

Final Report

**on
Compliance Review Panel Request No. 2012/2
on 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])**

14 January 2014

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EXECUTIVE SUMMARY

Mandate for Compliance Review

This report was prepared by the Compliance Review Panel (CRP) in response to a request for compliance review of the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project. The purpose of compliance review under the Asian Development Bank's (ADB) Accountability Mechanism is to investigate alleged noncompliance with ADB operational policies and procedures that directly, materially, and adversely affect local people during the formulation, processing, or implementation of an ADB-financed project. The review focuses on ADB's conduct and not on that of the borrowing country, the borrower, the executing agency, or the project sponsor. As an independent body, the CRP reports to the ADB Board of Directors, from which it derives its authority to conduct compliance reviews. The Board approves the recommendations of the CRP, but not its findings or conclusions.

Request for Compliance Review

The requesters first activated ADB's Accountability Mechanism through the Office of the Special Project Facilitator (OSPF), which declared the request eligible on 11 January 2012. On 30 August 2012, the Special Project Facilitator (SPF) confirmed that a request for compliance review had been sent to the CRP and that the OSPF had worked out a proposed course of action in consultation with the affected people (the requesters) in Cambodia and in coordination with ADB's Southeast Asia Department (SERD) and the government's Interministerial Resettlement Committee (IRC). (The OSPF is coordinating with IRC in the process of implementing the course of action in Cambodia.)

The letter seeking a compliance review of the project reached the CRP by e-mail on 28 August 2012. The 22 requesters were from affected households (AHs) in the five resettlement sites in Sihanoukville, Phnom Penh, Pursat, Battambang, and Poipet. They wanted to keep their identities confidential. The letter raised the following main complaints relating to the project:

- (i) inadequate consultation and information dissemination about the resettlement plan (RP), followed by inadequate grievance redress during implementation;
- (ii) insufficient compensation for loss of property, income losses, and transition allowances;
- (iii) distant location of three resettlement sites and inadequate basic services, such as water, electricity, waste disposal, roads, health facilities, and schools, at all sites;
- (iv) inadequate and much-delayed income restoration assistance;
- (v) impoverishment and indebtedness of requesters and AHs resulting from the inadequate compensation and loss of income;
- (vi) threat of unlawful land acquisition and expropriation in Samrong Estate, where a freight facility was to be constructed under the project; and
- (vii) violations of human rights guaranteed to the requesters by the Cambodian Constitution and laws, as well as under international treaties ratified by Cambodia.

The Compliance Review

On 18 September 2012, the CRP submitted its eligibility report on the request to the Board, recommending a compliance review, and on 9 October 2012, the Board authorized the review. The terms of reference for the investigation were cleared by the Board Compliance Review Committee on 24 October 2012 and the CRP began its investigation soon after. A site visit was made from 19 to 28 October 2013, at the recommendation of the government.

The CRP investigation consisted of (i) a desk review of documents; (ii) interviews with ADB Management and staff at ADB headquarters; (iii) meetings in Phnom Penh with ADB staff at the resident mission, with Ministry of Public Works and Transport (MPWT) and IRC officials, and with the project consultants; (iv) meetings with consultants of MPWT and IRC and other agencies, as well as with nongovernment organizations (NGOs) involved in this issue; and (v) meetings with the requesters, some AHs, and their authorized representatives. The CRP also visited four of the five resettlement sites (Sihanoukville, Phnom Penh, Battambang, and Poipet) and met with some requesters and AHs at the sites.

The review was led by Lalanath de Silva (part-time CRP member). CRP Chair Rusdian Lubis had overall responsibility for the compliance review until 28 November 2013. Anne Deruyttere (part-time CRP member) participated in the investigation until she completed her term on 21 July 2013. Arntraud Hartmann (part-time CRP member), who joined the CRP in August 2013, participated in the site visit and investigation. The CRP was supported by a document reviewer (consultant), an international resettlement specialist (consultant), and an interpreter. The Office of the Compliance Review Panel provided technical, logistic, and administrative support.

The Project

The project was proposed because the railway in Cambodia had fallen into disuse and disrepair during the past civil war and conflict. With a booming economy and thriving transborder trade with Thailand, developing railway transport linking the two countries made good sense. The government decided to seek the assistance of ADB in rebuilding the 642-kilometer railway line connecting the port city of Sihanoukville in the south, via the capital of Phnom Penh, to the city of Poipet in the north at the Thai border.

However, over the years, people had moved in and settled in the railway right-of-way after it fell out of use. Slum villages supporting hundreds of families had sprung up along the tracks. Many of the families had migrated from the provinces to better their lives. For years, these people, mostly poor and vulnerable, had eked out an existence by finding work in the nearby cities of Sihanoukville, Phnom Penh, Pursat, Sisophon, Battambang, and Poipet. The CRP visited several of these sites along the tracks, and found poor but extremely industrious people, working hard to make a living—some selling food and groceries, others mending fishing nets, and still others repairing motorbikes or working in factories.

On 13 December 2006, the ADB Board approved a \$42 million loan (Loan 2288) for a 2-year (2007–2009) project. The railway's operations were to be improved through (ongoing) restructuring, which was to be completed in 2007 with an award to a private railway operator of a concession to operate the railway commercially for a period of 33 years under a public–private partnership arrangement.

The project was prepared and implemented from ADB headquarters through the Transport and Communications Division of SERD. ADB did not delegate the management and implementation of the project to the Cambodia Resident Mission (CARM) but collaborated with the resident mission as and when required.

The memorandum of understanding of 10 October 2006 between the Government of Cambodia and ADB that followed an appraisal mission listed important specific assurances on resettlement. These assurances included the preparation of a detailed measurement survey (DMS) of losses to land acquisition; the provision of compensation, assistance, and suitable alternative land before displacement; assistance to the poorest persons and vulnerable groups in improving their socioeconomic status; capacity-building programs to help with resettlement; and the timely provision of counterpart funds for resettlement to meet unforeseen obligations exceeding the resettlement budget estimates.

This was a category A project where involuntary resettlement was concerned. According to the October 2006 resettlement plan (RP), the railway rehabilitation would affect a total of 2,629 households (comprising 11,288 persons), of which 822 households (3,535 persons) would have to be relocated to resettlement sites. Innovative features of the RP were the provision of plots with land title to AHs relocating to resettlement sites, a guaranteed 5-year right of residence for AHs shifting from the railway corridor of impact but still within the right-of-way of the railway line, an income restoration program for AHs, and grievance redress arrangements.

However, because of delays in fulfilling the condition for loan effectiveness involving the signing of a concession agreement, the project took effect only on 30 January 2008. Compared with the 2006 RP, the updated RPs, which were based on the final technical designs, increased the aggregate number of AHs by about 30%. By the end of June 2013, compensation payments for the railway sections covered by the four updated RPs were reported to be fully or nearly completed, while relocation to resettlement sites was 54% completed. Moreover, following complaints from AHs in the Phnom Penh section of the railway line, it was recognized that an additional 242 AHs had houses that would be fully affected. Of these, 105 AHs chose to move to the resettlement site. This impact was to be addressed through an addendum RP for Phnom Penh (as of 2013 this plan had not yet been submitted).

A supplementary project (Loan 2602, \$42 million) to establish a new freight and rolling-stock maintenance facility at Samrong Estate, about 10 kilometers west of Phnom Penh, was approved on 15 December 2009. Additionally, a grant of 21.5 million from the Australian Agency for International Development (AusAID) took effect on 5 January 2011. Compliance issues in Samrong Estate included inadequate compensation and inadequate consultations regarding the RP.

Following a request from the government, ADB decided to extend the closing date for loan fund disbursements for both the original and supplementary loans to 31 December 2014.

Findings of the Compliance Review

The CRP found major design flaws in the original 2006 RP. These included inadequate requirements for consultation with and participation by AHs, a lack of provisions for inflation-indexed compensation, no provisions for replacement housing of minimum standard to improve the situation of poor and vulnerable resettled families, inadequate planning for the

facilities required at resettlement sites, inadequate grievance redress mechanisms, and a weak program for capacity building for government entities involved in the project. The approach taken to the resettlement design was rigid. The original provisions of the 2006 RP were retained despite changes in the key site parameters, and these changes were not addressed when updated RPs were drafted for specific sections of the railway line. Thus, compensation allowances were not adjusted when resettlement sites farther away than originally anticipated from the original AH residence sites were chosen. Compensation paid from 2010 to 2011 was inadequate because it was based on the 2006 rates and did not take price increases over the intervening 5 years into account.

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. A more appropriately designed expanded income restoration program (EIRP) financed by AusAID started in mid-2012, 12 months or more after the households had been resettled. By then many households had already experienced significant income losses. As most of the resettled households were poor, the income shocks resulting from these income losses contributed to increased indebtedness. The amounts of income lost varied between sites, but were particularly significant at the Phnom Penh site, where households were moved about 20 km – 30 km from their original place of residence.

The CRP also found considerable inaccuracies in the DMS resulting in misclassified and erroneously inventoried structures. A large number of households were thus under-compensated for the loss of their houses. This finding is consistent with that of the SPF, who noted inaccurate DMS entries and consequent under-compensation for the vast majority of AHs examined. According to available estimates, under-compensation for household assets was substantial, and was another key reason for the significantly higher debt levels of households in resettlement sites. While some of the increased indebtedness was due to the construction of larger houses of higher-quality materials by some AH's, inadequate compensation helped push many households into a debt trap. Better guidance and support in the construction of new houses on the new resettlement sites could have reduced the risk of indebtedness of resettled households. While there are success stories of AHs making good or doing better, overall the resettlement left a substantial number of AHs worse off and impoverished.

The CRP found serious infrastructure problems—flooded or damaged access roads and nonfunctional drainage systems—in most resettlement sites. While all four sites visited had electricity, water services continued to be a problem in Battambang. Access to medical services was also an issue at some sites. The health center at Phnom Penh site was in an appalling state, with one bed, no medical doctor, and a building badly in need of repair to serve its larger resettled population, including 79 families from the railway project.

After thorough examination, the CRP concluded that these problems were the result of failure to implement ADB operational policies and procedures. The project was noncompliant with ADB's involuntary resettlement and public communications policies, and its guidelines on operational procedures. Much of the noncompliance occurred up to around 2010–2011 and was documented in ADB mission reports, but proactive engagement with the government and AHs at the required level began only in late 2010 after NGOs presented their concerns to the President of ADB. This report traces these actions and omissions and attributes most of them to ADB. However, the situation today is much improved. CARM and staff at ADB headquarters

have been making encouraging efforts, which include strengthening the staffing to deal with resettlement issues, correcting past mistakes, and improving the implementation of project safeguards. The OSPF has played a significant part in these heightened efforts. Engagement with the government and on-site improvements should continue into the future. All the human rights allegations can also be adequately addressed under applicable ADB safeguard policies.

Lessons

The CRP has also identified three lessons from this case for the Board to consider. First, there is a need for an urgent, firm, and clear message to ADB Management that resettlement, environmental, and public disclosure and consultation issues should be taken seriously and accorded the priority consideration they deserve. ADB operational, sectoral, and regional staff must undergo a mind shift in the treatment of resettlement, environment, and public disclosure and consultation. Their perspective must be based on the recognition already existing in ADB's safeguard policies that involuntary resettlement is a development opportunity, intrinsic to achieving the developmental goals of projects. The inclusion of vulnerable and affected populations as direct beneficiaries must be part of the DNA of ADB projects and be implanted in the very conceptual embryo of each such project.

Second, there is a need for timely and continuous assignment of sufficient ADB staff and clear communication in resettlement planning and implementation. Third, there is a need for a reliable and effective independent monitor in projects with significant resettlement and environmental impact.

CRP Recommendations

The CRP has given long, serious, and careful consideration to the steps that need to be taken to bring the project into compliance with ADB safeguard policies and to restore the AHs that have manifestly suffered to at least their pre-project situation. The CRP's recommendations are the following:

- (i) a proposal for the establishment of a compensation deficit payment scheme (funding in the likely range of \$3 million – \$4 million) for onetime additional compensation deficit payments to AHs (to correct inadequate compensation payments for property losses and make good income and transition losses);
- (ii) improved facilities on resettlement sites;
- (iii) improve the functioning of the grievance redress mechanism, to be reflected in a time-bound and verifiable action plan;
- (iv) develop an appropriate capacity-building program on resettlement for IRC, to be reflected in a time-bound and verifiable action plan;
- (v) a debt workout scheme to help highly indebted families repay their accumulated debts through a dedicated credit line and a debt workout facility;
- (vi) sustained implementation of the EIRP; and
- (vii) the adoption of specific safeguards for the development of a freight facility in Samrong Estate.

ABBREVIATIONS

ADB	– Asian Development Bank
AH	– affected household
AMP	– Accountability Mechanism Policy
AP	– affected person
AusAID	– Australian Agency for International Development
BABC	– Bridges Across Borders Cambodia
BTOR	– back-to-office report
CARM	– Cambodia Resident Mission
CCO	– chief compliance officer
COI	– corridor of impact
CRP	– Compliance Review Panel
DMS	– detailed measurement survey
EIRP	– expanded income restoration program
EMO	– external monitoring organization
HBS	– Honest and Balanced Services (a Cambodian law firm)
IOL	– inventory of losses
IRC	– Interministerial Resettlement Committee
IRP	– income restoration program
MEF	– Ministry of Economy and Finance, Cambodia
MOU	– memorandum of understanding
MPWT	– Ministry of Public Works and Transport, Cambodia
MRM	– Management Review Meeting
NGO	– nongovernment organization
OCRPF	– Office of the Compliance Review Panel
OM	– operations manual
OSPF	– Office of the Special Project Facilitator
PPTA	– project preparatory technical assistance
PSC	– project supervision consultant
RD-MEF	– Resettlement Department, Ministry of Economy and Finance, Cambodia
ROW	– right-of-way
RP	– resettlement plan
RRP	– report and recommendation of the President
RS	– resettlement site
RSES	– Environment and Social Safeguards Division
SERD	– Southeast Asia Department
SETC	– Transport and Communications Division, Southeast Asia Department
SHG	– self-help group
SPF	– Special Project Facilitator
URP	– updated resettlement plan

WEIGHTS AND MEASURES

ha	–	hectare
km	–	kilometer
m	–	meter
m ²	–	square meter

NOTE

In this report, “\$” refers to US dollars.

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

I. INTRODUCTION

1. This report was prepared by the Compliance Review Panel (CRP) in response to a request for a compliance review of the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project.¹ The purpose of a compliance review under the Asian Development Bank (ADB) 2003 Accountability Mechanism Policy (2003 AMP)² is to investigate alleged noncompliance with ADB operational policies and procedures that directly, materially, and adversely affect local people during the formulation, processing, or implementation of an ADB-financed project.³ The review focuses on ADB's conduct and not on that of the borrowing country, the borrower, the executing agency, or the private project sponsor. As a forum for affected persons, compliance review provides such persons with an opportunity to voice complaints, and ADB with a means of increasing its accountability and strengthening project performance. As an independent body, the CRP reports to the ADB Board of Directors, from which it derives its authority to conduct compliance reviews. The Board approves the recommendations of the CRP, but not its findings or conclusions.

2. The CRP has established procedures⁴ for carrying out compliance reviews and for preparing reports in line with the steps and time frames prescribed in paras. 53–65 of the Operations Manual (OM) on Accountability Mechanism.⁵ In accordance with step 8, the CRP issues this report to the ADB Board of Directors having taken into consideration the comments by ADB Management (received on 20 December 2013) and the requesters (received on 31 December 2013) on its draft report issued on 28 November 2013. These comments were received in compliance with the time period specified in the Accountability Mechanism policy and are found in Appendix 6 of this report. Once the Board has considered the report and decided on its recommendations, the report and its appendixes will be disclosed to the public. The CRP carried out this compliance review under the 2003 Accountability Mechanism Policy as this request was first filed with the Office of the Special Project Facilitator (OSPF) on 21 November 2011 before the revised 2012 Accountability Mechanism Policy took effect (on 24 May 2012).

3. The requesters first activated the accountability mechanism of ADB via the OSPF. The OSPF declared the request eligible on 11 January 2012. The Special Project Facilitator (SPF) submitted a review and assessment report to the parties on 17 February 2012 recommending several courses of action. On 30 August 2012, the SPF confirmed that the CRP had received a request for compliance review, as set out in para. 32 below, and that the OSPF had worked out a proposed course of action in consultation with the affected people (the requesters) in Cambodia and in coordination with the operations department concerned and the government's Interministerial Resettlement Committee (IRC). (The OSPF is coordinating with IRC in the process of implementing the course of action.) Step 7 of the consultation phase in the 2003 AMP had been reached.

4. This report is the result of the CRP's investigation of alleged harm linked to ADB's noncompliance with its operational policies and procedures. The five sections that immediately follow this introductory section give an overview of this compliance review and the contents of

¹ ADB approved the following financing for the project: Loan 2288 in December 2006 and Loan 2602/Grant 0187 (Supplementary) in December 2009.

² ADB. 2003. *Review of the Inspection Function: Establishment of a New Accountability Mechanism*. Manila.

³ ADB. 2008. *Operations Manual*. Manila (OM L1/ Operational Procedures [OP] issued on 19 December, para. 37);

ADB. 2008. *Operations Manual*. Manila (OM L1/Bank Policy [BP] issued on 19 December, para. 5).

⁴ ADB. 2004. *Operating Procedures for the Compliance Review Panel*. Manila.

⁵ Ibid. (OM L1/ Operational Procedures [OP] issued on 19 December, footnote 2).

this report (section II), present the background of the project (section III), describe the request for compliance review (section IV), assess the eligibility of the request (section V), and define the scope and conduct of the CRP's investigation (section VI). The core sections of the document contain the findings of the CRP regarding the alleged harm suffered by the requesters (section VII), review ADB's compliance with its operational policies and procedures during project preparation (section VIII), summarize the CRP's conclusions based on its findings and lessons learned from the review (section IX), and present the CRP's recommendations (section X).

II. OVERVIEW

5. Barely 20 years after the Paris Peace Agreement, Cambodia is emerging from decades of civil war, mass trauma, and political change. Its economy is on the rise, with gross domestic product growing by about 7.2% yearly from 1994 to 2012. The government has embarked on a series of programs to develop its infrastructure and institutions that were either neglected or badly damaged during the past civil wars. Multilateral and bilateral donors have engaged with Cambodia to help it on its way. The post-conflict government has many new graduates in its growing cadres as the country regains its intellectual capital, and builds the capacity and skills of its workforce. But major challenges persist: land rights are complex and often uncertain, institutions of governance have uneven capacity, the public transport system is almost nonexistent, and a large population lives near the poverty line.

6. The Rehabilitation of the Railway in Cambodia Project, the subject of this compliance review, was mooted in this context. The railway had fallen into disuse and disrepair during the civil war and conflict. With a booming economy and thriving transborder trade with Thailand, developing railway transport linking the two countries—an environment-friendly option compared with highways—made good sense. The government decided to seek the assistance of ADB in rebuilding the 642-kilometer railway line connecting the port city of Sihanoukville in the south, via the capital of Phnom Penh, to the city of Poipet in the north, near the Thai border. The line would then connect to the Thai railway system.

7. However, over the years, people had moved in and settled in the railway right-of-way (ROW) after it fell into disuse. For many years, these people, mostly poor and vulnerable, had eked out a living by finding work in the nearby cities of Sihanoukville, Phnom Penh, Pursat, Sisophon, Battambang, and Poipet. They had built small homes made of various materials such as concrete, wood, bamboo, thatch, corrugated sheets, and tarpaulins along the tracks. Slum villages supporting hundreds of families, many of whom had migrated from the provinces to better their lives, had sprung up along the tracks. The CRP visited most of these sites along the tracks and found poor but extremely industrious people, working hard to make a living—some selling food and groceries, others mending fishing nets, and still others repairing motorbikes and machines.

8. A resettlement plan (RP) drawn up in 2006 estimated that 822 affected households (AHs) had to move from their homes and resettle to make way for the reconstructed and rehabilitated railway track. To minimize involuntary resettlement, it was decided not to displace people from the ROW, which varied from 20 to 30 meters (m) from the railway centerline, but instead use a corridor of impact (COI) of 3.5 m on either side of the railway centerline to define the area from which people would be relocated. The 2006 RP provided a compensation and resettlement package. As part of that package, the government decided to provide AHs with title to a plot of land at five resettlement sites. This was a significant and positive aspect of the resettlement scheme because land titles in Cambodia are a precious commodity, especially for

the landless, the poor, and the vulnerable. Moreover, people settled or relocating within the ROW would be allowed to remain there for the next 5 years.

9. The effectiveness of the ADB project loan of \$42 million for the rehabilitation and reconstruction of the railway was contingent on the granting of a railway concession by the government through a competitive process. The project took effect only in January 2008 after a concession was granted to Toll Holdings of Australia. Around the same time, the government decided to develop Samrong Estate, located in proximity to Phnom Penh, as a freight facility. ADB approved a supplementary loan of \$42 million in 2009 for the Samrong facility, track rehabilitation on the Northern and Southern lines, and for technical assistance and capacity development. The Australian Agency for International Development (AusAID) joined ADB as cofinancier and contributed \$21.5 million to the project. The provision of Samrong Estate for development into a freight and rolling-stock maintenance facility had been a promise made to the concessionaire. Samrong Estate was mostly agricultural land occupied and cultivated since the 1970s by people who claimed possessory rights or title to those lands. On the other hand, the government claimed Samrong as public property belonging to the state. Legal investigations commissioned by ADB supported the government's position, while those done by NGOs supported the residents' position.

10. Resettlement in preparation for the construction and civil works for the main railway line began from 2010, starting with Pursat and Battambang to the north because the concessionaire originally felt that the northern line from Phnom Penh to Poipet on the Thai border would be most profitable. While resettlement was proceeding, the concessionaire had a change of mind and asked instead for the completion of the southern line from the port of Sihanoukville to Phnom Penh. Resettlement in the south then commenced in Sihanoukville and later in Phnom Penh. The southern line has been completed and the concessionaire now operates cargo trains. Although people were resettled along the entire railway line, the project ran out of funds and only 48 kilometers (km) from Phnom Penh on the northern line could be completed under the project.

11. Resettlement was beset with several issues. Affected persons (APs) complained that the compensation package put together in 2006 was inadequate. They alleged that replacement cost rates for building materials had increased by 2010 but that their compensation was based on 2006 rates. They called inaccurate and erroneous the detailed measurement survey (DMS) that inventoried and described their property losses, and complained that they had been moved to resettlement sites where basic services, such as electricity, water and roads, were not in place. In Battambang, the APs declared the situation dire: there had been no water services for about 8 months. They said that two children had drowned in a nearby pond as a result. Trepeang Anhchanh, where people from Phnom Penh were relocated, was 20–30 km away from their previous homes making it hard, if not impossible, for people to continue with their old city livelihoods. The income restoration program (IRP) was poorly designed, providing only training and skill building with no credit or capital support, and started months after resettlement was completed. Only about 18 months later did an expanded income restoration program begin with support from AusAID and soft loans from self-help groups. In the meantime, usury lenders had moved in and preyed on some AHs and their resettlement plots (used as security). Indebtedness allegedly increased to a level where some lost their resettlement plots and homes. In some sites, schools and medical services were farther away than before. The resettled people said that they were poorer and in a worse economic position than before resettlement. They alleged that ADB safeguard policies and their human rights had therefore been violated.

12. Some AHs complained to the SPF and adjusted compensation was offered to 110 AHs and accepted by 47 of them, while 63 refused the compensation offer. The SPF found that, in the vast majority of cases, the DMS and the compensation were inaccurate, either because the structures had been wrongly classified or two-story houses had been treated as single-story houses. Elsewhere, the ADB worked with the government to build a school in Poipet and improved water supply in Battambang with a pond, a filtration system, a holding tank, and an overhead tank connecting houses to piped water. But issues concerning other infrastructure on resettlement sites, the adequacy of compensation, and income losses from resettlement and resulting indebtedness remained unaddressed. The requesters therefore invoked the compliance review procedures of the ADB.

13. The request was found to be eligible in 2012 and this report is the result of the CRP's compliance review. The CRP reviewed ADB's documentation relating to the project and the resettlement, interviewed ADB staff who took part in project design and implementation, visited four of the resettlement sites, and met with AHs and the requesters, as well as with government officials and staff and with staff from ADB's Cambodia Resident Mission (CARM). The CRP discussed the issues with nongovernment organizations (NGOs) that were involved in resettlement, with experts such as Michael Cernea (resettlement) and George Cooper (Cambodian land laws), and with Honest and Balanced Services (HBS), a Cambodian law firm tasked by ADB to prepare an opinion on the legal status of the land parcel at Samrong Estate. The CRP also met with and gained valuable insights from AusAID staff in Cambodia and other consultants who were working as external monitor for resettlement and those managing the IRPs. The CRP's conclusions are drawn from the wealth of information and insights it received and from its own observations and assessments in the field.

14. In summary, the CRP found major design flaws in the 2006 RP, including inadequate requirements for consultation with and participation by affected families, lack of provisions for inflation-indexed compensation, no provisions for replacement housing of minimum standard to improve the situation of poor and vulnerable resettled families, inadequate planning for the facilities required at resettlement sites, inadequate grievance redress mechanisms, and a weak program for capacity building for government entities involved in the project. The approach to the resettlement design was rigid, and these deficiencies were not addressed when updated RPs were drafted for specific sections of the railway line. The CRP also found design flaws in the IRP, which were later sought to be addressed through the expanded income restoration program. Compensation paid from 2010 to 2011 was inadequate because the rates applied were from 2006 and ought to have been revised upward in the updated resettlement plans (URPs) to account for inflation, and because some resettlement sites were farther away than originally envisaged. Considerable inaccuracies in the DMS resulted in wrongly classified and erroneously inventoried structures. Income losses from resettlement, especially at the Phnom Penh site, had not been made good. AHs were impoverished and in distress. Indebtedness increased and, at least in the case of some AHs, resettlement impact probably contributed to that result. Some resettlement sites had serious infrastructure problems—flooded or damaged access and internal roads, and drainage systems that did not work. Water services continued to be a problem in Battambang, but all four sites we visited had electricity. Medical services were an issue at some sites, and the medical center at Phnom Penh site, which served a larger resettled population including 79 families from the railway project, was in an appalling state with one bed, no medical doctor, and the building in disrepair. On the whole, in the CRP's assessment, a substantial part of the AHs were worse off and impoverished as a result of the resettlement, although there are also success stories of AHs who made good or did better.

15. After thorough examination, the CRP concluded that the problems had resulted from failure to implement ADB's operational policies and procedures. The CRP found the project noncompliant with ADB's Involuntary Resettlement (F2/OP/BP) and Public Communications (L3/OP) policies, and its Guidelines on Operational Procedures (GP 47). In a post-conflict situation, such as that in Cambodia, where a country is emerging from decades of civil war, donors need to proactively engage with the government and provide it with support at a much higher level and intensity than was provided by ADB in this case. As senior government officials put it, they expected to have ADB "as a partner working hand in hand with us" and "showing us what to do and how to do it." This did not happen during the project. Gradual proactive engagement at the required level and intensity began only in late 2010 after NGOs presented their concerns to the President of ADB. Much of the noncompliance with ADB safeguards occurred before or at around this time and was documented in ADB mission reports. These actions and inactions are traced in detail below; most of them are attributable to ADB. In short, the government and the AHs in this case did not receive the engagement and support they were entitled to and expected to have under ADB's safeguard policies. However, the situation today is much improved. CARM and staff in Manila are exerting greater efforts, at expected levels, to correct past mistakes and strengthen the implementation of project safeguards. While the OSPF filled a significant role in attempting to address complaints of individual AHs, it did not address broader systemic problems with the resettlement process. These proactive efforts at engagement with the government and on-site improvements should continue into the future. This matter is dealt with more specifically in the recommendations section (section X).

16. We have given long, serious, and careful consideration to the steps that need to be taken to bring the project into compliance with ADB's safeguard requirements and to restore the AHs that have manifestly suffered compared to at least their pre-project situation. The recommendations reflect what the CRP believes to be the best, most practicable, and most effective way forward. Among the CRP's recommendations are (i) a proposal for the establishment of a compensation deficit payment scheme (in the likely range of \$3 million to \$4 million) for onetime additional compensation payments (to correct inadequate compensation payments and make good income losses) to AHs; (ii) a debt workout scheme; (iii) continued implementation of the expanded income restoration plan (EIRP); and (iv) improved facilities on resettlement sites. In developing these recommendations, the CRP also examined the possibility of a resettlement audit and other potential actions and provided reasons for rejecting or significantly revising those actions.

17. The resettlement sites provided under the railway project suffer from poor planning of facilities in relation to the needs of the resettlers; inadequate consultation on the sites; deficient site preparation, with inadequate facilities provided ahead of the relocation; slow physical implementation; and questionable design and construction quality of some physical works. Overall, only 54% of the 981 families to be resettled had moved to the sites by June 2013. Each resettlement site, including its specific characteristics and the issues that were most prominent at each site, is described briefly below.

18. **Sihanoukville.** At the southern end of the railway line, the resettlement site in Sihanoukville is on the outskirts of the city, 7 km from the location adjacent to the harbor from which the affected families were displaced. The 7 km distance violates the principle stated in the 2006 RP that resettlement sites should wherever possible be located less than 5 km from the former residence of the resettlers, so as not to disrupt livelihoods. The affected families were not informed or consulted about the location of the resettlement site, although their livelihoods have been constrained, since many derive their incomes from the fishing sector (e.g., as fishermen or from fish marketing). As a result, of the 33 families that were to move to the site, CRP was

informed during its site visit that only six families have actually moved since relocation began in June 2010, while five others are building their houses. The rest, including 13 families that were said to have sold their plot, have chosen to rent accommodation closer to their source of livelihood. However, compared with the houses of families remaining within the railway ROW in the old location, the new houses in the resettlement site are larger, airier, and made with better materials (loans financed some of the houses). The site has electricity connections, open-well drinking water, and latrines, but its access and internal roads are eroded and barely passable in the rainy season. Six plots were made available to the resettlers for land-based income restoration activities promoted under the project (chicken and pig raising and mushroom cultivation), since at 105 square meters (m²) of plot allocated to a family (in all five resettlement sites) was too small for this purpose.

19. **Phnom Penh (Trapeang Anhchanh).** This resettlement site outside Phnom Penh city, surrounded by rice fields and wetlands, is about 20–30 km from the location in Phnom Penh from which the affected families were displaced. It is part of a larger resettlement site for people displaced from Phnom Penh. Resettlement from the railway project originally involved 161 families, but a reassessment of project impact in 2011 identified an additional 248 families that would be fully affected and required resettlement. Of these, 105 families chose to move to the resettlement site (to be covered under a planned addendum to the Phnom Penh RP). But only 79 families have moved to the site since resettlement began in September 2011, while many of those still to relocate appear to be discouraged by the distance to the locations where they derive their livelihoods. A member of ADB's project team made this observation: "There is a correlation between income restoration and distance to the original place of residence." The houses constructed by the resettlers range from well-built two-story houses of brick or concrete to shacks built with recovered materials. According to ADB, around two-thirds of the families that relocated to the site are indebted (some using their plot as collateral), and it is likely that many of the new houses were financed with the help of credit. Facilities at the site include electricity connections, piped drinking water, latrines, and an access road that was flooded and difficult to pass for most vehicles when the CRP visited the site. More recently, solid waste management has been introduced (although part of the access road to the site still functions as a garbage dump), and a community hall and a large market building (only partially occupied), along with a community health post (containing some dilapidated furniture, a rudimentary supply of medicines, and inadequate staffing), have been constructed. The overcrowded primary school serving the entire site, with classrooms accommodating around 60 pupils, was being expanded from 5 to 15 classrooms at the time of the CRP visit.

20. **Pursat.** The resettlement site at Pursat is the only one located close to the place from which the affected families were displaced, allowing the resettlers to maintain their pre-displacement livelihoods. Of the 33 families scheduled for relocation, 26 have settled on the site since June 2010. ADB reports that more than 60% of the resettlers live in better housing compared with their pre-displacement situation. Facilities at the site, which were provided after most of the resettlers moved to the site, comprise electricity connections, tube wells with hand pumps, latrines, and an access road that is prone to erosion.

21. **Battambang.** Like the sites at Sihanoukville and Phnom Penh, the resettlement site at Battambang is on reclaimed land surrounded by paddy fields on the outskirts of town close to the highway, and about 7 km from the former location of the affected families. Of the 48 families scheduled for relocation, 38 have settled on the site since May 2010. Housing quality is more limited in range in Battambang than in the other resettlement sites visited by the CRP, and most of the housing is of very low quality. Even so, some families interviewed reported that they had borrowed money to build their new house (a potential consequence of providing poor people

with compensation at “replacement cost” for their houses instead of support for replacement housing of minimum standard). As in other sites at a distance from prior sources of income, affected persons interviewed by CRP said this factor constrains the restoration of livelihoods. Facilities at the site, which here too were provided after resettlers moved, comprise electricity connections, latrines, and, since February 2012, filtered water (of questionable quality) from a pond, for which an overhead tank and pipes for house connections were being installed. This installation was completed by end November 2013. In the interim, the resettlers had to rely on supply from private water trucks, which they considered costly. From February 2011, this supply was subsidized by the project. The site has no arrangements for solid waste management, and both the access road and internal roads within the site are of very poor quality and in need of upgrading.

22. **Poipet.** At the northern end of the railway line, the resettlement site at Poipet is also located on reclaimed land surrounded by paddy fields outside the city, and at a distance of about 6 km from the locality from which the affected families were displaced. Poipet is the largest resettlement site under the railway project; of the 601 families scheduled for relocation, 378 have moved to the site since June 2011. As in the Phnom Penh site, the houses range from well-built two-story houses of brick or concrete to shacks constructed with recovered materials. A review undertaken by ADB in early 2013 found that 91 families had sold their plot (and, as might be inferred from the CRP interviews with affected persons at Poipet, some of these families chose to rent accommodation in the ROW to be close to their sources of livelihood). Here again, affected persons interviewed by the CRP stated that distance from prior sources of income had constrained the restoration of livelihoods. Facilities at the site, provided after resettlers moved there, comprise electricity connections, latrines, and water from tube wells with hand pumps. Here, too, both the access road and internal roads within the site are of extremely poor quality and in need of upgrading, and the site has no arrangements for solid waste management. A large well-built market has been constructed, but only houses two functioning shops, while several small shops operate out of houses built by the resettlers. Despite the size of the Poipet resettlement site, a primary school was not planned as part of the services to be provided under the project. This omission was later corrected, and a good-quality five-room school building on the site was nearing completion at the time of the CRP visit. As in Battambang, the CRP noticed a large and deep pond adjacent to the site and next to the new primary school. Children were playing and fishing in the pond. At the suggestion of the SPF, a wire fence is being built around the pond to keep children away from the area.

III. PROJECT HISTORY

23. The ADB Board approved by summary procedure on 13 December 2006 a \$42 million loan for a 2-year (2007–2009) project to restore Cambodia’s railway infrastructure by rehabilitating its existing track and reestablishing Cambodia’s rail connection with Thailand.⁶ The project was to begin in 2007 and be completed in 2009.⁷ The railway’s operations were to be improved through (ongoing) restructuring, which was to be completed in 2007 with the award to a private railway operator of a concession to operate the railway commercially for a period of 33 years under a public–private partnership arrangement.⁸ The rehabilitation investment and the associated restructuring (made through a separate advisory technical assistance) were expected to set the stage for efficient rail services, which in turn would realize the project’s

⁶ Project data Sheet, <<http://www.adb.org/printpdf/projects/37269-013/main>> at 31 March 2013.

⁷ ADB. 2006. *Report and Recommendation to the President to the Board of Directors: Proposed Loan and Administration of Loan to the Kingdom of Cambodia for the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*. Manila. para. 30.

⁸ Ibid.

objectives of (i) improving the efficiency of the transport sector by increasing the diversity of transport modes and routes, and (ii) reviving the railway on a sustainable basis.⁹

24. The Ministry of Public Works and Transport (MPWT) of Cambodia was named the executing agency for the project, and many other national government agencies, including IRC, were involved in various aspects of project implementation. MPWT had overall responsibility for the management and coordination of the activities under the project, while IRC was responsible for managing the resettlement under the project.

25. The project was prepared and implemented from ADB headquarters through the Transport and Communications Division (SETC) of the Southeast Asia Department (SERD). ADB did not delegate the management and implementation of the project to CARM but collaborated with the resident mission as and when required. At a later stage, additional staff were hired through CARM to handle the resettlement needs of the project.

26. The Management Review Meeting (MRM) on the draft report and recommendation of the President (RRP) took place on 7 August 2006, and project appraisal in late August. The memorandum of understanding (MOU) between the government and ADB of 10 October 2006, following the appraisal mission, listed important specific assurances on resettlement. These included consultation workshops on resettlement planning for women-headed households; a DMS of losses to land acquisition; provision of compensation, assistance, and suitable alternative land before displacement; assistance to the poorest persons and vulnerable groups to improve their socioeconomic status; programs to build resettlement capacity; and timely provision of counterpart funds for resettlement to meet unforeseen obligations exceeding the resettlement budget estimates.¹⁰ In its comments to the Staff Review Committee Meeting on 13 October 2006 on the draft RP, the Environment and Social Safeguards Division (RSES) noted that while “most of our comments [at the MRM on the draft RP] have been addressed,” there was, in the light of the project risk that compensation, resettlement, and income restoration might not be delivered as agreed, a need to strengthen the assurances on resettlement, and to conduct external monitoring on a quarterly basis.¹¹ The issue not addressed in the 2006 RP was the recommendation that compensation prices should be indexed for inflation.¹² This was a category A project where involuntary resettlement was concerned, and the 2006 RP estimated that the railway rehabilitation would affect a total of 2,629 households (11,288 persons) of which 822 households (3,535 persons) would have to be relocated, while 1,793 households (7,753 persons) would be compensated for asset losses, but would not have to be relocated. Innovative features of the 2006 RP were the provision of plots with land title to AHs relocating to resettlement sites, a guaranteed 5-year right of residence for AHs moving from the railway COI but remaining within the ROW of the railway line,¹³ an IRP for AHs, and grievance redress arrangements.

27. The loan agreement for Loan 2288 was signed in March 2007, the loan was expected to take effect around April 2007,¹⁴ and land acquisition and resettlement of affected persons were

⁹ Ibid.

¹⁰ Loan Appraisal Mission Memorandum of Understanding (MOU), 10 October 2006.

¹¹ Issues paper for Staff Review Committee meeting, 13 October 2006.

¹² Internal ADB communication of 10 August 2006.

¹³ The right-of-way is the railway corridor land owned by the government, while the corridor of impact is the narrower area within this corridor that will be permanently cleared for the project (2006 RAP, Executive Summary).

¹⁴ ADB. 2006. *Report and Recommendation to the President to the Board of Directors: Proposed Loan and Administration of Loan to the Kingdom of Cambodia for the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*. Manila. para. 30.

expected to be completed by December 2007.¹⁵ However, because of delays in fulfilling the condition for loan effectiveness involving the signing of a concession agreement in principle, the project became effective only on 30 January 2008.¹⁶ During implementation, updated RPs for specific sections of the railway line were developed as the detailed technical designs were finalized for the Northern Line and Missing Link in July 2008, Southern Line in September 2009, Phnom Penh in June 2010, and the Poipet section in May 2010. Compared with the 2006 RP, these updated RPs had the aggregate impact of increasing the total number of AHs by about 30%. By the end of March 2013, compensation payments were reported to be fully or nearly completed for the railway sections covered by the four updated RPs, while relocation to resettlement sites was 54% completed.¹⁷ Moreover, following complaints from AHs in the Phnom Penh section of the railway line, it was recognized that an additional 242 AHs had houses that would be fully affected, and of these, 105 AHs opted to move to the resettlement site. This impact was to be addressed through an addendum RP for Phnom Penh, which was to be submitted to ADB by the end of June 2013¹⁸ but had not yet been submitted by the end of 2013.

28. A supplementary project (Loan 2602) to establish a new freight and rolling-stock maintenance facility at Samrong Estate, about 10 km west of Phnom Penh, was approved on 15 December 2009 and became effective on 21 April 2010. Additionally, an AusAID grant of \$21.5 million took effect on 5 January 2011.¹⁹

29. A draft RP for Samrong Estate was submitted to ADB on 24 June 2009. This RP was updated in 2010, but pending the result of a legal assessment of land ownership issues in Samrong Estate, ADB's review of the draft RP was put on hold.²⁰ When ADB reviewed the draft RP in late 2012, it found that further revision was required since the DMS to determine the losses of AHs and the consultation and disclosure activities carried out during the updating needed to be improved.²¹ As of 28 October 2013, a final version of the updated RP for Samrong had not been submitted for ADB review.

30. From the start of resettlement planning, the government claimed Samrong Estate as state public land. However, affected households disputed the government's title to Samrong Estate, asserting that the land they held was private property or at the very least open to registration under Cambodian law as private property. When NGOs raised issues concerning the ownership status of Samrong Estate, ADB in August 2010 requested IRC to submit a legal opinion on the issue.²² In September 2010, ADB decided to contract its own land law specialist,²³ and hired the specialist in October 2010. After significant delays in obtaining the required information, the draft report of December 2011 determined that Samrong Estate was

¹⁵ Ibid. Appendix 1: Design and Monitoring Framework, p. 20. However, this optimistic schedule does not correspond with the Implementation Schedule in Appendix 7, which estimates that land acquisition and resettlement would be completed by the end of 2008 (p. 35).

¹⁶ The concession agreement was signed on 12 June 2009 and was declared effective on 22 October 2009 (BTO of 7 May 2010 for mission 23–29 January 2009, MOU para. 2).

¹⁷ Aide-Mémoire for Project Administration Mission, April 2013, Annex on Resettlement Review, para. 3.

¹⁸ BTOR for Special Project Administration Mission, 11 April 2013. Attached to this BTOR is a Resettlement Review annex, which mentions the addendum resettlement plan for Phnom Penh, scheduled to be submitted for ADB review by May 2013 (para. 10).

¹⁹ AusAID grant funding for the project totaled \$22.46 million by March 2013.

²⁰ MOU Midterm Review Mission, 30 July 2012, para. 22.

²¹ BTOR for Mission, 16 October 2012, para 6; and BTOR for Resettlement Mission, 20 December 2012, para. 11.

²² MOU for Mission 12 August 2010, para. 29.

²³ Memo from project team leader to Director, RSES, of 10 September 2010.

state public land.²⁴ This conclusion was disputed by NGOs, which claimed that some AHs in Samrong Estate had documentary proof of ownership to their plot. To assess the merits of this claim, the ADB consultant continued the investigation and submitted a legal opinion from another legal firm in July 2012 reconfirming the earlier finding of state ownership.²⁵ The legal assessment was deemed to have delayed project implementation by 18 months.²⁶

31. The closing date for loan fund disbursements for both the original and supplementary loans will be extended to 31 December 2014, and the closing date for AusAID grant fund disbursements was planned to be extended to 31 December 2013.²⁷

IV. REQUEST FOR COMPLIANCE REVIEW

32. The CRP received the letter of request with attachments (Appendix 1) by e-mail on 28 August 2012. The letter, signed by David Pred of Inclusive Development International (IDI), included an authorization letter signed by 22 requesters (as the authorizing parties) authorizing D. Pred and Eang Vuthy of Equitable Cambodia to act on the requesters' behalf. The requesters explicitly sought to keep their identities confidential. On 4 September 2012, the Office of the Compliance Review Panel (OCRP) acknowledged receipt of the letter and registered the request.

V. ELIGIBILITY OF THE REQUEST

33. After reviewing the request letter and clarifications, the CRP had adequate information to assess the eligibility of the request. The CRP determined that none of the exclusions for compliance review applied to the case and that the request met the requirements for eligibility under the OM L1 OP, paras. 10 and 51 (footnote 2). The CRP informed the Executive Director representing Cambodia in the Board, ADB Management, and relevant senior staff about the request.

34. On 18 September 2012, the CRP submitted its eligibility report to the Board²⁸ recommending compliance review, which the Board authorized on 9 October 2012. The CRP cleared its terms of reference for the compliance review (Appendix 2) with the Board Compliance Review Committee on 24 October 2012 and sent copies of the cleared terms of reference to the Board and the requesters. In March 2013, the CRP, through CARM, informally requested the government to authorize a site visit, and was informed that a visit could be undertaken in August 2013. Earlier visits were ruled out because of the impending New Year season in April and the run-up to the national elections from May to July 2013. The government recommended postponement of the site visit to 21–28 October 2013 because of the unsettled state prevailing in Cambodia following the July 2013 elections. The CRP conducted the site visit from 20 to 28 October 2013.

²⁴ Internal ADB E-mail communication of 13 January 2012.

²⁵ Internal ADB briefing note of 13 January 2012.

²⁶ BTOR for Midterm Review Mission, 30 July 2012, para. 12.

²⁷ BTOR for Joint Review Mission, 19 December 2012 (para. 10); and BTOR Special Project Administration Mission, 11 April 2013 (para. 11).

²⁸ ADB Accountability Mechanism Compliance Review Panel; Report on Eligibility, to the Board of Directors On Compliance Review Panel Request No. 2012/2 on 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]).

VI. SCOPE AND CONDUCT OF THE COMPLIANCE REVIEW

35. As mandated under the 2003 AMP, the CRP “investigates alleged violations in any ADB-assisted project that directly, materially and adversely affect local people in the course of the formulation, processing, or implementation of the project.” The CRP investigates ADB’s operational policies and procedures that have resulted, or are likely to result, in direct, adverse, and material harm to project-affected persons “in the course of formulation, processing or implementation of the ADB assisted project” (footnote 2). If ADB is found to be noncompliant, the CRP “makes recommendations [to the Board] to ensure project compliance, including those, if appropriate, for any remedial actions in the scope or implementation of the project” (footnote 3). Unless the Board declares otherwise, the CRP monitors annually the implementation of its recommendations and remedial actions and prepares a monitoring report, which is posted on the CRP website.

36. The conduct of parties other than ADB, including the government, the borrower, and the executing agency, is not investigated unless it is directly relevant to assessing compliance with ADB operational policies and procedures. Compliance review is also not intended to provide legal remedies such as injunctions or monetary damage (footnote 1, para. 61; footnote 3, para. 9).

37. In its investigation, the CRP considered the following ADB policies and operational procedures that were in effect before December 2006, when the project was approved:

- (i) OM F2/OP and BP: Involuntary Resettlement (issued on 29 October 2003);
- (ii) OM C2/OP and BP: Gender and Development in ADB Operations (issued on 29 October 2003);
- (iii) OM C4/OP and BP: Governance (issued on 15 December 2003);
- (iv) OM L3/OP and BP: Public Communications (issued on 1 September 2005);
- (v) GP 47 Guidelines on Operational Procedures: Incorporation of Social Dimensions into ADB Operations (issued on 7 January 1997);

38. The CRP investigation consisted of (i) a desk review of documents; (ii) interviews with ADB Management and staff at ADB headquarters; (iii) meetings in Phnom Penh with ADB staff at CARM, with MWPT and IRC officials, and with the project consultants; (iv) meetings with consultants of MWPT and IRC and other agencies, as well as with NGOs involved in this issue; and (v) meetings with the requesters, some AHs, and their authorized representatives. The CRP also visited four of the five resettlement sites (Sihanoukville, Phnom Penh, Battambang, and Poipet) and met with some requesters and AHs. A list of the persons contacted by the CRP during the compliance review is in Appendix 3.

