and allowed to temporarily move back into the residual right-of-way have a right to be presented with meaningful resettlement options. Many of these families have found themselves living in cramped conditions – with less than 30 square meters of living space – and no security that they won't be forcibly evicted in the future. These families have only been presented with one option, which is to move to a site that is 20-30 kilometers from their current residences, where they have seen their former neighbors driven into destitution.

The CRP has stated that families who do not wish to relocate to the resettlement site outside of Phnom Penh have a right to receive an alternative resettlement solution. According to the Panel, if, "even after the improvement of the facilities of the resettlement site, an affected person still does not wish to move to the offered resettlement site because it is too distant and would be disruptive to their livelihood, that person ought to be offered an equitable and commensurate compensation package or alternate site that will place the person in the same position as before the project impacts were felt."⁹

Despite ADB's 2012 commitment to prepare a new resettlement plan for these families, as of April 2016, this has yet to occur and requests from affected households for information and consultation have gone unanswered.

Recommendation:

- **Prepare an Addendum Resettlement Action Plan for affected families remaining along the railway 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.**

⁸ ADB, Water for All: The Water Policy of the Asian Development Bank (2001), p. 36.

⁹ CRP, Report on Eligibility, Compliance Review Panel Request No. 2015/1 on the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia project, 16 November 2015, para. 30.