39. The review was led by Lalanath de Silva (part-time CRP member). CRP Chair Rusdian Lubis, had overall responsibility for the compliance review until 28 November 2013. Anne Deruyttere (part-time CRP member) completed her term on 23 July 2013 and was replaced in August 2013 by Arntraud Hartmann (part-time CRP member), who was actively involved in the site visit and investigation. The CRP was supported by two consultants—a document reviewer and an international resettlement specialist—and an interpreter. The OCRP provided technical, logistic, and administrative support.

VII. ALLEGED HARM

40. The request of 28 August 2012 (Appendix 1) identified the following main types of alleged harm that the requesters said they had suffered or were likely to suffer:

- (i) anxiety and stress due to inadequate access to information and consultation, and threats and harassment;
- (ii) threat of illegal forced eviction of households;
- (iii) indebtedness and impoverishment resulting from inadequate compensation and loss of income;
- (iv) loss of access to basic services and unsafe conditions at resettlement sites leading to death;
- (v) loss of access to health centers and schools and other facilities at resettlement sites;
- (vi) impact on children: food insecurity, drop in school attendance, and reduced access to health services;
- (vii) mental and physical harm due to abuse and threats at the Phnom Penh resettlement site;
- (viii) threat of unlawful land acquisition and expropriation of property without provision of compensation based on the full market price at the time of expropriation; and
- (ix) violations of human rights guaranteed to the requesters by the Cambodian Constitution and laws, and under international treaties ratified by Cambodia.

41. During its mission to Cambodia, the CRP visited four out of the five resettlement sites and met with some requesters and AHs. We also arranged separate meetings at all sites with requesters and AHs. These meetings were extremely useful in eliciting the facts concerning the alleged harm suffered. Appropriate questions were raised with requesters and AHs, and detailed information about each of the above categories of alleged harm was obtained. The CRP came away convinced that the requesters and some of the AHs met had suffered the harm.

42. One requester from the Phnom Penh site stated that “the compensation provided did not match the market price”²⁹ and that the compensation paid was “not sufficient to rebuild the house and people had to borrow and fall [into] heavy debt due to high interest.” Others complained that there was “no water and electricity after having been relocated to the site for 2 months.” Another requester from the same site complained that the “relocation was too far away, to a place where there were no schools, health facilities, poor road conditions, and no employment opportunity” and that opportunities for earning through some “business was in the city about 30 km away.” Another complained that “children quit school to find work” while others had “sold their land and moved to Phnom Penh.” A requester suggested that if ADB was to comply with its operational policies and procedures, “it should allow us [and] be relocated in Steung Mean Chey area [which is much closer to Phnom Penh], where we would be happy to move.” Similar information was provided by requesters and AHs whom we met at Sihanoukville. A requester stated that “it took between a few months to 1 year” before he managed to find a job and that “no comprehensive information relating to relocation was provided.” The main request was for additional compensation and loan facilities to help the requesters and AHs start up businesses (such as the purchase of a fishing boat). These complaints were echoed in Battambang, where one AH stated he “had to travel to town to do business, spending \$2.5 a

²⁹ All quoted statements in this paragraph are from confidential interviews with the CRP during the Cambodia mission.

day for a round trip” and that there was a “long distance from the relocation site to the marketplace (6–7 km).” AHs in Battambang highlighted their continuing water problem, stating that when they were relocated they had to purchase water privately for “\$4.25 for 3 [cubic meters] in comparison [with] \$0.5 per cubic meter supplied by the provincial water authority” whereas they “had water on tap at the old site.” A new water facility with a pond, filtration tank, and overhead tank and piped water is being installed in Battambang. AHs stated that “people were relocated in May 2010 and received a water subsidy in February 2011 until the pond was completed.” At Poipet, the CRP sought information through a structured set of questions in addition to discussions and dialogue with requesters and AHs. All 15 requesters and AHs that attended the meeting with the CRP stated that they did not receive adequate compensation and that they were worse off after the resettlement, highlighting the indebtedness of AHs and stating that the grievance redress mechanism had not succeeded in addressing their complaints. But they expressed satisfaction with the new primary school.

43. We interviewed relevant ADB staff to assess whether the alleged harm had been suffered by requesters and other AHs. The ADB staff interviews helped to confirm the following facts:

- (i) **Resettlement plan quality and changes.** RPs prepared for the project could have been improved to mitigate or avoid at least some of the alleged harm had more information been available at the time of their preparation
- (ii) **Indexing of compensation rates.** AHs complained that compensation rates were not at replacement cost. A January 2012 report from an external monitoring organization (EMO) justified the compensation rates from the 2006 RP reflecting current replacement costs. However, a recommendation from the review of the 2006 RP by ADB safeguards specialists to index compensation rates to inflation in the RPs was not followed up on, and the January 2012 EMO report did not consider the consumer price index or inflation rate.
- (iii) **Public information booklet.** ADB staff agreed that though public information booklets prepared in response to ADB’s resettlement policy might be adequate, they were mostly distributed without further explanation. ADB staff also acknowledged that many recipients of the booklets were illiterate and could not have made use of the booklets without further explanations. Harm may well have resulted from ignorance of key aspects of resettlement that the booklets were meant to convey.
- (iv) **Insufficient compensation based on inadequate DMS and grievance redress.** ADB project staff were aware that compensation for a large number of houses belonging to AHs was insufficient mainly due to inadequate DMS and the miscategorization of houses. ADB staff had relied on AHs to use the grievance redress mechanism, even when acknowledging that it was not functioning at all or functioned poorly at the time. Later AHs were encouraged to seek the assistance of OSPF which they did: “.. we were saying please go to the OSPF because we want this to be resolved soon and we have been pushing the government to sort out the issues”.³⁰ The OSPF has confirmed that compensation payments had to be revised upwards for many AHs due to these errors. Delays in attending to these issues led to NGOs raising concerns.

³⁰ Confidential ADB staff interview with CRP.

- (v) **Resettlement site infrastructure.** Some AHs had been encouraged by the government to move to resettlement sites on the basis that water and electricity services would follow. However, these services did not arrive in a timely fashion and significant delays occurred, resulting in hardship to AHs. In some instances, ADB staff was unaware that AHs had been moved under such circumstances until later on. These facts are confirmed by EMO reports we examined. ADB staff hired by CARM for the project also confirmed the existence of such situations. Water and electricity services were generally brought to the perimeter of the resettlement site and to key points within but wiring house connections and internal plumbing costs were borne by AHs. This was in spite of assurances given by ADB staff to NGOs that AHs would be reimbursed such costs.
- (vi) **External monitoring.** As noted later in this report, ADB staff failed to address such issues in a timely fashion to avoid or mitigate harm to AHs or bring the project into compliance with ADB safeguard policies. Based on the material we have examined, it is safe to say that senior ADB management did not know of, or knew of but did not act on the above issues until NGOs complained to the ADB President in October 2010. Long response times have led AHs to suffer harm or experience difficulties throughout the project implementation phase.
- (vii) **Lack of capacity building for government.** During interviews, senior ADB staff acknowledged that proactive engagement with the government, in particular the IRC, would have helped to identify and close capacity gaps in the IRC much earlier: “ADB from day one should have given extra measures as part of the design in the capacity building aspect. ... That needs to be clearly assessed and if it is found that the executing agency is not fully capable of handling this type of activity, then, as part of the design of the project, we should have done that.”

44. The upshot of the CRP’s many interviews with government officials was that while the IRC and MWPT had gained some resettlement experience and skills from the previous Highway One Improvement Project funded by ADB, resettlement challenges under this project were much bigger. Government officials reiterated that their expectations of support from ADB for guidance, advice and models on the “how” were not met adequately and that proactive engagement from ADB came late in the resettlement phases. We evinced changing and evolving views within the government staff, especially among senior officials of the importance of safeguards and the need to ensure that their own affected citizens were not rendered worse off as a result of development projects. The current capacity of IRC is much better than it was when resettlement commenced and earlier proactive engagement from ADB might have significantly helped alleviate the challenges and issues that arose from resettlement. Government officials acknowledged that there was resettlement related indebtedness, although they also emphasized that there were other causes for the same. Government officials also acknowledged that there was no water supply in Battambang when resettlement first occurred and that at some sites electricity connections took some time. They also acknowledged that the current condition of access roads to most sites were inadequate and indicated they had plans to rehabilitate the roads after the rainy season ends in November 2013. While they pointed out some AHs who had done better in the resettlement sites, they also acknowledged that there were many who had not. We are convinced that had ADB engaged with IRC and MWPT in a practical, culture sensitive manner from the early stages of the project, many of the safeguard issues that arose might have been avoided or mitigated significantly.

45. The CRP finds that the claims of harm suffered by the requesters mentioned in paragraphs 40(i) to (viii) were justified based on the verification of facts during the interviews with the requesters and their representatives, government representatives, resettlement consultants, and ADB staff, as well as on the reports issued by the SPF and other documents examined by the CRP. We conclude that the requesters and other AHs have suffered direct, adverse and material harm. In particular, the CRP finds that the requesters have established harm from (i) insufficient compensation for loss of property and incomes; (ii) lack of electricity and water services at resettlement sites as well as from poor access roads; (iii) weak or ineffective grievance redress mechanisms; (iv) lack of timely assistance for income restoration; (v) indebtedness; and (vi) insufficient information and consultation.

VIII. ADB COMPLIANCE DURING PROJECT PREPARATION AND IMPLEMENTATION

46. In reviewing policy compliance, the CRP identified four key areas: (i) resettlement planning and implementation; (ii) compensation for housing and livelihoods, transition assistance, and income restoration; (iii) Samrong Estate project planning and resettlement; and (iv) alleged human rights violations. Each of these areas is dealt with below.

A. Resettlement Planning and Implementation

47. The issues below need detailed consideration under the broad topic of resettlement planning, implementation, and monitoring:

- (i) adequacy of resettlement plan preparation;
- (ii) adequacy of basic services and facilities at resettlement sites;
- (iii) adequacy of eviction safeguards and procedures;
- (iv) adequacy of grievance redress mechanisms; and
- (v) adequacy of capacity building for government agencies.

48. In what follows, the CRP deals with each of the above issues in similar fashion, namely: requester's complaint; relevant policy references; evidence available for and against the complaint; and analysis of evidence and findings.

1. Adequacy of Resettlement Plan Preparation

a. Resettlement Budget

49. **The request for compliance review** claimed that ADB did not make adequate budget allocations for resettlement, and that: "The RPs and resettlement budget were themselves inadequate to ensure that affected households would not be made worse off." (para. 11). Moreover, "project compensation rates for losses and costs of resettlement were calculated in 2006, when the original Resettlement Plan was prepared. Compensation payments, however, began in 2009 and are continuing well into 2012. In more than five years, with the possible exception of Phnom Penh, the compensation rates were not adjusted to reflect annual inflation" (para. 24).

50. **ADB policy requirements.** ADB's policy on involuntary resettlement states that: "The full resettlement costs are to be included in the presentation of project costs and benefits. This includes costs of compensation, relocation and rehabilitation, social preparation and livelihood programs," and "where loans include subprojects, components or investments prepared only

after project approval...that are likely to cause involuntary resettlement, sufficient contingency allowance must be allocated for resettlement prior to approval of the loan.”³¹ The policy also requires that: “All compensation is based on the principle of replacement cost,” and “replacement cost means the method of valuing assets to replace the loss at market value, or its nearest equivalent.”³² It is further required that the summary resettlement plan before the first MRM must “contain assurances from the executing agency or project sponsor that sufficient funds will be made available as and when necessary for the efficient and timely implementation of resettlement activities specified in the resettlement plan.”³³ Responsibility for policy compliance is defined as follows: “The operations departments are responsible for complying with the policy. ADB’s CCO [Chief Compliance Officer], supported by the Environment and Social Safeguard Division, is responsible for monitoring compliance with ADB’s safeguard policies, and advising and assisting operations departments. The CCO advises Management on safeguard policy issues and reviews projects’ compliance with ADB’s safeguard policies.”³⁴

51. The 2006 RP estimated the total number of AHs to be 2,629, of which 822 AHs would have to be resettled.³⁵ A replacement cost study conducted in June 2006 led to estimates of the total resettlement costs of between \$3.1 million (if all AHs to be resettled from the COI³⁶ stayed within the ROW of the railway line) and \$4.1 million (if all were resettled on sites away from the ROW).³⁷ The RRP of November 2006 estimated the cost of land acquisition, resettlement, and social mitigation at \$3.8 million.³⁸ An Addendum to the Approved Resettlement Plan from November 2007, which involved re-surveying affected households from the Southern and Northern (including Poipet) lines, found that a total of 1,173 AHs would have to relocate, of which 986 AHs opted for relocation to resettlement sites.³⁹ These numbers did not include impacts in the Phnom Penh section. The total costs were estimated at \$3.5 million.⁴⁰ During implementation, as detailed technical designs were finalized for four sections of the railway line, URPs were developed for each section. Compared with the 2006 RP, the aggregate impact of these URPs increased the total number of affected AHs to 3,754 (an increase of 30%), while the number of AHs moving to resettlement sites remained largely unchanged. The number in the URPs of AHs to be resettled from the Southern and Northern lines (including Poipet but excluding Phnom Penh) amount to 721 AHs, which is significantly below the 986 AHs arrived at in the 2007 Addendum RP. Such lack of clarity on the precise resettlement impacts of the project has continued to characterize the project (see para. 161). The allocated aggregate budget of the URPs increased to \$7,239,951 (an increase of 52% over the 2006 budget). However, the implementation of the four URPs took 4–5 years after the rates for compensation and other resettlement entitlements were defined in 2006, and these rates have not been adjusted to accommodate price increases.

³¹ Involuntary Resettlement, OM F2/BP, para. 4(x).

³² 4(iii) and footnote 6.

³³ Ibid., OM F2/OP, para. 36.

³⁴ Ibid., OM F2/OP para 53

³⁵ GMS Rehabilitation of the Railway in Cambodia: Resettlement Plan (ADB-TA: 6251 REG), October 2006, p.2.

³⁶ To reduce the number of people to be resettled within the state owned right-of-way for the railway line, the resettlement plan introduced a narrower corridor of impact (3.5 m to each side of the railway centerline), from which buildings would be removed and people resettled (October 2006 RP, Executive Summary).

³⁷ The budget figures include compensation and allowances, development of resettlement sites, income restoration programs, operational and administration expenses, monitoring, and contingencies (Ibid., p.III and p. 83).

³⁸ RRP of November 2006, p. 33.

³⁹ Addendum to the Approved Resettlement Plan, November 2007, p.9-10.

⁴⁰ Ibid., Executive Summary.

Table 1: Updated Resettlement Plans

Railway Section URP	URP Date	Compensation Payment ^a	Total AHs	AHs to Resettle	Budget (\$)
Northern Line & Missing Link	July 2008	May 2010	1,165	81	1,054,152
Southern Line	Sept 2009	Oct. 2011	206	52	643,166
Poipet	May 2010	Apr-Nov. 2011	1,094	588	3,979,230
Phnom Penh	June 2010	Feb-June 2011	1,289	161	1,563,403
TOTAL			3,754	882	7,239,951

AH = affected household, URP = updated resettlement plan.

^aIRC: Summary Report on Implementation Progress for Railway Rehabilitation Project in Cambodia, October 2013.

Source: Figures are from the updated resettlement plans for the sites.

52. The MOU between the government and ADB from October 2006 for the appraisal mission listed the timely provision of counterpart funds for resettlement to meet unforeseen obligations exceeding the resettlement budget estimates as one of the agreed specific assurances.⁴¹ This provision is reiterated in the 2006 RP, which cited a project principle that “adequate resources will be identified and committed during resettlement planning for the Project,” and that the budgeted “costs are estimates only and may change upon completion of detailed measurement survey (DMS) to determine actual impacts after detailed design.”⁴²

53. The comments on the draft RP made by RSES to the MRM on 1 August 2006 had recommended that the final RP should “provide the basis for arriving at different entitlements and ensure in principle [compensation] prices are indexed for inflation.” This critical recommendation was not incorporated in the final RP, which consequently—notwithstanding the assurance in the RP that the budget represented an estimate only which could change to reflect actual impact—did not include any *practical operational measure* to ensure that this commitment could be realized, and that the rates for compensation and other assistance would be updated to reflect replacement cost at the time of asset acquisition, displacement, and resettlement by the government. RSES repeated its recommendation in its comments of February 2010 on the updated RP for Poipet, stating that “we note that the Updated Resettlement Plan will be implemented in the year 2010, which is four or five years after the Cost Study was prepared. Considering there must have been changes in the actual rate due to inflation and other circumstances in the past five years, please clarify and/or justify in section 3.4. ‘Resettlement Costs and Budget Approval’ whether the proposed rate/standard is still adequate.”⁴³ Section 3.4 of the updated RP for Poipet stated that “the replacement cost in 2006 is still applicable for this URP” and no changes were made in the rates for compensation and other resettlement assistance.⁴⁴

54. At a meeting with NGOs on resettlement issues in March 2010, where the NGOs raised concerns regarding entitlements, ADB informed the group that updated resettlement plans for the different sections including entitlements would be based on the October 2006 RP.⁴⁵ This practice was followed in all four RPs that were updated between July 2008 and June 2010 for different sections of the railway line, and all retained the same entitlement matrix with the same compensation rates as the 2006 RP, in spite of the identical assurance made to AHs during

⁴¹ Appraisal Mission MOU between the Government of Cambodia and ADB of 10 October 2006.

⁴² 2006 RP, Executive Summary and p. 39.

⁴³ Internal ADB E-mail of 25 February 2010.

⁴⁴ Updated Resettlement Plan for the Poipet Section, May 2010, p. 13.

⁴⁵ BTOR for Resettlement Review Mission, 7 May 2010, para. 4.

consultation meetings, and recorded in each updated RP, that “they would be paid compensation at replacement cost reflecting current market value.”⁴⁶

55. However, by December 2010 concerns regarding the adequacy of entitlements were also voiced within ADB, when ADB's monitoring consultant proposed that the IRC should “undertake an update of the compensation rates in order to ensure that payments will be made at replacement cost at the time of payments to the APs.”⁴⁷ The proposal was rejected by ADB in favor of an approach that involved obtaining the consent “of IRC to require EMO [the IRC contracted external monitoring organization] to categorically state in its monitoring reports that compensation rates used in payment of affected assets were replacement rates.”⁴⁸ Subsequently, ADB agreed with IRC in January 2011 that the EMO should undertake a study by June 2011 “to verify retroactively if the compensation rates used (i.e. for fixed assets) were still valid at the time of compensation.”⁴⁹ The study was delayed,⁵⁰ and by September 2011 ADB had received only a draft.⁵¹

56. The objective of the EMO's replacement cost study was “to check if the compensation rates used for structure compensation were in accordance with current market prices at the time of relocation and affected households (AHs) were fully compensated at the then current replacement cost for their existing structures.”⁵² For every type of construction material examined, the study found that the rates paid by IRC between 2009 and 2011 were squarely within the range of current market prices and consequently at replacement cost. Following receipt of the draft replacement cost study, ADB requested the underlying database,⁵³ examined it, and concluded that “(t)he report shows that compensation rates were at current market prices at the time of compensation and resettlement.”⁵⁴

57. The results of the study are highly questionable. Average consumer price increases for Cambodian riel were 4.2% in 2006, 14% in 2007, 12.5% in 2008, 5.3% in 2009, 3.1% in 2010, 4.9% in 2011, and 2.5% in 2012—for an overall increase of 39.1% between the time compensation rates were defined (2006) and the time compensation payments began (2010).⁵⁵ As a significant share of transactions in Cambodia are conducted in US dollars and not in Cambodian riel, inflation rates of riel were only partly relevant. Inflation rates for US dollars based commodities and services in Cambodia were somewhat lower but also very significant during the relevant time period. It is possible but highly unlikely that construction materials and construction wages have been fully shielded from any inflationary impact. This is particularly unlikely as, during the same period, food prices, especially the price of rice, increased significantly. The inadequate reflection of price adjustments was acknowledged by ADB in the back-to-office report (BTOR) for a mission in September 2011, which stated that a “major

⁴⁶ RP for Northern Line and Missing Link, July 2008, p.8; Southern Line, September 2009, p. 6; Phnom Penh, June 2010, para 28; and Poipet Section, May 2010, para. 26. The identical entitlement matrixes and language used across the four updated RPs is indicative of the lack of learning that these documents reflect.

⁴⁷ Matrix with “Proposed Actions to Improve Resettlement Implementation and Monitoring” (Item 7, p. 2) attached to BTOR of resettlement mission undertaken 20–22 December, 2010, 5 January 2011.

⁴⁸ Ibid.

⁴⁹ BTOR of Resettlement and Social Review Mission, 6 July 2011, para. 3.

⁵⁰ Ibid.

⁵¹ MOU Loan and Grant Review Mission, 23 September 2011, para. 24.

⁵² REDECAM Group. 2012. Replacement Cost Study (Evaluation Report): GMS Rehabilitation of the Railway in Cambodia. January. p.2.

⁵³ BTOR of Loan and Grant Review Mission, 23 September 2011.

⁵⁴ BTOR of Midterm Review Mission, 30 July 2012, Annex 5, para. 16.

⁵⁵ IMF. 2013. World Economic Outlook Database. October: Inflation end-of-period consumer prices, percentage changes, and indicators.

remaining issue is inadequate payment of living allowances due to rapidly escalating food prices since 2008.”⁵⁶ However, the likely implications of the impact of the sharp increase in food prices on the costs of construction materials and labor were ignored by both the EMO study and by ADB. Thus, the commitment in the entitlement matrix of the 2006 RP and in the URPs, that for fully and partially affected houses, shops, and other types of structures, the project would provide “compensation at replacement cost based on current market prices of affected materials plus provision of current labor costs for repair” was not fulfilled.⁵⁷

58. By 30 November 2012, the government had spent a total of \$8,388,652 on resettlement activities under the project.⁵⁸ Although this amount represented an increase of 16% over the aggregate budget of the URPs, the expenditure was not sufficient to meet the requirements for adequate property compensation and transition allowances, for quality resettlement site infrastructure, and for purchase of land for resettlement sites in locations close enough to the areas from which APs were displaced, to enable them to continue their livelihoods.

59. In interviews with the CRP, some ADB staff expressed surprise as to why the recommendation for inflation indexed compensation had not been pursued. They surmised that the recommendation might have been lost in the details of initial project documentation. With an intervening 4-year gap during which Cambodia’s inflation grew by 39%, ADB staff waited until AHs and NGOs raised their voice to request the EMO to undertake an ex post facto cost study. In the CRP’s view, ADB standards of due diligence expect proactive intervention by its staff in situations such as this. ADB staff did check the study and concluded that the rates had not changed since 2006 despite their own recognition that food prices had increased sharply over the same period.

60. **Conclusions on ADB policy compliance: The CRP finds that AHs did not receive compensation at replacement cost rates either because ADB did not ensure that the 2006 RP included provisions for indexing rates for compensation and other assistance to AHs to address inflation, or because resettlement budgets in URPs between 2008 and 2010 did not adequately reflect increases in the consumer price index or significant increases in the number of affected AHs. Accordingly, the CRP finds that ADB is noncompliant with OM F2/BP paras. 4(iii) and 4(x) and OM F2/OP para. 36, footnote 6. RSES did not properly execute (or even acknowledge, as evidenced in interviews with the CRP) its role of “monitoring compliance with ADB’s safeguard policies,” and the lack of follow-up by RSES to its 2006 recommendation regarding indexing of compensation prices for inflation—reiterated in connection with their review of the EMO replacement cost study—results in noncompliance with OM F2/OP, para. 53.**⁵⁹

⁵⁶ BTOR of Loan and Grant Review Mission, 23 September 2011, para. 11. The CRP report deals with the issue of transition (living) allowances in section B.2 on page 55.

⁵⁷ Entitlement Matrix: Section B. Impacts on Non-Land Assets (irrespective of tenure status). 2006 RP p. 43, Updated RP for Phnom Penh, June 2010, Annex 1, p. 6.

⁵⁸ Information provided by IRC to the CRP on October 21, 2013. These expenditures included \$1,019,546 on compensation; \$6,060,382 on resettlement sites; \$566,251 on external monitoring and income restoration; and \$741,472 on incremental costs.

⁵⁹ In Management’s response to the CRP draft report dated 20 December 2013, it is maintained that ADB is compliant with respect to the requirement that the government provide compensation to affected households (AHs) at replacement cost. The CRP does not agree with this and refers to para. 57 of this report. It is also maintained that ADB, including RSES, did execute its role properly in accordance with OM F2 BP/OP. The CRP does not agree with this. The ADB project team (and SETC) consistently ignored RSES’s recommendation on indexing of compensation rates. While this key issue was raised repeatedly by RSES reviewers, it remained at this level and was not raised by higher levels of RSES vis-à-vis SETC. The CRP also questions whether “ADB’s due diligence” on the EMO report was analytically robust (refer to para. 59 of this report).

b. Consultation for the Preparation of the Resettlement Plan: Detailed Measurement Survey and Consultation with Civil Society

61. **The request for compliance review** claimed that “AHs, including Requesters, were not provided with Project-related information or consulted in a manner that ensured that they were ‘fully informed and closely consulted on resettlement and compensation options,’ as required by ADB policy” (para. 13). Furthermore, the “two main communication methods...to affected households: the dissemination of public information booklets (PIBs) and community meetings” were inadequate since a significant proportion of the APs were uneducated, and since the “community meetings did not ensure that AHs were closely consulted because of limited opportunities to ask questions or raise concerns and unsatisfactory responses by the Inter-Ministerial Resettlement Committee (IRC)” (Ibid.). It was also claimed that AHs were not adequately informed about and involved in the DMS which recorded their losses (para. 14), and “that an air of intimidation, threats and coercion has pervaded the resettlement process” (para. 15). Moreover, the request claimed that ADB had not been responsive in addressing critical resettlement risks when voiced by the NGOs: “...the Requesters and local NGOs monitoring the Project have previously made extensive good faith efforts to address the aforementioned problems and harms with ADB Cambodia Resident Mission, the relevant ADB Operations Department, and the Senior Management of ADB, through numerous written communications, meetings, and submissions of evidence, documentation and reports since May 2010.” (para. 78). One example cited was the location of the Phnom Penh resettlement site: “Despite being specifically forewarned by NGOs and the United Nations Human Rights Office (UNOHCHR) about the likely risks of a drop in living standards following a move to Trapeang Anh Chanh, the ADB nonetheless approved the Updated Phnom Penh Resettlement Plan, including the selection of Trapeang Anh Chanh as the Project-sponsored resettlement site” (para. 32). Another example was the issue of indebtedness which “has been raised with the ADB repeatedly by both AHs and NGOs verbally and in writing” (para. 37).

62. **ADB policy requirements.** OM F2/BP para. 4(v) requires that: “**The affected people are to be fully informed and closely consulted.** Affected people are to be consulted on compensation and/or resettlement options, including relocation sites, and socioeconomic rehabilitation. Pertinent resettlement information is to be disclosed to the affected people at key points, and specific opportunities provided for them to participate in choosing, planning, and implementation options.... Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation.” It is specifically required that: “consultation is to be carried out as early as possible in the project cycle so that the views of the affected people are taken into account in formulating the compensation and rehabilitation measures. Further consultation also takes place during resettlement plan implementation to identify and help address issues that arise,” and that “the resettlement documents [including an asset inventory/DMS] are to be developed in consultation with those affected.”⁶⁰ Finally, it is a requirement that “information on compensation and resettlement options, must be disclosed to the affected people before the first MRM [Management Review Meeting]...in a form and language that they can understand,”⁶¹ and that for “...nonliterate people, other communication methods [than in writing] will be appropriate.”⁶² Regarding consultation with NGOs and civil society, the policy on involuntary resettlement stipulates that “In preparing the resettlement

⁶⁰ Ibid., F2/OP paras. 34 and 44.

⁶¹ Ibid., F2/OP para. 45.

⁶² Public Communications, L3/OP, para. 22.

planning documents, ADB requires the borrower to take into account the views of affected groups and civil society groups where relevant, including nongovernment organizations.”⁶³ The public communications policy states that “To facilitate dialogue with affected people and other individuals and organizations...ADB shall ensure that the project’s design allows for stakeholder feedback during implementation,” involving “communications plans for certain projects and programs, particularly those likely to generate a high level of public interest” and this should involve recommendations on how to “increase involvement of grassroots and civil society organizations in the development process.”⁶⁴

63. The consultations with APs undertaken in preparation for both the 2006 RP and the four URPs were limited and did not provide adequate opportunities for the APs to participate in the planning and choice of resettlement options as required by ADB’s policy on involuntary resettlement. Arrangements for the involvement of APs in the conduct and verification of the DMS (the inventory of assets to be acquired from the APs by the project) were inadequate during most of the implementation period, and measures to address this inadequacy were introduced by ADB only in early 2013, when the final updating of the RP for Samrong and the addendum RP for Phnom Penh were being prepared.

64. **Consultation for the preparation of resettlement plan.** Consultation for the preparation of the 2006 RP was undertaken between April and June 2006, and involved eight meetings with affected persons.⁶⁵ The meetings were conducted by consultants from the project preparatory technical assistance (PPTA) team with participation of railway staff.⁶⁶ The meetings involved general information on the project and planned resettlement activities, along with feedback from the APs on their concerns and suggestions. The concerns of the affected persons included the risk of inadequate compensation, disruption of livelihoods due to relocation, problems with host community integration, difficulties for women and vulnerable households, and distance to schools from resettlement sites. As described in succeeding sections of this report, all of these concerns would become realities during the implementation of the land acquisition and resettlement. The report also shows that there was an inadequate response to the main request by the affected persons, namely, that the resettlement sites be furnished with basic services such as water, roads, and electricity.⁶⁷ On three occasions, two different meetings were conducted by the same PPTA team within 1 day with the affected persons, and the time available would hardly leave room for close consultation on resettlement options required by ADB’s policy on involuntary resettlement. Moreover, with the exception of the Poipet section, the consultation meetings involved only a very small proportion of the affected persons,⁶⁸ and little or no efforts appear to have been made to conduct the social preparation phase required by the policy to enhance the capacity of particularly vulnerable groups including female headed households to participate in negotiation, planning, and implementation.

⁶³ Involuntary Resettlement, F2/OP, para. 55(iii).

⁶⁴ Public Communications, L3/OP, paras. 15-16.

⁶⁵ October 2006 RP, p. 48 and annex with summaries of meetings held.

⁶⁶ It does not appear that any ADB staff attended any of these initial information dissemination and consultation meetings, while they did attend later consultations on the updated RPs for the southern line, Poipet, and Phnom Penh.

⁶⁷ October 2006 RP, Annex 1.

⁶⁸ Ibid.

Table 2: Information Dissemination and Consultation for the 2006 Resettlement Plan

Railway Section	APs at Consultation Meeting	Date of Consultations	Total AHs in Updated RPs ^a
Northern Line	17	19 May 2006	1,165
	1 village chief	17 May 2006	
Southern Line	18	20 May 2006	206
	No data	20 May 2006	
Phnom Penh	12	25 May 2006	1,289
Poipet	80	3 Apr 2006	1,094
	300	3 Apr 2006	
	70	15–17 Jun 2006	

AH = affected household; AP = affected person; RP = resettlement plan.

^aThe 2006 RP did not present numbers on APs or AHs for the different sections of the line, so the figures from the updated sectional RPs are presented here for comparison. The average AH size is around 4 to 5 persons.

Source: October 2006 RP, p. 48 and annex with summaries of meetings held.

65. From December 2006, a two-page resettlement plan booklet in Khmer with questions and answers on entitlements and the resettlement process was distributed to all AHs.⁶⁹ The booklet—now called the “Public Information Booklet”—was updated in July 2008 to become more reader friendly. Chapter 3 on the socioeconomic profile in the 2006 RP provides some information on the literacy of APs, which is largely consistent with the information in para. 13 of the request.⁷⁰ The 2006 RP found that around one-third of women and one-fourth of male AH heads had not attended school, while the request quoted reports from an NGO study that 20% of men and almost 40% of women were uneducated. During a visit to Battambang on the northern line section in July 2009, an ADB mission was told by AHs that while they had received the information booklet in 2006, “some did not read.”⁷¹ Yet communication under the railway project did not consider the provision in ADB’s policy on public communications that: “For nonliterate people, other communication methods will be appropriate” (OM L3/OP, para. 22). Other than the booklet, the public meetings were the only means of communication with APs.

66. The 2006 RP required social preparation activities to enhance the capacity of particularly vulnerable groups including female headed households to participate in the project. Such activities appear not to have been carried out. The 2006 RP includes a gender strategy which makes a number of commitments regarding women. It includes among the project principles that: “*All stages of resettlement identification, planning, and management should ensure that gender concerns are incorporated, including gender-specific consultation and information disclosure. This includes special attention to guarantee women’s assets, property, and land-use rights and to ensure the restoration of their income and living standards*.”⁷² Despite the intensified supervision efforts by ADB from early 2010 and onwards, mission documents do not indicate that any specific attention was paid to whether the commitments made in the 2006 RP on women headed households were addressed. Only the midterm review mission in April-May 2012 included a gender specialist, and assessed these issues. It was found that “*.. it is difficult to comprehensively assess the [gender] approach as limited sex disaggregated data collection and reporting has been undertaken*.”⁷³

⁶⁹ Updated RP for Phnom Penh, June 2010, p. 11.

⁷⁰ October 2006 RP, p. 25.

⁷¹ MOU for Resettlement Mission, 13 July, 2009, para. 8.

⁷² October 2006 RP, p. 36.

⁷³ MOU for Midterm Review Mission, 30 July 2012, annex 5 on Safeguards and Social Dimensions, para 33.

67. Consultations and information dissemination continued during the preparation of the UPRs for the four sections of the railway line. The data provided in these RPs on the attendance of AHs in meetings conducted by IRC, and on their familiarity with the resettlement plan booklet suggest that most affected persons had some general knowledge of the project:

Table 3: Information Dissemination and Consultation for the Updated Resettlement Plans

Item	Updated RP for Phnom Penh	Updated RP for Poipet	Updated RP for Northern Line	Updated RP for Southern Line
Total AHs	1,289	1,094	1,165	206
AHs that attended IRC meetings	1,185	912	No data	RP only states that 98.9% of AHs were aware of project
AH members that read the booklet	1,092	310	1,106	

AH = affected household; IRC = Interministerial Resettlement Committee; RP = resettlement plan; URP = updated resettlement plan.

Source: Updated resettlement plans for Phnom Penh, Poipet, the Northern Line, and the Southern Line.

68. The 2007 Addendum Resettlement Plan paid special attention to consultation on the selection of three of the resettlement sites, namely Battambang, Pursat, and Poipet. It reported that “Village leaders and representative AHs have visited the sites. Village leaders and all AHs have accepted the sites.”⁷⁴ However, while the site visits by village leaders and representative AHs (comprising an average of 6 persons) were undertaken in October 2007, the village meetings where AHs were said to have endorsed the selection of the sites, were conducted in March 2007, six months prior to the site visits by their representatives.⁷⁵ Thus, there is no way that the village meetings claimed to have endorsed the selection of resettlement sites could have been informed by the visits by AH representatives to these sites.

69. In its BTOR of October 2007, ADB’s project team reported that: “The mission reviewed the process of consultation on the four resettlement sites proposed for this project, and concluded that there has been adequate consultation and information sharing about the Battambang, Pursat, and Poipet sites, but further investigation and consultation is needed regarding the Sihanoukville site, particularly since IRC [has] found the proposed site to be unsuitable.”⁷⁶ However, a mission in July 2009 found that AHs in Sihanoukville were not aware of the location of the alternative resettlement site that had been selected and the mission also found that AHs in both Battambang and Poipet had not visited the sites selected for resettlement,⁷⁷ contrary to what was reported in the 2007 Addendum RP.

70. The BTORs for successive missions have rated as “ongoing/satisfactory” or “ongoing” the compliance with the March 2007 loan agreement clause that MPWT shall “update the RP based on detailed technical design and the detailed measurement survey of losses.... The update shall be prepared in full consultation with and disclosed to the affected persons.” Yet this assessment of the adequacy of the information dissemination and consultation undertaken under the project was not borne out by the findings in a BTOR of a resettlement review mission in December 2010, which reported limited consultation with AHs regarding the Poipet and

⁷⁴ 2007 Addendum RP, p. 17.

⁷⁵ Ibid., pp. 17-18.

⁷⁶ BTOR and Aide-Mémoire of Resettlement Review Missions; 1 October 2007.

⁷⁷ MOU of Resettlement Mission, 13 July 2009, paras. 8, 13, and 17.

Phnom Penh resettlement sites.⁷⁸ Similarly, a communications planning mission for the project in June 2011 reported that: “Many families we met voiced concerns about fair compensation, and the provision of adequate information about the resettlement and compensation process and grievance mechanisms.”⁷⁹ Subsequently, OSPF found that the main concerns among the 118 APs interviewed were “obtaining adequate information about the project” and “being consulted on issues that affect them and their families.”⁸⁰

71. The approach to land acquisition and resettlement, including the entitlement matrix and compensation rates, was determined during the preparation of the 2006 RP, and its provisions were replicated in the URPs for the different sections of the railway line. Thus, the URP of June 2010 for the Phnom Penh section stated that: “This updated RP follows the same “model” used in the other updated RPs under this Project,” and “the resettlement policy, principles, entitlements, including grievances redress procedures, as provided in the accepted 2006 RP and the Addendum were applied to this Updated RP.”⁸¹ Consequently, during consultations for the preparation of the URPs, the interaction between the executing agency and the APs was no longer to ensure that “the views of the affected people are taken into account in formulating the compensation and rehabilitation measures” (OM F2/OP, para. 44). That would have been addressed during the few and brief information dissemination and consultation meetings leading up to the drafting of the 2006 RP. The meetings with APs relating to the updating of the RPs involved information dissemination on the project, the COI and ROW concepts, and the already defined entitlement matrix, followed by interaction with individual AHs to finalize the DMS of their losses.⁸²

72. The use of the unchanged entitlement matrix from the 2006 RP in the URPs was an indication of the inflexibility that characterized the approach to resettlement during most of the project period. Instead of an approach that provided scope for adjusting key features in the light of changing circumstances and lessons learned, the provisions of the original 2006 RP defined an inadequate conceptual framework for managing resettlement that was rigidly perpetuated, and that began to be adjusted only from 2011 onward. Examples of this inflexibility are discussed below in this report. They include the continued lack of adjustment of compensation rates to reflect price levels at the time of compensation payments; the continued use of an inaccurate DMS process that resulted in underpayment of compensation; and the use of the principle of replacement value for house compensation, which on the average provided AHs with a compensation amount that was only about half the cost of replacement housing of minimum standard. In addition, the 2006 entitlements were restrictively applied. When early resettlement practice departed from the principles in the 2006 RP, such as when the principle of locating resettlement sites within 3–5 km of the original places of residence of the displaced was not adhered to, compensation was not adjusted to mitigate the conditions of those resettled in locations that made it difficult or impossible to maintain former sources of livelihood. Thus, the transportation allowance for resettling remained fixed and did not take the longer and varying distances to resettlement sites into account, and the transition or living allowance did not reflect the actual time required to reestablish livelihoods or the inflation that had taken place between 2006 and the time of transition after resettling.

⁷⁸ BTOR of Resettlement Review Mission, 20–22 December 2010; 5 January 2011.

⁷⁹ BTOR of Communications Planning Mission for Cambodia's Railway Rehabilitation Project, 8–9 June (OIC, SCMRU); 17 June 2011, para. 3.

⁸⁰ Review and Assessment Report of the Office of the Special Project Facilitator; Feb. 2012, p.4.

⁸¹ Updated RP for Phnom Penh, June 2010, pp. 1 and 2.

⁸² Ibid., p. 10.

73. During its visit to Cambodia from 20 to 28 October 2013, the CRP explored the requesters' allegation that an "air of intimidation, threats and coercion has pervaded the resettlement process." Interviews with affected persons, including requesters at the four resettlement sites visited by the CRP, did not reveal any specific instances of overt physical intimidation, threats, and coercion. The evidence gathered by the CRP only indicated that government officials had informed AHs that refusal to accept compensation offered would not result in increases. While the CRP believes that some AHs may have felt pressured to vacate their homes as a result, and accept the compensation offered, no examples of overt or physical intimidation, threat, and coercion were revealed to the CRP by AHs during the site visits, even when the CRP met only AHs at separate meeting venues.

74. **Detailed measurement survey.** One of the weaknesses in the design and implementation of the Cambodia Highway One Project, which was identified in ADB's resettlement audit of January 2006, was the inadequate provision for "a participatory method for asset assessment."⁸³ The loan agreement for the project stipulated that MPWT shall "update the RP based on detailed technical design and the detailed measurement survey of losses following recruitment and mobilization of the independent monitor and the resettlement consultant. The update shall be prepared in full consultation with and disclosed to the affected persons."⁸⁴ However, neither the 2006 RP nor the four URPs that were approved by ADB between July 2008 and June 2010 contained any proper *guidance* on how to conduct a DMS with the participation of the AHs and their involvement in the verification of the DMS results. The project administration memorandum, which provided guidance on project implementation, did not include a section on resettlement, and the project had no tool to provide uniform and consistent guidance to those tasked with planning and implementing the RPs.⁸⁵

75. As early as July 2009, ADB staff noticed flaws in DMS data when they found houses of AHs at Battambang station categorized as "partially affected" when the houses were in reality no longer viable habitations. The agreed action was that the Resettlement Department of the Ministry of Economy and Finance (RD-MEF) would review the DMS database, and "take into account the household members when deciding on the viability of remaining structures."⁸⁶ Earlier requests by ADB for the DMS database were rejected by the government, and this constrained ADB's ability to assess the adequacy of the information on losses of AHs. ADB correspondence recognized that the IRC's position was to withhold information and instead provide the ADB team with a statistical summary of the total number of APs and total cost of compensation, which would not help the Project Team in evaluating the RPs.⁸⁷ The request for the DMS database was repeated in July 2009,⁸⁸ and this issue, which should have been proactively settled as part of the engagement with the government in the preparation of the 2006 RP, was resolved only in 2009, when ADB made it a condition for its review and clearance of the updated RP for the southern line.⁸⁹

⁸³ ADB Resettlement Audit of Highway Improvement Project, January 2006, p. 10. Subsequent ADB mission reports rated compliance with this provision either as "ongoing/satisfactory" or as "ongoing."

⁸⁴ Loan Agreement, March 2007, Schedule 5, para. 7.

⁸⁵ Project Administration Memorandum, CAM: GMS Rehabilitation of the Railway in Cambodia Project' (January 2008). No use was made of the guidance provided in ADB's handbook *Compensation and Valuation in Resettlement: Cambodia, People's Republic of China, and India*, November 2007.

⁸⁶ BTOR of Resettlement Review Mission, 13 July 2009. Attachment 1, item 2.

⁸⁷ Internal ADB E-mail communication of 2009.

⁸⁸ BTOR of Resettlement Review Mission, 13 July 2009, para. 10.

⁸⁹ Fax dated 6 August 2009 from project team leader to the undersecretary of state, the chairman of the IRC, and the project director advising them that the complete DMS database was needed to confirm the acceptability of the updated RP for the Southern Line.

76. While the URP of June 2010 for Phnom Penh claimed that “the DMS surveys were conducted in full consultation with AHs and affected villages/communes leaders,” the actual description of the DMS process simply states that following the public meetings (described in paras. 67-71 above), “...IRC/MPWT staff carried out house-to-house measurements of assets to be lost and updated the inventory” in late 2009.⁹⁰ In preparation, “IRC together with local resettlement specialist conducted brief workshops, on 8th July 2009, for field staff engaged in the DMS to explain the methods and procedures for the survey, including clarification of conceptual issues such as replacement cost.”⁹¹ At the end of the DMS, the AHs were expected to thumbprint the DMS form,⁹² and were given a handwritten Post-It note with the results of the DMS.⁹³ If disagreeing with the DMS, the concerned AP was expected to seek redress through the project grievance mechanism.⁹⁴

77. The inadequacy of the DMS process was recognized by ADB in April 2011, when a BTOR for a resettlement review mission stated that “the Mission is convinced that the AHs did not fully understand the details of the DMS on their affected assets. AHs also did not understand the bases for what each of them will receive in compensation. The Mission also found indications [in Toul Sang Kaeh] that the resettlement sub-committee working group ... may have made errors in identifying and measuring affected structures.”⁹⁵ The mission recommended that in the Phnom Penh/Samrong and Poipet sections, preparatory meetings should be conducted with AHs to explain the methodology for the DMS and the calculation of compensation. The February 2012 OSPF report noted that: “Complainants...request that the DMS and the categorization be explained to them again.”⁹⁶ Thus, the recommendation made during the ADB mission in April 2011 did not appear to have been adopted, and an ADB mission in October 2012 found that “DMS and consultation and disclosure activities carried out during the updating of the [Samrong] RP in late 2010–early 2011 were limited, and that the Updated RP for Samrong has to be further revised to ensure that the Project do not encounter problems similar to Phnom Penh (i.e., mis-categorization of structures, lack of transparency, and poor photo-documentation that led to complaints).”⁹⁷

78. As a result, ADB recommended in early December 2012 that a “desk review (resettlement audit) of DMS for all sections” should be undertaken covering all the updated RPs.⁹⁸ This, however, was rejected by IRC, which also informed the mission that the resettlement committee would not agree to any retroactive payments to AHs, the need for which was likely to have been one of the implications of such an audit.⁹⁹ The background for ADB’s recommendation was the belated realization that the DMS process and results—a core element of resettlement—was flawed: “Conscious of the mistakes in the conduct of the DMS and updating of the RPs for the other components of the Railway Project, IRC, CARM, and AusAID

⁹⁰ Ibid., p. 10.

⁹¹ Ibid., p. 3.

⁹² Ibid., pp. 11 and 17. A photo of a DMS post-it note provided by IRC to AHs accepting compensation can be found in the report by the NGO STT (Sahmakum Teang Tnaut): *Rehabilitation of Cambodia’s Railways: Comparison of Field Data*, July 2011, p. 10.

⁹³ Interview with ADB staff.

⁹⁴ RP, October 2006, p. 51 and Annex 2 (Resettlement Plan Booklet); and Updated RP for Phnom Penh, June 2010, Annex 2 (Public Information Booklet)

⁹⁵ BTOR of Resettlement Review Mission, 15 April 2011, para. 11.

⁹⁶ Review and Assessment Report of the Special Project Facilitator on the GMS: Rehabilitation of the Railway in Cambodia Project, February 2012, p. 8.

⁹⁷ BTOR of Mission, 16 October 2012, para. 6.

⁹⁸ BTOR of Mission, 20 December 2012 (covering pre wrap-up and wrap-up meetings with IRC for a resettlement mission in mid-November and early December 2012), para. 2.

⁹⁹ Ibid.

representatives have agreed to ensure the active participation of key stakeholders, especially the AHs, in the DMS and in subsequent activities leading up to the preparation, including actual implementation, of the RP for Samrong.¹⁰⁰ A number of measures for a more participatory future DMS process were outlined in an appendix to the BTOR, and it was agreed with IRC that a training seminar for AHs would be conducted “in August 2013, following the conclusion of the local and national elections.”¹⁰¹ The CRP was informed during its mission to Cambodia that this had been done.

79. It took more than 6 years after ADB approved the resettlement plan of October 2006 for detailed operational measures to be finally introduced to ensure a fully participatory DMS process, orient AHs on this process, and train executing agency staff in its implementation.¹⁰² This enhanced DMS process was to be used in the updating of the RP for Samrong Estate from July 2009.¹⁰³ Related to this, the updating of the 2012 Replacement Cost Study was also planned. Key features of this fully participatory DMS process were:

- (i) distribution of the 2009 DMS to AHs for review and reference at least 1 week before the start of the DMS updating;
- (ii) on-site DMS review and validation with active participation of AHs in the on-site review of affected assets, together with photo-documentation of these;
- (iii) validated DMS forms signed by AHs and witnesses, with a copy of the signed form to be given to the AHs; and
- (iv) disclosure of the results of the DMS validation, followed by consultation on resettlement options and entitlements.

80. It was agreed that this new participatory DMS process, along with a revised replacement cost study, would also be applied in developing the addendum resettlement plan for Phnom Penh covering 105 AHs. Following complaints from AHs in the Phnom Penh section, it was recognized that 242 AHs had houses that would be fully affected, and of these 105 AHs opted to move to the resettlement site.¹⁰⁴ The addendum RP for Phnom Penh was scheduled to be submitted to ADB in May 2013, but this had not happened by the time the CRP visited Cambodia in late October 2013.

81. ADB staff stated that detailed process guidelines for DMS preparation were not provided in RPs because this was not a requirement. They suggested that AHs were provided with a Post-It note listing the structures affected and the allowance for compensation. It was clear from interviews that ADB staff were aware of the faulty DMSs and were encouraging AHs to invoke the grievance redress mechanisms under the project, including the SPF. However, the staff also admitted that the local grievance redress mechanism was not fully operational at the time. It would seem that the staff had encouraged resort to SPF because the grievance redress mechanisms did not address the issues in accordance with standards and procedures expected under ADB's safeguard policies. Staff interviews also revealed that under the addendum RP for

¹⁰⁰ BTOR of Resettlement Mission, 20 December 2012 (para. 11). The mission was undertaken on 13–22 November and 13 December 2012.

¹⁰¹ Ibid., Appendix 4.

¹⁰² BTOR of Mission on the Expanded Income Restoration Project; Appendix 5: Seminar and Consultation on the Updating of the DMS for Samrong Estate; 25 March 2013.

¹⁰³ The ADB Management in its response to the draft CRP report states that the GoC “has officially requested the removal of Samrong component from the project” and “ADB is currently preparing a change in the project scope.” It further states that “ADB has requested the government to prepare a communication plan in order to inform the AHs identified in the 2009 Samrong RP of the proposed removal of the Samrong facility from the project scope.”

¹⁰⁴ BTOR of Special Project Administration Mission, 11 April 2013. Attached to this BTOR is a resettlement review, which mentions the addendum resettlement plan for Phnom Penh (para. 10).

Phnom Penh, compensation would be indexed to prices for building materials should compensation be delayed beyond 1 year. It became clear to the CRP that once an RP or URP is agreed on with a government, ADB staff find it extremely difficult to request the government to revise or improve aspects of the plan. ADB project staff should therefore exercise high levels of due diligence to ensure that adequate consultation and information dissemination takes place and that acceptable DMSs are undertaken before an RP or URP is agreed on with the government. Staff interviews suggested that such due diligence had not been forthcoming from ADB staff with regard to consultations, information dissemination, and DMSs, except for the addendum RP for 105 AHs in Phnom Penh and possibly also Samrong Estate.

82. The CRP finds that there was limited consultation with APs during the preparation of the 2006 RP and the updated RPs (except possibly for the addendum RP for 105 AHs in Phnom Penh and Samrong) and that, as a result, APs did not have an adequate opportunity to participate in choosing and planning implementation options or adequately providing their views on compensation and rehabilitation measures. The CRP also finds that a significant number of APs were uneducated or vulnerable and that ADB did not carry out a preparatory phase that would have socially prepared them to benefit fully from the consultation phases. Furthermore, inadequate arrangements were made by ADB for the participation of AHs in the conduct and verification of the DMS, resulting in inadequate consultation with those whose assets were affected. Despite the assertion in the updated RPs that APs were fully informed about the project, both ADB's own mission reports and independent sources of information (e.g., the SPF) indicated that this was not the case. Evidence provided to the CRP convinced the panel that resettlement information on compensation and resettlement options was not adequately disclosed to APs in a form and language that they could understand. Significant numbers of uneducated and vulnerable APs did not have the understanding or the needed information to participate fully in the RP planning and implementation. The CRP concludes that, as a result of these actions and omissions of ADB, APs and AHs were denied an adequate opportunity to present options for resettlement and to influence the RP decision-making process.

83. **Consultation with NGOs and civil society organizations.** Instead of a proactive strategy involving NGOs or other civil society entities in a dialogue regarding resettlement issues from the start of the project, ADB was initially reactive in its engagement with NGOs and began addressing the resettlement issues they raised only after the NGOs had raised these with the ADB President in October 2010. Since then, however, considerable efforts have been undertaken by ADB staff, especially CARM staff, to engage with NGOs and to communicate with them. For this reason, the CRP suggests in its recommendations that the CARM develop an NGO communications and engagement strategy (in consultation with NGOs) to give definite form to this relationship, for the benefit of this project and future projects.

84. The RRP of November 2006 does not consider how NGOs or civil society entities could be engaged in the context of the project. While the RP of October 2006 mentioned the lesson that "NGOs can assist in setting up local networks for people to be able to state grievances and concerns," this lesson was not taken up in the project approach to resettlement, and the only role envisaged for NGOs was as contractors engaged in planning and implementing the IRP.¹⁰⁵ This absence of a strategy for engaging with NGOs and other civil society entities was striking in view of the broader context, where ADB-supported projects were already subject to intense scrutiny regarding resettlement issues by NGOs in Cambodia,¹⁰⁶ and where ADB was about to

¹⁰⁵ RRP, November 2006, pp. 58, 60, and 67.

¹⁰⁶ BTOR, 11 February 2008, describes meetings with NGOs on their concerns regarding the drafting of a Cambodian Resettlement Sub Decree (TA 4490-CAM), and regarding the handling of resettlement in the Phnom Penh to

embark on a project with larger resettlement impact than any previous ADB-supported project in the country.

85. ADB interaction with the Cambodian NGO community on the railway rehabilitation project started in March 2010, when the NGO Forum on Cambodia invited ADB to make a presentation on resettlement, which took place on 19 March.¹⁰⁷ At a later meeting in March 2010 between the NGOs and a resettlement review mission for the project, the NGOs raised issues regarding “project entitlements, relocation of, and income restoration measures for the affected households in Phnom Penh.”¹⁰⁸ From then on, over the following years, numerous meetings were held with the NGO Forum and specific NGOs (Equitable Cambodia (formerly BABC), Inclusive Development International, Sahmakum Teang Tnaut, and Housing Rights Task Force), as they started raising specific concerns when resettlement implementation started in May 2010 and the compensation and relocation of AHs began.

86. From 20 May 2010 onward, ADB received several communications from NGOs voicing concerns regarding different resettlement issues, and on 21 October 2010 a group of NGOs sent a letter to the ADB President expressing concern about the conditions of people affected by the project including facilities in resettlement sites and the adequacy of transition allowances.¹⁰⁹ At a meeting in December 2010 at CARM with participation by ADB, AusAID, the NGO Forum, and three of the NGOs engaged in advocacy for the people affected by the project, senior ADB staff acknowledged receipt of the NGO letter and the lack of knowledge of the seriousness of the issue and assured them that the ADB was ready to revisit the approved Resettlement Plan.¹¹⁰

87. However, at levels below that of the Director General, SERD, ADB staff had known about the issues raised by the NGOs for more than a year. The only resettlement review mission in 2009 had identified a number of critical issues—limited consultation on resettlement sites, faults in the DMS, lack of capacity building, and inadequate EMO reporting—that were to haunt the project over the succeeding years.¹¹¹ These and additional issues were reiterated in April 2010 in reports submitted by ADB’s newly hired monitoring consultant.¹¹² The follow-up by ADB on the issues raised in this report, and in the consultant’s second report in late 2010, was reluctant and partial.¹¹³ Thus, it was only after the NGOs started their persistent advocacy on behalf of the APs by publicizing issues related to the resettlement under the project and communicating these to senior ADB Management, that ADB significantly stepped up its efforts to improve resettlement planning and implementation through enhanced supervision and specialist staff involvement.

88. Senior ADB staff interviewed acknowledged the important role played by NGOs in bringing the resettlement issues to the attention of ADB. These issues were taken seriously by

Ho Chi Minh City Highway Project (Loan 1659-CAM), also known as the Highway One Improvement Project (paras. 2–10).

¹⁰⁷ Letter from NGO Forum on Cambodia to CARM of 10 March 2010.

¹⁰⁸ BTOR of Resettlement Review Mission, 7 May 2010, para. 4.

¹⁰⁹ The letter was sent by the NGO Forum, the Housing Rights Task Force, and Bridges Across Borders Cambodia. The BABC report “Derailed” was also provided along with the letter.

¹¹⁰ Minutes of Meeting held at CARM with NGOs, 3 December 2010.

¹¹¹ BTOR of Resettlement Review Mission, 13 July 2009.

¹¹² BTOR of Resettlement Review Mission, 7 May 2010, Table 1, with Summary of ‘Recommendations for Improving Resettlement Implementation’. Specific issues raised in this table are dealt with in the relevant sections of this report.

¹¹³ BTOR of Resettlement Mission, 5 January 2011, Annex with “Proposed Actions to Improve Resettlement Implementation and Monitoring.”

the senior ADB staff in 2010 and various actions were initiated to address the grievances. A senior ADB official went to Cambodia and met with NGOs, and continued to engage with them thereafter as well. This sent a strong message to ADB staff that resettlement issues were to be taken as seriously as technical and other project issues. However, senior ADB staff also observed that had the engagement commenced earlier in the project and in a more structured way involving NGOs, the government, and ADB, it might have been more constructive and led to quicker resolution of issues. A positive outcome of NGO engagement was the recruitment of an international safeguard specialist by CARM in 2011 from its own staff allocations. ADB staff appreciated the feedback from NGOs, supported by reliable information, solid evidence, and sound analysis.

89. Since the December 2010 meeting, CARM and AusAID have put considerable resources into addressing resettlement issues raised by NGOs and AHs. CARM staff was clear that it favored “developing a much more engaged civil society strategy in the Cambodia Resident Mission” because there were “other benefits.”¹¹⁴ They added that the engagement of NGOs could benefit “the preparation of projects” and help in getting “feedback from other stakeholders” that could “lead to a resettlement plan or a resettlement strategy that was more effective.”¹¹⁵ CARM staff spoke positively about the current NGO relations, stating that “communication is...important and some NGOs are...serious about the welfare issues of the affected households,”¹¹⁶ that they understood what CARM staff were trying to do, and that the issues could be resolved.¹¹⁷

90. **The conclusions on ADB policy compliance are as follows:**

- (i) **Limited consultation with APs during the preparation of the 2006 RP did not ensure that “specific opportunities [were] provided for them to participate in choosing planning and implementation options” [OM F2/BP, para. 4(v)], or that “the views of the affected people are taken into account in formulating the compensation and rehabilitation measures” (OM F2/OP, para. 44), resulting in noncompliance with these policy provisions.¹¹⁸ The implementation arrangements during the preparation of the 2006 RP were not adequate to ensure compliance, with the provision that: “Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation” [OM F2/BP, para. 4(v)].¹¹⁹**

¹¹⁴ Confidential CRP interview.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ As reflected in the requesters’ comments on the CRP’s draft report, the NGOs have a different perception of this relationship and maintain that “since 2010 the ADB has consistently dismissed NGO recommendations regarding the myriad of problems associated with the Railway project resettlement process. It must also be noted here that several NGOs were threatened with closure by the Cambodian Government, and one NGO (STT) was suspended, following a letter NGOs wrote to the ADB president.”

¹¹⁸ In Management’s response to CRP’s draft report dated 20 December 2013, it is maintained that ADB fully informed the government of its responsibilities to comply with consultation requirements, and that ADB complied with its obligation to support and monitor implementation. The CRP does not agree with this statement, and find that the consultations conducted in connection with the 2006 RP, the 2007 Addendum RP, and the four URPs have been inadequate as described in para. 64 (and Table 2), and 67-70.

¹¹⁹ In Management’s response to CRP’s draft report dated 20 December 2013, it is maintained that the 2006 RP contained adequate implementation arrangements for social preparation activities to enhance participation by vulnerable groups. The CRP does not agree with this statement. Social preparation activities were not described

- (ii) **Inadequate arrangements for the participation of AHs in the conduct and verification of the DMS resulted in noncompliance with the provision that: “The resettlement documents [including an asset inventory] are to be developed in consultation with those affected” (OM F2/OP, para. 34). Notwithstanding the assertion in the updated RPs that APs were fully informed about the project, both ADB’s own mission reports and independent sources of information (OSPF) indicated that this was not the case, and that resettlement information on compensation and resettlement options had therefore not been disclosed to APs “in a form and language that they can understand” (OM F2/OP, para. 45), in part since the project had not considered that “for nonliterate people, other communication methods will be appropriate” (OM L3/OP, para. 22).¹²⁰**
- (iii) **Neither the RRP of November 2006 nor the RP of October 2006 considered a strategy for involving NGOs or other civil society entities, and during project preparation there was noncompliance with the requirement that: “In preparing the resettlement planning documents, ADB requires the borrower to take into account the views of affected groups and civil society groups where relevant, including nongovernment organizations” (OM F2/OP, para. 55[iii]). The absence of a strategy for dealing with NGOs or other civil society entities also means that the requirement “(t)o facilitate dialogue with affected people and other individuals and organizations...ADB shall ensure that the project’s design allows for stakeholder feedback during implementation” (OM L3/OP, para. 15), involving “communications plans for certain projects and programs, particularly those likely to generate a high level of public interest” with recommendations on how to “increase involvement of grassroots and civil society organizations in the development process” (OM L3/OP, para. 16) was not complied with.¹²¹**

2. Adequacy of Basic Services and Facilities at Resettlement Sites

91. **The request for compliance review** claimed that: “Households resettled under the Project, including requesters, have in some cases reduced access to basic services, including water and electricity, as compared to their pre-resettlement situation. None of the five Project-sponsored resettlement sites were properly prepared with services prior to relocation of households, in contravention of RP commitments and ADB policy. Many of the services have

anywhere in sufficient detail to provide proper operational implementation guidance, and were also not implemented as intended. See para 66, and 70-71.

¹²⁰ In Management’s response to CRP’s draft report dated 20 December 2013, it is maintained that the 2006 RP contained adequate arrangements for the participation of AHs in the conduct and verification of the DMS. CRP does not agree with this statement as substantiated in para 74, 77, and 79. Management also maintains that ADB raised shortcomings in the DMS process as soon as it became aware of them and has consistently required the government to take corrective actions. Here too, CRP disagrees. ADB only raised issues with government on the quality and availability of DMS data, but not on the DMS process itself (para 75-76). The inadequacy of the DMS process was only recognized by ADB in April 2011 (para 77), and only in March 2013, was a participatory DMS process agreed with IRC (para 79).

¹²¹ Management’s response to CRP’s draft report dated 20 December 2013 maintains that the 2006 RP did contain a strategy for involving NGOs. The CRP does not agree. The 2006 RP did not contain a strategy for involving NGOs, only a plan to involve NGOs as contractors for IRP implementation (para. 84). There were no measures to take into account the views of civil society groups in preparing the resettlement planning documents, and no steps to ensure that the project’s design allowed for stakeholder feedback (incl by NGOs) during implementation – all required by ADB operational policies and procedures.

since been installed but some remain absent or inadequate” (para. 44). Moreover, “the distance of the resettlement sites from previous residences and urban centres and the failure to provide health facilities and schools at the sites has reduced access of AHs, including requesters, to these essential facilities. In some cases children have stopped attending school as a result. This is especially the case at the Phnom Penh site. In Battambang and Poipet mothers have expressed concern about the distance that their children have to travel to attend school and feel that this poses a risk to their safety” (para. 49).¹²² Another issue was that “resettled households were required to pay connection fees for services in at least three of the resettlement sites” (para. 45). It was also claimed that as a result of inadequate services at resettlement sites, accidents took the lives of three children (paras. 48 and 51).

92. **ADB policy requirements:** OM F2/OP and BP states that one of the three important elements of the involuntary resettlement policy is “assistance for relocation, including provision of relocation sites with appropriate facilities and services,” and that a “schedule for providing resources and opportunities for reestablishing housing, facilities, networks, incomes, and livelihoods, prior to relocation should be included in the resettlement plan.”¹²³ The policy further specifies that “Community and public resource losses to be considered as eligible for compensation include...public structures such as markets, health and educational facilities, water and washing points, and meeting houses; and...infrastructure such as roads, bridges, and other transport lines; power facilities; telecommunication lines; and water sanitation and drainage facilities.”¹²⁴ The provision of adequate infrastructure and services at resettlement sites will contribute towards achieving another important element of the involuntary resettlement policy, namely, that affected people enjoy “at least the same level of well-being with the project as without it.”¹²⁵

93. Overall, resettlement under the project has been characterized by inadequate planning for facilities in relation to the needs of the resettlers (e.g. on-site services such as education and health in Poipet and Phnom Penh resettlement sites), inadequate consultation on the sites, lack of preparation of resettlement sites with facilities ahead of the relocation, slow physical implementation, and questionable design and build quality of some of the physical works. However, according to communication issued by ADB staff to the public on the project: “It simply takes a year or two for these new, resettled neighborhoods to come alive.”¹²⁶

94. Under the project, five resettlement sites were established in Poipet, Battambang, Pursat, Phnom Penh, and Sihanoukville. The 2006 RP stated that “The sites will be developed with all the basic infrastructures: access roads, water supply, electricity, drainage and toilets facilities (pit latrines). The sites will be fully developed before APs have to move onto them.” (p. 54). This commitment was not adhered to when AHs were relocated to the resettlement sites, since the infrastructure was at best partially furnished at the time of relocation, and what was subsequently made available was often of inferior quality. Moreover, although provided for in OM F2/OP and BP, neither the Transport and Communications Division nor RSES raised the issue of additional facilities, such as education and health, during the preparation of the 2006 RP or the subsequent URPs for the different sections of the railway line, even though it was known that at least the Poipet resettlement site was planned for 588 AHs, a community size that should warrant dedicated services such as a school at the site.

¹²² Additional information on the same issue is provided in para. 58 of the request for compliance review.

¹²³ Involuntary Resettlement, F2/BP, para. 4, and F2/OP, para. 34.

¹²⁴ Ibid., F2/OP, para. 15.

¹²⁵ Ibid., F2/BP para. 4.

¹²⁶ ADB: The Cambodian Railway Tracker, <http://www.adb.org/projects/37269-013/activities>.

95. The 2006 RP specified that resettlement sites should preferably be located 3–5 km from the location from which the AHs will be displaced.¹²⁷ With one exception—Pursat—this principle was not adhered to when the location of resettlement sites was decided on. For the other four resettlement sites, the cost of land appeared to have been a determining factor in site selection, even if the choice of a least-cost option meant that the site would be located beyond the limit suggested in the 2006 RP.¹²⁸ Thus, in the case of the Trapeang Anhchanh site for Phnom Penh, a location outside the city 20 km or more from the original homes of the resettlers was selected because the land price was about half the price of land at an alternative site closer to the city.¹²⁹ Both the Sihanoukville and Battambang sites are about 7 km from where the AHs were displaced. Consultation on the selection of sites appears to have been inadequate. As reported in the BTOR for the resettlement review mission in June 2009, AHs in Sihanoukville were not informed of the location of the resettlement site ahead of resettlement, and while AHs in Pursat and Poipet knew the location, they had not visited the sites.¹³⁰

96. Since April 2010, concerns regarding the adequacy of infrastructure and services at the resettlement sites in Battambang, Pursat, and Sihanoukville had been raised by the newly hired ADB staff and by NGOs in written communications to ADB and at meetings.¹³¹ Similar issues were later reported by a project review mission in August 2010: “The Review Mission found that some resettlement sites had not been provided with water and power prior to the relocation of affected households. This is a breach of the approved resettlement plans, and the resettlement responsible (IRC) has been alerted to this. IRC has undertaken to resolve the issue promptly.”¹³²

97. Issues regarding infrastructure and services at resettlement sites had been known to ADB since the beginning of 2010, and were reported in the EMO’s 10th quarterly report of July 2010¹³³ and by the ADB mission in late July and early August.¹³⁴ The BTOR for a Resettlement Mission undertaken from 20 to 22 December 2010 identified additional issues and ascribed the overdue response to address these to “the inability of the project supervision consultants (PSCs) to sustain mobilization of its international and local resettlement specialists in 2010 as one of the reasons behind the project’s shortcomings, principal of which is the PSC’s failure to guide the IRC and local governments’ resettlement working groups in updating and implementing the RPs.”¹³⁵ As a result, “the resettlement specialists were not on hand to advise IRC on the preparation of the relocation sites in Battambang, Pursat, and Sihanoukville, or on the subsequent shifting of AHs to these sites.... Consequently, a number of resettlement issues that could have been easily and expediently settled were allowed to fester, only to reach the attention of RD-MEF, including ADB, through the mass media and letters of complaints of NGOs.”¹³⁶

¹²⁷ October 2006 Resettlement Plan, p. 59.

¹²⁸ Ibid. pp. 54–55.

¹²⁹ Ibid.

¹³⁰ BTOR Resettlement Review Mission, 13 July 2009, para. 4.

¹³¹ BTOR on Resettlement Supervision and Monitoring, First Mission, April 2010, by ADB Social Adviser; and minutes of NGO meeting with ADB on 19 May 2010. The main issue raised was the deficient water quality at the Phnom Penh and Battambang resettlement sites.

¹³² BTOR of Review Mission from 29 July to 5 August; 12 August 2010, para. 11.

¹³³ The EMO’s 10th quarterly report for 16 April–15 July 2010 (May 2010) identified issues in the following resettlement sites: Pursat (inadequate drinking water supply, inadequate drainage, electricity connections had to be paid for by the AHs), Battambang (no access to drinking water or electricity), Sihanoukville (no access to electricity, inadequate drainage). (p. 7)

¹³⁴ BTOR of joint ADB/AusAID Loan and Grant Review Mission, 12 August 2010.

¹³⁵ BTOR of Resettlement Mission from 20 to 22 December 2010; 5 January 2011, para. 11(e).

¹³⁶ Ibid.

98. Only in December 2010 did ADB complete its investigation of the issues raised in May 2010 by the NGOs including the lack of adequate infrastructure at resettlement sites, and agreed with IRC “to mitigate the observed site specific implementation issues, to strengthen the resettlement process under the Project to avoid repetition in future, and to help improve resettlement outcomes under the Project.”¹³⁷ In response to a letter from the NGO Bridges Across Borders Cambodia (BABC) of 14 February 2011, ADB stated that: “ADB and AusAID have reviewed the approach to planning and resettlement under the rail project with the Cambodian government, to ensure compliance with ADB safeguards policy. As a result of negotiations, the Government has agreed to change its approach to planning resettlements. This will ensure that no resettlement is undertaken prior to basic services and compensation processes being in place.”¹³⁸ At the very least, this was evidence that when ADB proactively engaged the government, agreement to implement ADB safeguard policies properly was possible.

99. The BTOR of a resettlement review mission in January 2011 reported positively on the government’s follow-up to this agreement: “The Mission appreciates the Government’s efforts in implementing resettlement under the Project. Outstanding issues are now being addressed in a satisfactory manner, with the enthusiasm and cooperation of RD-MEF, the national resettlement consultant, and the resettlement subcommittees, and we look forward to an improved resettlement implementation.”¹³⁹ This assessment notwithstanding, problems continued, as reported in the BTOR for a resettlement review mission in April 2011,¹⁴⁰ and in the BTOR for a communications planning mission for the project in June 2011, which described issues in resettlement sites such as lack of adequate water, sanitation, electricity, and other facilities.¹⁴¹ By December 2011, a year after ADB had agreed with IRC on resolving issues at the resettlement sites, some but not all the planned services had been delivered, and for some of the services delivered new issues were surfacing, namely, those of maintenance and inadequate design.¹⁴² A year later, in December 2012, a joint review mission comprising ADB, AusAID, and the government reported that “IRC has continuously addressed outstanding resettlement issues...and all agreed actions due on or before November 2012 have been addressed by IRC.”¹⁴³ However, there remain what ADB terms “minor issues regarding facilities at the relocation sites,” and these include maintenance and inadequate design problems, some of which were identical to those observed a year earlier.¹⁴⁴

¹³⁷ Memo to Executive Directors from Director General, Southeast Asia regional Department (SERD), 15 December 2010.

¹³⁸ Letter to three NGOs (BABC, SST, HRTF) from Putu Kamayana (CARM) and Megan Anderson (AusAID); 22 February 2011.

¹³⁹ BTOR of Resettlement Review Mission, 10 January to 3 February; 10 February 2011, para. 8.

¹⁴⁰ BTOR of Resettlement Review Mission, 15 April 2011. Identified issues were in Battambang (no water on site, nonfunctioning latrines, AHs not reimbursed for electricity connections), and Pursat (24 AHs on the RS but no drinking water, electricity, or drainage culverts).

¹⁴¹ BTOR of Communications Planning Mission for Cambodia’s Railway Rehabilitation Project, 8 to 9 June (OIC, SCMRU); 17 June 2011, para. 4.

¹⁴² BTOR of Resettlement Mission, 7 December 2011. In Poipet some hand pumps were not functioning, but IRC had handed them over to the AHs and did not view the repair of the pumps as its responsibility. Likewise, in Battambang, filtered water was provided from a pond located 200 m from the site, but the filter tank capacity was inadequate. Here, too, IRC did not feel responsible for finding a solution.

¹⁴³ MOU of Joint Review Mission, December 2012, Annex 5 on Resettlement Review, para. 1.

¹⁴⁴ Ibid., para 8. In Poipet, the issues concerned inadequate drainage leading to erosion of roads, and seepage from latrines; Pursat and Sihanoukville both had issues with inadequate drainage leading to erosion of roads; in Battambang the maintenance of the water system remained a challenge; and the Phnom Penh site had solid waste management problems.

100. During its mission in January 2012, OSPF visited the resettlement sites in Phnom Penh, Poipet, Battambang and Sihanoukville and reported that: “The complainants in the relocation sites have acknowledged that the environment is better compared with their previous sites, and that they now have a plot of land.... In some sites the distance to schools is much farther than previously, which makes it difficult for small children to go to school. The accessibility of health centers is an issue mentioned by some.”¹⁴⁵ This statement that AHs acknowledged that the environment in the resettlement sites is better compared with their previous sites is disputed by the requesters.¹⁴⁶

101. Yet, only in December 2012 did ADB acknowledge that “(t)he size of the Poipet resettlement site requires dedicated services on site. A primary school is being built by the Ministry of Education on site....”¹⁴⁷ The Poipet resettlement site was intended to accommodate 588 AHs, and when the AHs started relocating to the site, no educational (or health) facilities had been planned. The Poipet resettlement site was where an 11-year old, whose family had moved there in November 2011, was killed by a truck when crossing a main road, on his way back from his old school near his former home (para. 51 of the request). The new primary school was scheduled to open in September 2013.¹⁴⁸ At Poipet, IRC has also allocated land for a health center, which is currently under construction and requires funding from the Department of Health for operational costs. Currently, the nearest health center is located 5 km from the resettlement site.¹⁴⁹

102. At the Phnom Penh resettlement site, which is scheduled to accommodate 266 AHs, access to affordable health services became available only in January 2013 when “AusAID...made an agreement with the non-profit health insurance agency SKY to offer households relocated by the railway project in Phnom Penh coverage of medical bills at reduced premium rates. This is part of the services provided by SKY elsewhere in Phnom Penh. As part of SKY, families are expected to pay the monthly premium fees themselves. However as part of services provided by the railway project, families can choose to cover this through the Social Safety Net Funds made available for each Self Help Group.... The SKY insurance will cover registered households until the end of the SKY program in Cambodia in September 2013.”¹⁵⁰ The same program also provides access to health care for resettlers in Pursat.¹⁵¹ During its visit to Cambodia in October 2013, the CRP was informed that arrangements had been made to continue the SKY insurance program with financing from the Social Safety Net Fund established under the EIRP.¹⁵² In the Phnom Penh resettlement site, the CRP observed that the five-room primary school, serving both the railway project resettlers and earlier re-settlers from other projects in Phnom Penh, was being enlarged with 10 new classrooms to address the current overcrowding with as much as 60 or more students per class.¹⁵³

¹⁴⁵ Review and Assessment Report of the Special Project Facilitator on the GMS: Rehabilitation of the Railway in Cambodia Project, February 2012, p. 7.

¹⁴⁶ See the attached requesters' comments on the draft CRP report.

¹⁴⁷ MOU Joint Review Mission, December 2012, Annex 5 on Resettlement Review, para. 11. In addition to the primary school, the size of the Poipet RS was also found to warrant construction of a police station (with AusAid funding).

¹⁴⁸ ADB: The Cambodian Railway Tracker, <http://www.adb.org/projects/37269-013/activities>.

¹⁴⁹ MOU Joint Review Mission, December 2012, Annex 5 on Resettlement Review, para. 15.

¹⁵⁰ ADB: The Cambodian Railway Tracker, <http://www.adb.org/projects/37269-013/activities>.

¹⁵¹ Ibid. Management's response to the CRP draft report of December 20, 2013 questions this publicly available information from ADB, and states that it was the self-help groups established under the project's expanded income restoration program (EIRP) that agreed with SKY on the medical insurance scheme.

¹⁵² Interview with ADB staff at CARM, 21 October 2013.

¹⁵³ MOU Joint Review Mission, December 2012, Annex 5 on Resettlement Review, para. 15.

103. The MOU for the November–December 2012 mission presented information on the distance to services at the five resettlement sites:

Table 4: Distance to Services from Resettlement Sites
(km)

Resettlement Site	Primary School	Secondary School	Health Facility	Market
Poipet	1.0	4.5	5.0	2.0
Battambang	1.0	1.0	4.0	5.0
Pursat ^a	2.0	5.0	2.0	0.4
Phnom Penh	0.2	5.0	0.2	0.2
Sihanoukville	2.5	3.5	5.0	3.5

km = kilometer.

^aThe Pursat RS is located less than 1 km from the AHs' former habitations.

Source: MOU Joint Review Mission, December 2012, Annex 5 on Resettlement Review.

104. During its visit to the resettlement sites, the CRP found that infrastructure and service problems continued. In Sihanoukville, Battambang, and Poipet both the access roads and the roads inside the resettlement sites were eroded and barely passable in the rainy season. Pursat is also reported to have an access road that is prone to erosion. The CRP found that the access road to the Trapeang Anhchanh/Phnom Penh site was flooded and difficult to pass for most vehicles. Part of the flooding appears to be the result of landfill operations taking place on one side of the access road. Solid waste management has recently been introduced here, but part of the access road to the site still functions as a garbage dump. A community health post contained some dilapidated furniture, a rudimentary supply of medicines, and was inadequately staffed. Both the Battambang and Poipet sites have garbage disposal problems, but none of the sites have arrangements for adequate solid waste management.

105. Although resettlement has been ongoing for more than 2 years, it is still far from completed. As of June 2013, only 54% of the AHs scheduled for relocation to resettlement sites have moved there:¹⁵⁴

Table 5: Status of Resettlement, June 2013

Resettlement Site	AHs to Resettle	AHs at the Site	% Relocated
Poipet	601	378 ^a	63
Battambang	48	38	79
Pursat	33	26	79
Phnom Penh	266 ^b	79	30
Sihanoukville	33	6	18
TOTAL	981	527	54^c

AH = affected household.

^aADB: The Cambodian Railway Tracker (<http://www.adb.org/projects/37269-013/activities>) provides the figure of 328 AHs as of 1 April 2013.

^bThis figure represents the original 161 AHs covered in the June 2010 URP for Phnom Penh and the additional 105 AHs covered in the pending addendum RP for Phnom Penh.

^cThis figure contradicts the statement in ADB's official public communication on the project that by 31 October 2011, "66% of eligible households had moved to relocation sites."

Source: Information from the Transport and Communication, Southeast Asia Department, ADB, 7 August 2013.

106. Once the inadequate provision of infrastructure was highlighted by NGOs, ADB focused its attention on appropriate measures to take on the resettlement sites. It is regrettable that

¹⁵⁴ Aide-Mémoire, Project Administration Mission 2 to 9 April 2013; Annex on Resettlement Review, Table 2.

these measures were taken only after NGOs had raised these issues. Even so, ADB's internal reporting had indicated inadequacies at the resettlement sites. Up to the end of 2010, project staff placed emphasis on technical and institutional aspects of the project. There appears to be a need for a seismic mind shift on the part of ADB project staff for this culture to change. The CRP comments on this aspect in the lessons section of this report (section IX).

107. **Death of three children at Battambang and Poipet.** The requesters alleged that two children at the Battambang resettlement site had died by drowning in a nearby water pond 4 days after their family resettled in May 2010. The pond was created when it was excavated for soil to use as landfill on the resettlement site and access road. Ponds of this nature can be dangerously deceptive as to their depth. The unprotected pond was located some distance away from the relocation site, on private property. Investigations by ADB staff, supported by the evidence gathered by SPF, indicate that the two children had gone to the pond accompanied by their sister-in-law. There are contradictory versions of why they went to the pond. The requesters alleged that they went there to bathe, wash clothes, and collect water for drinking. The police and ADB investigations suggested that they may have gone to collect snails and small crabs. While at the pond, one of the children fell into distress and the other went to his rescue. The sister-in-law was unable to help and hastened back to the relocation site to call for help. When she returned with help, both children had drowned in the pond.

108. There is no doubt or dispute that at the time this incident happened there were no water supply facilities at the resettlement site. People on the site obtained drinking water from a private water supplier, who trucked water for a price. The resettlement site itself is located in the middle of rice paddies and therefore surrounded by wetlands. To paraphrase an oft-quoted line, there was water everywhere but not a drop to drink. In this situation, it is reasonable and foreseeable to conclude that resettled families might have resorted to alternate sources of water for washing, cooking, and bathing. The pond in question was one such ready source. The CRP's investigations revealed that it took around 8 months for water to be trucked to the site under the auspices of the IRC, at a subsidized rate. Later a water pond was constructed, although the quality of water was a problem. When the CRP visited the site, a filtration tank and an overhead tank with pump had been constructed, and pipes were being laid to every house to supply water from the overhead tank.

109. It may not always be possible for a borrowing government to provide pipe-borne water to resettled families. Resettlement sites may be located a considerable distance away from water pipelines or there may be inadequate pressure in existing pipelines to serve the resettlement site. This was apparently the case at the Battambang site. Nevertheless, the provision of potable water to resettled people is a fundamental requirement of ADB resettlement policies and good practice, and is increasingly recognized as a fundamental right by the international community. The pond in question at Battambang was not provided with any safety measures and, in the absence of a viable and regular source of water, it was more likely than not that resettled people would resort to it to satisfy their water needs.

110. The unfortunate deaths of two children at the water pond at Battambang are traceable to multiple causes and causal conditions. The inadequate safety at the pond is only one of these. The failure to provide a viable and regular source of potable water before people were moved is another. On the other hand, whether the children were accompanied by a responsible adult when they went to a relatively new pond which they did not know so well is also a causal condition for consideration. It is not the CRP's mandate to come to factual findings on the liability for these deaths, nor is it within the CRP's competence to grant remedies in the form of "damages." The CRP's mandate is to evaluate whether the deaths were caused by

noncompliance with ADB operational policies and procedures, and if so what remedies would be appropriate to bring the project into compliance. The failure to provide adequate water supply to the resettled people of Battambang is a clear instance of noncompliance with ADB's involuntary resettlement policy. Any reasonable person would conclude that the resettled people, including the children concerned, would resort to other sources of water in this situation. It was foreseeable that an accident of this nature could happen. If the CRP were possessed of all the facts and had a mandate to investigate all actors concerned and come to findings on the nature and extent of accountability, the panel might have been able to come to factual findings on ADB's accountability for the deaths. However, that is not the case.

111. This family is extremely poor and vulnerable. The main breadwinner of the family, the father, is clearly suffering from mental distress on account of the loss of his two children. More than likely, this has affected his ability to support the family. The CRP visited this home and found it to be in poor condition compared with the other houses at the resettlement site. The family has other children, who are equally poorly off. The loss of these two children represents, among others, a loss of future income and support for this family.

112. The child in Poipet who died on the way home from school was in a comparable situation. There was a longer distance between the school and the resettlement site than between the school and the original site from where the family was relocated. The child was hit by a vehicle while walking back from school. The accident happened soon after the family moved to the resettlement site. The Poipet resettlement site has now been provided with a primary school.

113. **Conclusions on ADB policy compliance:** ¹⁵⁵ ADB did not perform adequate due diligence regarding the planning (and associated budget allocation) in the October 2006 RP of resettlement site facilities, since it ignored the need for additional dedicated services at the Poipet resettlement site (an oversight that was repeated when the updated RP for Poipet was finalized in May 2010). Despite ADB's enhanced supervision effort and attention to the lack of facilities in resettlement sites from early 2010 and onward, and despite the subsequent engagement of SERD senior management and agreements with the government to rectify this issue, there has been lack of compliance with the requirement in both the Involuntary Resettlement Policy and the RPs that appropriate facilities in resettlement sites are provided prior to relocation, which continued into 2013. Consequently, the CRP concludes noncompliance with the following: OM F2/BP, para. 4;¹⁵⁶ OM F2/OP, para. 15;¹⁵⁷ and OM F2/OP, paras. 15 and 34.¹⁵⁸

¹⁵⁵ Management's response to CRP's draft report dated 20 December 2013 maintains that ADB performed adequate due diligence regarding the planning and budgeting of resettlement site facilities. CRP disagrees since planning of site facilities was minimalistic (para 94). Thus, the plan for Poipet intended to house 588 AHs did not include a school. The need for this was only recognized in Dec 2012 (para 101). Management acknowledges that many AHs were resettled to locations with insufficient site facilities, and states that this happened contrary to the requirements under the 2006 RP and without ADB's knowledge. CRP finds that the lack of knowledge indicates an inadequate supervision effort. Finally, inadequate construction quality of infrastructure has continued into the second half of 2013 (para 104).

¹⁵⁶ Affected people should enjoy "at least the same level of well-being with the project as without it."

¹⁵⁷ The policy specifies that "Community and public resource losses to be considered as eligible for compensation include...public structures such as markets, health and educational facilities, water and washing points, and meeting houses; and...infrastructure such as roads, bridges, and other transport lines; power facilities; telecommunication lines; and water sanitation and drainage facilities."

¹⁵⁸ One of the three important elements of the involuntary resettlement policy is "assistance for relocation, including provision of relocation sites with appropriate facilities and services," and that a "schedule for providing resources and opportunities for reestablishing housing, facilities, networks, incomes, and livelihoods, prior to relocation should be included in the resettlement plan."

Regarding the death of two children in Battambang, in the light of the circumstances of this case, and the CRP's findings about the failure to provide water as required by the ADB policy, the CRP believes that the ADB may consider offering a reasonable *ex gratia solatium* to this family without any formal admission of liability. A *solatium* of this nature would go a long way toward helping the family get back on its feet and provide support for its remaining members. A similar approach might be pursued in the case of death of a child occurring as a result of a road accident on the way back from school to the Poipet resettlement site, shortly after the relocation of the family.

3. Adequacy of Eviction Safeguards and Procedures

114. **The request for compliance review** alleged that in the Poipet section of the railway line, "households residing within the COI in Poi Pet have been served with three eviction notices since April 2012. In the first notice dated 27 March 2012, twenty-two households were informed that they have 10 days "to remove their houses and buildings away from the railway.... The notice was issued by Poi Pet City Hall to residents on 5 April 2012, just one day before the deadline" (para. 17). The CARM resettlement specialist verbally clarified to the requester that of the AHs in the COI in Poipet, 40 households were illegal encroachers who had moved to the site after the 2009 cutoff date defined in the RP (para. 19). The request also raises the issue that many AHs "are required to dismantle the part of the house and/or other structures within the COI but remain living in the residual Right of Way (ROW), where their security of tenure remains precarious" (para 8).

115. **ADB policy requirements.** OM F2/OP para. 34 requires that: "A schedule for providing resources and opportunities for reestablishing housing, facilities, networks, incomes, and livelihoods prior to relocation should be included in the resettlement plan." With regard to a cutoff date for claims for resettlement entitlements, the policy states that: "Affected people are to be identified and recorded as early as possible in order to establish their eligibility through a population record or census that serves as an eligibility cutoff date, preferably at the project identification stage, to prevent a subsequent influx of encroachers or others who wish to take advantage of such benefits," both to prevent "an influx of ineligible nonresidents who might take advantage of project entitlements and speculate on land values, and to prevent speculation by eligible affected persons."¹⁵⁹

116. When ADB became aware that there were eviction issues in Poipet, it sought to sort out the evidence and resolve the issues over several missions. As of September 2013, however, it was not clear from ADB documentation whether the issues had been resolved.

117. The section on project principles in the 2006 RP states that: "Construction works cannot commence on a particular section unless the IRC, of which MPWT is a member, has satisfactorily completed all resettlement activities in that particular section and ensured that the required rehabilitation assistance is in place."¹⁶⁰ Completion of resettlement activities includes payments for losses to AHs and provision of fully developed resettlement sites.¹⁶¹ While the principle that AHs should be compensated for lost assets prior to dispossession has been adhered to, both the compensation rates provided in the entitlement matrix and the execution of the DMS defining the losses of individual AHs were not in compliance with ADB policy as

¹⁵⁹ Ibid., F2/BP para. 4(viii), and F2/OP, para. 5.

¹⁶⁰ Resettlement Plan, October 2006, p. 38.

¹⁶¹ Ibid. p. 54, on fully developed resettlement sites, and the Resettlement Plan Booklet on payment for losses prior to relocation.

described above in section A.1. As described in section A.2 above, the commitment that resettlement sites would be fully developed before the APs had to move to them was also not complied with. Moreover, more than three years after displacement of AHs from the COI began, the commitment made in the 2006 RP that “(t)he Government will issue a certificate to APs relocated on-site indicating that they will be permitted to stay in the remaining ROW for a period of 5 years” has not been complied with.¹⁶²

118. Regarding the NGO complaint of April 2012 on the situation in Poipet, the MOU for the midterm review mission undertaken between 27 April and 8 May 2012 stated that

ADB received a complaint on 6 April from 22 households on an eviction notice issued by the Governor of Poipet. The complaint explains that the notice was dated 27 March 2012, requiring APs to relocate to the Poipet resettlement site within 10 days. They received the Governor’s letter on 4 April, giving them only 2 days to relocate. ADB and AusAID discussed with IRC to ensure that any actions taken on project affected people comply fully with the RP, which requires adherence to ADB policies as well as national law and international agreements entered into by Cambodia. ADB and AusAID have discussed with IRC the need to ensure that due process is followed. IRC has ensured ADB and AusAID that based on discussions with local authorities in Poipet, no actions will be taken for households under the ADB Office of the Special Project Facilitator (OSPF) process until sufficient outcomes from the process facilitated by OSPF was attained. IRC is determining further action for the other households.¹⁶³

119. The mission reports did not present any position on the distinction made by IRC between APs who were part of the complaint to OSPF and those who were not, although this distinction might entail significant differences regarding the way their concerns could be handled. However, the mission did discuss the issue of encroachers with IRC, and “IRC explained that sites are handed over to MPWT [after compensation to AHs]. The mission confirmed with MPWT that they are responsible for dealing with encroachment after the hand-over date consistent with the environmental management plan (EMP).”¹⁶⁴

120. ADB followed up on the issue during a mission from 18 November to 19 December 2012, during a visit to the railway COI and households that had received a clearance notice in the Poipet missing link section.¹⁶⁵ The mission was informed that a total of 111 households had received the clearance notice, and of these 109 would be able to shift back to the remaining ROW, while 2 households, which were recent encroachers, would be displaced.¹⁶⁶ In terms of the grievance from April 2012, the mission noted “that there are households who claim to have been in the COI despite not having DMS records and support the information with their IOL [inventory of losses] receipts. This [the presence of households] is also supported by an aerial photo taken a week after the DMS. These households are classified as new encroachers because they do not have a DMS. IRC explained during the wrap-up meeting that there are households who received an IOL based on a 15 m COI. When the 7 m COI was finalized, there were households who were no longer considered affected and

¹⁶² Ibid. p. 53.

¹⁶³ MOU Midterm Review Mission, 30 July 2012, Annex 5, para 22.

¹⁶⁴ Ibid., para 26.

¹⁶⁵ MOU Joint Review Mission (ADB, AusAID, Government of Cambodia), November–December 2012, Annex 5, para. 35.

¹⁶⁶ Ibid., para 34.

therefore were not included in the DMS.”¹⁶⁷ The mission requested clarification on these issues and on which steps IRC would take, including the dates for these, to be furnished by 31 January 2013.¹⁶⁸

121. A resettlement review mission in March 2013 found that the issues were only partly resolved. Of the 111 households that had received the clearance notice, 47 still remained in the COI, while the rest had shifted back and removed the part of their structures that was in the COI. Of these 47 households, 9 had agreed to move while the remaining 38 had not, and of these 38 households, 10 were recognized as AHs by IRC, while 28 were considered to have encroached after the cutoff date since they were not recorded in the DMS.¹⁶⁹ However, 25 of these 28 households claimed that they were in the COI before the cutoff date. For these, the IRC reiterated its earlier explanation that these were households that had received an IOL based on a 15 m COI, and when the 7 m COI was finalized, they were no longer considered affected and therefore were not included in the DMS. The mission reiterated its request from the December 2012 mission that information be provided to clarify the issues “including the remaining steps to be followed for clearing the COI.”¹⁷⁰

122. The principle of a cutoff date for entitlements (F2/BP, para. 4(viii); F2/OP, para. 5) is central to the planning and implementation of land acquisition for development projects. It is a principle used in resettlement policies both by ADB and by the World Bank. Other than a cutoff date, there is no measure to prevent an influx of ineligible nonresidents who might take advantage of project entitlements, or to prevent speculation by eligible affected persons.

123. **Conclusions on ADB policy compliance: While the principle in the resettlement policy that AHs are compensated for lost assets prior to dispossession has been complied with, both the compensation rates provided in the entitlement matrix and the execution of the DMS defining the losses of individual AHs were not in compliance with ADB policy (section A.1 above). Nor were the commitments that resettlement sites would be fully developed before the APs had to move to them complied with (section A.2), or the commitment that Government would issue a certificate to APs relocated on-site indicating that they could stay in the remaining ROW for a period of 5 years (the most probable dates being 2011-2016). Regarding the requesters’ specific complaint on the evictions from the Poipet section, ADB is in compliance since it responded promptly when it became aware of the eviction issues there and demonstrated due diligence over several missions to get these issues resolved.**¹⁷¹

4. Adequacy of Grievance Redress Mechanisms

124. **The request for compliance review** stated that while a significant number of APs had sought redress through the project grievance mechanism, it “has not worked for the vast majority of complainants. According to the BABC 2012 report, it appears from a review of Phnom Penh grievance cases that many have been deemed closed by the IRC after the IRC sent a response dismissing rather than resolving the problems and concerns raised” (paras. 74-

¹⁶⁷ Ibid., para 35.

¹⁶⁸ Ibid.

¹⁶⁹ BTOR of Special Project Administration Mission, 11 April 2013; Resettlement Review annex for mission of 26–28 March, para. 13.

¹⁷⁰ Ibid. Subsequent BTOR and MOU have no information on resolution of this issue.

¹⁷¹ Management’s response to CRP’s draft report dated 20 December 2013 refers to its response above to CRP’s conclusion 1 and 3. The CRP refers to its comments to Management on these conclusions.

75).¹⁷² Moreover, the requesters "have also been denied their right to negotiate solutions collectively and be represented by individuals and organizations of their choosing, thereby further weakening their position in the mediation process" (para. 82). In addition to the alleged environment of intimidation, the requesters attributed the deficient grievance redress to "a number of demand and supply-side barriers to accessing remedies, including limited awareness about the grievance process, low literacy levels, a lack of legal aid and a general feeling amongst AHs that submitting a complaint would be futile. It also identifies supply-side barriers, including low capacity of relevant authorities and lack of understanding of their roles and responsibilities" (para. 76).

125. **ADB policy requirements.** OM F2/BP para. 4(v) requires that: "Grievance redress mechanisms for affected people are to be established. Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation." Moreover, OM F2/OP, para. 45, states that "Public disclosure of resettlement plans and frameworks is mandatory.... In similar fashion...grievance procedures...must be disclosed to the affected people." To enable adequate resettlement planning and implementation OM F2/BP, para. 5, further provides that "ADB may also offer assistance to build the capacity of the [executing agency] and other project sponsors to prepare and implement the agreed resettlement planning document effectively."

126. During project preparation, ADB did not ensure that adequate grievance redress arrangements with sufficient detail to provide operational guidance to executing entities were described in the 2006 RP, and that APs were adequately informed about these arrangements. During implementation, ADB failed to act on early information from its own supervision missions on systemic problems with the functioning of the grievance redress process, and in particular the lack of capacity on the part of the government entities managing this process.

127. The 2006 RP described the grievance redress process as follows: "Grievances of APs in connection with the implementation of the RP will be handled through negotiation with the aim of achieving consensus" (p. 51). The grievance process comprises three stages, under which complaints are first submitted "to the Village or Commune Resettlement Sub-committee or IRC working group.... If after 15 days the aggrieved AP does not hear from, or if the AP is not satisfied with the decision taken by the first stage, the complaint may be brought to District Office." Here too, there is a 15-day period to resolve the complaint, and if unresolved the case will move before the Provincial Grievance Redress Committee, which must resolve the case within 30 days and report the result to MPWT, EMO, IRC, and the complainant. If a complaint cannot be resolved at this stage, the complainant can bring the case before the Provincial Court. In addition, "APs have the right to directly discuss their concerns or problems with ADB's Operations Department...through the ADB Cambodia Resident Mission office in Phnom Penh," and if not satisfied with the response, the AP "can directly contact the ADB's Office of the Special Project Facilitator (OSPF)" .

128. With the exception of the Provincial Grievance Redress Committee, the composition and the membership of the two preceding levels of the grievance redress process are not described in the RP, nor are the modalities for complaints processing or record keeping for any of the

¹⁷² The BABC (Bridges Across Borders Cambodia) report is 'Derailed: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway', 2012.

three levels.¹⁷³ In the absence of a resettlement operations manual (or a comparable document) and a plan for early capacity building of the entities involved in grievance redress, the only guidance on the handling and processing of grievances is the very brief and incomplete outline provided in the RPs.

129. It is therefore not surprising that when ADB began intensifying its supervision effort in early 2010, one of the findings was that “the grievance process is still not fully understood by the AHs and also sometimes by local authorities.”¹⁷⁴ It was noted that: “Training has been done but only for local authorities. It is recommended that new training on the planned grievance process also include the community leaders who are the first ones to receive complaints,” and further recommended that “all local authorities should have a list of the names of affected households.... Currently, some working groups (at the provincial, district and commune levels) have this list while others don’t.”¹⁷⁵ This marked the beginning of an uneven engagement on the part of ADB that would continue over the next 18 months to address the design flaws and inadequate training that characterized the grievance redress arrangements.

130. The BTOR of the resettlement review mission in December 2010 included a detailed annex with “Proposed Actions to Improve Resettlement Implementation and Monitoring” by ADB’s consultant social adviser.¹⁷⁶ This annex included the observation that “the existing Grievance Process is not trusted by the APs. There are claims that there is no transparency and clear mechanism. Local authorities are neither equipped nor trained to handle resettlement related grievances.”¹⁷⁷ To rectify this, the consultant hired by ADB suggested that IRC should propose “a new mechanism which has clear responsibilities, reporting requirements, and budget allocations to support the functions of the grievance committee members,” and further that IRC should “recruit and mobilize qualified experts to train local authorities and IRC Working Groups to conduct training on handling complaints and grievances.”¹⁷⁸ Both the diagnosis of the issues and the proposed remedial actions were rejected by ADB project staff, which responded that “if there is a specific case of lapse in the grievance process, then that can be investigated by IRC and addressed appropriately,” and the way forward would therefore be that during the next mission in January–February 2011, the focus should be to “emphasize to IRC and the project supervision consultants that the PSC should assist in gaining the confidence and trust of AHs on the grievance procedures.”¹⁷⁹ As it turned out, the failure to recognize and act on systemic problems associated with the grievance mechanisms was shortsighted.

131. The MOU for the resettlement review mission in January–February 2011 also included a detailed annex with “Proposed Actions to Improve Resettlement Implementation,” which reiterated the diagnosis of issues and proposed remedial actions from the previous mission.¹⁸⁰

¹⁷³ The Provincial Grievance Redress Committee is identical with the Provincial Resettlement Sub-Committee (PRSC): “a collegial body at the provincial level, headed by the Provincial Deputy Governor. The members of the PRSC are provincial department directors of line ministries represented in the IRC, and also the District Governors, and the Chiefs of communes and villages traversed by the Project road.” (Ibid., p. 65).

¹⁷⁴ BTOR of Resettlement Review Mission, 7 May 2010; Table 1: Summary of Recommendations for Improving Resettlement Implementation, p. 2.

¹⁷⁵ Ibid.

¹⁷⁶ BTOR of Resettlement Review Mission, 5 January 2011 (mission of 20–22 December 2010); Annex/Matrix with “Proposed Actions to Improve Resettlement Implementation and Monitoring” by ADB’s consultant social adviser; and feedback on findings and recommendations by ADB staff.

¹⁷⁷ Ibid. pp. 5–6.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ MOU Resettlement Review Mission, 10 February 2011; Annex/Matrix with “Proposed Actions to Improve Resettlement Implementation” by ADB’s consultant social adviser and feedback on findings and recommendations by ADB staff (p. 4).

However, this time ADB project staff agreed that capacity building was needed “on project resettlement policy, public participation, and grievance redress procedures [for] the Provincial grievance Redress Committees, the local government working groups, and the IRC field staff.” On the issue of the adequacy of the grievance redress arrangements, ADB stated that “instead of introducing new mechanisms, existing local grievance machineries and processes should be utilized.”¹⁸¹

132. A subsequent mission in June 2011 found that the diagnosis of the grievance redress process, made more than a year earlier, had been accurate, and that “the grievance redress process has not been functioning effectively,”¹⁸² mainly because of “a lack of capacity at the RD-MEF and *sangkat* level to address the requests and complaints received.”¹⁸³ An indication of this was that “there are about 305 letters of complaints and requests received, none of which have been addressed in writing by the resettlement committee at the *sangkat* (commune) level at the time of the mission.”¹⁸⁴ ADB’s follow-up involved meetings with the *sangkats* and the IRC Working Group in Phnom Penh attended by the ADB-CARM safeguards officer. IRC also “agreed to improve the grievance redress process and address the complaints/requests by 15 July 2011.”¹⁸⁵ The bulk of the complaints involved legitimate concerns on the part of the APs, since “70% have to do with the case of affected houses where the ‘new criterion’ on affected houses’ was applied, while another 25% refer to the wrong classification of structures.”¹⁸⁶ The “new criterion on affected houses” was the rule introduced by IRC in 2011—without informing ADB—that houses with 25% or more of floor area affected by land acquisition would be considered fully affected, whereas the rule in the agreed RPs was that if less than 30 m² was left, a house would be considered fully affected. Since the floor area of most affected houses is less than 30 m², the new rule meant that fewer houses would be considered fully affected and fewer AHs therefore entitled to a resettlement site plot of land.¹⁸⁷ As described in section B.1 below, ADB attempted over the next year and a half to convince IRC to address this issue, but, apart from the complaints assessed by OSPF, IRC refused to revisit the DMS records to identify the APs who would have a legitimate complaint regarding noncompliance with the 30 m².¹⁸⁸ ADB’s delay in attempting to improve the functioning of the grievance redress process therefore represents a missed opportunity to ensure adequate handling of what were recognized as legitimate complaints.

133. Following the June 2011 mission, training in grievance processing was undertaken in the five communes with the highest number of complaints received, and this training also included representatives of the AHs.¹⁸⁹ This commune-level training was followed by training at the provincial level in five provinces in early 2012.¹⁹⁰ Additionally, CARM sponsored a workshop on grievance redress for IRC staff and officials from Phnom Penh municipality facilitated by OSPF in November 2011.¹⁹¹ The training was complemented by the establishment of a grievance database, and ADB noted that “it is critically important that the grievance database is updated consistently. In particular, it is important that all letters, decisions, and responses are noted in

¹⁸¹ Ibid.

¹⁸² BTOR of Resettlement and Social Review Mission, 6 July 2011 (mission of 6–14 June), para. 2.

¹⁸³ Ibid., para. 14.

¹⁸⁴ Ibid., para. 2.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid., para. 15.

¹⁸⁷ Ibid., paras. 6-7.

¹⁸⁸ MOU, Joint Review Mission, 18 November to 19 December 2012, para. 38.

¹⁸⁹ MOU, Loan and Grant Review Mission, 23 September 2011, para. 21. Of the five communes, four were in the Phnom Penh section and one was in the Poipet section.

¹⁹⁰ MOU, Midterm Review Mission, 30 July 2012, Annex 5 on Resettlement Status, para. 11.

¹⁹¹ Aide-Mémoire, Resettlement Mission, 7 December 2011, para. 13.

writing as a valid record of the grievance procedure, to ensure accountability and compliance with the safeguards policy.”¹⁹² As a result of these efforts the midterm review mission in April–May 2012 found that “grievance redress has been improved at the sangkat/commune level through training and a grievance database developed by IRC.”¹⁹³

134. The MOU for the loan and grant review mission in September 2011 reported on the number of complaints received and responded to by IRC (complaints received from 502 AHs of which 302 had received a response). However, as in previous reporting on grievance redress management, the MOU had no information on the content of the responses and the number of complaints accepted or denied.¹⁹⁴ Only with the belated introduction of the grievance database in late 2011 would such information become available, and the resettlement mission in November–December 2011 requested that “IRC and the project resettlement team provide more detailed information in the Monthly Resettlement Progress Report of the types of grievances/requests addressed in letters and resolved at the different RSs.”¹⁹⁵

135. Despite the improvements in grievance redress noted by the midterm review mission in April–May 2012, a joint review mission in November–December 2012 found that there was a need for “further measures to improve grievance redress to which IRC agreed.”¹⁹⁶ These measures, however, were not of the same basic nature as those introduced earlier, but served to enhance what was already in place, and involved “(i) that the registry [the grievance database] be updated on a continuous basis, (ii) if the Sangkat feels that they need assistance from IRC, they need to transmit the complaint to IRC within 5 working days...so that IRC has at least 10 working days to assist the Sangkat in providing a reply, and (iii) attach the grievance redress flyer in each reply to inform the AH of other levels of grievance redress.”¹⁹⁷

136. **Conclusions on ADB policy compliance:**¹⁹⁸ During project preparation, ADB did not ensure that adequate grievance redress arrangements were in place with sufficient detail to provide operational guidance to executing entities, and that APs were adequately informed about these arrangements. The result is noncompliance with OM F2/BP, para. 4(v),¹⁹⁹ and OM F2/OP, para. 45.²⁰⁰ During implementation, ADB did not act on early information from its own supervision missions on systemic problems with the functioning of the grievance redress process, and in particular the lack of capacity on the part of the government entities managing this process. Notwithstanding later efforts by ADB to address this issue, the omissions during the early stages of implementation resulted in noncompliance with OM F2/BP, para. 5.²⁰¹

¹⁹² Ibid., para. 16.

¹⁹³ MOU, Midterm Review Mission, 30 July 2012, Annex 5 on Resettlement Status, para. 13.

¹⁹⁴ MOU, Loan and Grant Review Mission, 23 September 2011, para. 23; Aide-Mémoire, para. 12.

¹⁹⁵ Aide-Mémoire, Resettlement Mission, 7 December 2011, para. 15.

¹⁹⁶ MOU, Joint Review Mission, November–December 2012, para. 40.

¹⁹⁷ MOU, Joint Review Mission, November–December 2012, Annex 5 (Resettlement Review), para. 33.

¹⁹⁸ Management’s Response to CRP’s draft report dated 20 December 2013 states that the 2006 RP provided adequate grievance redress arrangements since the 2006 RP was meant to be updated during implementation, but acknowledges that the arrangements for the grievance redress mechanism (GRM) in the URPs contained insufficient detail to provide operational guidance to executing agencies. ADB has been providing capacity building support for the GRM from 2010 onwards.

¹⁹⁹ “Grievance redress mechanisms for affected people are to be established. Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation.”

²⁰⁰ “Public disclosure of resettlement plans and frameworks is mandatory.... In similar fashion...grievance procedures...must be disclosed to the affected people.”

²⁰¹ “ADB may also offer assistance to build the capacity of the [executing agency] and other project sponsors to prepare and implement the agreed resettlement planning document effectively.”

5. Adequacy of Capacity Building for Government Agencies

137. **The request for compliance review** stated that: “Despite being aware of the multitude of grievances of AHs and problems with the grievance process, the ADB did not carry out capacity building workshops until July/August 2011, and only in March 2012, after the vast majority of resettlement was already occurred, produced a pamphlet, called a ‘quick reference guide’ setting out the basic principles and process of resettlement and the grievance mechanism” (para. 76).

138. **ADB policy requirements.** The policy on involuntary resettlement states that “ADB may...offer assistance to build the capacity of the [executing agency] and other project sponsors to prepare and implement the agreed resettlement planning document effectively, to enhance a DMC’s national standards and capacities for involuntary resettlement, and to develop consistent sector standards.”²⁰² In addition, “ADB offers support for the efforts of the EA or other project sponsors, when considered necessary for involuntary resettlement policy compliance, for...providing technical assistance to strengthen the capacity of agencies responsible for involuntary resettlement.”²⁰³ The need for such support from ADB should be determined prior to implementation, and during “appraisal staff should...assess the capacity and commitment of the executing agency to fulfill its intended role to promote a sustainable, participatory approach. The project’s social preparation might also include sensitizing and training the executing agency staff....”²⁰⁴

139. While the request focused on capacity building for grievance redress, the issue is broader and involves the overall planning and implementation of government capacity building related to the project. During project preparation, ADB failed to act on the knowledge provided during the RRP review meetings, that the executing agency had a poor track record of resettlement implementation, and did not develop adequate planning and budget provisions for timely capacity building for entities (including IRC) to plan and implement resettlement. During implementation, ADB was slow to address identified capacity shortcomings in the entities involved in planning and implementing resettlement, and this contributed to inadequate consultation, grievance redress, and DMS.

140. The RRP of November 2006 made an optimistic assessment of the capacity of the executing agency to implement resettlement: “The MPWT has proven experience and has performed satisfactorily in implementing internationally financed projects.”²⁰⁵ However, ADB’s resettlement audit of the Highway One Improvement Project, released 7 months earlier, had arrived at a different conclusion regarding MPWT’s capacity in handling resettlement.²⁰⁶ The audit found that “[f]rom the start, it can be seen in all the versions of the CRIP that Government was confused on the limits of the mandate of the MPWT, on one hand, and of the Interministerial Resettlement Committee (IRC), on the other hand.”²⁰⁷ The Office of the General Counsel in its comments for the MRM on the RRP had noted the executing agency’s poor track record on resettlement implementation.²⁰⁸ The RRP of November 2006 included the caution that “compensation, resettlement, and income restoration measures might not be delivered as

²⁰² Involuntary Resettlement, F2/BP, para. 5.

²⁰³ Ibid., F2/OP para. 7.

²⁰⁴ Guidelines on Operational Procedures: Incorporation of Social Dimensions in Bank Operations, GP47, para. 12.

²⁰⁵ RRP, October 2006, Loan and Project Summary, p. v.

²⁰⁶ Mekong Department Infrastructure Division: Resettlement Audit of Highway Improvement Project, January 2006.

²⁰⁷ Ibid., p. 68.

²⁰⁸ Management Review Meeting minutes, 8 August 2006.

agreed, thereby impoverishing those affected and delaying the start of civil works.”²⁰⁹ Surprisingly this risk was not addressed by a capacity assessment of the IRC in the 2006 RP or of planning of the necessary measures to strengthen the capacity of the executing agency.

141. The RRP only stated that: “The MPWT, under the guidance of the Interministerial Resettlement Committee of the Ministry of Economy and Finance, will be responsible for updating, implementing, and internal monitoring of resettlement activities in accordance with ADB’s policies and requirements. Consultants will be engaged for the purposes of both supervision and *capacity building* to ensure the effective updating and implementation of resettlement activities”²¹⁰ (emphasis added). Apart from this statement, the only other reference to capacity building on resettlement in the RRP is in connection with a brief description of the gender strategy, which “includes capacity building for the MPWT, other relevant agencies, and leaders of those affected. Increased capacity on the part of the MPWT and those affected will enable effective implementation of resettlement and livelihood activities.”²¹¹ Thus, the RRP does not include any strategy, plan, or time schedule for enhancing the capacity of the IRC, RD-MPWT, and the provincial and commune level entities that would play a critical role in the planning and implementation of resettlement.²¹² Moreover, while the terms of reference for the project supervision consultant mentioned on-the-job training in project management,²¹³ they did not refer to training on resettlement planning and implementation, and the RRP had no dedicated budget allocation for capacity building.

142. During a mission in February 2009, “MEF raised the need for capacity building for resettlement in the relevant ministries once the sub-decree [on involuntary resettlement caused by development projects] is issued. MEF asked the Mission if it was possible to support the plans’ implementation through a grant which is estimated at \$1 million.”²¹⁴ This issue was not resolved, and a resettlement review mission in June 2009 pointed out that “given the progress of RP updating, the Mission advised the project supervision consultants to design capacity building interventions based on needs assessment.... The Mission informed MPWT that grant funds is not available for such training. Since it is part of the consultant’s tasks, the budget should be made available if no fund has been allocated. The Mission advised the project supervision consultants to use contingency funds and to ask MPWT for approval of contract variation from ADB.”²¹⁵ However, this discussion regarding the need for capacity building on resettlement and the need to find funding for this activity only began more than a year after activities had already started for which capacity building should have been provided. Thus, by February 2008, grievance redress committees had been established in 10 provinces, and the DMS had been completed for the updated RP for the Northern Line (except Poipet), and had started for the updated RP for the Southern Line in February 2008.²¹⁶ The DMS for the RP for the proposed supplementary financing in Samrong had been completed in May 2009.²¹⁷

²⁰⁹ RRP, November 2006, para. 42.

²¹⁰ Ibid., Appendix 9: TOR for the Supervision Consultant, para. 9.

²¹¹ RRP, October 2006. Para. 41. However, as described in section A.5 above, the midterm review mission in April–May 2012 found that the gender action plan for the project required by the gender strategy had not been developed (MOU April–May 2012, pp. 19–20).

²¹² Ibid.

²¹³ RRP, November 2006, Appendix 9, p. 39.

²¹⁴ BTOR of Review Mission, 13 February 2009, para. 6. There appears to have been an alternative option for funding through the CAM-Loan 2046 Road Asset Management, which had an allocation of \$300,000 for training, but MEF did not want to use the loan for this purpose and wanted the training component removed from the loan. (Ibid.)

²¹⁵ BTOR of Resettlement Review Mission, 13 July 2009, para. 7.

²¹⁶ BTOR of Resettlement Review Mission, 11 February 2008, para. 15.

²¹⁷ MOU of Fact-finding Mission, 19 June 2009, para. 13.

143. A resettlement review mission in December 2010

identified the inability of the project supervision consultants (PSCs) to sustain mobilization of its international and local resettlement specialists in 2010 as one of the reasons behind the project's shortcomings, principal of which is the PSC's failure to guide the IRC and local governments' resettlement working groups in updating and implementing the RPs... Consequently, a number of resettlement issues that could have been easily and expediently settled were allowed to fester, only to reach the attention of RD-MEF, including ADB, through the mass media and letters of complaints of NGOs. In view of this the Mission suggested that RD-MEF and PSC resettlement specialists agree on a work schedule where the international resettlement specialist can devote more time to the project and, during the international resettlement specialist's absence, involvement of local resettlement specialist is increased.²¹⁸

144. While this observation and recommendation are entirely appropriate, they nevertheless imply that ongoing "guidance" during implementation is a substitute for basic training and capacity building rather than being a supplement. It also ignores the fact that if timely training on the DMS and grievance redress had been provided, the dependence on the involvement of the PSC in day-to-day implementation would have been less acute.

145. The need for training of implementing entities was recognized in the BTOR for the resettlement review mission in January–February 2011, which recorded that it had been agreed that the supervision consultant would "facilitate the training of the resettlement sub-committees and local authorities specific to consultation, disclosure, and grievance redress procedures."²¹⁹ Training in conducting a participatory DMS involving the AHs was not included in this list. The MOU for the resettlement and social review mission in June 2011 recorded information transmitted by the MPWT to the mission that a detailed work plan and cost estimates would be prepared for capacity building in grievance redress for local authorities,²²⁰ and this training was conducted over the summer of 2011 in the five communes with the highest number of complaints received and with the participation of representatives of the AHs.²²¹ This commune-level training was followed by training at the provincial level in five provinces in early 2012.²²² In November 2011, CARM sponsored a workshop on grievance redress for IRC staff and officials from Phnom Penh municipality, facilitated by OSPF.²²³ Thus, it took more than 3 years after the establishment of grievance redress committees at the provincial level before training of the involved IRC staff and officials was finally conducted.

146. Finally, it was only more than 6 years after ADB approved 2006 RP, and more than 4 years after the updating of the DMS for the first sectional RPs in early 2008, that detailed operational measures were finally introduced to ensure a fully participatory DMS process, orient AHs on this process, and train staff of the executing agency in its implementation.²²⁴ This

²¹⁸ BTOR of Resettlement Review Mission, 5 January 2011, para. 11(e).

²¹⁹ BTOR of Resettlement Review Mission, 10 February 2011, para. 7.

²²⁰ MOU of Resettlement and Social Review Mission, 6 July 2011, para. 22.

²²¹ MOU of Loan and Grant Review Mission, 23 September 2011, para. 21. Of the five communes, four were the Phnom Penh section and one was in the Poipet section.

²²² MOU of Midterm Review Mission, 30 July 2012, Annex 5 on Resettlement Status, para. 11.

²²³ Aide-Mémoire, Resettlement Mission, 7 December 2011, para. 13.

²²⁴ BTOR of Mission on the Expanded Income Restoration Project; Appendix 5: Seminar and Consultation on the Updating of the DMS for Samrong Estate; 25. March 2013.

training was scheduled to be conducted “in August 2013, following the conclusion of the local and national elections.”²²⁵ The CRP confirmed that the training was conducted.

147. In interviews with the CRP, ADB project staff agreed that in hindsight there was a lack of capacity in IRC. Although IRC had been established as a response to the lessons from the Highway One Improvement Project and probably knew what needed to be done, ADB project staff maintained that there were misunderstandings in how some details of the policy or RPs were to be implemented. ADB staff unequivocally admitted that the resettlement under the railway project was the largest resettlement program undertaken by the IRC—much larger than the Highway One Improvement Project. Due diligence in assessing IRC’s capacities would have shown that there were significant deficits within IRC as well as MWPT and local agencies entrusted with various aspects of resettlement. In this context, it was not difficult to predict that the IRC, with its limited capacities in 2006-2008 would be overwhelmed with the tasks—a situation that project staff acknowledges happened. For this reason, it came as a surprise to the CRP when ADB project staff also maintained that these capacity deficits were not foreseeable.

148. Since then, several capacity-building training programs have been concluded with positive impact. ADB staff explained that training was delayed until after 2010 because it “cannot be carried out during preparation” and “because the working groups are only established during implementation,... capacity building will only come in during the updating of the resettlement plan when you have the working group members or the local officials.”²²⁶ However, the CRP finds that this explanation does not stand to reason. However, training ought to have preceded implementation. Some training was delayed until after implementation was well on its way.

149. ADB staff disclosed to the CRP that it was very difficult to engage with IRC at the early stages of the project. ADB staff stated that IRC was “very defensive, negative, not pro-active at all in trying to solve the issue raised by affected families” and that engaging with IRC was challenging. However, in its meetings with the CRP during the CRP’s visit to Cambodia, IRC expressed its disappointment that ADB had not assisted with enough up-front capacity building for the government to implement resettlement.²²⁷ A Senior Cambodian project staff stated that no capacity assessment of government on resettlement had been undertaken during project preparation.²²⁸

150. When the issues were brought into the open by NGOs, ADB began to take action to address the issues. Further changes in the IRC cooperation were evident after SPF engaged in problem solving. SPF’s involvement—directly meeting with each AH on a one-on-one basis and including IRC and other agency staff as well as ADB experts in solving the compensation and resettlement issues—appears to have enlightened all concerned that concerted, focused, and proactive engagement is required to address the issues raised by AHs and APs. There appears to be an encouraging change of heart at IRC and a higher level of ADB staff engagement as well—something that ought to have been there from the start of the project.

151. One consequence of delayed capacity building for the IRC and other executing agency staff on resettlement issues is over-reliance on ADB consultants and staff. In the longer term, capacity building accrues to the benefit of the borrowing DMC as well as future ADB projects.

²²⁵ Ibid., Appendix 4.

²²⁶ CRP confidential staff interview.

²²⁷ CRP meeting with IRC, 21 October 2013.

²²⁸ CRP meeting with senior Cambodian project staff, 22 October 2013.

This project and its resettlement trajectory is proof that capacity building makes a huge and lasting difference in the way business is done by executing agencies. It is in this context that senior ADB staff commented: “ADB from day one should have given extra measures as part of the design in the capacity building aspect.... That needs to be clearly assessed and if it is found that the executing agency is not fully capable of handling this type of activity, then, as part of the design of the project, we should have done that. I am pleased to report to you that finally, capacity is being built on the part of the IRC because of the involvement by us, by others, and OSPF, and we should have seen this.”²²⁹ This comment both frankly acknowledges the early noncompliance with ADB policy and also postulates the solution for the future. The CRP has little doubt that capacity and understanding about resettlement issues has now improved significantly within IRC as well as other executing agencies, including at the local level. Speaking of lessons learned, ADB staff stated what was required: “a better understanding of the capacity of the government authorities to implement..., a better appreciation of the complexity of the project so that we could provide more resources from the very beginning to ensure that it would be implemented properly...”²³⁰

152. Conclusions on ADB policy compliance:²³¹ During project preparation, ADB did not act on knowledge provided during the RRP review meetings that the executing agency had a weak track record of resettlement implementation and did not develop adequate planning and budget provisions for timely capacity building for the entities (including IRC) responsible for planning and implementing resettlement. This omission contributed to the fulfillment of the risk recognized in the RRP that “compensation, resettlement, and income restoration measures might not be delivered as agreed.”²³² During implementation, ADB was slow to address identified capacity shortcomings in the entities involved in planning and implementing resettlement, which contributed to inadequate consultation, grievance redress, and DMS. The result is noncompliance with OM F2/BP, para. 5;²³³ OM F2/OP, para. 7;²³⁴ and GP47, para. 12.²³⁵

²²⁹ Confidential ADB staff interview with CRP.

²³⁰ Ibid.

²³¹ Management's Response to CRP's draft report dated 20 December 2013 states that ADB acted appropriately on knowledge and recommendations provided during the RRP review meetings, and included adequate planning and budget provisions through the project supervision consultant and ongoing technical assistance (TA). The CRP disagrees and refers to paras. 140, 142, 145, and 147. Moreover, the contracting of the EMO was about compliance monitoring which in itself did not enhance government capacity to implement resettlement. The RRP and 2006 RP did not have a plan or strategy to build government capacity (para 141).

²³² Other contributing factors stemming from ADB planning omissions were inadequate consultation, the lack of inflation indexing of compensation rates, relocation to inadequately prepared resettlement sites, resettlement sites located too far from previous homes to allow continuation of livelihoods, and the initially inadequate and delayed income restoration measures.

²³³ “ADB may...offer assistance to build the capacity of the [executing agency] and other project sponsors to prepare and implement the agreed resettlement planning document effectively, to enhance a DMC's national standards and capacities for involuntary resettlement, and to develop consistent sector standards.”

²³⁴ “ADB offers support for the efforts of the [executing agency] or other project sponsors, when considered necessary for involuntary resettlement policy compliance, for...providing technical assistance to strengthen the capacity of agencies responsible for involuntary resettlement.”

²³⁵ The need for such support from ADB should be determined prior to implementation, and during “appraisal staff should...assess the capacity and commitment of the executing agency to fulfill its intended role to promote a sustainable, participatory approach. The project's social preparation might also include sensitizing and training the executing agency staff...”

6. Conclusions regarding Resettlement Planning and Implementation

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings on ADB Compliance
A.1. Adequacy of resettlement plan preparation (Including resettlement budget)		
<p>"The RPs and resettlement budget were themselves inadequate to ensure that affected households would not be made worse off." (para. 11)</p> <p>"...project compensation rates for losses and costs of resettlement were calculated in 2006 Compensation payments, however, began in 2009 and are continuing well into 2012. ...the compensation rates were not adjusted to reflect annual inflation." (para. 24)</p>	<p>"The full resettlement costs are to be included in the presentation of project costs and benefits... sufficient contingency allowance must be allocated for resettlement prior to approval of the loan." (OM F2/BP para. 4(x))</p> <p>"All compensation is based on the principle of replacement cost" (OM F2/BP para. 4(iii) and footnote 6)</p> <p>The summary resettlement plan before the first MRM must "... contain assurances from the executing agency or project sponsor that sufficient funds will be made available as and when necessary for the efficient and timely implementation of resettlement activities specified in the resettlement plan." (OM F2/OP para. 36)</p> <p>"The operations departments are responsible for complying with the policy. ADB's CCO [Chief Compliance Officer], supported by the Environment and Social Safeguard Division, is responsible for monitoring compliance with ADB's safeguard policies..." (OM F2/OP para. 53)</p>	<p>Noncompliance with: OM F2/BP/ para. 4(x); OM F2/BP para. 4 (iii) and footnote 6; and OM F2/OP para. 36</p> <p>Noncompliance with OM F2/OP para. 53</p>
Consultation for the Preparation of the Resettlement Plan: Detailed Measurement Survey and Consultation with civil society		
<p>"AHs, including requesters, were not provided with Project-related information or consulted in a manner that ensured that they were 'fully informed and closely consulted on resettlement and compensation options ..' (para. 13)</p> <p>AHs were not adequately informed about and involved in the Detailed Measurement Surveys (DMS) which recorded their losses (para. 14)</p> <p>".. an air of intimidation, threats and coercion has pervaded the resettlement process" (para. 15)</p> <p>".. the requesters and local NGOs monitoring the Project have previously made extensive good faith efforts to address the</p>	<p>"The affected people are to be fully informed and closely consulted. Affected people are to be consulted on compensation and/or resettlement options, including relocation sites, and socioeconomic rehabilitation. .. Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation." [OM F2/BP para. 4(v)]</p> <p>".. consultation is to be carried out as early as possible in the project cycle so that the views of the affected people are taken into account in formulating the compensation and rehabilitation measures. Further</p>	<p>Noncompliance with: OM F2/BP para. 4(v); OM F2/OP paras. 34 and 44; and OM L3/OP para. 16</p> <p>Noncompliance during project preparation and early implementation with: OM F2/OP para. 55(iii) OM L3/OP para. 15</p> <p>No evidence of overt intimidation, threats and coercion</p>

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings on ADB Compliance
<p>aforementioned problems and harms with ADB Cambodia Resident Mission, the relevant ADB Operations Department, and the Senior Management of ADB, through numerous written communications, meetings, and submissions of evidence, documentation and reports since May 2010." (para. 78).</p> <p>One example is the location of the Phnom Penh resettlement site: "Despite being specifically forewarned by NGOs and the United Nations Human Rights Office (UNOHCHR) about the likely risks of a drop in living standards following a move to Trapeang AnhChan, the ADB nonetheless approved the Updated Phnom Penh Resettlement Plan, including the selection of Trapeang AnhChan as the Project-sponsored resettlement site" (para. 32).</p> <p>Another example is the issue of indebtedness which "has been raised with the ADB repeatedly by both AHs and NGOs verbally and in writing." (para. 37).</p>	<p>consultation also takes place during resettlement plan implementation to identify and help address issues that arise," and that "the resettlement documents [including an asset inventory/DMS] are to be developed in consultation with those affected" (OM F2/OP paras. 34 and 44)</p> <p>For "... nonliterate people, other communication methods [than in writing] will be appropriate." (OM F2/OP para. 44)</p> <p>"In preparing the resettlement planning documents, ADB requires the borrower to take into account the views of affected groups and civil society groups where relevant, including nongovernment organizations" [OM F2/OP para. 55(iii)].</p> <p>"To facilitate dialogue with affected people and other individuals and organizations ... ADB shall ensure that the project's design allows for stakeholder feedback during implementation" (OM L3/OP para.15)</p> <p>This should involve "communications plans for certain projects and programs, particularly those likely to generate a high level of public interest" with recommendations on how to "increase involvement of grassroots and civil society organizations in the development process" (OM L3/OP para. 16)</p>	
A.2. Adequacy of basic services and facilities at resettlement sites		
<p>"Households resettled under the Project, including requesters, have in some cases reduced access to basic services, including water and electricity, as compared to their pre-resettlement situation. None of the five Project-sponsored resettlement sites were properly prepared with services prior to relocation of households .." (para. 44)</p> <p>"the distance of the resettlement sites from previous residences and urban centres and the failure to provide health facilities and schools at the sites has reduced access of AHs, including requesters, to these essential facilities." (para. 49)</p> <p>"resettled households were required</p>	<p>One of the three important elements of the involuntary resettlement policy is "assistance for relocation, including provision of relocation sites with appropriate facilities and services," and that a "schedule for providing resources and opportunities for reestablishing housing, facilities, networks, incomes, and livelihoods, prior to relocation should be included in the resettlement plan." (OM F2/BP para. 4 and OM F2/OP para. 34)</p> <p>"Community and public resource losses to be considered as eligible for compensation include ... public structures such as markets, health and educational facilities, water and washing points, and meeting houses;</p>	<p>Noncompliance with: OM F2/BP para. 4; OM F2/OP paras. 15 and 34</p>

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings on ADB Compliance
<p>to pay connection fees for services in at least three of the resettlement sites" (para. 45)</p> <p>"Tragically, two children, a brother and sister aged 9 and 13 respectively, drowned in an eight-meter deep pond near the Battambang site four days after resettlement in May 2010. The pond was used as a source of water for resettled families since no other source of water was provided at the site." (para. 48).</p> <p>"A third resettled child died at the Poipet site in November 2011. The 11-year old, whose family had recently moved to the site, was crossing a main road, walking back from school when he was hit by a truck. The boy died from his injuries. The boy was attending his old school near to his former home, since there was no closer school to the resettlement site. He had not needed to cross a busy road to get to the school previously." (para. 51)</p>	<p>and ... infrastructure such as roads, bridges, and other transport lines; power facilities; telecommunication lines; and water sanitation and drainage facilities." (OM F2/OP para. 15)</p> <p>Affected people should enjoy "at least the same level of well-being with the project as without it." (OM F2/BP para. 4)</p>	
A.3. Adequacy of eviction safeguards and procedures		
<p>In the Poipet section of the railway line, "households residing within the COI in Poi Pet have been served with three eviction notices since April 2012. In the first notice dated 27 March 2012, twenty-two households were informed that they have 10 days "to remove their houses and buildings away from the railway." ... The notice was issued by Poi Pet City Hall to residents on 5 April 2012, just one day before the deadline." (para. 17)</p>	<p>"A schedule for providing resources and opportunities for reestablishing housing, facilities, networks, incomes, and livelihoods prior to relocation should be included in the resettlement plan." (OM F2/OP para. 34. Also OM F2/OP paras. 36 and 38)</p> <p>"Affected people are to be identified and recorded as early as possible in order to establish their eligibility through a population record or census that serves as an eligibility cutoff date .. to prevent a subsequent influx of encroachers or others who wish to take advantage of such benefits", in order both to prevent "an influx of ineligible nonresidents who might take advantage of project entitlements and speculate on land values, and to prevent speculation by eligible affected persons" (OM F2/BP para. 4 and OM F2/OP para. 5)</p>	<p>Regarding the Poipet issues, ADB is in compliance since it responded promptly when it became aware of the eviction issues there in the Poipet section and demonstrated due diligence over several missions to get these issues resolved.</p> <p>Noncompliance regarding the commitment in the 2006 RP that "(t)he Government will issue a certificate to APs relocated on-site indicating that they will be permitted to stay in the remaining ROW for a period of 5 years"</p>
A.4. Adequacy of grievance redress mechanisms		
<p>The project grievance redress mechanism it "has not worked for the vast majority of complainants" (para. 74-75).</p> <p>Requesters "have also been denied</p>	<p>"Grievance redress mechanisms for affected people are to be established. Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded</p>	<p>Noncompliance with: OM F2/BP paras. 4(v) and 5; OM F2/OP para. 45</p>

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings on ADB Compliance
<p>their right to negotiate solutions collectively and be represented by individuals and organizations of their choosing .." (para. 82)</p> <p>The requesters attributes the deficient grievance redress to "a number of demand and supply-side barriers to accessing remedies, including limited awareness about the grievance process, low literacy levels, a lack of legal aid and a general feeling amongst AHs that submitting a compliant would be futile. It also identifies supply-side barriers, including low capacity of relevant authorities and lack of understanding of their roles and responsibilities" (para. 76).</p>	<p>by a social preparation phase to enhance their participation in negotiation, planning, and implementation." [OM F2/BP para. 4(v)]</p> <p>"Public disclosure of resettlement plans and frameworks is mandatory. ... In similar fashion ... grievance procedures ... must be disclosed to the affected people." (OM F2/OP para. 45)</p> <p>"ADB may also offer assistance to build the capacity of the EA and other project sponsors to prepare and implement the agreed resettlement planning document effectively." (OM F2/BP para. 5)</p>	
A.5. Adequacy of capacity building for government agencies		
<p>"Despite being aware of the multitude of grievances of AHs and problems with the grievance process, the ADB did not carry out capacity building workshops until July/August 2011, and only in March 2012, after the vast majority of resettlement was already occurred, produced a pamphlet, called a "quick reference guide" setting out the basic principles and process of resettlement and the grievance mechanism" (para. 76).</p>	<p>"ADB may ... offer assistance to build the capacity of the EA and other project sponsors to prepare and implement the agreed resettlement planning document effectively, to enhance a DMC's national standards and capacities for involuntary resettlement, and to develop consistent sector standards." (OM F2/BP para. 5)</p> <p>"ADB offers support for the efforts of the EA or other project sponsors, when considered necessary for involuntary resettlement policy compliance, for ... providing technical assistance to strengthen the capacity of agencies responsible for involuntary resettlement." (OM F2/OP para. 7)</p> <p>During "appraisal staff should ... assess the capacity and commitment of the executing agency to fulfill its intended role to promote a sustainable, participatory approach. The project's social preparation might also include sensitizing and training the executing agency staff" (GP 47 para. 12)</p>	<p>Noncompliance with: OM F2/BP para. 5; OM F2/OP para. 7 and GP 47 para. 12</p>

B. Compensation for Housing and Livelihood, Transition Assistance and Income Restoration

153. The issues that are considered under this heading are:

- (i) adequacy of compensation for property losses;
- (ii) adequacy of transition assistance for affected households;

- (iii) adequacy of compensation for lost income and income restoration; and
- (iv) indebtedness.

1. Adequacy of Compensation for Property Losses

154. **The request for compliance review** stated that: “There is evidence of inaccuracies in the categorization of structure types and other measurements and a systematic downgrading of compensation entitlements for structures” (para. 23). Examples of this are that “a number of the 64 households classified as partially affected [in Poipet] would be left with less than 30 square meters of living space after removing the portion of their structures within the COI” (para. 20), and that in some cases “partially affected households had to demolish their entire houses in order to clear the COI because the structures were made from concrete. Some were nonetheless only compensated for the part of their structure in the COI. The average compensation rates received by partially affected households interviewed for the BABC study was \$206.60” (para. 26). The requesters quoted the 12th quarterly social monitoring report from the EMO, which found that “60% of AHs reported that the compensation they received was inadequate to restore their lost property” (para. 27).

155. **ADB policy requirements.** OM F2/BP, para. 4, states that one of the three important elements of the involuntary resettlement policy is “compensation to replace lost assets, livelihood, and income,” and for lost assets “all compensation is based on the principle of replacement cost.” OM F2/BP, footnote 6, defines replacement cost as “the method of valuing assets to replace the loss at market value, or its nearest equivalent, plus any transaction costs such as administrative charges, taxes, registration, and titling costs. Where national law does not meet this standard the replacement cost will be supplemented as necessary.” OM F2/OP, para. 34, further requires consultation of those affected on the “asset inventory” of their losses. Finally, OM F2/OP, para. 16, states that “measures to improve the status of the poor and vulnerable people should focus on strategies to avoid further impoverishment and create new income opportunities. Among them are...replacement housing of minimum standard...”

156. The design flaws in the 2006 RP described in paras. 55–59 and paras. 74–79 have been a leading cause of the mis-categorization of losses and insufficient compensation, namely, that the RP (i) did not lay out adequate arrangements for the participation of AHs in the conduct and verification of the DMS, (ii) did not include provisions for inflation indexed compensation and other assistance rates to AHs, and as described in this section, and (iii) lacked provisions for replacement housing of minimum standard as a measure to improve the status of the poor and vulnerable people affected by the project. From late 2010 onwards, ADB attempted to address the issues of inadequate compensation caused by mis-categorization of house losses, but this effort does not appear to have resulted in all AHs obtaining the correct amount of compensation they were entitled to. A salutary feature of the resettlement program of this project was the decision of the government to provide a plot of land with a promise of future title to AHs—essentially providing titled land to the landless.

157. The 2006 RP stipulates that: “All compensation and assistance is based on the principle of Replacement Cost,” and “replacement cost is defined as the method of valuing assets sufficient to replace the lost assets at current market value plus any transaction costs” (p. 40). For both partially and fully affected houses, the RP’s entitlement matrix states that AHs will be provided with “compensation at replacement cost based on current market prices of materials and labor without depreciation or deductions for salvageable materials,” and that “the minimum viable size to reorganize is 30 sq m,” meaning that any residence left with less than 30 m² would be considered fully affected (Ibid., pp. 41–43).

158. The BTOR for a resettlement review mission in May 2010 noted in a “table with recommendations for improving resettlement implementation” that the pre-displacement housing of AHs “in general...are of poor quality,” and since “it is likely that they [the resettled AHs] will rebuild the same type of structures in the resettlement sites...these structures will not meet minimum housing standards.”²³⁶ It was proposed that the project partner with Habitat for Humanity, which had a track record of providing quality low cost housing costing \$1,400 to \$2,000, in some areas close to those affected by the railway project.²³⁷ From a confidential interview, the CRP came to know that this partnership never materialized, because Habitat for Humanity did not have the capacity to facilitate delivery of low-cost housing on the scale needed by the project even if funding was available.

159. Providing resettling households with assistance for replacement housing of minimum standard would have been in compliance with OM F2/OP para. 16. The 2006 RP had planned “an exploratory study of a housing materials credit program”,²³⁸ which implicitly recognized that compensation at replacement value for the houses of extremely poor people would essentially amount to providing a shack for a shack. This study was not undertaken, and the average compensation (comprising both compensation for housing and transition assistance) furnished to resettling households amounted to only \$751, about half of the cost for basic quality housing estimated by Habitat for Humanity.

**Table 6: Average Compensation to Relocated AHs
at the Five Resettlement Sites**

Resettlement Site	AHs Receiving Plots	Average Compensation from IRC (\$)
Poipet	604	874.63
Battambang	48	862.23
Pursat	33	512.03
Phnom Penh	143	947.50
Sihanoukville	33	558.46

AH = affected household; IRC = Interministerial Resettlement Committee.

Source: Information provided by the Cambodia Resident Mission to the CRP on 3 November 2013.

160. The same table referred to above in the May 2010 BTOR also notes that the DMS has not taken into account that some houses have more than one story and may be inhabited by more than one family. IRC agreed that two families occupying the same house would be entitled to two plots in the resettlement site, and to consider this issue on a case by case basis in future.²³⁹

161. Further, in 2011, without informing ADB, IRC introduced a rule, which was applied in the Phnom Penh section, that houses which had 25% or more of their floor area affected by the government’s land acquisition would be considered fully affected. Since the floor area of most affected houses is less than 30 m², the new rule would mean that fewer houses would be considered fully affected and fewer AHs therefore entitled to a resettlement plot. When this came to the notice of ADB, and after consultation with RSES, a letter was sent to IRC on 1 July 2011 requesting IRC to provide the number of AHs affected under the 25% rule, the number that would have qualified under the 30 m² rule, and the measures that would be taken to rectify

²³⁶ BTOR of Resettlement Review Mission, 7 May 2010, Table 1, p. 1.

²³⁷ Ibid.

²³⁸ Resettlement Plan, October 2006, p. 53.

²³⁹ Ibid.

the issue.²⁴⁰ The BTOR from the Loan and Grant Review Mission in September 2011 stated that among “the major remaining issue[s] is a few cases of alleged miscategorization of structures in Phnom Penh ...”²⁴¹ However, the MOU for the same Mission reported that more than a few cases were involved since “IRC has identified 248 partially affected households in Phnom Penh, which are now considered fully affected under this rule” [the 30 m² rule]. Moreover, “IRC will expand the current relocation site as required” to accommodate the AHs that opt for relocation to the resettlement site.²⁴²

162. To account for these changes, it was agreed that IRC would develop an addendum to the URP for Phnom Penh and submit this for ADB’s review prior to compensation and relocation.²⁴³ For houses not covered by the 30 m² rule, IRC was unwilling to retroactively review whether the DMS had been adequate.²⁴⁴ The options given by IRC to AHs affected by the 30 m² rule was either to remain in the ROW and not receive any additional compensation, or to relocate to the resettlement site, receive a plot there, and be compensated for the remaining non-viable part of the house.²⁴⁵ Relocation to the Phnom Penh resettlement site was chosen by 105 AHs, and the Addendum RP for Phnom Penh was initially scheduled to be submitted for ADB review by 31 January 2013, but was still pending submission as of end October 2013.

163. In October 2012, OSPF conducted a review of complaints from 26 houses about compensation and found that all the complaints were justified, and that all 26 AHs were entitled “... to receive additional compensation given the underpayment by IRC.” Of the houses, 22 had two floors, but had been miscategorized as having only one floor, and the remaining four houses had been given the minimum category for house compensation provided in the entitlement matrix.²⁴⁶ IRC agreed to pay the additional compensation within two weeks.²⁴⁷ On this background, a Joint Review Mission involving ADB, AusAID, and the government in November–December 2012, reiterated a recommendation made earlier by OSPF that all DMS records should be reviewed to assess whether the 30 m² rule had been applied and houses with two floors had been identified.²⁴⁸ The mission’s recommendation was rejected by IRC, which “reiterated its position on not reviewing cases retroactively.”²⁴⁹ Prior to this, an ADB mission in July 2012 had reported that “3,697 AHs (92%) have been compensated for their structures.”²⁵⁰ The CRP finds it probable that a significant but unknown proportion of these AHs were inadequately compensated for their houses.

164. ADB staff stated that houses were likely undercompensated for a variety of reasons, including (i) miscategorization where a house is assigned a class with lower compensation when it falls into more than one class, (ii) houses affected by the 25% rule unilaterally introduced by IRC contrary to the agreed 30 m² rule, (iii) miscategorization of houses with two or more floors as single floored, and (iv) the application of replacement cost rates below market price because of the failure to revise 2006 rates when inflation since then had been in excess of 30% at the time of payment. Additionally, ADB staff agreed that providing minimum housing through pre-constructed dwellings for poor AHs would be a good option for poor AHs. In this

²⁴⁰ BTOR of Resettlement and Social Review Mission, 6 July 2011, paras. 6-7.

²⁴¹ BTOR of Loan and Grant Review Mission, 23 September 2011, para. 11.

²⁴² MOU of Loan and Grant Review Mission, 23 September 2011, para. 25.

²⁴³ Ibid. para. 26.

²⁴⁴ Ibid. para. 30.

²⁴⁵ BTOR of Resettlement Mission, 7 December 2011, para. 5.

²⁴⁶ BTOR of 16 October 2012, para. 2.

²⁴⁷ Ibid. para. 3.

²⁴⁸ BTOR on meetings with NGOs, IRC, and attending OSPF implementation, 16 October 2012, para. 3.

²⁴⁹ MOU of Joint Review Mission 18 November to 19 December, 2012, para. 38.

²⁵⁰ MOU of Midterm Review Mission, 30 July, 2012, Annex 5 on Safeguards and Social Dimensions, para. 1.

case such an alternative appears to have been considered though it did not materialize mostly due to a lack of capacity.

165. **Conclusions on ADB compliance: Design flaws in the 2006 RP are a leading cause of the mis-categorization of losses and insufficient compensation.** The RP did not lay out adequate arrangements for the participation of AHs in the conduct and verification of the DMS (see section A.1. above). This results in noncompliance with the provision that: “The resettlement documents [including an asset inventory] are to be developed in consultation with those affected” (OM F2 OP para. 34). Another cause of insufficient compensation results from the 2006 RP not including provisions for inflation indexed compensation and other assistance rates to AHs (OM F2/BP para. 4, 4(iii) and footnote 6).²⁵¹ A third design flaw in the 2006 RP is the lack of provisions for replacement housing of minimum standard as a measure to improve the status of the poor and vulnerable people affected by the project (OM F2/OP para 16).²⁵² Though starting fairly late into project implementation, ADB’s enhanced supervision efforts from 2010 and the attention to the faulty categorization of AH losses demonstrated due diligence in attempting to address the problems, though this effort does not appear to have resulted in a significant proportion of AHs obtaining the correct amount of compensation they were entitled to. Under ADB’s involuntary resettlement policy, ensuring all affected AHs receive the correct compensation they are entitled to is fundamental to ADB credibility and the efficacy of its policies.²⁵³

2. Adequacy of Transition Assistance to Affected Households

166. **The Request for Compliance Review** alleges that “there is no provision under the EIRP to compensate people for their actual loss of income and livelihood sources, including net income lost during the transition period” (para. 42). The Request also notes that compensation rates and resettlement costs (which includes transition allowances)“ were calculated in 2006, when the original Resettlement Plan was prepared. Compensation payments, however, began in 2009 and are continuing well into 2012. In more than five years, with the possible exception of Phnom Penh, the compensation rates were not adjusted to reflect annual inflation” (para. 24).

167. **ADB policy requirements.** OM F2/OP para. 13 states that all “eligible affected people ... are entitled to receive one-time financial assistance to cover losses of the move, as well as economic and social rehabilitation. Such entitlements may include (i) relocation and transfer expenses, [and] (ii) assistance for transitional income and livelihood support ...”

²⁵¹ One of the three important elements of the involuntary resettlement policy is “compensation to replace lost assets, livelihood, and income”, and for lost assets “all compensation is based on the principle of replacement cost.” Replacement cost “means the method of valuing assets to replace the loss at market value, or its nearest equivalent, plus any transaction costs such as administrative charges, taxes, registration, and titling costs. Where national law does not meet this standard the replacement cost will be supplemented as necessary.”

²⁵² “... measures to improve the status of the poor and vulnerable people should focus on strategies to avoid further impoverishment and create new income opportunities. Among them are ... replacement housing of minimum standard ...”

²⁵³ Management’s response to CRP’s draft report dated 20 December 2013 states that none of the alleged design flaws were a leading cause of miscategorization of losses and insufficient compensation. The CRP disagrees and refers to paras. 74, 77, and 79. Management also states that the lack of provisions for replacement housing of minimum standard does not constitute a design flaw. The CRP disagrees since title to a plot and replacement housing of minimum standard should be complementary rather than an exclusive measure. The 2006 RP recognized that provision of a plot with title does not ensure livelihood security, and suggested consideration of credit schemes. This was not pursued (para. 197).

168. The entitlement matrix in the 2006 RP stipulates that all affected persons moving out of the ROW to a resettlement site will be provided with compensation for loss of livelihood comprising “20 kg of rice/person/month for three months for house with light material and wooden houses”, and “20 kg of rice/person/month for six months for house with concrete and brick and for large wooden house”. Vulnerable APs, defined as female-headed households, the elderly, the disabled, and AHs with an income of less than \$20/month per person “will receive special assistance allowance equivalent to 20 kg of rice per family member per month for six months”.²⁵⁴ This, however, is not consistent with information buried in a table later in the 2006 RP, which states that the living or transition allowance of 20 kg of rice is for one month for one family (with an average of 5 members).²⁵⁵ This appears to have been the allowance that was paid to AHs shifting to resettlement sites.²⁵⁶ In addition, AHs relocating out of the ROW would receive \$70 as transportation allowance irrespective of the distance to the resettlement site.

169. Allowances for rice were paid to AHs in 2006 prices. These were the prices specified in the 2006 RP. But food prices, and especially rice prices, increased sharply in Cambodia between the time the rates for living/transition allowances were defined in the original Replacement Cost Study in June 2006, and the time these allowances were provided to APs from May 2010 onwards. No adjustments were made for these substantial increases of rice prices. Rice prices more than doubled during the period both on international and the Cambodia market.²⁵⁷ As rice is the main staple in Cambodia and food constitutes about 65% of the household budget of the poor,²⁵⁸ substantial increases in rice prices severely threaten the welfare of poor families. When ADB recognized the inadequacy of the allowances—a year after payments of the allowances began—it attempted to address the problem. After long deliberations, the IRC agreed to pay somewhat more generous allowances for AHs to be resettled in the future, but these adjustments will not be applied to AHs who have already received allowances. Since the compensation to be paid was meant to be expressed in the equivalent value of rice quantities, an adjustment of the allowances to be paid either by indexing it to the price of rice or the general level of inflation (consumer price index) would have been required.

170. A resettlement and social review mission in June 2011 “raised the issue on transition allowances (i.e. living and loss of income allowances), but IRC refused to discuss the issue and disagreed to include it in the MOU. IRC’s interpretation of the allowances is that it is a fixed amount (\$25 to \$150 based on the price of rice in 2006) as opposed to the definition in the agreed RP (20 kg of rice/person/month 20 kg multiplied by the number of months depending on the relocation of AHs – onsite/off site – and the construction type of affected houses)....”²⁵⁹ This was followed up by a letter to the Chairman of IRC from the Director General of SERD.²⁶⁰ The

²⁵⁴ 2006 Resettlement Plan, p. 44 and p. 46.

²⁵⁵ Ibid. Table 44, on p. 80. This allowance is maintained in the 4 URPs.

²⁵⁶ Based on the transition allowance paid (an allowance of 20 kg of rice per person per five member family per month valued at \$25), the allocation covering 3 months for a family with a small house of light material or wood was valued at \$75, and that covering 6 months for a family with a house of concrete/brick or a larger wooden house at \$150. As the price of 1 kg rice in 2006 was \$0.25, this formula amounts to \$25 for the 3-month allocation and \$75 for the 6-month allocation.

²⁵⁷ International rice prices doubled between 2006 and 2008 and by 2010 had settled at a level about 70% above the 2006 price. Cambodian rice prices closely followed the international price developments. (For data see World Bank, Food and Agriculture Organization; and International Monetary Fund data bases).

²⁵⁸ The World Bank, Cambodia Poverty Assessment 2006.

²⁵⁹ BTOR of Resettlement and Social Review Mission, 6 July 2011, para. 4.

²⁶⁰ Ibid. Attachment 2.

adjustment of the living allowances to reflect the increase in the cost of rice for all the 3,147 AHs affected by the project would require additional funding of \$450,000.²⁶¹

171. The issue remained unresolved by the time of a loan and grant review mission in September 2011, and the BTOR notes that a “major remaining issue is inadequate payment of living allowances due to rapidly escalating food prices since 2008. MEF agrees to pay increased living allowance rates in future and has indicated that this is not a matter of budget, but adamantly refuses to pay retroactively to affected households that have already been compensated.”²⁶² The BTOR went on to suggest that since “the underpayment of the living allowance is...evident” a way to resolve the issue could be “that the missing amount be added by MEF to the AusAID financed Expanded Livelihood Program.”²⁶³ However, as reported in the MOU of July 2012 for the midterm review mission, the issue of retroactive adjustments of the living/relocation allowance was not resolved since IRC maintained that it was “willing to adjust the living allowance for AHs who are yet to be moved under the Addendum RP for Phnom Penh and Samrong, but will not agree to retroactive payment to AHs that have already been compensated.”²⁶⁴ By this point in time, “of the 4,003 AHs, 3,697 AHs (92%) have been ... provided cash allowances,”²⁶⁵ and since compensation payments only started in May 2010, these 92% of the AHs had received a living/transition allowance that did not enable them to buy the amount of rice they were entitled to.²⁶⁶

172. As a result, the vast majority of AHs who had been resettled have not received a transition allowance they were entitled to under ADB’s safeguards policy, while those yet to be moved are scheduled to receive the allowance. The CRP is of the view, that the appropriate interpretation of the 2006 RP is that transition allowances were to be paid in the monetary equivalent of the respective amount of rice at the price at the time of payment. Given the importance which rice has in the household budget of poor people in Cambodia, the provision of specified amounts of rice for defined periods, could help AHs to smoothen the transition process while moving to the resettlement sites. Expressing transition allowances in terms of quantities of rice to secure household food intake, is a sensible approach. But if securing basic food intake during a transition period is the objective of the policy, then adjustments in monetary values need to be made, if there are substantial changes in rice prices. As this was the case in Cambodia between 2006 until 2010, the rice equivalent prices paid to resettled AHs needed to be adjusted upward.

173. Conclusions on ADB compliance: The CRP finds noncompliance with the requirement in the policy on involuntary resettlement that all “eligible affected people ... are entitled to receive one-time financial assistance to cover losses of the move, as well as economic and social rehabilitation. Such entitlements may include (i) relocation and transfer expenses, [and] (ii) assistance for transitional income and livelihood support ...” (OM F2/OP para. 13). The main cause of the insufficient living/transition allowances is the design flaw in the 2006 RP, which did not include provisions for inflation indexing of rates for compensation and other assistance to AHs (see section A.1. above). However, ADB’s recognition of the inadequacy of the allowances, although it only happened a year

²⁶¹ Ibid. para. 16.

²⁶² BTOR of Loan and Grant Review Mission, 23 September 2011, para. 11.

²⁶³ Ibid. para. 13.

²⁶⁴ MOU of Midterm Review Mission, 30 July, 2012, para. 30.

²⁶⁵ MOU of Midterm Review Mission, 30 July, 2012, Annex 5 on Safeguards and Social Dimensions, para. 1.

²⁶⁶ Notice the unaccounted for difference regarding the total number of AHs affected by the project in the BTOR for the Loan and Grant Review Mission in September 2011 (3,147 AHs) and in the MOU for the Midterm Review Mission of 30 July, 2012 (3,697 AHs).

after the payments began, demonstrated due diligence in attempting to address the problem. At the same time, this effort has not resulted in all AHs obtaining the compensation they were entitled to. ADB's efforts resulted in some AHs receiving the correct compensation while those paid before this effort did not. This has resulted in a situation of inequality which is not an acceptable way to implement ADB's safeguard policy.

3. Adequacy of Assistance for Lost Income and Income Restoration

174. The request for compliance review claims that

Exacerbating the harm caused by inadequate compensation amounts, totally affected households claim that their incomes have dropped significantly as a result of resettlement. ... The primary reason that income levels have dropped post-resettlement is that three out of five of the Project-sponsored sites [Phnom Penh, Battambang, Sihanoukville] are too far away from centers of economic activity and previous sources of livelihood. The extra distance to jobs or income earning opportunities means that the cost of transport may either outweigh or substantially cut into daily income" (paras. 29–30).

175. In addition, "Income Restoration Programs had not commenced at any of the resettlement sites at the time or for a considerable period of time after families had relocated. In a December 2010 letter to NGOs the ADB acknowledged that "[t]he income restoration programs for the Northern and the Southern Lines are both unacceptably late" (para. 38). The requesters also question the appropriateness of the design of the IRP: "As a part of the IRP, skills training workshops were held at resettlement sites beginning in 2011. The quality of these workshops and the applicability of the skillset covered at these workshops, including chicken raising and mushroom growing, are reported to be low. Some relocated households had problems growing mushrooms due to the lack of space on their plots. This also posed an obstacle to raising chickens or animals. Some AHs reported that despite the training they lack the capital to begin businesses" (para. 39).

176. **ADB policy requirements.** The policy on involuntary resettlement states that one of the three important elements of the policy is "compensation to replace ... livelihood, and income".²⁶⁷ The policy also states that particular "attention must be paid to the needs of the poorest affected people, and vulnerable groups that may be at high risk of impoverishment. ... Appropriate assistance must be provided to help them improve their socio-economic status."²⁶⁸ Specifically, this requires measures to "create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and] (iv) reducing vulnerability to poverty through asset-building strategies such as development grants ..."²⁶⁹ Regarding the timing of income restoration activities, the policy states that while "compensation is required prior to dispossession or displacement of affected people from their assets, the full resettlement plan implementation, which may require income rehabilitation measures, might be completed only over a longer period of time after civil works have begun."²⁷⁰

²⁶⁷ OM F2/BP para. 4.

²⁶⁸ Ibid.

²⁶⁹ Ibid. F2/OP para. 16.

²⁷⁰ Ibid. F2/OP footnote 19.

177. The design of the IRP consisted of three components (i) training, (ii) support to establish self-help groups (SHGs); and (iii) access to credit. Access to credit was to be secured through financial institutions. No special fund was established to provide financial support to AHs. The consultants contracted were expected to help AHs to get financial support from financial institutions. The assumption that vulnerable AHs recently resettled without a secure basis of income could secure funds for new livelihood activities through financial institutions was unrealistic, as proved to be the case (see para. 188). Due to the uncertain income earning prospects of resettled households, creditworthiness weakens in the initial stages of the resettlement process.²⁷¹ Livelihood support to resettled communities typically requires some financial support, which cannot – at least in the initial stages – be provided through regular loans. AHs are not creditworthy and require support at a particular vulnerable juncture in the resettlement process when income losses are particularly grave. The assumption that AHs could and should secure credit through financial institutions to engage in new livelihood activities is a major design flaw of the IRP. While SHGs can be a valuable approach to strengthening the resilience of communities during the resettlement process, without any capital funds such groups have very limited possibilities for engagement. The IRP implemented was therefore insufficient to help AH household to restore their incomes at the resettlement sites.

178. With the absence of credit, the IRP essentially consisted of training activities which were defined based on training needs assessments undertaken on the resettlement sites. A strong focus on chicken and pig raising and growing mushroom culture emerged. The very strong emphasis on these activities calls into question the quality of the training assessments. Resettled AHs live mostly on very small plots (105 m²) and in crowded quarters. Possibilities for chicken raising or pig raising are very limited. Only on the Sihanouk resettlement site, have AHs been given access to unutilized land to use intermittently for pig raising. If pig and chicken raising was expected to become a major income earning opportunity, AHs could have been given access to common lots to pursue this activity.

179. The IRP was poorly designed and it was commenced late. At all sites, IRP training activities started several months after resettlement took place. An income restoration program only focused on training which commences its activities many months after AHs have been resettled is not suitable to restore the livelihood of affected people. As a result of the inadequately designed and implemented IRP, resettled AHs, suffered significant income losses. As the coping mechanisms for vulnerable households, such as AHs are very limited, income shocks led to borrowing from moneylenders at usury rates. Insufficient income restoration at the time of resettlement is a contributory reason for the increasing indebtedness of resettled AHs (see section B.4. on indebtedness). The amounts of income losses experienced by households are difficult to be established. No appropriate baseline census was undertaken as part of the resettlement planning process which allows income gains or losses to be firmly established. The absence of a reliable baseline census, as is typically a standard requirement in a resettlement program, is regrettable. The ability of the project to assess income restoration outcomes based on the pre-project livelihoods of the APs is therefore doubtful. Income loss data provided in Table 7 below are based on socioeconomic assessments undertaken by the consultants engaged for the IRP by inquiring from AHs after resettlement.

²⁷¹ A study undertaken by the NGO Sahmakum Teang Tnaut for the Phnom Penh resettlement site showed that resettled households found it significantly more difficult to borrow from financial institutions than households which remained at the original site. Resettled households thus overwhelmingly turned to informal lenders. See report *End of the Line, Impacts of Resettlement Under the Railways Project in Phnom Penh*, May 2013.

180. Recognizing the flaws of the IRP, an agreement was reached by AusAID in 2011 to implement an EIRP. This program provides some capital support, to be managed through SHGs, in addition to financial planning and management. The design of the EIRP is more appropriate than the IRP, albeit its approach in financial assistance is cautious and limits financial assistance to short maturities and relatively small amounts. But the main concern is that the EIRP became effective only in mid-2012, at a time when vulnerable households already had experienced significant income loss and incurred increased levels of indebtedness. As Table 7 shows, there was a time gap between the start of resettlement and the start of disbursements that assisted APs to make investments in income restoration of about 2 years in the Sihanoukville, Battambang, and Pursat resettlement sites, and about 1 year in the Poipet and Phnom Penh sites.

Table 7²⁷² Commencement of EIRP Activities and Estimated Monthly Income before and After Resettlement

Resettlement Site	Start of Relocation	Start of EIRP Disbursement for Income Restoration ^a	Monthly Household Income before Resettlement (\$; rounded)	Monthly Household Income after Resettlement (\$; rounded)	Period for Income Loss Computation	Lump-Sum Income Loss Adjustment (\$ per household)
Sihanoukville	Oct 2010	Jul 2012	To be determined	To be determined	18	To be determined
Battambang	Nov 2010	Jul 2012	171	86	18	1,530
Pursat	Nov 2010	Jul 2012	225	123	18	1,836
Phnom Penh (Trapeang Anhchanh)	Sep 2011	Jul 2012	652	448	18	3,672
Poipet	Apr–Nov 2011	Jul 2012	344	359	No adjustment	Nil

^aSource: For Northern Line Resettlement sites: SBK Research and Development, Design and Implementation of Income Restoration Program for Northern Line Section, 25 December 2010; For Phnom Penh: SBK, Socio-Economic and Needs Assessment Report, Design and Implementation of Income Restoration Program, 11 May 2012; For Poipet: SBK, Design and Implementation of Income Restoration Program, Poipet Station, July 2012.

181. The preparation of the 2006 RP devoted inadequate attention to upfront groundwork for a sound income restoration program drawing on good practice experience from programs supported in other resettlement programs. The budget allocated to the IRP was inadequate. This omission resulted in both inadequate design of the income restoration program and serious delay of the start-up of income restoration activities. When ADB recognized during implementation that the IRP was inadequate, since it only provided training without any financial support for the investments required to make use of the new skills for livelihoods, it undertook a major effort to establish an income restoration program incorporating asset building strategies as provided for in the policy on Involuntary Resettlement. These efforts are still ongoing.

²⁷² The data presented in this Table is only illustrative in nature and should be used with caution as no reliable pre-resettlement data is available and survey techniques are unknown. Income losses might therefore not be fully representative. Incomes at the Phnom Penh resettlement site were estimated by the NGO Samakum Teang Tnaut, at \$372 household income per month prior to resettlement in 2011 and at \$220 household income after resettlement in 2012. The reduction was due to a per capita reduction in income earned and in increased unemployment. Prior to resettlement each household had an average of 2.57 income earners. After resettlement, the number of average income earners dropped to 2 per household. A qualitative assessment shows that about 85% of the households that moved to the Phnom Penh resettlement site describe their economic situation as greatly worsened or worsened. See May 2013, *End of the Line, Impacts of Resettlement Under the Railways Project in Phnom Penh*, Tables 7, 8, 21, Figure 16.

182. The RRP of November 2006 identified the following issue: “Displaced households and businesses face the risk of losing access to their sources of income if they are moved too far away from their current residence, thus resettlement sites have been identified close to current places of occupancy” (para. 43). This was also a concern expressed by APs in early consultations.²⁷³ As described above in section A.2, this risk was not addressed. Although the 2006 RP specifies that resettlement sites will be located 3 km–5 km from the location from which the AHs will be displaced, four of the five resettlement sites were located beyond this limit, and the Phnom Penh site was located 20 km or more from the original homes of the resettlers.

183. The 2006 RP states that a “detailed income restoration strategy will be finalized during implementation, according to the actual need of APs. It will be based on the following factors: APs’ preferences, level of preparedness of the AP to participate in such programs, and economic viability” (p. 59), and that the strategy may include vocational training, and project related employment (p. 60). It goes unexplained why a preliminary needs assessment could not have been carried out during preparation, based, among others, on the information from the socioeconomic surveys, interviews with APs, and lessons from other projects, and operational guidelines for implementation developed up front. This would potentially have enabled the IRP to start much earlier than eventually happened. Moreover, the budget allocation for income restoration at \$550,000 was unrealistically low, and no allocation had been made for income restoration in the Phnom Penh section of the railway line (p. 83).²⁷⁴

184. The start of income restoration activities was delayed, and only in March 2010 had IRC “signed a contract with Envisioning, a Cambodian NGO with experience in income generation, for the Southern Line to implement the income restoration program.”²⁷⁵ The BTOR for the March 2010 mission also stressed the critical importance of livelihood restoration as “a key component of the Project due to the large number of relocated AHs and the distance of the proposed resettlement sites from their former locations (especially in Phnom Penh).”²⁷⁶ This BTOR furthermore observed that since the process for selecting an implementing agency takes 3 months, IRC should start this process as soon as possible for the Northern Line and in Phnom Penh.²⁷⁷ The particular urgency of initiating income restoration activities for the Phnom Penh section was confirmed by a mission in late 2011, when these activities were still pending there.²⁷⁸

185. By December 2010, another NGO had been contracted to implement the IRP for the Northern Line section, but selection of an implementing agency was still pending for the Phnom Penh section.²⁷⁹ ADB never received from IRC the Inception Report for the IRP for the Southern Line, and was therefore not in a position to assess the approach used by the NGO before

²⁷³ October 2006 RRP, Annex 1.

²⁷⁴ The October 2006 RP also stated that “severely affected and vulnerable APs will be prioritized in gaining employment 1) in project construction work ... and 2) in Railway Company during operation” (p. 60). However, it was cautioned that “since approximately 600 Railway Company will be retrenched ... this may not be a feasible income restoration measure for APs.” (Ibid.) There is no subsequent information of any employment in any of these two categories.”

²⁷⁵ BTOR of Resettlement Review Mission, 7 May 2010, Annex with ‘Summary of Recommendations for Improving Resettlement Implementation’.

²⁷⁶ Ibid.

²⁷⁷ BTOR of Resettlement Review Mission, 7 May 2010, Annex with ‘Summary of Recommendations for Improving Resettlement Implementation’.

²⁷⁸ BTOR of Consultation Missions, 20 December 2011, para. 6.

²⁷⁹ BTOR of Resettlement Review Mission, 5 January 2011, para. 11(b).

activities started on the ground.²⁸⁰ This may have delayed effective income restoration, since an ADB mission in early 2011 found that “a more suitable and sustainable approach is needed to meet the overall objective of the income restoration program.”²⁸¹ The EIRP, which was agreed for the Northern Line and Poipet section involved “efforts to help AHs earn cash and augment this with backyard food and livestock production,” and an important component would be “the establishment of a self-help organization of AHs living in the relocation site and access to a credit facility for income generation.”²⁸²

186. The ADB mission in December 2010 also noted that the allocated budget for the IRP had been exhausted and that mobilization of additional funding was required.²⁸³ The implication of this budget constraint was that in early 2011, the EIRP had to be put on hold in the Southern Line section while activities in the Northern Line section were still to start.²⁸⁴ However, the originally planned more limited IRP activities continued in the Southern and Northern line sections.²⁸⁵ An agreement had been reached by July 2011 with AusAID for funding of the EIRP activities, but the program proposal required “additional work to accommodate the changes in scope and develop budget and implementation arrangements.”²⁸⁶ Only by December 2011, was the EIRP with AusAID financing of \$960,000 approved by IRC, and implementation was expected to start in January 2012,²⁸⁷ 4 years after the project took effect.

187. The BTOR for the ADB mission in November–December 2011 noted that the EIRP concept paper had been revised, and that ADB would develop operating guidelines for the EIRP and submit these by 15 December 2011.²⁸⁸ In anticipation of the finalization of the EIRP approach and availability of funding, SHGs had begun to be formed—one each in Battambang, Pursat, and Sihanoukville, and two in Poipet.²⁸⁹

188. The EIRP was intended to address some of the shortcomings in the IRP. The most significant of these shortcomings were that while the IRP provided skills training for income generation for APs, it did not provide any source of funding to make the required investments to make use of the training. To address this and other issues, the EIRP would in addition to skills training also include a community development fund, which would be managed by SHGs comprising APs, and provide seed capital to enable funding of income generating activities. However, loans provided under the fund to the APs are very limited in size and are provided only at short maturities. A third component was a Social Safety Net Fund (SSNF), also to be managed by the SHGs that could provide grants to vulnerable households to cushion the impact of social shocks such as illness or accidents.²⁹⁰

²⁸⁰ Ibid.

²⁸¹ MOU Resettlement Review Mission, 10 February 2011, para. 4.

²⁸² Annex on ‘Proposed Actions to Improve Resettlement Implementation’ in BTOR/MOU Resettlement Review Mission, 10 February 2011

²⁸³ BTOR of Resettlement Review Mission, 5 January 2011, para. 11(b).

²⁸⁴ BTOR of Resettlement Review Mission, 15 April 2011, para. 9.

²⁸⁵ BTOR of Resettlement and Social Review Mission, 6 July 2011, para. 8

²⁸⁶ Ibid.

²⁸⁷ BTOR of Consultation Missions, 20 December 2011, para. 6.

²⁸⁸ BTOR of Resettlement Mission, 7 December 2011, para. 2.

²⁸⁹ Ibid. para. 3.

²⁹⁰ Appendix 1 “Draft Concept Paper on EIRP” in BTOR Resettlement Mission, 7 December 2011, Annex on EIRP Guidelines of March 2012 in BTOR for Resettlement Mission on EIRP, 27 April 2012; and CRP interview with Social Safeguard Officer, CARM on 18 March 2013.

189. During a consultation mission on EIRP Guidelines in February 2012, the final version of the guidelines was agreed between IRC, ADB, and AusAID.²⁹¹ However, no consultation was undertaken on the EIRP design with AHs or with the NGOs that had been monitoring the resettlement process and assisting AHs. Orientation training on the EIRP guidelines for the staff of the two implementing NGOs was conducted during February 2012, but “one session of orientation for the IRP teams is simply not enough.”²⁹² To supplement this, it was proposed to field a follow-up mission over 1 month in March–April 2012 to prepare a simplified version of the guidelines for use by the SHGs, and train the NGO teams and IRC on the formation and functions of the SHGs. These tasks were accomplished during a mission from 12 March to 11 April 2012, and the BTOR concluded that “this capacity building exercise will be a continuing activity to deepen the IRP team members’ understanding and to hone their skills in community organizing.”²⁹³

190. The BTOR for the Consultation Mission on EIRP Guidelines in February 2012 makes two candid observations regarding the nature of the EIRP and what the program can and cannot be expected to accomplish. The first of these observations views the EIRP as a social experiment: “The merits of the EIRP can only be put to the test through its actual implementation involving AHs with varying needs and capabilities and in locations with varying livelihood opportunities. ... the EIRP is basically untested at the scale of the railway project. ... there is much at stake here.”²⁹⁴ The second observation cautions against too high expectations on what the program can realistically achieve: “While EIRP is intended to help relocated AHs provide for their daily needs in a sustainable manner, the program does not and cannot address the need of relocated AHs for assistance in building decent houses.”²⁹⁵

191. Over February and March 2013, a mission on EIRP was undertaken to assess the capabilities of the SHGs in order to identify and implement capacity building activities to make the SHGs viable.²⁹⁶ A total of 12 SHGs had been formed with 384 AHs as members, of which six SHGs were in Poipet, three in Phnom Penh (where EIRP activities had started ahead of the Addendum RP), and one each in Battambang, Pursat, and Sihanoukville.²⁹⁷ The mission found that “the operation of all SHGs in the 5 relocation sites is still rudimentary”, and “most if not all of the SHGs are run single-handedly by their respective leaders” since the opportunity costs of lost income deter most SHG officers from devoting their time to the running of the SHGs.²⁹⁸ Capacity building of 115 APs was conducted across all SHGs during the mission.²⁹⁹ However, a Resettlement Review conducted in March 2013 found that in two of the three resettlement sites visited (Pursat and Poipet) loans were repaid and there were no defaulters, while the SHG in the third site (Battambang) had not extended any loans yet.³⁰⁰ Based on the newly introduced photo-mapping and tracking system, it was also found that 73% of the AHs in the Poipet resettlement site had improved their incomes, while in the Phnom Penh resettlement site, 18% had a lower income than pre-displacement.³⁰¹ However, the methodological basis for these figures is unclear. Also worth noting is that the IRP and EIRP do not cover AH who have not had to move but whose houses were partially affected by the project. For these AHs, there is no

²⁹¹ BTOR of Consultation Mission on EIRP Guidelines, 29 February 2012, para. 1.

²⁹² *Ibid.* para. 11.

²⁹³ BTOR of Resettlement Mission on EIRP, 27 April 2012, para. 7.

²⁹⁴ BTOR of Consultation Mission on EIRP Guidelines, 29 February 2012, para. 10.

²⁹⁵ *Ibid.* para. 6.

²⁹⁶ BTOR of Mission on EIRP, 25 March 2013, para. 1.

²⁹⁷ *Ibid.* para. 3.

²⁹⁸ *Ibid.* para. 5.

²⁹⁹ *Ibid.* para. 9.

³⁰⁰ Resettlement Review, para 20-22, in BTOR Special Project Administration Mission, 11 April, 2013.

³⁰¹ *Ibid.* para 7(vi).

income restoration component as ADB assumed that their income would not have been affected.

192. While the EIRP represents a significant step forward in supporting the income restoration of the resettlers, its delay affected its effectiveness in assisting the poorest and most vulnerable AHs, who had already experienced income losses during resettlement and whose indebtedness and thus, vulnerability increased as a result of these income losses.

193. **Conclusions on ADB compliance:** Preparatory work for the design of an appropriate income restoration program and budget allocations for the program were insufficient. This resulted in both inadequate design of the income restoration program and serious delay of the start-up of income restoration activities, resulting in noncompliance with OM F2/BP, para. 4(ix),³⁰² OM F2/OP para. 16.³⁰³ During implementation, when ADB recognized that the income restoration measures in the RP were inadequate, it undertook a major effort to establish an effective income restoration program incorporating asset building strategies as provided for in the policy on Involuntary Resettlement. While these interventions have improved the IRP and EIRP, further fine tuning and expansion of funds is needed to make it work better for the AHs. The very substantial delays of an appropriate income support program resulted in substantial income losses to resettled households.³⁰⁴ Finally, no appropriate baseline census was undertaken as part of the resettlement planning process which would allow a robust assessment of the results of the income restoration effort.

4. Indebtedness

194. **The Request for Compliance Review** holds that the “combined factors of reduced income, increased expenses and insufficient compensation have led to widespread household indebtedness. Many AHs, including requesters, claim that they have had no choice but to borrow from moneylenders at exorbitant interest rates ... AHs have expressed fear that they will lose their plots to creditors once (or even before) they receive title because they are unable to manage their monthly repayments because of their reduced income-earning potential” (para. 34). It is also stated that “ADB confirmed again during the 27 August [2012] NGO roundtable discussion that the EIRP would not provide debt relief to vulnerable AHs who are heavily indebted as a result of resettlement. ... the debt burdens that these families face are a direct result of the Project ...” (para. 43).

195. **ADB policy requirements.** OM F2/BP para. 4 states that particular “attention must be paid to the needs of the poorest affected people, and vulnerable groups that may be at high risk of impoverishment. ... Appropriate assistance must be provided to help them improve their socio-economic status.” Such assistance may include measures to “create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and]

³⁰² The involuntary resettlement policy requires specific measures to “create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and] (iv) reducing vulnerability to poverty through asset-building strategies such as development grants ...” (F2/OP para. 16).

³⁰³ The involuntary resettlement policy requires specific measures to “create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and] (iv) reducing vulnerability to poverty through asset-building strategies such as development grants ...” (F2/OP para. 16).

³⁰⁴ Management’s response to CRP’s draft report dated 20 December 2013 states that the design and budget allocation for the IRP in the 2006 RP were sufficient at the time, and acknowledges the shortcomings identified during implementation. The CRP finds that the IRP was faulty from the beginning – it assumed access to credit and did not have a capital component (paras. 177-179). Moreover, as a result of the faulty IRP design and the delay in income restoration there has been substantial income losses to vulnerable households.

(iv) reducing vulnerability to poverty through asset-building strategies such as development grants ...³⁰⁵

196. The exact level of indebtedness of the resettled households is difficult to establish, as only sketchy data were collected. But there is evidence that the indebtedness of AHs significantly increased after resettlement.³⁰⁶ A review by ADB came to this same conclusion (see paras. 203-204). In the absence of a census before resettlement, the incremental indebtedness resulting from the resettlement process is difficult to estimate. The increased indebtedness has several causes. But it is highly likely that the resettlement program described above weakened the coping capacity of the poor and significantly increased their vulnerability to shocks. Since those who were resettled were mostly poor, this increased vulnerability rendered them significantly more exposed to indebtedness after they were resettled.

197. ADB's resettlement audit of the Highway One Improvement Project had found that "inadequate compensation forced APs to go into debt."³⁰⁷ The 2006 RP acknowledges that "lessons learned from the NPA experience show that providing a plot of land with all services doesn't guarantee livelihood security,"³⁰⁸ and also briefly considers the issue of indebtedness, but does not introduce any operational measures to address the issue: "Low interest credit or small-scale savings schemes may also reduce the need for people to borrow from private money lenders at high interest rates. However credit is difficult to implement in Cambodia" (p. 59).

198. The 2006 RP did not assess indebtedness of AHs as an issue in its socio-economic survey. Indebtedness of AHs in Battambang was first identified by BABC and communicated to ADB's monitoring consultant in May 2010.³⁰⁹ Possible indebtedness of AHs was identified by ADB's monitoring consultant as an issue in the BTOR for a Resettlement Review Mission undertaken in December 2010, which found that AHs in the Battambang resettlement site might be indebted, and suggested assessing whether this might be linked to compensation payments below replacement costs.³¹⁰ The issue was raised again by the monitoring consultant in his report from a mission in January–February 2011.³¹¹ The position expressed by ADB on this issue was that "there is no widespread case of indebtedness, and those in debt did not borrow from creditors (relatives, legitimate credit facilities, private loan sharks) because the

³⁰⁵ Ibid. OM F2/OP para. 16.

³⁰⁶ Data collected by the NGO Samhakum Teang Tnaut for the Phnom Penh resettlement site show that the average resettled household carries debt in the amount of \$1,000 as opposed to an average debt of \$700 carried by households which remained at the original site of residence near the railway. Data also shows that most of this incremental debt was provided by informal money lenders who lend at very high interest rates. Seventy-three percent of outstanding debt is owed to informal lenders, while households who remained at the railway station only owe 32% of outstanding debt to informal lenders. The same report also notes that about 60% of the borrowing went into construction of houses at the site. The report also notes that households at the new sites on average have constructed larger and better quality houses. One can assume that some of the funds were used to construct larger and better living facilities. But a significant amount of borrowed funds was necessary to substitute for insufficient compensation. See report May 2013, End of the Line, Impacts of Resettlement Under the Railway Project in Phnom Penh, Tables 10, 11, 19, Figures 14 and 15.

³⁰⁷ ADB Resettlement Audit of the Highway Improvement Project – Jan. 2006, p. 72.

³⁰⁸ In 1998, the NGO Norwegian People Aid (NPA) together with a Dutch NGO were involved in a resettlement scheme in Poipet, where poor households relocated from slum areas along the railway to a new resettlement site (Ibid. p. 56).

³⁰⁹ See attached requesters' comments on the CRP draft report

³¹⁰ Annex on 'Proposed Actions to Improve Resettlement Implementation and Monitoring' in BTOR Resettlement Review Mission, 5. January 2011.

³¹¹ Annex on 'Proposed Actions to Improve Resettlement Implementation' in BTOR Resettlement Review Mission, 10 February 2011. The BTOR for this mission stated that it "recommends that ADB and AusAID initiate an amiable termination of the contract" of the Social Adviser (para. 10).

compensation paid for the lost houses was not at replacement rates. AHs borrowed money for various reasons even when they were still in the [Battambang] railway station.”³¹² None of the succeeding ADB missions in 2011 brought up this issue again.

199. However, the issue was raised again in OSPF’s report of February 2012, which noted that “a number of complainants mentioned that they are indebted and must pay high interest rates. They are afraid of losing their houses and land if they cannot pay. They attribute their indebtedness to the low compensation rates they received.”³¹³

200. Only when the EIRP was being finalized, did ADB again recognize the indebtedness of AHs as an issue that had to be considered. The consultation mission on EIRP guidelines in February 2012 made the following assessment of the issue:

Relocated AHs are apparently inclined to build houses that are more decent than their shacks in the project COI regardless of whether or not they have the means to do so. This situation is evident in Poipet and in Trapeang Anhchanh in Phnom Penh where a number of AHs have borrowed from credit institutions or private sources to build better houses, some of which are simply too big.... These AHs are known to have borrowed as much as \$3000 to \$5000.... On the other hand, some AHs have borrowed from credit institutions or private sources to build modest houses.... The amounts borrowed for modest houses range from \$1,500 to \$2,000. Still, there are some other AHs who rebuilt their houses from materials salvaged from their demolished houses.³¹⁴

201. This situation would have serious consequences for the success of the new EIRP since “the relocated AHs simply cannot focus their efforts on building a stable livelihood while they are weighed-down by the need to pay back loans incurred in building new homes.”³¹⁵ The conclusion drawn from this assessment was that: “The EIRP cannot succeed without providing equal attention to the needs of the relocated AHs for assistance in building modest homes.”³¹⁶ The mission suggested as a possible mechanism to address this issue that the government, ADB, and AusAID should consider mobilizing resources to establish a “block fund” similar to the EIRP to assist “AHs in building new homes, including restructuring the loans of AHs who already built simple (not the villas) houses on credit.”³¹⁷

202. The joint review mission in November–December 2012 found that there were indebted AHs in all the resettlement sites, but that the issue was most severe in the Phnom Penh site, where 86% of the AHs had borrowed an average of \$1,200 from moneylenders. During site visits, the mission also found that AHs had used their plots as collateral for loans.³¹⁸ A Resettlement Review conducted in March 2013 reported findings that confirmed those of the November–December 2012 mission in some respects, while it differed on other findings of the previous mission. Thus, it found that in the Phnom Penh site, 76% of the AHs interviewed had loans averaging \$1,300, while indebtedness was not an issue in the other resettlement sites.³¹⁹ However, though somewhat contradictory, it also found that sale of house plots was most

³¹² Ibid.

³¹³ Review & Assessment Report of the Special Project Facilitator, February 2012, p. 7.

³¹⁴ BTOR of Consultation Mission on EIRP Guidelines, 29 February 2012, para. 6.

³¹⁵ Ibid. para. 7.

³¹⁶ Ibid. para. 8.

³¹⁷ Ibid. para. 12.

³¹⁸ MOU Joint Review Mission, November–December 2012, Annex 5: Resettlement Review, para. 23.

³¹⁹ BTOR of Special Project Administration Mission, 11 April 2013; Resettlement Review, para. 7.

pronounced in Poipet where 91 AHs had sold their plot, and less so in Phnom Penh where only 14 AHs had done so.³²⁰ Whether these sales were related to indebtedness was not clarified. The mission also found that all the AHs in the Sihanoukville resettlement site had improved their housing compared to the pre-displacement situation, while the figures were 77% in Poipet, 63% in Pursat, and 47% in Phnom Penh.³²¹

203. In November 2012, ADB commissioned a review of the debt situation of the re-settlers.³²² While the study does not present quantitative data on the debt situation, its main finding were that (a) the affected households' debt situations varied greatly, (b) some families had relocated, built a shelter and had remained out of debt, (c) others had borrowed from microfinance institutions and started businesses, (d) the third group had borrowed from money lenders and become overwhelmed by debt, and (e) the reasons for the third group's debt varied from rebuilding their shelter, to feeding themselves, to medical bills, to starting a business.³²³

204. The households in the third group appear to be among the poorest 53% of the AHs, who have monthly incomes below the threshold (\$150/month) that would make them eligible for loans from a microfinance institution.³²⁴ The study argues that access to future land title on resettlement has enabled the affected households to borrow larger amounts than usual, on the basis of the perceived security they hold and, in many instances amounts that based on their reported income, they could never hope to repay.³²⁵

205. While possession of the plot furnishes poor re-settlers with the means to get credit from moneylenders that they could not otherwise obtain, the circumstances that force them to do so cannot be separated from the impact of the resettlement process (something that the study does not consider). The combined effect of the design and implementation flaws in the resettlement program have, at the very least, contributed to weaken the economic coping capacity of some AHs, reduced their resilience and rendered them more vulnerable to stresses and shocks. These factors have been described above and include (i) the lack of indexing of compensation rates to reflect price levels at the time of compensation payments (paras. 57–59), (ii) inaccurate DMS that resulted in underpayment of compensation (paras. 74–79), (iii) the use of the principle of replacement value for house compensation which on the average only provided AHs with a compensation amount that was about half the cost of replacement housing of minimum standard (para. 159 and Table 6), (iv) inaccurate assessments of property losses (paras. 161–163), (v) a fixed transportation allowance for resettling which did not take the varying distances to resettlement sites into account (para. 167), (vi) a transition allowance that neither reflected the price of rice nor the actual time required to reestablish livelihoods, (paras. 168–171), (vii) location of most resettlement sites in places that made it difficult or impossible to maintain former sources of livelihoods (para. 95), and (viii) an initially inadequate and in any event much delayed income restoration program (paras. 177–190). The combined effect of these factors on people who were mostly quite poor before their displacement, has significantly contributed to make them more exposed to indebtedness.

206. Given the experience with the Highway One Improvement Project and its lessons about indebtedness, the CRP finds it disturbing that ADB did not expend more resources and consult

³²⁰ Ibid.

³²¹ Ibid. The improvements consisted inter alia of changes compared with pre-displacement from thatched to zinc roofs, zinc to brick walls, and larger houses.

³²² Confidential internal ADB report of 27 June 2013.

³²³ Ibid.

³²⁴ Ibid.

³²⁵ Ibid.

more expertise in the design phase of the RP and include clearer provisions regarding income restoration, including a credit scheme for AHs. ADB staff who were interviewed acknowledged that when AHs were allotted a titled land, they would most likely have been motivated to build a better house than the one they had under precarious titles. This was a foreseeable consequence of the resettlement scheme from the beginning. One way to solve that problem would have been to provide minimum standard housing for AHs. Alternatively, the problem could also be addressed through a credit scheme built in to an IRP. Due diligence was therefore required in the development of the 2006 RP. The 2006 RP ought to have addressed these issues in depth. But it did not, thereby, giving rise to a design flaw. That said, not all indebtedness is due to relocation or income losses. Some are simply the result of imprudent borrowings from usury lenders. Others are probably the result of insufficient compensation for houses and still others are due to the loss of incomes because AHs were spatially removed from their sources of income. In our recommendation, we attempt to develop a differentiated approach to remedy this problem, based on our interviews with ADB staff, AHs, and government officials.

207. Conclusions on ADB compliance: The CRP finds that the design and implementation of the resettlement program was a contributory factor in the indebtedness of a significant number of AHs. The 2006 RP did not adequately assess and address the indebtedness issue, although this was a known impact from the Highway One Improvement Project. The CRP therefore finds noncompliance with OM F2/BP para. 4 and OM F2/OP para. 16 and para. 54.³²⁶

6. Conclusions concerning Compensation, Livelihood and Income Restoration, and Indebtedness

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings
B.1. Adequacy of compensation for property losses		
<p>"There is evidence of inaccuracies in the categorization of structure types and other measurements and a systematic downgrading of compensation entitlements for structures" (para. 23).</p> <p>".. a number of the 64 households classified as partially affected [in Poipet] would be left with less than 30 square meters of living space after removing the portion of their structures within the COI" (para. 20)</p>	<p>One of the three important elements of the involuntary resettlement policy is "compensation to replace lost assets, livelihood, and income", and for lost assets "all compensation is based on the principle of replacement cost." (OM F2/BP para. 4)</p> <p>Replacement cost "means the method of valuing assets to replace the loss at market value, or its nearest equivalent .." (OM F2/BP footnote 6)</p> <p>Those affected are to be consulted on the "asset inventory" of their losses. (OM F2/OP para. 34)</p> <p>".. measures to improve the status of</p>	<p>Noncompliance with: OM F2/BP para. 4 and footnote 6; OM F2/OP paras. 16 and 34</p>

³²⁶ Management's response to CRP's draft report dated 20 December 2013 states that the 2006 RP adequately considered key lessons on indebtedness from the Highway One Improvement Project. CRP disagrees since while the 2006 RP acknowledges the lesson from Highway One, it did not provide measures to address the issue (para. 197). Management also states that it is difficult to attribute the indebtedness of AHs to this project. The draft CRP report does not make such a claim. The CRP attributes the indebtedness of some, but not all indebted AHs to the project (paras. 201-205).

	the poor and vulnerable people should focus on strategies to avoid further impoverishment and create new income opportunities. Among them are ... replacement housing of minimum standard ..." (OM F2/OP para. 16)	
B.2. Adequacy of transition assistance for affected households		
<p>".. there is no provision under the EIRP to compensate people for their actual loss of income and livelihood sources, including net income lost during the transition period" (para. 42).</p> <p>Compensation rates and resettlement costs (which includes transition allowances) "were calculated in 2006, when the original Resettlement Plan was prepared. Compensation payments, however, began in 2009 and are continuing well into 2012. In more than five years, with the possible exception of Phnom Penh, the compensation rates were not adjusted to reflect annual inflation" (para. 24).</p>	<p>All "eligible affected people ... are entitled to receive one-time financial assistance to cover losses of the move, as well as economic and social rehabilitation. Such entitlements may include (i) relocation and transfer expenses, [and] (ii) assistance for transitional income and livelihood support ..." (OM F2/OP para. 13)</p>	<p>Noncompliance with: OM F2/OP para. 13</p>
B.3. Adequacy of assistance for lost income and income restoration		
<p>"Exacerbating the harm caused by inadequate compensation amounts, totally affected households claim that their incomes have dropped significantly as a result of resettlement." (para. 29)</p> <p>"Income Restoration Programs had not commenced at any of the resettlement sites at the time or for a considerable period of time after families had relocated. In a December 2010 letter to NGOs the ADB acknowledged that "[t]he income restoration programs for the Northern and the Southern Lines are both unacceptably late" (para. 38).</p> <p>"As a part of the IRP, skills training workshops were held at resettlement sites beginning in 2011. The quality of these workshops and the applicability of the skillset covered at these workshops, including chicken raising and mushroom growing, are reported to be low." (para. 39)</p>	<p>One of the three important elements of the policy is "compensation to replace ... livelihood, and income". (OM F2/BP para. 4)</p> <p>Particular "attention must be paid to the needs of the poorest affected people, and vulnerable groups that may be at high risk of impoverishment. ... Appropriate assistance must be provided to help them improve their socio-economic status." (OM F2/BP para. 4 (ix))</p> <p>Specifically, this requires measures to "create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and] (iv) reducing vulnerability to poverty through asset-building strategies such as development grants .." (OM F2/OP para. 16)</p>	<p>Noncompliance during preparation and initial implementation with: OM F2/BP para. 4 (ix) and OM F2/OP para. 16</p> <p>Later during implementation, when ADB recognized that the income restoration measures in the RP were inadequate, it undertook a major effort to establish an effective income restoration program incorporating asset building strategies as provided for in the policy on Involuntary Resettlement.</p>
B.4. Indebtedness		
<p>".. combined factors of reduced income, increased expenses and insufficient compensation have led to widespread household indebtedness. Many AHs, including requesters, claim that they have had no choice but to borrow from moneylenders at</p>	<p>Particular "... attention must be paid to the needs of the poorest affected people, and vulnerable groups that may be at high risk of impoverishment. ... Appropriate assistance must be provided to help them improve their socio-economic</p>	<p>Noncompliance with OM F2/BP para. 4 and OM F2/OP para. 16.</p>

<p>exorbitant interest rates ... AHs have expressed fear that they will lose their plots to creditors once (or even before) they receive title because they are unable to manage their monthly repayments because of their reduced income-earning potential" (para. 34).</p> <p>"ADB confirmed again during the 27 August [2012] NGO roundtable discussion that the EIRP would not provide debt relief to vulnerable AHs who are heavily indebted as a result of resettlement. ... the debt burdens that these families face are a direct result of the Project ..." (para. 43).</p>	<p>status." (OM F2/BP para. 4 (ix))</p> <p>Specifically, this requires measures to "create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and] (iv) reducing vulnerability to poverty through asset-building strategies such as development grants .." (OM F2/OP para. 16)</p>	
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AHs = affected households; EIRP = expanded income restoration program; IRP = Income Restoration Program; NGO = nongovernment organization.

C. Samrong Estate Project Planning and Resettlement

208. We have decided to deal with some aspects of Samrong Estate separately because it presents a set of facts and issues that stand apart from the main project. Samrong Estate is a 104.1 ha area of land located about 10 km west of Phnom Penh.³²⁷ In February 2009, the government decided to offer Samrong Estate to the railway concessionaire under the project, as a new freight and rolling stock maintenance facility. The original intent of the project was to establish such a facility at Phnom Penh. However, the concessionaire and the government took the view that the area at the original location was insufficient. A supplemental loan to cover the cost of resettling AHs and constructing the freight station became effective on 21 April 2010. A draft RP for Samrong was submitted to ADB in June 2009, and this RP was updated again in early 2010, but ADB found that it needed further revision since the DMS to determine the losses of AHs and the consultation and disclosure activities carried out during the updating needed to be improved.³²⁸ Submission of a final version of this updated RP for ADB review was still pending as of 31 October 2013.

209. From the start of resettlement planning, the government claimed Samrong Estate was state public land. However, affected parties disputed the government title to Samrong Estate asserting that the land they held was private property or at the very least open to registration under Cambodian law as private property. When NGOs raised issues concerning the ownership status of the Samrong Estate, ADB in August 2010 requested IRC to submit a legal opinion on the issue.³²⁹ In September 2010, ADB changed its mind and decided to contract its own land law specialist,³³⁰ which was engaged in October 2010, and after significant delays in obtaining the required information, the draft report of December 2011 determined that Samrong Estate was state public land.³³¹ This conclusion was disputed by NGOs, who claimed that some AHs in Samrong had documentary proof of ownership to their plots. To assess this, the investigation

³²⁷ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft June 2010, p.ix

³²⁸ BTOR of Mission, 16 October 2012, para. 6; and BTOR of Resettlement Mission, 20 December 2012, para. 11.

³²⁹ MOU Mission 12 August 2010, para. 29.

³³⁰ Internal ADB memo of 10 September 2010.

³³¹ Internal ADB E-mail of 13 January 2012.

was continued by the ADB consultant, who submitted a legal opinion by a separate legal firm in July 2012 reconfirming its earlier finding.³³²

210. In these circumstances, the following issues arose for review with regard to Samrong Estate:

- (i) the adequacy of the manner in which ADB staff resolved the disputed title issue;
- (ii) the adequacy of steps taken to assess the land requirements for a freight yard and station at Samrong Estate and the assessment of land required for such a facility;
- (iii) the adequacy of the Samrong Estate resettlement plan and consultation;
- (iv) issues concerning compensation in the resettlement plan;
- (v) the adequacy of the procedure followed for obtaining Board approval for the original and supplementary loan; and
- (vi) conclusions on Samrong Estate project planning and resettlement.

211. The first of these issues is raised by the requesters, whereas the other four issues emerged from the CRP's examination of the evidence concerning the planning of resettlement for the Samrong Estate.

1. Adequacy of the Manner in which ADB Staff Resolved the Disputed Title Issue

212. **The Request for compliance review** states that "231 AHs in a 98-hectare area known as Samrong Estate are distinct from other AHs in that they claim legal possession rights to the land that they reside upon and/or farm. In the Draft Resettlement Plan for Samrong Estate, however, the MPWT claims that the area is property of the Royal Railway of Cambodia (RRC). [details in paras. 64–67, and 69]". It further states "Samrong Estate AHs are entitled under Cambodian law, at a minimum, to have their claims adjudicated through an impartial process in accordance with the law. As with the 2005 ban on land transfers, approval by the ADB of the current Draft Samrong Resettlement Plan, which denies residents' land rights, could constitute an offense under the penal provisions of the Land Law."³³³

213. The request also states that with regard to this aspect,

BABC sent two memos to ADB with extensive legal analyses and supporting documentation regarding the legal tenure status of Samrong Estate residents in September 2010 and January 2012 respectively (See Annex 9). The findings of that analysis were that the Samrong Estate land is not State public property but rather the private property of Samrong residents who have legally acquired or purchased possession rights over the land. Upon receiving the September 2010 BABC memo, ADB undertook to commission its own legal assessment on the matter. In late 2010, ADB informed BABC and Samrong AHs that it had engaged DFDL law firm to carry out the legal assessment. Some two years later, on 17 August 2012, ADB released on its website an "ADB Statement on Samrong Estate Legal Opinion," along with a legal opinion provided not by DFDL law firm but by the firm Honest and Balanced Services (HBS). The HBS legal opinion did not review key records and documents that substantiate the residents' claim to

³³² Briefing Note: LN2288-CAM and LN2602-CAM/AusAID Grant 0187-CAM, 6 September 2012.

³³³ Ibid, para. 68.

possession rights. Moreover, the opinion reads not as a balanced, good faith effort to determine the facts and impartially analyze the applicable law, but rather as one written to justify the State's claim to the land. On several points, the opinion makes statements about the Land Law that are manifestly wrong. This calls into question the independence of the firm that provided the opinion.³³⁴

214. The Request further stated that “(i) in the “ADB Statement on Samrong Estate Legal Opinion,” ADB insinuates that it accepts the HBS findings [that Samrong Estate is State public land] and will proceed with approval of an Updated Resettlement Plan. Despite the strength of the legal arguments to the contrary and the weaknesses of the HBS opinion, it thus continues to regard Samrong Estate as State public land and denies AHs their legal right to market-based compensation for their land in accordance with the Cambodian Expropriation Law.”³³⁵ The relief sought by the requesters was “that the CRP undertake an independent legal assessment of their land rights in order to determine whether ADB has complied with its operational policies requiring compliance with national laws.”³³⁶

215. **ADB policy requirements.** ADB’s policy on involuntary resettlement state that “(r)ehabilitation measures ... must be determined in consultation with affected communities, whose rights might not be formally recognized in national legislation”³³⁷ and “(r)eplacement cost is based on market value before the project or dispossession, whichever is higher.”³³⁸ ADB operational policies and procedures also state that “(l)ack of formal legal title to land by any affected people is not a bar to ADB policy entitlements. In order to assist affected people who may not be entitled to compensation for loss of land under the applicable legal framework of the developing member country (DMC) concerned, eligible affected people are classified into three groups with respect to land title, each of which will have different entitlements as set out in Section C.”³³⁹

Titled: Those who have formal legal rights to land, including any customary or traditional rights recognized under the laws of the country.

Legalizable: Those who do not have formal legal rights to land when the affected population is recorded, *but could claim rights to such land, under the DMC’s laws.*

Nontitled: Those who have no recognizable rights or claims to the land that they are occupying.³⁴⁰

216. Furthermore, the policy defines “legalizable” as claims that “may result from recognition of prescriptive rights, from adverse possession, from continued possession of public lands without eviction, through eligibility for a government land titling process, or from customary or traditional usage.”³⁴¹

217. Finally, the policy indicates that “(w)here land and assets are lost, titled (para.. 9[i]) and legalizable (para. 9[ii]) affected people are entitled to compensation, in the form of cash at replacement cost or replacement land, and to other assistance to at least restore their economic and social base. Whereas nontitled affected people (para.. 9[iii]), including displaced tenants,

³³⁴ Ibid, para. 69.

³³⁵ Ibid, para.

³³⁶ Ibid, para.

³³⁷ OM F2/BP para. 4, footnote 4.

³³⁸ Ibid, footnote 6.

³³⁹ OM F2/OP, para. 9.

³⁴⁰ Ibid.

³⁴¹ Ibid.

sharecroppers, and squatters, are entitled to various options of resettlement assistance, provided that they cultivated/occupied the land before the eligibility cutoff date. Resettlement assistance to nontitled affected people may also include replacement land, although there is no entitlement to this for such affected people.”³⁴²

218. The draft 2010 Resettlement Plan for Samrong recounts some of these facts as follows: “From 1979 onwards, local authorities apportioned the estate to landless people for residential and agricultural use. Following the change of government in 1989, the District Office of Agriculture reportedly issued a possessory receipt to each household that was awarded land in the estate. Notwithstanding that this receipt was not a land title, a number of the apportioned plots were subsequently transferred or sold to others over the years, with commune officials attesting to the land transfer. In 2000, the RRC served notice to the municipal government of Phnom Penh, district, commune, and village offices that the Samrong Estate was State-owned land under the stewardship of the RRC. Despite this notice, however, the transfer and use as collateral of apportioned plots in the estate continued ... This situation changed in February 2005, when the municipal government of Phnom Penh and the RRC issued an instruction banning the transfer, sale, and the use as collateral, of the apportioned plots in the estate. Since February 2005, the commune council reportedly ceased endorsing any subsequent land transfer. However, commune officials privately admit that the transfer and the use as collateral of the apportioned plots have continued until now, in spite of the 2005 ban.” (p. 1)

219. The draft resettlement plans further recounts “.. the situation at the Samrong Estate is different from other areas affected by the railway rehabilitation project. The Samrong Estate in 1979 was a huge vacant flat land suitable for farming and housing. As in similar locations in other parts of the country, the post-1979 government apportioned the property to landless people primarily for agricultural use. Typical of farming communities, recipients of plots in the estate with no residential land elsewhere constructed their houses inside the estate close to their farms. When private ownership was restored in 1989, the District Office of Agriculture reportedly issued possessory receipts to the people with plots in the estate. ... Over the years that followed until February 2005 when the municipal government of Phnom Penh and the Royal Railway of Cambodia issued a ban to the sale, transfer, and use as collateral of plots of land inside the estate, some or a number of the apportioned plots had been sold to new “possessors”. Since land titling is a recent phenomenon in the country, people given possessory receipts for plots of land in the estate following the restoration of private ownership in 1989 may have thought that they enjoyed absolute ownership over the properties and that these plots could be sold as needed. In 2000, the Royal Railway of Cambodia served notice to the municipal government of Phnom Penh, district, commune, and village offices that the Samrong Estate was government property. The notice was accompanied with a map indicating the boundaries of the Samrong Estate. Said notice did not stop the sale, transfer, and use as collateral of plots in the estate, however.” (p. 5).

220. In this state of disputed facts and legal interpretations, in 2010, ADB management first decided to request a legal opinion from the government. However, for unknown reasons, ADB Management decided to commission its own legal investigation and report from DLDF, a law firm operating in Cambodia. No evidence has been provided on what basis ADB selected DLDF as a law firm. During the CRP’s mission to Cambodia, partners of HBS, the law firm that issued a legal opinion in 2012, stated that DLDF was not competent to issue a legal opinion on title under the rules of the Cambodia bar. Why ADB contracted such a firm to investigate a title dispute under Cambodian law begs a satisfactory explanation.

³⁴² OM F2/OP para. 11

221. DLDF then conducted investigations which included visits to government offices, examination of government records and interviews with local officials and approximately 18 months later (in 2012) concluded that Samrong Estate was state public land and not privately owned or registrable as private property under Cambodian law. By this time NGOs and AHs had raised their voice and asserted that Samrong was private property and they also claimed to have documents to establish these claims. Some of these documents were then obtained by ADB and referred to DLDF for further examination and report. At the end of its investigation, DLDF issued a report with a significant number of caveats. One of these many caveats stated that the report should not be shared with anyone external to ADB.

222. ADB then made further payments to HBS, a legal firm in Cambodia recommended by DLDF (again without any independent verification of competence or independence) to issue a legal opinion that could be made public. The representatives of the requesters have since alleged that at least three partners of HBS have close connection to or hold offices of honor or profit with the government. AHs in Samrong attack both the accuracy as well as the independence of HBS's legal opinion. When the CRP inquired about these partners from HBS, we were informed that they were inactive partners. In order to inspire confidence in a legal opinion that ADB makes public, it is essential that due diligence is performed on the competence and independence of the legal firm or lawyer issuing the opinion. Unfortunately, no evidence of either was provided to us, despite requests to do so during ADB staff interviews.

223. The HBS legal opinion was based on the report prepared by DLDF. In our interview with HBS partners it became clear that in issuing this opinion HBS had not examined all the documentation or been privy to the interviews that DLDF had completed. The legal opinion confirmed that Samrong was state public property and ADB made the document public and issued copies to NGOs. As noted above, the requesters dispute the accuracy, credibility, independence and veracity of this opinion. They continue to assert their legal title to Samrong. Their position is that AHs have title or, in the alternative, have titles that are registrable under Cambodian land laws.

224. Faced with a situation of this nature, what options did the ADB Management have? The policies require the classification of AHs into one of three categories for the purpose of calculating compensation: titled, nontitled and legalizable. If the view of the government is correct, ADB would have to classify most of the AHs as nontitled. On the other hand if the AHs are right in their assertion, they would be classified, at the very least, as legalizable, if not titled, entitling them to higher levels of compensation. The CRP takes the view that the purpose of this classification under ADB's policy is not to determine title to the property. That is not the function of ADB and is best left to the sovereign judicial and other dispute resolution institutions of the DMC concerned. The sole purpose of this policy is to provide a guideline for how AHs should be regarded for the purpose of computing and paying compensation under ADB safeguard policies. Under ADB operational policies and procedures, even AHs not having any title to land receive resettlement benefits and entitlements to help relocate and alleviate their predicament occasioned by the project.

225. The computation of compensation is done after "(t)he population record and asset inventory are prepared on site investigation sufficient to identify titled, legalizable, and nontitled affected people...The population records, land assessment, asset inventory...are prepared in consultation with those affected."³⁴³ The policy makes it clear that the primary responsibility for

³⁴³ OM F2/OP, para. 35

the preparation of resettlement documents is with the executing agency/project sponsor and the function of ADB is to ensure that in the preparation and submission of these documents, ADB policies are complied with.³⁴⁴

226. For an AH to be classified as having a “legalizable” title under the cited ADB policy, what is required is that an AH “*could claim* rights to such land, under the DMC’s laws” and that such a claim “*may result* from recognition of prescriptive rights, from adverse possession, from continued possession of public lands without eviction, through eligibility for a government land titling process, or from *customary or traditional usage*” (emphasis added). In Samrong Estate, ADB is faced with a title dispute in a nation where private and public title to land is, to say the least, complicated, subject to historic uncertainties and vigorously debated by legal experts. In such a case, the CRP takes the view that the application of the safeguards policy ought to follow a precautionary approach where in the case of doubt or dispute, the affected AH ought to have the benefit and be granted the entitlements under the policy. With the Samrong AHs that claim to have title to lands, the most appropriate course for ADB was to treat such claims as “legalizable” and to have computed compensation on that basis.

227. The requesters assert a claim to title on the basis of the Cambodian Land Law of 1992 which allowed title registration in the case of those who had possessed land adversely and independently for 5 or more years. However, the government asserts that in the case of state public property, such possession does not mature into title because Article 5 of the Land Law 1992 states that “private property rights cannot be granted in respect of...land *reserved* for...railroads...”(emphasis added). The requesters counter by arguing that the Samrong Estate lands were never “reserved” by the government for a railway and that to do so there must be, at the very least, an overt, express public act of reservation with notice to possessors and occupiers. Thus, the fundamental question is whether Samrong or a part of Samrong is “state public property.” What constitutes an act of reservation is not defined in the law and as such requesters argue that in the absence of a publicly notified act of reservation, Samrong does not qualify as State public lands. As stated in this report, the CRP and ADB are not the appropriate forums for the determination of this issue. Whether they would ultimately succeed in a Cambodian judicial or other forum is irrelevant for the purposes of the application of ADB safeguards policies. What is material is that they have a claim to title under Cambodian law that is not frivolous. In the CRP’s view, these AHs have a genuine and palpable claim.

228. In the CRP’s view, it is a risky course of action for ADB’s Management to embark on a title investigation of its own or to commission private legal counsel to do so. In this case, IRC and the government asserted that Samrong Estate AHs fell into the category of “untitled.” As in this case, if that assertion is contested and AHs assert title, the appropriate forum for resolving that dispute is not ADB, nor its accountability mechanisms. That dispute is best settled via the DMCs dispute resolution mechanisms under its own domestic laws. Neither ADB nor an independent counsel commissioned by it has the legal wherewithal (For example, the power to summon witnesses, examine documents, test evidence, or give binding legal interpretations etc.) to settle title disputes. If a competent domestic forum rules in favour of or against AHs on title, ADB can then revise the resettlement plan and the entitlements. But until then, all that the policy requires is that ADB classifies AHs into titled, legalizable and nontitled based on the available material and claims of AHs and where there is a real and substantive title dispute, adopt a precautionary approach and err in favor of a higher compensation payment so as not to render the AH worse off. In the case of Samrong, the best approach was for ADB to classify the AHs that claimed title on the basis of possessory receipts or witnessed transfer documents, was

³⁴⁴ Ibid, para. 32.

to treat them as having “legalizable” title. That determination does not end the title dispute but only enables ADB to compute compensation in keeping with the spirit and letter of its own policy on involuntary resettlement.

229. Conclusions on ADB compliance: For these reasons, the CRP is of the view that the AHs in Samrong Estate who claim title on the basis of possessory receipts or witnessed title transfers should be treated as having a “legalizable” title for the purposes of ADB’s policy on involuntary resettlement and compensation computed accordingly. The rehabilitation measures in the Samrong RP were not determined in consultation with the affected community (OM F2/BP para. 4, footnote 4), and their current classification as untitled is a noncompliance with OM F2/OP para. 9. The CRP also wishes to express its concern with regard to the lack of due diligence in assessing the competence and independence of legal firms that were chosen by the ADB in this case.³⁴⁵

2. Adequacy of Steps Taken to Assess the Feasibility of a Freight Yard and Station at Samrong Estate and the Assessment of Land Required for Such a Facility

230. The RRP of November 2009 for the supplementary loan proposes the “transfer of freight and train maintenance operations from the confined and congested central station in Phnom Penh to a new and much larger area in Samrong” to accommodate a new freight and rolling stock maintenance facility.³⁴⁶ The Samrong site is located about 10 km west of Phnom Penh, and “consists of paddy fields and grassland with sparsely populated areas nearby.”³⁴⁷ It has an aggregate area of 104.1 ha.³⁴⁸

231. The MOU for the fact-finding mission in September 2009, lists the following works for the Samrong freight and rolling stock maintenance facility: (i) landfill of 450,000 cubic meters, (ii) civil works comprising road, drainage, water, electricity, (iii) railway track works, and (iv) workshop buildings (5,270 m² and 4,720 m²) with facilities and equipment, at an estimated total cost of \$20.9 million.³⁴⁹ The RRP of November 2009 and RP are even more summary in their description of the planned works. The RRP of November 2009 only states that the proposed works will involve “rehabilitation of existing sidings and construction of short new sidings (about 500–800 meters in length) linking to two dry ports about 50 meters from the existing main line,”³⁵⁰ and since the RRP of November 2009 does not include a map of the Samrong Estate area with the planned infrastructure, there is no substantiation that all the 104.1 ha would be required for the project. The Samrong RP of June 2010 states that the “Samrong railway estate will be leveled and developed with the needed infrastructure support and facilities as a freight and rolling stock maintenance station” and refers to a map of the Samrong railway estate.

³⁴⁵ ADB Management in its response to the draft CRP report states that “matters relating to the procurement of goods and services fall outside the scope of compliance review” and that they “were recruited as individual consultants through DFDL pursuant to para. 2.34 of ADB’s Guidelines on the Use of Consultants and on the basis of their qualifications for the assignment.” The CRP’s concern is with regard to the assessment of the independence and competence of the employed legal firms. The independence and competence of the legal firms contracted by the ADB impacts the legal opinions rendered by the firms and, when acted upon by the ADB, impacts the rights of AHs to compensation. Despite requests for copies of such assessments during confidential CRP interviews with counsel from the Office of General Counsel, no such documentation has been submitted to the CRP.

³⁴⁶ RRP Proposed Supplementary Loan, November 2009, p.8.

³⁴⁷ Ibid. p. i.

³⁴⁸ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft June 2010, p.ix.

³⁴⁹ MOU for the Fact Finding Mission, 1 September 2009, p.10.

³⁵⁰ RRP Proposed Supplementary Loan, p.i.

However, this map, which is in Khmer, only provides an unclear sketch that does not clarify what may be the existing railway line and station, and what might be planned new construction.³⁵¹

232. With regard to resettlement impact, the RRP of November 2009 states that “strengthening and upgrading of track does not require additional design or resettlement, activities consist primarily of the installation of heavier rails and new sleepers. Installation of additional sidings to terminals requires additional design and *minor resettlement*” (emphasis added).³⁵² The rationale for planning resettlement of all land users across all of the 104.1 ha of the Samrong Estate as stipulated in the RP appears not to derive from the immediate need for access to land for the investments under the project, but instead because the Samrong Estate in its entirety is viewed as providing “sufficient space to meet future multimodal transport requirements.”³⁵³ These requirements, moreover, will not be met by the project, rather it is expected that the “concessionaire will undertake additional upgrading of the railway’s infrastructure as justified by future traffic and revenues.”³⁵⁴ Thus, the RP for Samrong does not comply with OM F2/BP para 3 “to minimize resettlement where population displacement is unavoidable”. The 2009 RP states that “MPWT is repossessing the land ... for an aggregate land area of 103.6 ha, a little over the 98.6 ha that the Government has committed to the railway operator / concessionaire for the cargo and freight railway facility.”³⁵⁵

233. Whereas both the 2006 RP and the URPs for the main project (Loan 2288) made efforts “to minimize resettlement where population displacement is unavoidable” as required by ADB’s Involuntary Resettlement Policy (OM F2/BP para. 3) by allowing households displaced from the COI to relocate within the ROW if they so desired, the supplementary project (Loan 2602) appear to veer in the opposite direction by requiring displacement of households from a substantially larger area than that directly affected by the infrastructure financed by the project.

234. The CRP wanted to examine a feasibility study or an equivalent investigation into the justification for a freight facility at Samrong. Such a study would have evaluated the potential need for the facility, projected freight volumes and the extent of land required. During interviews with ADB staff, ADB’s railway project staff in Cambodia stated that a formal assessment had not been done and that an informal assessment was “*more or less made by staff and the engineers and others and we all agreed that it is a reasonable size, and if you compare it with all the terminals, but it’s not something staff have in writing*”³⁵⁶ (emphasis added). It appears that converting Samrong to a freight facility was required because it was part of the concession agreement between the government and the railway concessionaire, Toll Holdings of Australia. The lack of a feasibility study that included an assessment of land required is one of several disturbing features of the proposal to develop Samrong Estate. At the very least, a land requirement assessment would have been necessary to minimize resettlement impact.

235. Conclusions on ADB compliance: While the transfer of freight and train maintenance operations from the confined and congested central station in Phnom Penh to Samrong likely represents a “feasible alternative project design and location option”

³⁵¹ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft June 2010, p.2 and map on p.4.

³⁵² RRP Proposed Supplementary Loan, November 2009, p. ii.

³⁵³ RRP Proposed Supplementary Loan, November 2009, p. ii.

³⁵⁴ Ibid. p.8.

³⁵⁵ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft July 2009, p. ix.

³⁵⁶ Confidential CRP interview.

to reduce resettlement impact (OM F2/OP para. 3), the planning of resettlement for the Samrong Estate did not seek “to minimize resettlement where population displacement is unavoidable” (OM F2/BP para. 3). By requiring displacement of households from all of the 104.1 ha of the Samrong Estate, which is an area significantly larger than that directly affected by the infrastructure financed by the project, the supplementary project does not comply with the policy objective of ADB’s Involuntary Resettlement Policy to minimize resettlement. The absence of a satisfactory and formal feasibility study for the facility prior to the loan or as part of ADB’s facilitation is disturbing because it signals a lack of due diligence and rationality in decision making.³⁵⁷

3. Adequacy of the Samrong Estate Resettlement Plan and Consultations

236. The RRP of November 2009 states that: “The modified project will result in additional resettlement impact at Samrong because of the construction of a new freight facility.... The mitigation measures adopted for the original project will also be implemented for the supplementary financing”(p. i). This is reiterated both in the first draft RP for Samrong from June 2009 and in an updated draft RP of June 2010: “The legal framework, resettlement policy, principles, entitlements, including grievance redress procedures, as provided and expounded in the approved December 2006 RP apply in the Samrong RP.” And this also includes the consultation arrangements.³⁵⁸

237. The implication of the above is that the AHs in the Samrong Estate were not provided with the “specific opportunities ... to participate in choosing, planning, and implementation options” required by OM F2/BP para 4(v). In preparation of the RP for Samrong, only one public consultation meeting lasting two hours was held in September 2009 with participation of 168 AHs, and apart from questions from a few APs, the meeting only involved information dissemination on the project and its impact, entitlements and the cutoff date for these, the schedules for delivery of entitlements and displacement, and grievance redress procedures.³⁵⁹

238. Pending the result of the legal assessment of land ownership issues in Samrong from October 2010 onward, ADB’s review of the draft RP was put on hold.³⁶⁰ When ADB reviewed the draft RP in late 2012, it found that

the DMS and consultation and disclosure activities carried out during the updating of the RP in late 2010-early 2011 were limited, and that the Updated RP for Samrong has to be further revised to ensure that the Project do not encounter problems similar to Phnom Penh (i.e., mis-categorization of structures, lack of transparency, and poor photo-documentation which led to complaints).³⁶¹

³⁵⁷ Management’s response to CRP’s draft report dated 20 December 2013 acknowledges that no feasibility study for Samrong was undertaken as part of processing the supplementary loan. However, Management states that ADB and railway experts of the construction and supervision consultants reviewed the concept layout plan prepared by the railway experts of the concessionaire and found that the proposed facility at Samrong and the land area were appropriate. If this be the case, the CRP takes the view that the concessionaires layout plan and the ADB’s and railway experts of the construction and supervision consultant’ assessment ought to have been included in the RP for the supplementary project. This assessment has not been provided by the Management to the CRP.

³⁵⁸ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft June 2010, p.ix-x.

³⁵⁹ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft June 2010, p. 21 and Annex 3: Minutes of the Meeting.

³⁶⁰ MOU Midterm Review Mission, 30 July 2012, para. 22.

³⁶¹ BTOR of Mission, 16 October 2012, para. 6.

239. Moreover, an updated replacement cost study to determine current compensation rates for land, structures, living allowances, and crops/trees would also be conducted.³⁶² To ensure that the updating would meet ADB requirements, a consultant from ADB-CARM would support IRC in the revision of the RP.³⁶³ ADB also recognized that “continuous guidance and close monitoring are needed to ensure that...the Updated RP for Samrong will be prepared based on lessons learned from previous updated RPs.”³⁶⁴

240. During the October 2012 mission, IRC had rejected that a new DMS be undertaken to correct any mistakes in the one done in 2010.³⁶⁵ However, during a subsequent mission, ADB managed to convince IRC that a verification and updating of the DMS needed to be done, and

conscious of the mistakes in the conduct of the DMS and updating of the RPs for the other components of the Railway Project, IRC, CARM, and AusAID representatives have agreed to ensure the active participation of key stakeholders, especially the AHs, in the DMS and in subsequent activities leading to the preparation, including actual implementation, of the RP for Samrong.³⁶⁶

241. In practical terms, this involved a much more participatory process that engaged AHs in the conduct and verification of the DMS, along with training of both AHs and staff from the entities involved in carrying out the DMS.³⁶⁷ The URP for Samrong was expected to be submitted for ADB review in May 2013.

242. Staff interviews confirmed many of the above facts. Staff also were candid that Samrong presents challenges that are somewhat different from those at the other resettlement sites in that its major use is agricultural (rather than residential). Many of the APs are middle class house owners. Besides, staff agreed that they were being more proactive about the resettlement plans for Samrong and were incorporating lessons learnt from the other resettlement sites.

243. Conclusions on ADB compliance: ADB was not in compliance with the requirements for consulting APs when the June 2010 RP for Samrong was developed, but has apparently (belatedly) begun to incorporate lessons learned from the preparation of the four updated RPs for the other sections of the railway line and of the initial draft RPs for Samrong, and – while the final updating of the Samrong RP is still not available – it appears that there is ongoing due diligence to ensure that compensation rates will be revised to reflect replacement costs at current market rates, that a new DMS is carried out in a genuinely participatory manner involving the AHs, and that both AHs and staff from the entities involved in carrying out the DMS receive adequate prior information on this exercise.

4. Issues concerning Compensation in the Resettlement Plan

244. The draft RP of June 2010 states that of the Samrong Estate comprises 104.1 ha, and of these 97.8 ha are occupied/used by 238 individuals and 1 company. Of this area, 72.8 ha

³⁶² Ibid. para. 5.

³⁶³ Ibid. para.6

³⁶⁴ Ibid. para.13.

³⁶⁵ Ibid. para. 5.

³⁶⁶ BTOR of Mission, 20 December 2012, para. 11.

³⁶⁷ Ibid. and Appendix 4 describing the DMS training.

(74.4%) is cultivated, and 16.3 ha (16.7%) are residential land. About 7.5 ha is cultivated by eight sharecroppers. A total of 75 houses and two shops will be totally affected.³⁶⁸

245. The DMS for the Samrong Estate was conducted in November-December 2009, and the unit compensation costs were based on a replacement cost study conducted in May 2009.³⁶⁹ Consequently, if implemented in 2012, the compensation rates would have been more than 3 years out of date with current price levels.

246. Since acquisition/repossession of land in Samrong is slated to involve displacement of all households from all of the 104.1 ha, certain options such as AHs moving back from the COI to unaffected areas in the ROW would not be available in Samrong. To address this, a set of different mitigation measures and associated compensation rates were defined for these:³⁷⁰

**Table 8: Site-Specific Impact and Mitigation Measures
in the Samrong Resettlement Plan**

No. of AHs	Impact/Losses	Compensation
169	Households losing residential land with standing dwelling unit, those occupying the Samrong railway station buildings and/or who have constructed structures thereat, AHs losing other types of land in the estate, such as farm land, vacant land, grazing land, commercial land etc.	All these losses are compensated at the same uniform rate of \$2.75 per sq.m
5	AHs who have been in the estate before the February 2005 ban and who still till, and derive their livelihood from the land they possess inside the estate.	Cash assistance of \$9.75/sq.m to help them find a replacement for their affected farmland"
75	AHs losing dwelling units, including those who have established residence in the Samrong railway station.	These AHs will not be compensated for the land on which their houses are built but will have the option to (i) self-relocate and receive a cash assistance of \$10,000 each, or (ii) receive a 300 m ² plot each in a relocation site that will be developed by the government
8	Sharecroppers will be provided cash assistance for loss of land use and loss of income	Compensation equivalent to the area lost multiplied with \$0.60/sq.m

AH = affected household.

Source: Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft June 2010, pages 5–6.

247. Compared with the rates in the entitlement matrix in the 2006 RP, which was also applied in the four updated RPs for different sections of the railway line, compensation rates for some types of losses were increased in the draft RP of June 2010 for Samrong. Whereas compensation for "loss of land use" in the 2006 RP was uniformly set at \$0.50 per m², the 2010 RP for Samrong applied three different rates. For the five AHs that were recognized to have resided and used land in the Samrong Estate before the February 2005 ban and still derived their livelihood from the land they possessed inside the estate, the compensation rate was set at \$9.75 per m², which was deemed sufficient to buy replacement land outside Samrong Estate

³⁶⁸ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft June 2010, p.ix.

³⁶⁹ Ibid. p.11-12.

³⁷⁰ Ibid. p.5-6.

when the replacement cost study was conducted in May 2009.³⁷¹ For the 169 AHs that were not recognized as having resided and used land in the Samrong Estate before the February 2005 ban, a uniform rate of \$2.75 per m² was applied to different types and uses of land. This rate was held to be “the prevailing market rate of land at the Samrong Estate before the February 2005 ban,”³⁷² but it was also recognized that this rate would “not [be] sufficient...to find a replacement land at current market prices.”³⁷³ For the eight sharecroppers cultivating land possessed by people residing outside Samrong, the applied compensation rate of \$0.60 per m² was based on the calculation done in May 2009 of an average yield of 0.3kg/m² of unmilled rice multiplied by \$0.20/kg for a 10-year period. Thus, for all three categories of loss of land, the compensation rates in the draft 2010 RP would not correspond to the price levels at the time compensation payments would be made (whether in 2012 or 2013).

248. The differential rates adopted here are based on a 2005 government ban on land transactions. AHs in Samrong Estate have contested this ban on the basis that they have title to the lands possessed by them (see previous section). In this context, AHs allege that the differential rates were unfair and unjustified. Although the official position of the government is that the differential rates are justified on the basis of the ban, some government officials felt that it was problematic. Those AHs that qualify for the lower differential rate of \$2.75 per m² came to possess their lands on purchase from persons who had possessed the land prior to the 2005 ban. If the assertion of title by AHs is correct, the basis for the differential rate falls away. In the CRP’s view, in keeping with our findings on the title issues dealt with in the previous section, the differential rate is not justified under ADB operational policies and procedures and leads to an inequality of treatment of AHs under the ADB policy.

249. The rates for house compensation were also based on the cost of materials defined in the May 2009 replacement cost study. In addition, each of the 75 AHs who would be losing a dwelling could choose between two options not offered in the 2006 RP. Those displaced could either get a 300 m² plot in a resettlement site (compared with the standard plot size of about 105 m² provided in five resettlement sites under the project), or a grant of \$10,000 if they chose to self-relocate (the Samrong Estate would be cleared of all residents, and the option elsewhere available along the railway line of moving back in the ROW did not exist). While the two resettlement options represented improvements to those in the 2006 RP, the house compensation rates of May 2009 would not have corresponded to replacement costs when AHs were displaced and compensated 3 to 4 years later.

250. The RRP of November 2009 provides a budget of \$3.8 million for land acquisition, resettlement, and social mitigation for Samrong.³⁷⁴ The draft July 2009 RP states that the “estimated cost of resettlement for the Samrong railway facility is \$4,128,046.12,” while the draft RP of June 2010 states an overall budget of \$4,060,472.³⁷⁵ In the BTOR of 20 December 2012,

³⁷¹ From 1979 onward, local authorities apportioned the estate to landless people for residential and agricultural use. Following the change of government in 1989, the District Office of Agriculture reportedly issued a possessory receipt (held not to be equivalent to a land title) to each household that was awarded land in the estate. In February 2005, the municipal government of Phnom Penh and the RRC issued an instruction banning the transfer, sale, and the use as collateral, of the apportioned plots in the estate (*Ibid.* p.1). Five AHs were recognized in the RP as having a valid ‘possessory receipt’ documenting residence prior to the 2005 ban.

³⁷² *Ibid.* p.7.

³⁷³ *Ibid.* p.8.

³⁷⁴ RRP Supplementary Loan, November 2009, p. iii.

³⁷⁵ Resettlement Plan CAM: GMS Rehabilitation of the Railway in Cambodia Project (Supplementary), Draft July 2009, p.37; and Draft of June 2010, p.xi.

an estimate of the budgetary implications of the measures to improve the updating of the Samrong RP described in section C.3 provides a resettlement budget of \$5.8 million.³⁷⁶

251. ADB staff interviews confirmed that the cost of resettlement would be fully funded entirely by ADB (as opposed to the government). Staff confirmed that ADB had expected resettlement to take place in 2012 leaving 2013–2014 for construction work. They also confirmed that some of the houses in Samrong are large and that it was in this context that the government decided to make an alternate \$10,000 offer for purchase of land/house outside Samrong.

252. **Conclusions on ADB compliance: As belatedly recognized by ADB and described in Section C.3, the compensation rates based on the May 2009 replacement cost study would not have been adequate to provide replacement costs at current market rates as required by the policy on Involuntary Resettlement (OM F2/BP para. 4). The CRP also finds the differential rates for those who came to possess before and after 2005 unjustified and all AHs should be entitled to one rate for compensation purposes.³⁷⁷ Beyond this, the CRP is unable to make a finding with regard to the adequacy of compensation as the updated RP for Samrong is not available.**

6. Conclusions concerning Samrong Estate Project Planning and Resettlement

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings
C.1. Adequacy of the manner in which ADB staff resolved the disputed title		
<p>"231 AHs in a 98-hectare area known as Samrong Estate are distinct from other AHs in that they claim legal possession rights to the land that they reside upon and/or farm. In the Draft Resettlement Plan for Samrong Estate, however, the MPWT claims that the area is property of the Royal Railway of Cambodia (RRC)". (details in paras. 64-67, & 69)</p> <p>"Samrong Estate AHs are entitled under Cambodian law, at a minimum, to have their claims</p>	<p>"(r)ehabilitation measures ... must be determined in consultation with affected communities, whose rights might not be formally recognized in national legislation" (OM F2/BP para. 4 footnote 4).</p> <p>"(r)eplacement cost is based on market value before the project or dispossession, whichever is higher." (OM F2/BP para. 4 footnote 6).</p> <p>"(l)ack of formal legal title to land by any affected people is not a bar</p>	<p>Noncompliance with: OM F2/BP para. 4 footnote 4; OM F2/OP para. 9.</p>

³⁷⁶ BTOR of Mission, 20 December 2012, para. 10.

³⁷⁷ The ADB Management in its response to the CRP draft reports asserts that the differential rates are justified because "ADB does not consider any of the AHs on Samrong Estate "legalizable" within the meaning of ADB's Policy on Involuntary Resettlement, regardless whether they possessed the land prior to the 2005 government ban on land transactions or thereafter" and that the "differential rates were meant to compensate those AHs that had resided and used the land before 2005 and already derived their livelihood from the land prior to the government ban." The CRP disagrees as in its view AHs have a legalizable tile. Moreover, the Management's response is a contradiction in terms. If the Management's position is that all AHs in Samrong have no title to their lands, they should all be treated equally and alike with regard to compensation, irrespective of the 2005 government ban on transfers. Implicit in the 2005 cutoff date and differential rates of compensation is the notion that those who came before 2005 had some superior claim to the land than those who came after. Besides there is a huge difference before the pre-2005 and post-2005 rates of compensation and Management has not placed any material before the CRP to demonstrate any economic or financial justification for that differential on the basis of "livelihood" compensation.

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings
<p>adjudicated through an impartial process in accordance with the law. As with the 2005 ban on land transfers, approval by the ADB of the current Draft Samrong Resettlement Plan, which denies residents' land rights, could constitute an offense under the penal provisions of the Land Law." (para. 68)</p> <p>"BABC sent two memos to ADB with extensive legal analyses and supporting documentation regarding the legal tenure status of Samrong Estate residents in September 2010 and January 2012 respectively ... The findings of that analysis were that the Samrong Estate land is not State public property but rather the private property of Samrong residents who have legally acquired or purchased possession rights over the land. Upon receiving the September 2010 BABC memo, ADB undertook to commission its own legal assessment on the matter. ... Some two years later, on 17 August 2012, ADB released on its website an "ADB Statement on Samrong Estate Legal Opinion," along with a legal opinion provided not by DFDL law firm but by the firm Honest and Balanced Services (HBS). The HBS legal opinion did not review key records and documents that substantiate the residents' claim to possession rights. Moreover, the opinion reads not as a balanced, good faith effort to determine the facts and impartially analyze the applicable law, but rather as one written to justify the State's claim to the land. On several points, the opinion makes statements about the Land Law that are manifestly wrong. This calls into question the independence of the firm that provided the opinion." (para. 69)</p>	<p>to ADB policy entitlements. In order to assist affected people who may not be entitled to compensation for loss of land under the applicable legal framework of the developing member country (DMC) concerned, eligible affected people are classified into three groups with respect to land title, each of which will have different entitlements as set out in Section C.</p> <p>Titled: Those who have formal legal rights to land, including any customary or traditional rights recognized under the laws of the country.</p> <p>Legalizable: Those who do not have formal legal rights to land when the affected population is recorded, <u>but could claim rights to such land, under the DMC's laws.</u></p> <p>Nontitled: Those who have no recognizable rights or claims to the land that they are occupying." (OM F2/OP para. 9)</p> <p>The policy defines "legalizable" as claims that "may result from recognition of prescriptive rights, from adverse possession, from continued possession of public lands without eviction, through eligibility for a government land titling process, or from customary or traditional usage." (OM F2/OP footnote 8).</p> <p>The policy indicates that "(w)here land and assets are lost, titled (para.. 9[i]) and legalizable (para.. 9[ii]) affected people are entitled to compensation, in the form of cash at replacement cost or replacement land, and to other assistance to at least restore their economic and social base. Whereas nontitled affected people (para.. 9[iii]), including displaced tenants, sharecroppers, and squatters, are entitled to various options of resettlement assistance, provided that they</p>	

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings
	cultivated/occupied the land before the eligibility cutoff date. Resettlement assistance to nontitled affected people may also include replacement land, although there is no entitlement to this for such affected people." (OM F2/OP para. 11).	
Issue Identified by CRP	Applicable ADB Policy Provisions	CRP Findings
C.2 Adequacy of steps taken to assess the feasibility of a freight yard and station at Samrong estate and the assessment of land required for such a facility		
Whether ADB did due diligence with regard to justifying (and documenting) the technical and engineering dimensions of the planned freight and maintenance facility at Samrong, and its resettlement impact.	"The involuntary resettlement policy objectives are ... (ii) to minimize resettlement where population displacement is unavoidable by choosing alternative viable project options..." (OM F2/BP para 3)	Noncompliance with: OM F2/BP para. 3)
C.3. Adequacy of the Samrong Estate Resettlement Plan and Consultations		
Whether ADB did due diligence with regard to ensuring that the AHs in the Samrong estate were provided with specific opportunities to participate in choosing, planning, and implementation options.	"Affected people are to be consulted on compensation and/or resettlement options, including relocation sites, and socioeconomic rehabilitation. Pertinent resettlement information is to be disclosed to the affected people at key points, and specific opportunities provided for them to participate in choosing, planning, and implementation options." (OM F2/BP para 4 (v))	Regarding the June 2010 RP for Samrong: Noncompliance with: OM F2/BP para. 4 (v)
C.4. Issues concerning the compensation in the resettlement plan		
Whether ADB did due diligence with regard to ensuring that the AHs in the Samrong estate would receive compensation at replacement value.	"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 pre-project level. All compensation is based on the principle of replacement cost." (OM F2/BP para. 4) "Replacement cost means the method of valuing assets to	Regarding the June 2010 RP for Samrong: Noncompliance with: OM F2/BP para. 4 and footnote 6

Requester's Complaints	Applicable ADB Policy Provisions	CRP Findings
	replace the loss at market value, or its nearest equivalent, plus any transaction costs such as administrative charges, taxes, registration, and titling costs." (OM F2/BP footnote 6)	

AH = affected household; BABC = Bridges Across Borders Cambodia; DMC = developing member country; IRC = Interministerial Resettlement Committee; MPWT = Ministry of Public Works and Transport; RRC = Royal Railway of Cambodia .

D. Alleged Human Rights Violations

253. The request (paras. 94–97) alleged numerous human rights violations and attributed them to ADB. The human rights that were allegedly violated were as follows:

- (i) The right to be protected from forced eviction, defined under international law as the permanent or temporary removal against their will of individuals, families, or communities from the homes or land they occupy, without the provision of, and access to, appropriate forms of legal or other protections, including, among others, access to alternative adequate housing;
- (ii) The right to adequate housing, as a component of the right to an adequate standard of living, including sufficient space, privacy, and protection from the elements, and access to basic services and facilities in an appropriate location close to livelihood opportunities;
- (iii) The right to an affordable and adequate supply of water, as a component of the right to an adequate standard of living, in accordance with World Health Organization guidelines on water quantity and quality, without discrimination basis on the grounds of housing, land status, or other factors;
- (iv) The right to be free from discrimination on the grounds of property and land tenure status;
- (v) The right of every child to an adequate standard of living for the child's physical, mental, spiritual, moral, and social development, including the need to be provided with material assistance and support programs particularly for nutrition and housing;
- (vi) The right of every child to the enjoyment of the highest attainable standard of health, including the provision of clean drinking water, and facilities for the treatment of illness and rehabilitation of health;
- (vii) The right of every child affected by the project to education on the basis of equal opportunity; and
- (viii) The right to an effective remedy for persons whose rights have been violated.

254. **ADB policy requirements:** As a preliminary matter, the CRP examined these alleged violations and assessed if they may be adequately dealt with under applicable ADB safeguard policies. The results of this examination are reproduced in Appendix 4. On the basis of that examination, the CRP concludes that all the human rights allegations could be adequately addressed under applicable ADB safeguard policies.

255. The requesters have based their human rights claims, among others, on the 2009 Safeguards Policy Statement and Clause 6(b) of Annex 5 of the loan agreement of March 2007.

Under ADB's Accountability Mechanism Policy the 2009 Safeguards Policy does not apply to this loan as it was granted in 2006.³⁷⁸ While the express provisions of the 2009 ADB Safeguards Policy may have grounded a claim for violation of human rights, it has no application to this case. The loan agreement states that "(t)he borrower shall cause MPWT to ensure that all Works contracts under the Project incorporate provisions...to oblige the contractors to...comply with all applicable laws and regulations of the Borrower, including ratified international treaty obligations...." This clause creates an obligation on the borrower (in this case Cambodia) to ensure that MPWT and its contractors undertaking project work abide by the international obligations of the government. In the CRP's view this loan covenant does not create an obligation on ADB that is open to safeguards compliance review. As such, the CRP does not wish to express any opinion in this case as to whether the alleged acts amount to human rights violations and if so whether they may be covered by applicable ADB policies.

256. Conclusion. In this particular case, the CRP has not reviewed the alleged human rights allegations as the alleged acts of non-compliance are covered and dealt with by the applicable ADB's safeguard policies listed in this report. The CRP therefore makes no recommendations concerning this part of the request.

IX. CONCLUSIONS AND LESSONS

A. Conclusions

257. The CRP based its compliance review on the basic principles and relevant safeguard policies referred to in this report. This section summarizes the conclusions arrived at by the CRP as a result of the foregoing analysis and findings.

258. The CRP concludes that the alleged direct and material harm suffered by the requesting parties exists. The allegations were examined during interviews with the requesters and their designated representatives, government officials, resettlement consultants, and ADB staff, and a review of internal ADB documents. The harm suffered is referred to in detail in the report and includes inadequate compensation for loss of property and income, transition allowances, and income restoration, as well as inadequate facilities at the resettlement sites.

B. Lessons

259. A mind shift in ADB's approach to involuntary resettlement, environment, and public disclosure is imperative. Cases reviewed by the CRP showed a recurrent pattern of inadequate attention by ADB to addressing the resettlement, public communications, and disclosure requirements of its own policies in a timely, adequate, and responsive manner. There is an obvious need for an approach that incorporates these issues as an integral part of project formulation and implementation, and that genuinely mainstreams them so that they are not treated as mere add-ons. The lack of adequate attention to these issues up-front in the project and in previous cases reviewed by the CRP has led to significant yet avoidable adverse social impact on mostly poor and vulnerable people. These people have 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. In the final analysis, this case, as in previous cases, has

³⁷⁸ The requester's comments on the CRP's draft report states that requesters "note that it is a condition of AusAID's MoU with the ADB on the Project that the 2009 SPS be applied" and they "regret that CRP does not express any opinion as to whether the harms it has found constitute human rights violations." The CRP is bound by the terms of the 2009 safeguards policy and other ADB policies that are applicable to its mandate.

resulted in avoidable higher transaction costs for government and ADB and significant risks to ADB's reputation.

260. Most importantly, lessons previously highlighted by the CRP emphasize the need for an urgent, firm, and clear message to ADB Management that resettlement, environmental, and public disclosure issues should be taken seriously and accorded the priority consideration they deserve. ADB operational, sectoral, and regional staff must undergo a mind shift in the treatment of resettlement, environment, and public disclosure and consultation. Their perspective must be based on the recognition already existing in ADB's safeguard policies that involuntary resettlement is a development opportunity, intrinsic to achieving the developmental goals of projects. Effective and genuine compliance with ADB's involuntary resettlement, environmental, and public disclosure policies can be achieved only when the public benefit and the interest of ADB projects include the livelihood enhancement and development of those vulnerable populations that are adversely affected by a project. The inclusion of vulnerable and affected populations as direct beneficiaries of the benefits and goals of ADB projects must form part of the project concept.

261. This case is particularly grievous since despite (i) ADB's resettlement experience from the Highway One Improvement Project in Cambodia, (ii) an ADB resettlement audit of the Highway One Improvement Project identifying lessons to be learned from that experience, (iii) the involvement in the railway project of some ADB staff who were fully aware of that previous experience, and (iv) several studies commissioned by ADB and produced by civil society groups on the weaknesses of the Highway One Improvement Project, many of the same shortcomings were repeated in this project. There is an urgent need for ADB to operationalize and mainstream the lessons it has learned from implementing its safeguards, and this issue merits the attention of the Board and senior Management.

262. **There is a need for timely and continuous assignment of ADB staff and clear communication in resettlement planning and implementation.** This and previous compliance reviews clearly reveal that the key to success in government-led resettlement preparation and implementation is the timely and continuous assignment of the necessary ADB staff to the project team throughout the project cycle to conduct early due diligence and engage proactively with government, consultants, and other stakeholders. Accordingly, Management urgently needs to provide adequate attention to staff needs in this regard. Besides providing technical and financial resources, ADB can facilitate clear communication between the parties to prevent misunderstandings from deteriorating into obstacles to the smooth and timely preparation and implementation of complex social safeguards such as involuntary resettlement. Consistent with its consultation and public communications policies, ADB can also fill the critical role of ensuring that affected persons are informed and consulted in a timely and appropriate manner, so that they can participate meaningfully in the planning and implementation of their relocation, compensation, and livelihood restoration. Proactive early engagement is even more important in post-conflict situations, when infrastructure and institutions are being built and the government lacks the needed capacity to implement safeguards. Therefore, in the CRP's view, it is in the urgent interest of ADB to increase its in-house staff and resources to adequately address involuntary resettlement and other complex social safeguard issues. Equally important is the need to make resettlement, the environment, and public disclosure an integral and prominent part of project conception, feasibility assessment, design, implementation, monitoring, and remedial actions.

263. **There is a need for a reliable and effective independent monitor in projects with significant resettlement and environmental impact.** While the CRP has not specifically

reviewed monitoring under the project, the fact that the importance of independent monitoring was highlighted at the Management Review Meeting in August 2006³⁷⁹ and at the Staff Review Committee meeting in October 2006³⁸⁰ and subsequent discussion of this issue³⁸¹ warrant its mention here. The CRP finds that to provide both the implementing agency and ADB with genuinely independent monitoring, it is necessary—particularly in relatively small countries with a limited pool of potentially qualified consulting agencies—to engage non-national agencies with a proven track record to furnish the critically needed, fact-based scrutiny of project implementation that is the basis for timely and sound diagnosis of problems and remedies for these problems. ADB Management may wish to consider whether, in future projects of this nature, it would be better for ADB (as opposed to the executing agency) to employ an independent monitor, to ensure accurate feedback on ADB safeguard implementation and enable timely corrective action.

X. RECOMMENDATIONS

264. The CRP has given long, serious, and earnest consideration to these recommendations. Their main purpose is to bring the project into compliance with ADB safeguard policies, in view of the noncompliance on the part of ADB that the CRP compliance review disclosed. The recommendations also seek to avoid further harm to affected persons.

265. **Recommendation 1: Establish a compensation deficit payment scheme.** With regard to our findings under sections A.1 (on the adequacy of resettlement plan preparation and implementation), B.1 (on the adequacy of compensation for property losses), B.2 (on the adequacy of transition assistance for affected households), and B.3 (on the adequacy of compensation for lost income and income restoration), the most obvious recommendation appeared to be a fresh independent replacement cost study from 2006 to 2013 and a resettlement audit of compensation payments with a follow-up payment program to ensure that full compensation is paid to all AHs.³⁸² However, on further reflection the CRP concluded that a resettlement audit would not fully serve the purpose of speedily bringing this project into compliance. An audit would take at least 2 years to complete and another year would be spent making compensation payments to AHs. These AHs need assistance as soon as possible and the delay is not justifiable. Besides, the CRP's interviews with government officials clearly showed that the government does not favor a resettlement audit.

266. The CRP therefore turned to examining alternative ways of bringing this aspect of the project into compliance. It identified international and national mass compensation claims processing techniques as a model for a potential solution. There is considerable experience and knowledge on mass claims processing techniques in a wide range of situations including post-conflict war reparations to victims, dormant account claims on Swiss banks, and refugee and immigrant compensation schemes at the international level,³⁸³ as well as natural disaster compensation schemes at the national level. The CRP's recommendation for addressing compensation deficits for property and income losses, as well as transition allowances, draws on these experiences and models. The CRP believes ADB would thus be able to address the

³⁷⁹ Management Review Meeting minutes, 8 August 2006.

³⁸⁰ Issues Paper for SRC meeting, 13 October 2006.

³⁸¹ Confidential ADB review mission report of 12-22 September 2012.

³⁸² This is a key recommendation made in a confidential ADB Report of 12-22 September 2012.

³⁸³ Howard Holtzmann and Edda Kristjansdottir, eds. 2007. *International Mass Claims Processes: Legal and Practical Perspectives*. Oxford University Press.

compensation deficits and rectify noncompliance effectively and quickly.³⁸⁴ The recommendation below is provided with the expectation that if and when it is approved by the Board, it would be used by ADB Management as a guide in crafting its action plan for implementing the recommendations. The recommendation must therefore be seen as a broad framework and not as a rigid scheme.

267. The CRP recommends that ADB require GoC:

- a. to establish a compensation deficit payment scheme to ensure that AHs are compensated in accordance with the guidelines set forth below, which CRP estimates would likely fall in the range of \$3 million to \$4 million. The source of funding for such scheme should be an ADB loan or other sources of funds procured in accordance with ADB policies; and
- b. to agree and to procure the implementation and administration of such scheme, consistent with the guidelines set forth below, with the assistance, advice and oversight of ADB.

268. There are several options for how such a scheme could be established and operated and what factors might be considered in computing compensation deficits, but the operations of the scheme must satisfy the following guidelines:

- (i) The scheme must be established and the compensation paid to AHs quickly (within 12-18 months of the approval of these recommendations by the Board) and efficiently.
- (ii) The purpose of the scheme is not to compute compensation deficits with precision but rather to establish average and clear entitlements for compensation categories (property loss, cost adjustments for inflation, transition allowance, income loss, etc.) that AHs could apply for.
- (iii) The goal of the scheme is to mitigate property, transitional, and income losses suffered by AHs so that they are not made worse off as a consequence of the resettlement.
- (iv) Some AHs will be under-compensated and others over-compensated as a result of the scheme. But overall the scheme will ensure that the resettlement impact on all AHs is mitigated.
- (v) Appropriate arrangements (including necessary skills and infrastructure) will be required to implement the scheme.
- (vi) The scheme should operate transparently.
- (vii) The scheme must have an oversight body which can also act as a single-tier appeal body regarding computation and payment of compensation.

³⁸⁴ This would include the additional 248 AHs in Phnom Penh that were initially assessed as partially affected, but later found to be fully affected (paras. 153–154). The still pending Addendum RP for Phnom Penh was intended to provide compensation and resettlement assistance for the 105 AHs that opted to move to the Phnom Penh resettlement site. The remaining AHs who choose to relocate close to their original place of habitation would apparently not receive any additional compensation although their houses had been found to be fully affected.

269. An illustrative example of how such a scheme could be designed and implemented is provided in Appendix 5 of this report.

270. ADB Management in its response to the *draft* CRP report stated that it “agrees that compensation deficits should be rectified” but that the “establishment of an ADB fund for compensation payments is not the appropriate mechanism” for the reasons set out in its response. One reason adduced by ADB Management was that the recommendation constituted “damages” and was not within the competence of the CRP. The CRP believes that the recommendations contained in this *final* report fall squarely within the definition of compensation payable to AHs under ADB operational policies and procedures and its recommendation seeks to bring this project into compliance.

271. The requesters in their comments on the CRP draft report state that the “broad contours of the proposed compensation deficit payment scheme represent an acceptable remedy for the issues of inadequate compensation for losses.” However they assert that “there is too much discretion granted to ADB Management in the CRP’s recommendation to design the scheme” and “(g)iven their experience over the past four years, the requesters have little faith that the ADB will follow through appropriately with this recommendation unless the basic structure and principles of the scheme are clearly prescribed as recommendations by the CRP and adopted by the Board.” In the CRP’s view, the guidelines set out in the recommendation if and when adopted by the Board will need to be followed by the ADB Management, and the CRP will have an opportunity to comment on Management’s action plan drawn up in pursuance of those guidelines and to monitor the implementation of the action plan if and when it is approved by the Board.

272. **Recommendation 2: Improve facilities at resettlement sites.** With regard to its findings in section A.2 (on adequacy of basic services and facilities at resettlement sites), the CRP acknowledges that considerable efforts are under way to ensure that the access roads are improved after the rainy season ends in November 2013. The CRP also found that all the sites now have water and electricity supply, though in Battambang the quality of the water supply is still a significant issue. A primary school has been built in Poipet and the school at the Phnom Penh resettlement site is being enlarged to accommodate 10 more classrooms. The CRP also expects to see the continued provision of the medical insurance scheme formerly provided by SKY. The CRP recommends that the medical center at the Phnom Penh site be refurbished, provided with a better supply of medication, and properly staffed with a medical doctor. ADB Management should present a time-bound action plan that spells out, in some detail, both urgent and longer-term actions to be taken to improve and maintain the facilities on all sites.

273. **Recommendation 3: Improve the functioning of the grievance redress mechanism, to be reflected in a time-bound and verifiable action plan.** The CRP’s findings under section A.4 acknowledge the improvements that have been made in the grievance redress mechanism. Yet it is still not functioning as expected. The CRP suggests that the ADB Management review this mechanism and propose interventions, including training and capacity building, as well as a greater up-front role for IRC in providing guidance on complaint handling. ADB Management should have an action plan with specific time-bound and verifiable actions for improving the functioning of the grievance mechanism.

274. **Recommendation 4: Develop an appropriate program to build capacity for resettlement in the IRC, to be reflected in a time-bound and verifiable action plan.** With

regard to the CRP's findings under section A.5, ADB has taken action to build the capacity of the executing agency (IRC) for resettlement. In CRP interviews with the IRC, it was clear that the resettlement committee has an enthusiastic group of young staff, many of whom are willing to learn best practices and find ways to improve performance in resettlement and other safeguards. IRC now provides services to many projects funded by different donors and it is therefore in the interests of ADB to continue to build the capacity of the IRC by offering training and exchange visits to other places in Asia where resettlement is being carried out more successfully. The CRP suggests that ADB, in consultation with IRC, develop an appropriate capacity-building program for IRC, to be reflected in a time-bound and verifiable action plan. The plan may include training and other interventions such as the provision of expertise.

275. Recommendation 5: Establish a debt workout scheme to help highly indebted families repay their accumulated debts through a dedicated credit line and a debt workout facility. The dedicated credit line would provide funds at a highly subsidized interest rate and at sufficiently long maturity. ADB loan funds should be used to finance this debt workout scheme. Funds could be used only to repay debts. Funds provided under the debt workout program would be disbursed directly against AH loan repayment obligations, and would not be disbursed to indebted households. The repayment of informal lenders that have lent at usury rates to AHs presents a special challenge. Households interested in participating in the debt workout scheme should be consulted on how procedures for repaying debts to informal money lenders directly through the debt workout facility could be established. AHs would be required to use the incremental compensation payments proposed in recommendation 1, for debt repayment. Funds provided under the facility to a single household would need to be capped, for example at \$1,000, to avoid fund capture by better-off households, which could borrow larger amounts because they have more valuable assets. AHs participating in the scheme would also be required to participate in basic financial training to improve household financial management. The scheme could be implemented by an NGO or other suitable institution that can demonstrate adequate financial management competence. A microfinance institution that has provided loans to AHs would not be a suitable executing agency. Further data on the debt levels of resettled households would be required to establish the approximate size of the fund for a debt workout. Because of the high level of subsidization and the high credit risk of AHs, the dedicated credit line could be funded only through a development agency and not through a financial institution.

276. Recommendation 6: Implement the expanded income restoration program in a sustained and sustainable manner. The EIRP now being implemented is an appropriately designed program. It provides funds to SHGs for capacity building, some funds for investments, and training support. For the program to be more effective, funds provided to SHGs should be increased and the maturities for loans should be lengthened. For the program to be sustainable, capacity building and financial support should be provided over an extended period, to allow SHGs to develop into sustainable institutions and eventually into savings groups, and SHG systems and financial management processes to mature. In light of the vulnerabilities and high indebtedness experienced by many AHs during the resettlement process, support under the EIRP to resettled households should be continued for 5 more years.

277. Recommendation 7: Adopt specific safeguards for the development of a freight facility in Samrong Estate. With regard to the CRP's findings in sections C.1 (on the adequacy of the manner in which ADB staff addressed the disputed title issue), C.2 (on the adequacy of steps taken to assess the land requirements for a freight yard and station at Samrong Estate), C.3 (on the adequacy of the resettlement plan), and C.4 (on the issues concerning the quantum of compensation in the resettlement plan), the following recommendations are made:

- (i) The resettlement at Samrong should be based on an updated resettlement plan that takes into account these recommendations, as well as the findings of a proper written feasibility study of the freight facility at Samrong (including an assessment of land requirements).
- (ii) Such an updated resettlement plan should be prepared with adequate notice to and consultation with all affected AHs, and with appropriate prior preparation of vulnerable and poor AHs.
- (iii) A fresh DMS should be carried out to ensure that properties are adequately documented and each AH should be provided with a copy of the DMS showing the inventoried property and the compensation payable under the URP.
- (iv) Each AH ought to have adequate time to reflect on the DMS and the compensation payable before being asked to agree to the same, and AHs should be provided with an opportunity to access the grievance mechanism to seek adjustments that they feel are needed in the DMS and the compensation offered.
- (v) Compensation for AHs that have a claim to private or registerable title under Cambodian law should be treated as having “legalizable” title under ADB’s involuntary resettlement policy and should be offered compensation at the market value of the land at the time of relocation.
- (vi) AHs that came before and after 2005 ought to be treated alike with regard to compensation if they are entitled under this recommendation to be classified as having legalizable title.

/S/Lalanath de Silva

Part-time Member Compliance Review Panel

/S/Arntraud Hartmann

Part-time Member, Compliance Review Panel

Manila, Philippines

14 January 2014

APPENDIX 1: REQUEST FOR COMPLIANCE REVIEW

Confidentiality:

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

 inclusive development international

David Pred
Inclusive Development International
22231 Mulholland Hwy. Suite 209
Calabasas, California 91302
USA
Email: david@inclusivedevelopment.net

Aug 28, 2012

Via Electronic Mail

Secretary, Compliance Review Panel
Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550
Philippines
Email: crp@adb.org

Re: Request for Compliance Review on GMS: CAM: Rehabilitation of the Railway of Cambodia Project

Dear Secretary,

1. Inclusive Development International (IDI) is submitting this request to the Compliance Review Panel (CRP) on behalf of households affected by the CAM: GMS Rehabilitation of the Railway in Cambodia Project (the "Requesters") to investigate whether ADB has complied with its operational policies and procedures regarding the Project.
2. The Requesters currently reside in, or have been resettled from, sites along the railway tracks that are being repaired or constructed by the Project in the provinces or municipalities of Sihanoukville, Phnom Penh, Battambang and Poipet.
3. The Requesters have authorized IDI to submit this request for investigation by the CRP on their behalf, and to represent them throughout the CRP process (see Annex 1). The Requesters have asked that their names be kept confidential. This request is supported by three local Cambodian non-governmental organizations, which also decline to be publicly named.
4. The Requesters believe that they have, or are likely to, suffer damage or harm (set out in paragraphs 13 – 73) due to ADB's failure to comply with its operational policies and procedures and international law requirements (set out in paragraphs 86 – 97).
5. The Requesters have repeatedly raised their concerns through the Project Grievance Mechanism and with the ADB Cambodia Resident Mission, the relevant Operational Department, and ADB Senior Management at meetings and through written communications since late 2010. Several NGOs have also provided extensive evidence

Confidentiality:

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of harm suffered or likely to be suffered by Project-affected households as a result of non-compliance by the ADB with its operational policies and procedures since early 2010. Details of these efforts are provided in paragraphs 74–79.

6. The Requesters submitted a complaint to the Office of the Special Project Facilitator (OSPF) on 21 November 2011, which was deemed eligible on 11 January 2012. A course of action was finally agreed on 22 August 2012 and the OSPF process has now reached Stage 7. The Requesters now request that the CRP undertake a parallel investigation into ADB's compliance with its operational policies and procedures because they do not believe that the OSPF process will effectively address the non-compliance issues with which they are concerned. Additional reasons for this decision are provided in paragraphs 80–85.

I. Background

7. At least 4174 households¹ whose residences, other structures and/or assets were or are situated within the Corridor of Impact (COI) of the railway line or on land required for the construction of stations, depots or other Project-related infrastructure stand to be affected by the Project [hereafter “affected households” or “AHs”]. The COI extends 3.5 meters either side of the centerline of the tracks in Phnom Penh and provincial cities and 5 meters on either side of the centerline in other provincial urban centers. Resettlement activities commenced in the first half of 2010. As of August 2012, the majority of households in the COI have been relocated or displaced by the Project, while an estimated 60 families in Poipet and 66 families in Phnom Penh are still remaining within the COI. A further 231 families farm and/or reside on land within a 103.6 ha area known as Samrong Estate, which the Project seeks to acquire for use as a freight and cargo facility.
8. Affected households have been or are required to either relocate to a Project-sponsored resettlement site, or, if the part of their residence outside of the COI is at least 30 square meters, they are required to dismantle the part of the house and/or other structures within the COI but remain living in the residual Right of Way (ROW), where their security of tenure remains precarious. At least 1,200 households are totally affected and must relocate.
9. With the exception of residents living in Samrong Estate who have asserted their legal possession rights² to that land, the households affected by the Project live on land defined by the Cambodian Land Law (2001) as State Public Property and are regarded as “illegal settlers” by the Royal Government of Cambodia (RGC). Nonetheless, under the Project policy, their occupation of State Public Property does not preclude entitlements.

¹ As per the updated Resettlement Plans (2009).

² According to Cambodian Land Law, persons who possess certain types of land and meet a number of criteria are recognized as legal possessors, conferring on them a bundle of rights almost akin to ownership. These households are eligible to apply for formal land title. The process of formally registering all land plots throughout Cambodia and issuing ownership title is currently ongoing and is years away from completion. The majority of Cambodian households that have recognizable claims under the Land Law as legal possessors of their land have not yet had the opportunity to have their possession rights converted into full ownership through the issuance of title deeds.

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10. Pursuant to Resettlement Plans (RPs) prepared under the Project, all AHs are entitled to compensation for their lost or partly lost structures and/or assets based on the Detailed Measurement Survey (DMS). According to the RPs totally affected households required to relocate were to be provided with three options: (1) relocation to project-sponsored sites with security of tenure, (2) re-organization onsite in the ROW with a guarantee of being able to remain there for at least the next 5 years, and (3) cash compensation for lost assets and self-arranged relocation. Vulnerable households are entitled to additional support. AHs are also entitled to compensation for transition costs, lost income due to resettlement and income restoration support. The overriding objective of these entitlements is to ensure that AHs receive assistance so that they would be at least as well-off as they would have been in the absence of the project, in accordance with the ADB's 1995 Policy on Involuntary Resettlement.
11. For reasons detailed below, full entitlements under the RPs were not provided or have not been offered to many households, including but not limited to the Requesters, and these households have been, or have a legitimate fear of being, made worse-off as a result of the Project. Furthermore, the RPs and resettlement budget were themselves inadequate to ensure that affected households would not be made worse off. These circumstances amount to non-compliance with, inter alia, the ADB Policy on Involuntary Resettlement.
12. A number of publications have been produced by NGOs in Cambodia that provide evidence of harm suffered by Project-affected households due to non-compliance with ADB policy. Information from these publications is used extensively throughout this Request for Compliance Review. These publications include:
 - Sahmakum Teang Tnaut (STT), Rehabilitation of Cambodia's Railways: Comparison of field data, July 2011 (see Annex 2).
 - Bridges Across Borders Cambodia (BABC), "DERAILED: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway," 2012 (see Annex 3).
 - STT and Housing Rights Task Force (HRTF), Railways Relocation in Phnom Penh: Six women tell their stories, Fact and Figures Issue 20, March 2012 (see Annex 4).
 - STT, Losing the Plot: Rapid Assessment of Household Debt in Trapeang Anhchanh, June 2012 (see Annex 5).

II. Harms suffered or likely to be suffered

Anxiety and stress due to inadequate access to information and consultation and threats and harassment:

13. AHs, including Requesters, were not provided with Project-related information or consulted in a manner that ensured that they were "fully informed and closely consulted on resettlement and compensation options," as required by ADB policy. Two main

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communication methods were utilized to make resettlement information available to affected households: the dissemination of public information booklets (PIBs) and community meetings. The PIB was not an appropriate or accessible method of communication for a high proportion of AHs as evidenced by the BABC 2012 report, which found that of the 200 households interviewed, 20 percent of men and almost 40 percent of women reported being illiterate. Community meetings did not ensure that AHs were closely consulted because of limited opportunities to ask questions or raise concerns and unsatisfactory responses by the Inter-Ministerial Resettlement Committee (IRC). A vast majority of people interviewed for the BABC study did not think that they received sufficient information about the Project.

14. AHs were required to thumbprint post-it notes with handwritten compensation amount offers to receive payment. The post-it note was in most cases the first piece of documentation AHs received containing information about specific household entitlements. If AHs did not thumbprint the note because they disagreed with the amount offered they did not receive a copy.
15. BABC research indicates that an air of intimidation, threats and coercion has pervaded the resettlement process. Over one third of affected persons interviewed for the BABC study reported that they felt they had been intimidated or pressured by local authorities, including those tasked with Project implementation, during the resettlement process. The highest proportions of threats and intimidation were reported by respondents in Poipet, Phnom Penh and Battambang. In Poipet, nearly half of all respondents reported some form of coercion. Coercion techniques varied from overt threats of destruction of property without compensation to more subtle pressure to accept compensation and not complain.
16. Requesters report that the lack of information, the fear of complaining and the duress under which they have been placed to accept proffered compensation that they deem inadequate to ensure non-retrogression in their standard of living has resulted in a high level of anxiety and mental strain.

Households threatened with illegal forced eviction

17. Households residing within the COI in Poi Pet have been served with three eviction notices since April 2012. In the first notice dated 27 March 2012, twenty-two households were informed that they have 10 days "to remove their houses and buildings away from the railway." The notice further states that "[f]or people who do not move within 10 days, city hall will take action according to the law and will not be responsible for any damage or loss of property." The notice was issued by Poi Pet City Hall to residents on 5 April 2012, just one day before the deadline.³ The notice did not provide a justification for the eviction, nor did it mention any legal recourse available to challenge the decision. Several of the households who received the eviction notice have complaints pending with OSPF.

³ See The Cambodia Daily, "Eviction Notices Arrive Too Late, Villagers Say," 6 April 2012 (noting, *inter alia*, that the eviction letter was received one day before the deadline).

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18. In response to a letter of concern about the threatened eviction that 4 NGOs sent to the ADB, the ADB Country Director stated only that the IRC had assured the ADB that "no actions will be taken until after the Khmer New Year national holidays (13-16 April 2012)."⁴ ADB also stated that the IRC explained to ADB that only 8 of the 22 families are project affected households, while the 14 other households moved to the project site after the resettlement plan cut-off date and therefore have no entitlements under the Project.⁴
19. A second notice was issued to families in July and a third notice was issued on 20 August, but this time to 111 households, informing them that they had three days to move. In verbal communications following this notice, the ADB CARM Resettlement Specialist clarified that 111 households, 64 households are partially affected, 7 households are totally affected but have not yet signed resettlement agreements because they contest the proffered compensation, and 40 households are "illegal encroachers" who moved to the site after the 2009 cut-off date.⁵
20. IDI has learned that a number of the 64 households classified as partially affected would be left with less than 30 square meters of living space after removing the portion of their structures within the COI and are thus entitled to compensation for the full replacement cost of their structures and a plot at the resettlement site. The IRC has evidently told them that they have no more plots available for them.
21. With respect to the so-called "illegal encroachers," it is important to note that the land that they occupy with their residences is in the area of the "Missing Link", where there has been no railway track for decades. Without any physical demarcation, families who settled in this area were not on notice that they were encroaching on State land within the railway ROW. For those who purchased plots and/or housing in the area after the cut-off date, it is unclear if they were duly informed about the Project. BABC's research found that information disclosure to affected people in all Project areas was severely lacking. Regardless of Cambodian domestic law provisions with respect to illegal occupation of State land, the International Covenant on Economic, Social and Cultural Rights, to which Cambodia is a State party, protects the right to adequate housing. This provision entails the prohibition of forced evictions and the deprivation of housing without the provision of alternative adequate housing. There are no exceptions, including cut-off dates for development projects, to the basic human right to adequate housing. Therefore even so-called encroachers should be entitled, under the Project, at minimum to the replacement cost of their housing and other improvements to the land so that they are not left destitute as a result of the development project.

Indebtedness and impoverishment resulting from inadequate compensation and loss of income

22. Many AHs, including Requesters, have not received compensation amounts according to their entitlements under the RPs or ADB policy. These AHs have not received full replacement cost-based compensation for lost structures and assets as required by the

⁴ Letter to 4 NGOs by ADB Country Director Putu Kamayana, 12 April 2012.

⁵ Verbal correspondence with ADB CARM Resettlement Specialist, 24 August 2012.

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RPs. Moreover, AHs that have lost their means of livelihood as a result of the Project have not been "compensated and assisted so that their economic and social future will generally be at least as favourable with the project as without it," as required by ADB policy.

23. There is evidence of inaccuracies in the categorization of structure types and other measurements and a systematic downgrading of compensation entitlements for structures. The July 2011 STT report compared the information recorded on household compensation documentation provided by the IRC with STT's own household survey of four Phnom Penh railway communities. According to the report, in "the clear majority of cases, data collected by STT showed households were eligible to receive (sometimes significantly) higher rates of compensation" than that afforded to them by the IRC. The report identified a number of patterns that indicate systematic inaccuracies in compensation amounts offered, and therefore, presumably, flaws in the DMS. These patterns included the exclusion of households that should have been categorised as "totally affected" and been eligible for corresponding entitlements; the systematic downgrading of housing structures into a lower category of structure quality and corresponding compensation entitlements; failure to compensate households properly for multi-floor structures; and some multiple family households receiving only single-family entitlements. The last pattern was found to have occurred in relation to widow-headed households in the BABC 2012 report. In a few cases widows were treated as belonging to the same household as their fathers or sons, despite living in separate houses prior to resettlement and did not receive a separate plot at the resettlement site.
24. Project compensation rates for losses and costs of resettlement were calculated in 2006, when the original Resettlement Plan was prepared. Compensation payments, however, began in 2009 and are continuing well into 2012. In more than five years, with the possible exception of Phnom Penh, the compensation rates were not adjusted to reflect annual inflation. According to the International Monetary Fund (IMF), average consumer prices rose every year between 2006 and 2010, except in 2009 in which there was a slight deflation of consumer prices, after a nearly 25 percent inflation rate in 2008. The ADB itself has released data that shows a 4.7 percent rise in the consumer price index in 2006, 5.9 percent in 2007, 19.7 percent in 2008, -0.7 percent in 2009 and 4 percent in 2010.
25. The BABC report found that the average amount of compensation received by totally affected households required to resettle interviewed is US\$757.50, with a few households receiving \$200 or less and the vast majority receiving less than US\$1000. These compensation amounts were supposed to cover loss of structures and assets, transition costs, loss of income and all other resettlement-related losses, costs and expenses. Unsurprisingly three quarters of interview respondents reported that they felt unsatisfied with the compensation package. AHs gave various reasons for being dissatisfied including that the amount is not enough to rebuild decent shelter, to connect to essential services, to cover lost income and to cover transportation and reconstruction costs. Female-headed households in particular said that they could not afford to hire laborers to construct shelters for the families.
26. According to the NGO Habitat for Humanity, which has built houses for some of

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Cambodia's most impoverished communities, the cost of constructing a basic adequate 4 x 4 meter stilt wooden house is at least US\$1,925.75, constituting US\$1,660.75 in materials and US\$265 in labor. Constructing a 4 x 6 meter brick house costs a total of at least US\$1,040, constituting US\$800 in materials and US\$240 in labor costs. The average total compensation provided to totally affected households (US\$757.50 according to BABC's survey) falls well short of these amounts and is supposed to cover *all* resettlement related losses, costs and expenses. In some cases partially affected households had to demolish their entire houses in order to clear the COI because the structures were made from concrete. Some were nonetheless only compensated for the part of their structure in the COI. The average compensation rates received by partially affected households interviewed for the BABC study was US\$206.60.

27. This situation is reflected in a survey conducted by the External Monitoring Organization (EMO) and reported in the 12th Quarterly Social Monitoring Report. The EMO found that 60% of AHs reported that the compensation they received was inadequate to restore their lost property.
28. One result of all of the above is that AHs were unable to construct adequate housing post-resettlement without going into debt. For the reasons outlined above, in many cases AHs did not receive replacement cost compensation; however even if replacement cost had been provided, for families living in inadequate shelters previously, this amount would not have been enough to ensure that they could live in basic adequate housing with protection from the elements and sufficient space and privacy post-resettlement. Families living in inadequate shelter prior to resettlement should be regarded as vulnerable and alternative housing or assistance through a minimum threshold compensation amount should have been provided to ensure access to adequate housing upon resettlement.
29. Exacerbating the harm caused by inadequate compensation amounts, totally affected households claim that their incomes have dropped significantly as a result of resettlement. AHs not yet resettled fear that their incomes will diminish once they relocate. AHs have not received compensation to cover these losses.
30. The primary reason that income levels have dropped post-resettlement is that three out of five of the Project-sponsored sites are too far away from centers of economic activity and previous sources of livelihood. The extra distance to jobs or income earning opportunities means that the cost of transport may either outweigh or substantially cut into daily income.
31. The 2006 Resettlement Plan states on page 59 that "[o]ff-site relocation will be to sites within close proximity (3 to 5 km) of current locations, wherever possible, to minimize distance from current livelihood activities and to enable [their] continuation." Selection of sites beyond that distance was only to occur "under exceptional circumstances," where closer sites cannot be found.
32. In Phnom Penh, one peri-urban resettlement site has been established for all Phnom Penh affected communities, regardless of their pre-resettlement location. While the Phnom Penh resettlement site in Trapeang AnhChanh, is only a few kilometers away

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from the Samrong Station communities, it is between 20 to 25 kilometers from other pre-resettlement communities, such as Mittapheap and Toul Sangke A. Trapeang AnhChanh is located well outside the busy urban center, in which residents from inner-city communities derive their incomes. Project-affected women who have moved to the site have especially reported facing difficulties in finding jobs and in some cases have stopped work altogether. Despite being specifically forewarned by NGOs and the United Nations Human Rights Office (UNOHCHR) about the likely risks of a drop in living standards following a move to Trapeang AnhChanh,⁶ the ADB nonetheless approved the Updated Phnom Penh Resettlement Plan, including the selection of Trapeang AnhChanh as the Project-sponsored resettlement site. ADB asserted at the time that land within a 3 to 5 km radius of pre-existing settlements in Phnom Penh was too expensive to purchase.⁷

33. In Battambang, the resettlement site is approximately 5 to 7 kilometers from most previous places of residence. In Sihanoukville, the site is 10 kilometers from many former homes. The relevant Resettlement Plans state that the sites are 4 kilometers (Battambang) and 2 kilometers (Sihanoukville) from former locations, but this measurement is not an accurate description for many resettled households. Resettled households in both these areas expressed dissatisfaction with the location of the site because of, inter alia, reduced income-earning opportunities. The distances are considerable for families that do not own a car or motorbike, and in many cases, even a bicycle. As a consequence, over 50 percent of resettled families in both Sihanoukville and Battambang do not live at the resettlement site and some are instead renting near their sources of livelihood at their own expense. Some families in Sihanoukville have reportedly sold their plots. The same pattern has repeated at the Phnom Penh resettlement site.
34. The combined factors of reduced income, increased expenses and insufficient compensation have led to widespread household indebtedness. Many AHs, including Requesters, claim that they have had no choice but to borrow from moneylenders at exorbitant interest rates ranging from 5 to 7 percent per month, using their plot of land at resettlement sites as collateral.
35. AHs have expressed fear that they will lose their plots to creditors once (or even before) they receive title because they are unable to manage their monthly repayments because of their reduced income-earning potential. According to RPs, resettled households are to receive title to their plots five years after resettlement; however the unmanageable debt burdens on AHs pose a severe threat to their security of tenure. As indebtedness increases and remains unaddressed, the risk that AHs will become landless and homeless escalates.
36. AHs have said that despite being aware of the risk of indebtedness they felt they had no choice but to borrow to meet the basic needs of their families including food. NGO

⁶ Email correspondence between BABC and ADB Social Advisor Pierre Amoux between May – June 2010, and meeting on 23 July 2010 at CARM office, including Peter Broch (ADB), Pierre Amoux (ADB consultant), NGO representatives and staff of UNOHCHR.

⁷ Email communication from ADB Social Advisor Pierre Amoux, May 21, 2010.

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investigations have found that principle loan amounts range from between \$500-\$2000 dollars. See Annex 5 for more information about the indebtedness impacts of the Project.

37. Due to the urgency of the problem, the issue of indebtedness has been raised with the ADB repeatedly by both AHs and NGOs verbally and in writing. ADB has stated repeatedly that it will not provide debt relief to AHs. Rather ADB has stated that the debt issue will be addressed indirectly through the IRP and the Enhanced IRP, supported by a 1 million USD grant from AusAID in late 2011 (see Annex 6).⁸ This is discussed further in paragraphs 40-43.
38. Income Restoration Programs had not commenced at any of the resettlement sites at the time or for a considerable period of time after families had relocated. In a December 2010 letter to NGOs the ADB acknowledged that "[t]he income restoration programs for the Northern and the Southern Lines are both unacceptably late" (see Annex 7).⁹
39. As a part of the IRP, skills training workshops were held at resettlement sites beginning in 2011. The quality of these workshops and the applicability of the skillset covered at these workshops, including chicken raising and mushroom growing, are reported to be low. Some relocated households had problems growing mushrooms due to the lack of space on their plots. This also posed an obstacle to raising chickens or animals. Some AHs reported that despite the training they lack the capital to begin businesses. Some AHs reported that they think the IRP is "useless" for them because it is not what they are interested in doing.
40. ADB has not yet disclosed to AHs or monitoring NGOs the detailed terms of reference or detailed budget breakdown for the EIRP, nor were they consulted on its terms. According to correspondence received from the ADB on 10 April 2012, under the EIRP the Government is establishing "self-help groups and will include social safety nets provision and access to revolving community credit schemes to assist affected households during the transition period." In its letter, the ADB claims that the EIRP "will improve relocated household's ability to earn a living through livelihood opportunities near the new community" (see Annex 6). In an "NGO Round Table on the Enhanced Income Restoration Program," held at the ADB CARM office on 27 August 2012, a presentation was made to NGOs on the broad aims and structure of the EIRP; however no documentation was provided with detailed information about how the program will work or how the budget is allocated.
41. AHs have reported that they are required to form savings groups, or "self-help groups" (SHGs) and that if they do not participate in the SHGs, they will not have access to seed capital or other support through the program. Some AHs have complained that since they are unable to even meet their loan payments and basic family needs they do not have any money to contribute to a savings group. ADB clarified in the EIRP round table on 27 August that AHs are not required to contribute savings to the SHG in order to become a member; however this has apparently not been communicated to AHs, who

⁸ ADB response to 02 April 2012 letter from Trapeang AnhChanh community letter, 10 April 2012.

⁹ ADB letter to NGOs, 13 December 2010.

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continue to believe that they are required to contribute a minimum amount per month in order to become a member. Furthermore, ADB explained that the EIRP was only available to AHs at the resettlement sites. ADB could not respond to questions about how AHs who have not moved to the resettlement site because they claim that their compensation was insufficient to rebuild their homes will be supported to relocate, build new housing, and receive their entitlements to livelihood assistance.

42. Importantly, there is no provision under the EIRP to compensate people for their actual loss of income and livelihood sources, including net income lost during the transition period. Provision of such compensation is required by the 2009 ADB Safeguard Policy Statement (SPS).¹⁰ While the Project may not have been subject to the SPS under the Loan Covenant, this requirement of the SPS is best practice that should have guided ADB and AusAID in designing mitigation measures such as the EIRP (three years after the adoption of the SPS) to address harms caused by the extreme tardiness and inadequacy of transitional development assistance programs for economically displaced households. ADB has consistently declined to respond to inquiries about this issue when raised during meetings throughout 2011-2012.
43. ADB confirmed again during the 27 August NGO roundtable discussion that the EIRP would not provide debt relief to vulnerable AHs who are heavily indebted as a result of resettlement. IDI and the Requesters believe that the refusal by ADB to provide debt relief will mean that the EIRP will not successfully reverse impoverishment of vulnerable families who are heavily indebted. As noted above, the debt burdens that these families face are a direct result of the Project, and specifically its failure to 1) provide compensation at the actual replacement cost for many totally affected families due to flawed DMS and failure to update rates based on the market price at the time of resettlement; 2) provide an option of alternative housing or a minimum floor compensation rate to cover the costs of basic adequate housing upon resettlement; 3) protect these vulnerable families from predatory private money-lenders when they were resettled, at least by assisting them to access affordable micro-finance and avoid loan-sharks; and 4) displacing people from their livelihoods without first establishing adequate income restoration programs and leaving them without any meaningful support for up to two years. The provision of debt relief to these families is not only essential to ensure the success of the EIRP, but it is essential to repair the harms that have been caused by acts and omissions of ADB with respect to its obligations under the Policy on Involuntary Resettlement.

Loss of access to basic services and unsafe conditions at resettlement sites leading to deaths

44. Households resettled under the Project, including Requesters, have in some cases reduced access to basic services, including water and electricity, as compared to their pre-resettlement situation. None of the five Project-sponsored resettlement sites were properly prepared with services prior to relocation of households, in contravention of RP commitments and ADB policy. Many of the services have since been installed but some remain absent or inadequate. For example, AHs in Battambang report that water trucks, which had been delivering subsidized water to affected people at an affordable price

¹⁰ ADB Safeguard Policy Statement, June 2009, Appendix 2, para 12.

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following ADB's intervention in December 2010, have stopped. A new pond and water filter installed behind the resettlement site replaced this service and was intended by ADB and IRC as a permanent water solution, contrary to ADB's assurances in its 13 December 2010 letter to NGOs that piped water would be made available (see Annex 7). AHs report that there is an insufficient supply of pond water to meet the water needs of the families. Some families have been forced to return to fetching water from the rice fields, while others purchase unsubsidized water trucked in by private companies at a higher rate than they were paying at their previous location. In Poipet, AHs report that the drainage system is broken and that the IRC has informed people that it is no longer their responsibility to maintain it.

45. Resettled households were required to pay connection fees for services in at least three of the resettlement sites, contrary to previous commitments by the IRC and ADB, exacerbating their financial strain. Only some AHs have since been reimbursed. Others have been only partly reimbursed. Some AHs have not connected to electricity because they cannot afford the fee. On 4 April 2012, 166 affected families resettled to the Phnom Penh site delivered a complaint letter to CARM for the ADB President stating that they "are disconnected from electricity," and are "living in the dark at night" (see Annex 8).
46. A chart of services available at resettlement sites as the time of relocation and as of December 2011 is available on the last page of the BABC report.
47. The 2006 Resettlement Plan states on page 54 that before any households relocate, resettlement sites "will be developed with all basic infrastructures: access roads, water supply, electricity, drainage and toilet facilities (pit latrines)." These requirements were confirmed in December 2010, when the IRC and the ADB adopted a "Resettlement Checklist" to be completed before any further relocation of affected households could take place.¹¹ The introduction of the checklist system was presented as a new safeguard to prevent a repeat of problems that had already occurred in Sihanoukville and Battambang, where affected households had been resettled before the site was prepared. A year later, however, the ADB reported that the checklist system had been abandoned - without explanation.¹²
48. Tragically, two children, a brother and sister aged 9 and 13 respectively, drowned in an eight-meter deep pond near the Battambang site four days after resettlement in May 2010. The pond was used as a source of water for resettled families since no other source of water was provided at the site.¹³ The deaths of the children underscore the lack of due diligence measures undertaken to ensure availability of essential services and a reasonable level of safety at the resettlement sites. All residents should be able to access basic services and facilities without putting themselves at risk. (See also, paragraph 51 below.)

¹¹ See ADB letter to NGOs, 13 December 2010 (Annex 6).

¹² Meeting at CARM between NGOs and community representatives, AusAID staff, ADB CARM staff, SERD staff and DG Kunio Senga, 15 November 2011.

¹³ Richard Baker and Nick McKenzie, "Two child deaths linked to AusAID Cambodia project," *The Age*, 1 November 2010. See <http://www.theage.com.au/national/two-child-deaths-linked-to-ausaid-cambodia-project-20101031-178w7.html>. See also testimony from the deceased children's parents at: Zoe Daniel, "Cambodian rail line to displace country's poor," *ABC News*, 13 May 2011. See <http://www.abc.net.au/lateline/content/2011/s3216781.htm>.

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Loss of access to health centers and schools and other facilities at resettlement sites

49. The distance of the resettlement sites from previous residences and urban centres and the failure to provide health facilities and schools at the sites has reduced access of AHs, including Requesters, to these essential facilities. In some cases children have stopped attending school as a result. This is especially the case at the Phnom Penh site. In Battambang and Poipet mothers have expressed concern about the distance that their children have to travel to attend school and feel that this poses a risk to their safety.
50. In Phnom Penh, as a result of inadequate health care at the resettlement site, residents at the Trapeang AnhChanh site resorted to requesting medical assistance from local human rights NGO LICADHO in April 2012. The local village chief however denied the medical team access to the site and hence the opportunity to treat the residents. (See paragraphs 59-62).
51. A third resettled child died at the Poipet site in November 2011. The 11-year old, whose family had recently moved to the site, was crossing a main road, walking back from school when he was hit by a truck. The boy died from his injuries. The boy was attending his old school near to his former home, since there was no closer school to the resettlement site. He had not needed to cross a busy road to get to the school previously.

Impacts on children: Food insecurity, drop in school attendance and reduced access to health services

52. In July 2012, IDP's local partner Equitable Cambodia (EC) conducted interviews with 13 parents who had moved to the Phnom Penh resettlement sites to find out what the impacts of resettlement have been on children. Almost all parents interviewed stated that because of the drop in their income they are no longer able to feed their children three nutritional meals per day. Some have relied on limited food aid from an NGO. Most parents also said that one or more of the children have stopped going to school. Both younger and older children are affected, but while there is a primary school nearby, there is no secondary school so teenage children are more likely to have dropped out. Parents reported noticing a regression in children's grades or skills, including reading. In some cases children are working to supplement household income instead of attending school. Resettled people interviewed also said that although there is a health post on the site, it is often closed and travel costs to the hospital in Phnom Penh coupled with treatment could be prohibitive if their children fall ill. A description of some of the families' situations follows in paragraphs 53-58. Full survey results are on file with EC and can be made available to the CRP.
53. A 47-year-old mother told EC that before her family resettled her children still in her care (aged 12, 15 and 18) ate three meals per day of "whatever they wanted from the market" and she was also able to give her children money for a daily snack. Since they have resettled she can only feed her children one or two meals per day and they are eating snails. There is not always enough money to buy rice. She no longer has enough money to send all her children to school (to pay for the food and snacks necessary), so two out of three have dropped out. One daughter now works at a factory and the other

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stays home and helps her cook and clean. She says that her children were not often sick before resettlement and are now "always sick" with headaches because they are hungry. Her children "are more stressed because they are angry with their mother since they don't have enough to eat." The health post is always closed or there is no doctor or nurse there, and "they don't have enough instruments."

54. A 59-year-old *tuk-tuk* driver and father said that while prior to resettlement he generally (although not always) fed his children three meals of vegetables and meat per day, at the resettlement site his children do not have enough food to eat. He told EC that his two youngest children, aged 14 and 18, who still live with him, had to stop studying after the move because of a drop in household income. Both children now work at a factory. At the new site they have a larger house and plot of land to live on "with more fresh air, and his children are sick less often than before; however he said he has never seen a doctor at the health post, and that if he had to take his children to a hospital he would need to travel to Phnom Penh at considerable cost. He said that his youngest child is more "stressed" now than before.
55. A 38-year-old mother of three, whose family received a total of US\$400 in compensation, said that since her family resettled there is less food to eat. She still feeds her children (aged 12, 9 and 1) three meals per day but the meal sizes are much smaller than before. There are not enough doctors and nurses at the health post on the site, which she described as "not good" so they would need to travel to Phnom Penh hospital. She is concerned that she would be unable to cover the costs of treatment because she lost her job. Both school age children still attend school but she thinks that the quality of education is worse than at their old school because the teacher does not always turn up and they have "mixed some of the grades, so its boring." Her children's marks have dropped since they changed schools. She is also concerned about what will happen when her children are older since there is no secondary school near the site.
56. A 35-year-old divorced man with HIV has one of his three children, an eleven-year-old daughter, living with him at the resettlement site. Before they moved his daughter did not have enough food to eat, although she ate three meals a day – often fast food from the market. Now at the resettlement site "it's worse than before". She eats only two meals per day and misses breakfast. In the afternoon she eats at the Christian English school. She has stopped going to [public] school because he can't afford to send her, but has been attending the Christian school "that teaches English for three months." The father said that he wants "her to have a good education and have a better life and he has nothing to give her."
57. A 39-year-old mother of three said that before her family moved she provided her children (aged 13, 9 and 7) three full meals, snacks and fruit every day. Since living at the resettlement site she can only feed her children two insufficient meals per day. Sometimes they eat snails and frogs, or whatever else they can find near their house. She told EC that sometimes there is no nurse or doctor at the local health post. She tries to take care of her children's health because she won't be able to afford the treatment if they fall seriously ill and would need to borrow money to do so. She sends all her children to school, but her eldest son's marks have dropped. She says "this is because he is upset with me that sometimes I am unable to give him money to go to school or send

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him to study English as before.” She is concerned about the lack of access to secondary school at the site and fears she will be unable to afford to send them far away to study.

58. A 47-year-old mother of two teenagers told EC that before “I provided food to my children three times [a day].... I cooked delicious food for my children, because I had enough income to spend on food...” Now, she feeds her children two meals per day. She says, “my children never eat delicious food since my family moved here, because I have no income, no job.” She said: “Since my family has moved from my old place to here, it is very different related to my children’s living. In my old place, my children lived so happily. They had enough food to eat. But in the new place my children aren’t happy. Both sleeping and eating. In the new place sometime my son becomes a construction worker, when he is not studying. My son is just 13 years old.” Her 15 year old daughter has stopped going to school completely: “From day to day, she always asks my neighbors about a job because she doesn’t want to study, she wants to find a job in order to earn income to help mother. When I was in my old place my children were so happy. In the morning I gave them money for school, [and to] buy snacks for eating. They didn’t think about anything besides studying.” Since there is sometimes no free medicine at the health post she says: “I tell my children to endure, because I have no money to buy medicine.”

Mental and physical harm due to abuse and threats of abuse at Phnom Penh resettlement site

59. On the evening of 5 April 2012, Trapeang AnhChanh Boun village chief Chan Sy Dara and others carried out a violent and unprovoked assault on Project-affected persons living at the Trapeang AnhChanh resettlement site, Phnom Penh. Specifically, the village chief targeted Ms Ros Bopha, a female community representative who had led her community of 166 households to file a complaint to the ADB Cambodia Resident Mission earlier that week regarding problems arising from inadequate compensation and lack of income restoration activities, mounting debt and utilities issues.
60. Earlier in the day on 5 April, Ms Bopha had requested medical assistance for the community from the NGO LICADHO. Upon the medical team’s arrival at the site the local authorities denied them permission to treat the villagers. The situation escalated when the village chief and an estimated 30-40 villagers from the host community entered the site carrying electric batons, knives and sticks, which they then used to assault Project-affected people resettled. Bricks and rocks were also thrown at the residents. Despite police presence, the attack continued into the evening, resulting in injuries for many Project-affected persons, including the elderly. Two people were hospitalized overnight. Given the lack of adequate health facilities at or near the site, they were required to travel some 20 km away from the resettlement site in order to receive emergency care. The village chief reportedly later returned to Ros Bopha’s house holding a gun. He called on her to come out of her house and threatened to shoot her. Bopha however was hiding in a different house at the time and continued to do so until the village chief left.¹⁴

¹⁴ Amnesty International, “Cambodian Woman Threatened With Death,” Urgent Action Appeal, 13 April

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61. The unprovoked and violent nature of this attack underscores the hostile environment into which these families have been relocated under the auspices of the Project. Prior to the incident, the community had told the ADB about problems related to the behavior of the village chief, whom residents accuse of having defrauded them in relation to electricity and water connection costs. The incident highlights the desperate situation of Project-affected households, who are resorting to public protests that put them at serious risk of harm. It also highlights the lack of adequate health care at or near the site, which places Project-affected persons at risk particularly in emergency situations.
62. Numerous people resettled to the Trapeang AnhChanh site have alleged that they were also threatened by the village chief and his supporters, who warned them that they would be harmed if they entered the territory of the adjoining community. They are afraid to use the access road to get in and out of the resettlement site, especially at night.

Threat of unlawful land acquisition and expropriation of property without provision of compensation based on the full market price at the time of expropriation

63. The 231 AHs in a 98-hectare area known as Samrong Estate are distinct from other AHs in that they claim legal possession rights to the land that they reside upon and/or farm. In the Draft Resettlement Plan for Samrong Estate, however, the MPWT claims that the area is property of the Royal Railway of Cambodia (RRC). The MPWT has granted a concession over the area to the Australian-Cambodian joint venture, Toll Royal Railway, for the development of a freight and cargo facility as a part of the Project.
64. According to section 38 of the Cambodian Land Law (2001), persons who possess certain types of land and meet a number of criteria are recognized as legal possessors, conferring on them a bundle of rights akin to ownership. These households are eligible to apply for formal land title. The process of formally registering all land plots throughout Cambodia and issuing ownership title is currently ongoing and is several years away from completion. To date, the majority of Cambodian households that have recognizable claims under the Land Law as legal possessors of their land have not yet had the opportunity to have their possession rights converted into full ownership through the issuance of title deeds. Under the Cambodian Expropriation Law (2010), in the event that their land is needed for a public interest project, these households are entitled to have their rights to the land adjudicated, and if confirmed, to receive the same treatment as full owners, including fair market value for their land.
65. In the Resettlement Plan for Samrong Estate, the MPWT states that the area was acquired by the government for use of the RRC in the 1950s. However, this acquisition has no bearing on present day claims to the land because, pursuant to article 7 of the Cambodian Land Law (2010), the slate was wiped clean from 1979 with respect to all claims to land, including State claims. After the fall of the Khmer Rouge regime in 1979, families began settling on the Samrong Estate with the consent of local authorities. From 1989, when a private property system was re-introduced after two decades of collective and State ownership, families occupying the area were issued with possessory receipts and the plots in Samrong Estate began to be sold or otherwise transferred with

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attestation by commune officials. This practice continued unabated until 2005, with subsequent possessors considering themselves akin to owners of their plots – an understanding confirmed by the acts of local officials.

66. The MPWT claims that in 2000 the RRC gave notice to various levels of government that the area was State-owned; however, the evidence suggests that the general public and the families residing on or farming the area were not put on notice at this time. In 2005, the Municipality of Phnom Penh and the RRC issued an instruction banning the transfer, sale and the use as collateral of plots within Samrong Estate. At least some residents of Samrong Estate were made aware of this instruction. Nonetheless, households by and large ignored this ban, possibly both out of necessity and because they were uncertain of its validity since they regarded themselves as legal possessors, and continued to deal with the land as before. Indeed, there appears to be no legal basis upon which the State could issue such an instruction to legal possessors. Moreover the penal provisions of the Land Law makes any act or conduct that hinders the peaceful possessor of land whose ownership rights have not yet been fully strengthened under the law an offense.¹⁵ The 2005 instruction banning the sale of Samrong Estate land may have constituted such an offense.
67. In 2008, the systematic land registration process commenced in Samrong Estate. Households received receipts after their land plots were surveyed in exchange for documentation that they provided as evidence of their lawful possession. However, the land registration process was aborted without explanation to the households. The following year the households were informed that the land was State property that would soon be used for the Project, requiring them to vacate.
68. Samrong Estate AHs are entitled under Cambodian law, at a minimum, to have their claims adjudicated through an impartial process in accordance with the law. As with the 2005 ban on land transfers, approval by the ADB of the current Draft Samrong Resettlement Plan, which denies residents' land rights, could constitute an offense under the penal provisions of the Land Law.
69. BABC sent two memos to ADB with extensive legal analyses and supporting documentation regarding the legal tenure status of Samrong Estate residents in September 2010 and January 2012 respectively (See Annex 9). The findings of that analysis were that the Samrong Estate land is not State public property but rather the private property of Samrong residents who have legally acquired or purchased possession rights over the land. Upon receiving the September 2010 BABC memo, ADB undertook to commission its own legal assessment on the matter. In late 2010, ADB informed BABC and Samrong AHs that it had engaged DFDL law firm to carry out the legal assessment. Some two years later, on 17 August 2012, ADB released on its website an "ADB Statement on Samrong Estate Legal Opinion," along with a legal opinion provided not by DFDL law firm but by the firm Honest and Balanced Services (HBS).¹⁶ The HBS legal opinion did not review key records and documents that substantiate the residents' claim to possession rights. Moreover, the opinion reads not as

¹⁵ Law Law 2001, article 248.

¹⁶ See <http://www2.adb.org/projects/cam-railway/default.asp#time19>.

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a balanced, good faith effort to determine the facts and impartially analyze the applicable law, but rather as one written to justify the State's claim to the land. On several points, the opinion makes statements about the Land Law that are manifestly wrong. This calls into question the independence of the firm that provided the opinion.

70. At the time of writing, the documents cited by HBS as those that were relied upon to form its opinion have not yet been disclosed to the Samrong residents, despite their request to ADB to promptly do so.
71. In the "ADB Statement on Samrong Estate Legal Opinion," ADB insinuates that it accepts the HBS findings and will proceed with approval of an Updated Resettlement Plan. Despite the strength of the legal arguments to the contrary and the weaknesses of the HBS opinion, it thus continues to regard Samrong Estate as State public land and denies AHs their legal right to market-based compensation for their land in accordance with the Cambodian Expropriation Law.
72. Requesters from the Samrong Estate area request that the CRP undertake an independent legal assessment of their land rights in order to determine whether ADB has complied with its operational policies requiring compliance with national laws.

Other harms or likely harms

73. The above may not be an exhaustive list of harms suffered or likely to be suffered by AHs, including Requesters. We request that the CRP conduct an exhaustive investigation into all harms and likely harms suffered by all Project-affected persons.

III. Attempts to seek redress through grievance mechanism

74. Despite the pervading environment of intimidation, which has inhibited aggrieved AHs from complaining, a significant number of people have sought redress through the Project grievance mechanism. According to the ADB website, as of 30 November 2011 the IRC reported that the grievance mechanism had been accessed by 499 households through 102 letters of concerns and complaints about Project impacts. The number of households who have submitted a complaint represent 12 percent of the total number of affected households.
75. The Project grievance mechanism, however, has not worked for the vast majority of complainants. According to the BABC 2012 report, it appears from a review of Phnom Penh grievance cases that many have been deemed closed by the IRC after the IRC sent a response dismissing rather than resolving the problems and concerns raised.
76. In addition to the environment of intimidation, the BABC report identifies a number of demand and supply-side barriers to accessing remedies, including limited awareness about the grievance process, low literacy levels, a lack of legal aid and a general feeling amongst AHs that submitting a complaint would be futile. It also identifies supply-side barriers, including low capacity of relevant authorities and lack of understanding of their roles and responsibilities. Despite being aware of the multitude of grievances of AHs and problems with the grievance process, the ADB did not carry out capacity building workshops until July/August 2011, and only in March 2012, after the vast majority of

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resttlement was already occurred, produced a pamphlet, called a "quick reference guide" setting out the basic principles and process of resettlement and the grievance mechanism.

77. It is unclear whether the process has improved since that time, however the ongoing harms and concerns detailed above suggest that no significant improvements have ensued.

IV. Attempts to seek a resolution through communications and with ADB CARM and Management

78. As detailed above, the Requesters and local NGOs monitoring the Project have previously made extensive good faith efforts to address the aforementioned problems and harms with ADB Cambodia Resident Mission, the relevant ADB Operations department, and the Senior Management of ADB, through numerous written communications, meetings, and submissions of evidence, documentation and reports since May 2010.
79. This correspondence, up until November 2011, is summarized in Annex 10. IDI will make any correspondence referred to therein, as well as correspondence after November 2011, available to CRP upon request.

V. Requesters' dissatisfaction with OSPF process

80. The Requesters submitted a complaint to the Office of the Special Project Facilitator (OSPF) on 21 November 2011, which was deemed eligible on 11 January 2012.
81. None of the Requesters' major suggestions for reforming the consultation process and altering the draft course of action were incorporated into the final course of action. They requested, for example, that the Resettlement Plans and DMS be subject to review as part of the course of action, but this proposal was rejected.
82. Requesters have also been denied their right to negotiate solutions collectively and be represented by individuals and organizations of their choosing, thereby further weakening their position in the mediation process. Not only are AHs prohibited from being represented and/or advised in negotiations by NGOs with specialized knowledge about ADB safeguard policies; apparently only the heads of households whose names are registered on the DMS are allowed to participate in the individual negotiations facilitated by OSPF. If this is in fact the case, this exclusion will disproportionately affect women and further marginalize them in the resettlement process.
83. Due to the deep-seated power imbalances and lack of procedural fairness in the OSPF-led consultation process, Requesters do not believe that it will lead to a satisfactory outcome. They reluctantly agreed to the course of action out of a sense of hopelessness and because they were informed that the CRP would not accept their request until the consultation process reached Stage 7 and the course of action was agreed.
84. Furthermore, Requesters believe that the entitlements, processes and principles enshrined in ADB's Operational Policies, including the Policy on Involuntary

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Resettlement, must be respected and applied in order to comprehensively remedy their situation, and indeed to ensure that they are not made worse off by displacement in the long-run. They believe that until a rigorous assessment of areas of non-compliance with operational policies is conducted and a full corrective action plan is put in place to bring the Project back into compliance with policies, the harms they are suffering will not be fully remedied. ADB adherence to the principles and requirements of the Policy has explicitly not been considered or addressed by OSPF.

85. IDI wishes to add that the OSPF-led consultation process is flawed in that it limits its attempts at problem-solving to those individuals who signed the complaint letter, thereby ignoring the plight of other affected families who have been harmed as a result of systemic flaws in the resettlement process, but who have not been made aware of their right to complain to OSPF, have had their complaints rejected by OSPF on procedural grounds,¹⁷ or are too afraid of the repercussions to do so.

VI. Acts and omission of the ADB

86. We submit that the following acts or omissions have resulted in non-compliance by the ADB with operational policies and procedures:
- a. Inadequate identification and mitigation of risks during the Project design, appraisal, and approval stage;
 - b. Approval of resettlement plans and budgets that are unsatisfactory to meet the requirements of the Policy on Involuntary Resettlement and to ensure the restoration of the social and economic base of those relocated;
 - c. Failure to provide the required resources and capacity-building to ensure compliance with the Policy on Involuntary Resettlement by ADB staff and the RGC, including in relation to information disclosure and dissemination, meaningful consultation, resettlement processes and schedules, detailed measurement surveys, income restoration programs, resettlement sites, compensation rates, grievance mechanisms and the overall budget for resettlement;
 - d. Failure to adequately conduct due diligence, review, and supervision throughout the project cycle to ensure that the RGC complies with the requirements set out in the Policy on Involuntary Resettlement and related contractual obligations between ADB and RGC; and

¹⁷ See for example: <http://www.adb.org/sites/default/files/complaint-letter-en-cam-railway-2012.pdf>. This complaint, filed by three affected persons without any assistance or representation by an NGO, was rejected by OSPF on the grounds that the complainants "have yet to solve the problem with the concerned operations department." OSPF disregarded the fact that the complainants had complained on several occasions to the local Project grievance mechanism and that NGOs had raised the problems they were experiencing numerous times with ADB over the course of two years. Moreover, given that a complaint on the same project was already deemed eligible by OSPF, it is unreasonable that OSPF would not have added their names to the registry of the pending complaint.

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- e. Failure to take effective action, within the tools and remedies available to ADB, to prevent foreseeable harms related to ongoing resettlement activities, which were previously experienced by other AHs and reported by the external monitoring agency and monitoring NGOs, and to ensure effective remedial measures are put in place to repair harms that have already been caused to AHs.
87. This may not be an exhaustive list of acts and omissions of the ADB that have resulted in non-compliance with operational policies and procedures and harms suffered or likely to be suffered. We request that the CRP conduct a comprehensive investigation into such acts and omissions of the ADB.

VII. Non-compliance with operational policies and procedures by the ADB

88. We submit that the acts and omissions of the ADB listed above amount to non-compliance with ADB's Involuntary Resettlement Policy (1995) and Safeguard Policy Statement (2009), Safeguard Requirements 2: Involuntary Resettlement. While the Project Loan Agreements bind the RGC to the 1995 Policy and the first, although not the second, Loan Agreement was entered into before the 2009 Policy came into effect, we submit that the provisions of the 2009 Policy affirm, clarify, and in some cases extend, the ill-defined requirements of the 1995 Policy and as such, in instances in which the 1995 Policy provisions are unclear, the 2009 Policy should be used to ascertain precise requirements.
89. In particular, we believe that the Involuntary Resettlement Policy has not been complied with in relation to requirements for, inter alia:
- a. the preparation of a socioeconomic baseline of all AHs;
 - b. access to information and meaningful consultation;
 - c. social preparation of AHs and in particular vulnerable AHs;
 - d. Full replacement cost-based compensation prior to resettlement for lost structures, assets, improvements, and loss of income and livelihood sources, including net income lost during the transition period;
 - e. adequate relocation assistance;
 - f. the provision of appropriate land, housing, infrastructure and other compensation and appropriate facilities and services at resettlement sites / better housing at resettlement sites with comparable access to employment and production opportunities and civic infrastructure and community services;
 - g. secured tenure to relocation land;
 - h. provision of sufficient resources and opportunities so that AHs are able to reestablish their livelihoods as soon as possible / transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities, and opportunities to derive appropriate development

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benefits from the project, including the establishment of a comprehensive rehabilitation program, supported by an adequate budget, prior to resettlement to help displaced persons improve, or at least restore, their incomes and livelihoods;

- i. appropriate assistance to female-headed households and vulnerable AHs;
 - j. the economic and social integration of resettlers into host communities;
 - k. the establishment of a mechanism to receive and facilitate the resolution of affected persons' concerns and grievances promptly, using an understandable and transparent process that is readily accessible to the affected persons without retribution;
 - l. Assistance by the ADB to the government to (i) adopt and implement the above policy objectives and principles; and (ii) build the capacity of the government to effectively plan and implement involuntary resettlement; and (iii) strengthen the government's capacities and macro frameworks for involuntary resettlement.
90. In relation to Samrong Estate AHs, who have claims to the land that are recognizable under national laws, we submit that the potential approval and implementation of the draft RP would amount to, in addition to the above, non-compliance with ADB policy requirements to compensate project affected people at replacement costs for lost assets, including land, and to comply with national laws.
91. In general we submit that the harms suffered and likely to be suffered described above represent a failure to meet the objectives of the policies to: ensure that AHs are "compensated and assisted so that their economic and social future will generally be at least as favourable with the project as without it" (1995); and "enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups" (2009).
92. In addition, we believe that the following operational policies and procedures may not have been complied with by the ADB:
- a. OM Section J4/BP on Loan Covenants (2003)
 - b. OM Section C2/BP and OP on Gender and Development in ADB Operations (2010)
 - c. OM Section C3/BP and OP on Incorporation of Social Dimensions into ADB Operations (2010)
 - d. OM Section C4/BP and OP on Governance (2010)
93. The above may not be an exhaustive list of operational policies and procedures that have not been complied with by the ADB and we request that the CRP investigate all possible areas of non-compliance.

Confidentiality:

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

VIII. Violations of international human rights law

94. We submit that the harms suffered amount to violations of the ratified international treaty obligations that are binding of the Kingdom of Cambodia, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the United Nations Convention on the Rights of the Child, and specifically:

- The right to be protected from forced eviction, defined under international law as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protections, including *inter alia* access to alternative adequate housing.¹⁸
- The right to adequate housing, as a component of the right to an adequate standard of living, including sufficient space, privacy and protection from the elements, and access to basic services and facilities in an appropriate location close to livelihood opportunities.¹⁹
- The right to an affordable and adequate supply of water, as a component of the right to an adequate standard of living, in accordance with World Health Organization guidelines on water quantity and quality,²⁰ on a non-discriminatory basis, including on the grounds of their housing or land status.²¹
- The right to be free from discrimination on the grounds of property and land tenure status.²²
- The right of every child to an adequate standard of living for the child's physical, mental, spiritual, moral and social development, including in case of need to be provided with material assistance and support programs particularly with regard to nutrition and housing.²³

¹⁸ Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 11; and UN Committee on Economic, Social and Cultural Rights, General Comment 7 (1997), para. 3.

¹⁹ Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 11; and UN Committee on Economic, Social and Cultural Rights, General Comment 4, (1994).

²⁰ See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002; and WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993).

²¹ Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 11; and UN Committee on Economic, Social and Cultural Rights, General Comment 15, (2002), paras 12 and 16.

²² Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 2.2; and UN Committee on Economic, Social and Cultural Rights, General Comment 20 (2002), para. 25.

²³ Constitution of Cambodia (1993), article 31; United Nations Convention on the Rights of the Child

Confidentiality:

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

- The right of every child to the enjoyment of the highest attainable standard of health, including through the provision of clean drinking water, and to facilities for the treatment of illness and rehabilitation of health.²⁴
 - The right of every child affected by the Project to education on the basis of equal opportunity;²⁵
 - The right to an effective remedy for persons whose rights have been violated.²⁶
95. In respect of the above acts and omissions of ADB, we recall the following statement of the United Nations Committee on Economic, Social and Cultural Rights, in its General Comment No. 2, that:
- international agencies should scrupulously avoid involvement in projects which, for example... involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation... [W]herever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights...
- Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account.²⁷
96. We further refer to the ADB Operations Manual Bank Policies (BP), OM Section F1/BP, issued on 4 March 2010 (paragraph 6), which states:
- ADB will not finance projects that... do not comply with the host country's social and environmental laws and regulations, including those laws implementing host country obligations under international law.
97. Furthermore, we refer to Schedule 5 of the 2007 Loan Agreement, echoed in the 2010 Loan Agreement, entered into by the RGC and the ADB, which stipulates:
- The Borrower shall...ensure that all Works contracts under the Project incorporate provisions and include the necessary budget to oblige the contracts to . . . comply with all applicable laws and regulations of the Borrower, including ratified international treaty obligations . . .

IX. Remedies sought by Requesters

(1989), article 27.

²⁴ Constitution of Cambodia (1993), article 31; United Nations Convention on the Rights of the Child (1989), article 24.

²⁵ Constitution of Cambodia (1993), article 31; United Nations Convention on the Rights of the Child (1989), article 28.

²⁶ Constitution of Cambodia (1993), article 31; International Covenant on Civil and Political Rights (1966), article 2.3.

²⁷ United Nations Committee on Economic, Social and Cultural Rights, General Comment 2 (1990), para. 6 and 8 (d).

Confidentiality:

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

98. The Requesters seek the following remedies for harm suffered or likely to be suffered:

- a. A comprehensive, independent and transparent review and revision of the compensation policy such that it 1) meets the ADB standard of full replacement value at current market rates, and 2) provides a compensation "floor" that is sufficient to ensure that displaced households are able to secure adequate housing upon relocation;
- b. Reimbursement for the actual costs of replacing lost assets for each household that have not yet been compensated and retroactive compensation adjustments for those who have already been resettled and compensated at less than the actual replacement value;
- c. Repayment of debt principle and interest incurred as result of inadequate compensation and resettlement processes for each household that is indebted due to resettlement;
- d. An independent and transparent assessment of the legal status of the Samrong Estate land parcel by the Compliance Review Panel; and if confirmed by the assessment that the land is in fact legally possessed by residents, amendment of the Samrong Estate Resettlement Plan to provide compensation, at current market rates, for all immovable property acquired from legal possessors in advance of expropriation.
- e. Delivery of cash payments for loss of income, including past losses, at a minimum to cover household daily subsistence needs, until income levels are restored to their pre-Project levels through the EIRP;
- f. Access to affordable basic services at relocation sites, including at a minimum, potable water and electricity connected free of charge, adequate drainage and sanitation facilities, access roads, lighting at resettlement sites for safety, primary and secondary schools, and health centers;
- g. Support to enable parents to reenroll in school children who dropped out following resettlement. Support should also include free school buses or other transport to ensure primary and secondary age school children at all resettlement sites can safely travel to and from school.
- h. Adequate replacement land allocation, in an appropriate and acceptable location, including provision of one plot of land for each affected family with their own family book;
- i. An immediate moratorium on evictions and removal of the threat of eviction for all people affected by the Railway project, including alleged illegal encroachers until all legal protections and safeguards under the ADB Policy on Involuntary Resettlement and international law are put in place, including *inter alia* access to information, meaningful consultation on resettlement and compensation options, and the assurance that nobody will be left homeless or impoverished.

Confidentiality:

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

99. We request that the Compliance Review Panel carry out a full and comprehensive investigation into the harms suffered and likely to be suffered by AHHs, including the Requesters, due to acts and omissions of ADB constituting, contributing to, or resulting in non-compliance with ADB's operational policies and procedures.

Sincerely,



David Pred
Managing Associate
Inclusive Development International

List of Annexes:

Annex 1: Requesters' representation authorization letter

Annex 2: Sahmakum Teang Tnaut (STT), Rehabilitation of Cambodia's Railways: Comparison of field data, July 2011.

Annex 3: Bugalski, N. and Medallo, J. "DERAILED: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway," Bridges Across Borders Cambodia (BABC), 2012.

Annex 4: STT and Housing Rights Task Force (HRTF), Railways Relocation in Phnom Penh: Six women tell their stories, Fact and Figures Issue 20, March 2012.

Annex 5: STT, Losing the Plot: Rapid Assessment of Household Debt in Trapeang Anhchanh, June 2012

Annex 6: ADB response to Community Petition, 10 April 2012.

Annex 7: ADB letter to NGOs, 13 December 2010

Annex 8: Community petition to ADB, 2 April 2012.

Annex 9: BABC memos to ADB and AusAID re Samrong Estate on 13 September 2010 and 25 January 2012.

Annex 10: NGO Railways Resettlement Communications Matrix

APPENDIX 2: TERMS OF REFERENCE FOR THE COMPLIANCE REVIEW



CRP Request No. 2012/2 – Request for Compliance Review on the Greater Mekong Subregion: Rehabilitation of the Railway in the Kingdom of Cambodia Project [Asian Development Bank Loan 2288 and Asian Development Bank Loan 2602/ Grant 0187 (Supplementary)]

TERMS OF REFERENCE FOR COMPLIANCE REVIEW

I. Introduction

1. These Terms of Reference (TOR) have been prepared by the Compliance Review Panel (CRP) for undertaking a compliance review of the Greater Mekong Subregion: Rehabilitation of the Railway in the Kingdom of Cambodia Project following a request for compliance review (the Request) (Appendix) received on 28 August 2012 and registered on 4 September 2012.
2. On 18 September 2012, the CRP determined the Request eligible and recommended to the ADB Board of Directors (Board) that they authorize a compliance review. The Board authorized the compliance review with an effective date of 9 October 2012.
3. Under paragraph 122 of the Accountability Mechanism policy¹ and paragraph 37 of the CRP Operating Procedures², these TOR, which cover the scope of review, methodology and timeframe, are submitted for clearance to the Board Compliance Review Committee (BCRC). Following clearance by BCRC, the CRP will provide the TOR to the Board and all stakeholders, and post them on the CRP website within 14 days from the receipt of Board authorization of the compliance review.

II. The Request for Compliance Review

4. Brief particulars of the Request and the Project are summarized below:

Project Name	Greater Mekong Subregion: Rehabilitation of the Railway in the Kingdom of Cambodia Project [Asian Development Bank Loan 2288 and Asian Development Bank Loan 2602/ Grant 0187 (Supplementary)]
Country	Kingdom of Cambodia
Borrower	Kingdom of Cambodia
Requesting parties	The 22 requesters, who requested that their identities be confidential, authorized Mr. David Pred of Inclusive Development International (IDI), to file a request for compliance review on their behalf, together with Mr. Ieng Vuthy of Equitable Cambodia.

¹ ADB. 2003. *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*. Manila.

² Operating Procedures of the Compliance Review Panel dated 5 June 2004.

Allegations	Noncompliance with ADB operational policies and procedures on Involuntary Resettlement, Safeguard Policy Statement, Incorporation of Social Dimensions into ADB Operations, Public Communications, Gender and Development in ADB Operations, Processing Sovereign and Sovereign Guaranteed Loan Proposals, Loan Covenants and Promotion and Cooperation with NGOs.
ADB operations department responsible	South East Asia Department (SERD)
Project categorization	Category A for resettlement impact
Project Description	<p>The original Project (Loan 2288-CAM) involves rehabilitating or reconstructing the railway and reestablishing the railway connection with Thailand. The railway operations are also being restructured and the rehabilitated railway will be operated by a new, commercial railway operator.³ The original project is estimated to cost the equivalent of \$73.0 million, including taxes and duties equivalent to \$7.4 million.⁴</p> <p>The supplementary financing (Loan 2602-CAM) will be used to: (i) establish a new freight and rolling stock maintenance facility at Samrong, 10 kilometers west of Phnom Penh; (ii) upgrade or strengthen parts of the main line to enable early initiation of integrated multimodal services; and (iii) establish additional sidings to terminals to facilitate multimodal connectivity.⁵ The supplementary financing investment cost is estimated at the equivalent of \$68.6 million.⁶ The combination of the original project and the supplementary financing will be referred to as the modified project and will push the total cost of the modified project to the equivalent of about \$141.6 million.⁷ Technical Assistance (TA) for Outcome Monitoring and Procurement Review will be provided to Cambodia's Ministry of Public Works and Transport. This will be done through a TA with an estimated cost of \$0.45 million.⁸ The Government of Australia will finance the TA from its proposed grant for the project (AusAid Grant 0178-CAM) and to be administered by ADB.</p>
Project Status	ADB Loan 2288 was approved on 13 December 2006, became effective on 30 January 2008, and scheduled to close on 30 September 2013. As of 9 October 2012, approximately \$33,666,000 of ADB Loan 2288 has been disbursed.

³ ADB. 2006. *Report and Recommendation of the President to the Board of Directors: Proposed Loan and Administration of Loan to the Kingdom of Cambodia for the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*. Manila.

⁴ Footnote 1, p. iii.

⁵ ADB. 2009. *Report and Recommendation of the President to the Board of Directors: Proposed Supplementary Loan and Administration and Technical Assistance Grant, Kingdom of Cambodia: Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*. Manila.

⁶ Footnote 3, p. 10.

⁷ Footnote 3, p. 11.

⁸ Footnote 3, p. 15.

	ADB Loan 2602 and Grant 0187 were approved on 15 December 2009, became effective on 5 January 2011, and scheduled to close on 30 September 2013. For Loan 2602 and Grant 0187, \$5,934,000 and \$4,822,000 have been disbursed, respectively, as of 9 October 2012.
Project Implementation Arrangement	The executing agency is the Ministry of Public Works and Transport, Kingdom of Cambodia.
CRP	Mr. Rusdian Lubis, CRP Chair is taking primary responsibility for the compliance review and Mr. Lalanath De Silva, CRP part-time member has been appointed by the CRP Chair as the Lead Reviewer, with assistance from Ms. Anne M. Deruyttere, CRP part-time member. The CRP will be supported by the Office of the Compliance Review Panel (OCRP).
Contact person:	Mr. Rusdian Lubis, Chair, CRP Mr. Geoffrey R. Crooks, Principal Compliance Coordination Specialist, OCRP Email: crp@adb.org Tel: (+63 2) 632 4149

III. Purpose and Scope of Compliance Review

5. The purpose of the CRP is to investigate alleged violations by ADB of its operational policies and procedures in the Project that directly, materially and adversely harm project-affected people in the course of the formulation, processing, or implementation of the Project. The purpose of the compliance review is to focus on ADB's accountability in determining whether ADB has or has not complied with its operational policies and procedures in connection with the Project, and not to investigate the borrower or the executing agency. The conduct of these other parties will be considered only to the extent directly relevant to an assessment of ADB's compliance with its operational policies and procedures. After carrying out a compliance review, the CRP will issue to the Board its findings and recommendations.

IV. Allegations of Noncompliance with ADB Policies

6. The Requesters claim that ADB failed to follow its operational policies and procedures on Involuntary Resettlement (2005) and Safeguard Policy Statement (2009), Loan Covenants (2003), Gender and Development in ADB Operations (2010), Incorporation of Social Dimensions into ADB Operations (2010), and Governance (2010). The request letter also stated that: "the above may not be an exhaustive list of operational policies and procedures that have not been complied with by the ADB and we request that the CRP investigate all possible areas of non-compliance (para. 93)."

7. Based on the allegations by the requesters of noncompliance with specific ADB operational policies, the Accountability Mechanism Policy (1993) and the CRP's findings in its eligibility review of the Request, the CRP will consider ADB's operational policies and procedures that were in effect at the time of Board approval of both loans and grant (13 Dec 2006 and 15 December 2009, respectively) regarding project formulation, processing and implementation. These policies, among others, include:

4

- (i) Operations Manual F2, Involuntary Resettlement, September 2006;
- (ii) Operations Manual C3, Incorporation of Social Dimensions into ADB Operations, April 2007
- (iii) Operations Manual L3, Public Communications, September 2005 and December 2008
- (iv) Operations Manual C2, Gender and Development in ADB Operations,, September 2006
- (v) Operations Manual D11, Processing Sovereign and Sovereign Guaranteed Loan Proposals, October 2003 and April 2007
- (vi) Operations Manual, Loan Covenants, October 2003
- (vii) Promotion and Cooperation with NGOs, October 2003

V. Conduct of Compliance Review and Methodology

8. The CRP will carry out its work expeditiously, transparently and in a manner to ensure that there is engagement with Management and staff, the requesters, project-affected people, the Government of Cambodia, executing and implementing agencies, and the Board Member representing the Government of Cambodia.

9. The compliance review will include (but not be limited to) the following:

- (i) a review of ADB project files and other documents related to the Project;
- (ii) the conduct of site visits with prior consent of Government of Cambodia;
- (iii) consultation with all concerned stakeholders, including interviews with:
 - ADB Management, staff and consultants,
 - staff from the Office of the Special Project facilitator (OSPF) on its engagement at the consultation phase of the Accountability Mechanism,
 - requesters and, where possible, other project affected people, including those already resettled,
 - officials from executing and implementing agencies,
 - officials from the Government of Cambodia,
 - the ADB Board Member representing the Government of Cambodia;
- (iv) the engagement of consultants or technical experts, as appropriate, to assist the CRP in carrying out its work; and
- (v) using any other review or investigatory methods that the CRP considers appropriate in carrying out its work.

10. The CRP will exercise discretion and maintain a low profile in conducting the compliance review. The CRP will not give any media interviews at any stage of the compliance review. CRP members and OCRP staff will be subject to ADB's confidentiality and disclosure of information policy. Any material or information submitted to any CRP members or OCRP staff on a confidential basis from any party will not be released to any other parties without the consent of the party that submitted it. Compliance review is not intended to provide judicial-type remedies and the CRP's findings and recommendations are not adjudicative. The Chair and members of the CRP will be subject to the CRP's protocol on conflicts of interest that mandates disclosure of all potential conflicts of interest so that the Chair (or CRP members if the Chair has a potential conflict of interest) can decide the appropriate course of action.

11. After conducting its compliance review, the CRP will issue a draft report of its findings and recommendations to the Management and the Requesters for comment. Both the Management and Requesters will have 30 days to comment on the draft report. Within 14 days from receipt of Management and Requesters comments, the CRP will consider their comments and finalize the report then issue its Final Report to the Board with its findings and recommendations. If appropriate, the recommendations may include any remedial actions for ADB Management to implement in order to bring the Project back into compliance with ADB policies and procedures and will approve the timetable for CRP monitoring of remedial actions, if required. The CRP notes that the Requesters have identified a number of desired outcomes or remedies in their request letter; these will be considered by CRP, if warranted, during compliance review.

VI. Timeframe

12. The CRP will carry out the compliance review in accordance with the procedural steps and timeframe indicated in the 2003 Accountability Mechanism policy, the corresponding Operations Manual Section L1 and the CRP Operating Procedures.

Step	Event	Timeframe
6	CRP Draft report. CRP will issue its draft report with findings and recommendations to the Management and the Requesters for comments.	Not time-bound
7	Management's and Requesters' responses to CRP draft report.	30 days from receipt of CRP draft report
8	CRP Final Report. After considering the Management's and Requesters' comments, CRP finalizes its report and submits a Final Report to ADB Board of Directors, including the Management's and Requesters' comments.	14 days from receipt of Management's and Requesters' comments
9	Board Decision: Board consideration of the CRP's Final Report with recommendations. Release and disclosure of the Board Decision and CRP Final Report	21 days from receipt of CRP Final Report by the Board Within 7 days from Board's decision

13. This timeline does not take into account any additional time required for translation and requested extensions for filing of responses. If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC's clearance of the revised timeframe.

/S/ Rusdian Lubis
Chair, Compliance Review Panel
18 October 2012

APPENDIX 3: PERSONS CONTACTED DURING THE COMPLIANCE REVIEW

The Compliance Review Panel (CRP) contacted the following persons within and outside the Asian Development Bank (ADB) in carrying out its investigation of the request for compliance review under the project. This list is not exhaustive as it does not include persons who requested their identities to be kept confidential.

ADB Staff

(including those present in various CRP/OCRCP meetings at headquarters, staff interviewed, and Cambodia Resident Mission [CARM] staff)

1. Aysha Qadir, Senior Counsel, Office of the General Council (OGC)
2. Christophe Gautrot, Senior Counsel, OGC
3. Indira Simbolon, Principal Social Development Specialist (Safeguards), RSES
4. James Nugent, Director General, Southeast Asia Department (SERD)
5. Kunio Senga, (Former) Director General, SERD
6. Eric Sidgwick, Country Director, CARM
7. Mailene Buendia, Senior Safeguards Specialist (Resettlement), Transport and Communications Division (SETC), SERD
8. Munawar Alam, Unit Head, Project Administration, SETC, SERD
9. Nessim Ahmad, Director, RSES, and concurrently Practice Leader (Environment)
10. Peter Brimble, Senior Country Economist, CARM
11. Peter Broch, Senior Transport Economist, CARM
12. Putu Kamayana, Advisor, SEOD
13. Ricardo Carlos Barba, Senior Safeguards Specialist (Resettlement), CARM
14. S. Chander, Special Senior Advisor (Infrastructure and Public–Private Partnership)
15. Sokha Ouk, Senior Safeguards Officer, CARM

Former ADB Resettlement Consultants

1. Pierre Arnoux
2. Romeo Cleto

Government

1. Tauch Chankosal, Secretary of State, Ministry of Public Works and Transport (MPWT)
2. Uon Song, Undersecretary of State, MPWT
3. Khun Srun, General Director of Lab, MPWT
4. Ly Borin, Director of Railway Department, MPWT
5. Chan Samleng, Deputy Director of RD
6. Nhean Leng, Undersecretary of State, Ministry of Economy and Finance (MEF)
7. Chhorn Sopheap, Deputy Secretary General, MEF
8. B.H.S.Khemmo, Deputy Secretary General, MLMUPC
9. Im Sethyra, Director of Resettlement Department (RD), MEF
10. Sim Samnang, Deputy Director of RD, MEF
11. Yon Sophan, Deputy Director of RD, MEF
12. Hiv Phannavuth, Chief of Administration and Finance Office
13. Sun Sokny, Chief of Multilateral Project Office, RD, MEF
14. Chan Thorn, Chief of Data Office, RD, MEF
15. In Vothana, Deputy Bureau Chief of Multilateral Project Office, RD, MEF
16. Cheang Chorlin, Deputy Chief of Multilateral Project Office, RD, MEF
17. Khuon Davith, Deputy Chief of Multilateral Project Office, RD, MEF

18. Ich Sokmony, Deputy of Government Officer
19. Natin Patel, Advisor, Department of Investment and Cooperation, MEF

Requesters' Representatives

1. David Pred, Managing Associate, Inclusive Development International
2. Eang Vuthy, Executive Director, Equitable Cambodia

(The CRP also met with affected persons and requesters during its visits to the resettlement sites. Names of requesters met by the CRP are withheld due to their request for confidentiality of their identities.)

Project Consultants

1. Nhean Bona, REDECAM Group
2. Yourn Yorn, REDECAM Group
3. Cheng Sarann, REDECAM Group
4. Chea Sarin, NK-JARTS
5. Endo Hitoshi, NK-JARTS
6. Tem Sareivouth, Consultant, ADB
7. Sao Botumroath, Consultant, ADB
8. Khnhel Bora, Executive Director, SBK
9. Elise Wall, SBK

AusAID

1. Michelle Vizzard
2. Nanda Gasparini

HBS (law firm)

1. Ly Tayseng, Managing Director
2. Nhean Somunin, Senior Legal Advisor
3. Vincent Martin Bidez, Senior Legal Advisor

Others

1. Kay Leak, EIRP coordinator
2. Dy Many, Credit Union Finance Australia
3. Nop Veasna, SKY
4. George Cooper (Phnom Penh based legal expert)
5. Michael Cernea

APPENDIX 4: ALLEGED HUMAN RIGHTS VIOLATIONS AND ADB SAFEGUARD POLICIES

Para.	REQUEST FOR COMPLIANCE REVIEW	Reference in ADB Operations Manual	Specific Provision in ADB Operations Manual
94	<p>We submit that the harms suffered amount to violations of the ratified international treaty obligations that are binding of the Kingdom of Cambodia, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the United Nations Convention on the Rights of the Child, and specifically:</p> <ul style="list-style-type: none"> The right to be protected from forced eviction ... without the provision of, and access to, appropriate forms of legal or other protections ... The right to adequate housing ...and access to basic services and facilities in an appropriate location close to livelihood opportunities. The right to an affordable and adequate supply of water The right to be free from discrimination on the grounds of property and land tenure status. The right of every child to an adequate standard of living ... particularly with 	<p>F2/OP-6</p> <p>F2/BP-4(v)</p> <p>F2/OP-16</p> <p>F2/BP-4</p> <p>F2/OP-15</p> <p>F2/OP-9 & 11</p> <p>F2/OP-10</p> <p>F2/BP-4</p>	<p>"Where involuntary resettlement is unavoidable, the policy requires satisfactory resettlement planning documents. ADB informs the executing agency (EA) or other project sponsors of the involuntary resettlement policy and related OM requirements. Starting early in the project cycle, ADB assesses government policies, experiences, institutions, and the legal framework for involuntary resettlement to address any inconsistencies with the policy."</p> <p>"Affected people are to be consulted on compensation and/or resettlement options, including relocation sites, and socioeconomic rehabilitation."</p> <p>"Measures to improve the status of the poor and vulnerable people should focus on strategies to avoid further impoverishment and create new income opportunities. Among them are: ... (iv) reducing vulnerability to poverty through asset-building strategies such as development grants, land-for-land, replacement housing of minimum standard and security of tenure."</p> <p>"... provision of resettlement sites with appropriate facilities and services."</p> <p>"Community and public resource losses to be considered as eligible for compensation include ... (ii) public structures such as ... water and washing points ..."</p> <p>"Lack of formal legal title to land by any affected people is not a bar to ADB policy entitlements."</p> <p>"People moving into the project location, or assets that are constructed after the eligibility cutoff date are not entitled to compensation or other assistance."</p> <p>"Replacement housing of minimum standard,</p>

	<p>regard to nutrition and housing</p> <ul style="list-style-type: none"> • The right of every child to the enjoyment of the highest attainable standard of health, including through the provision of clean drinking water, and to facilities for the treatment of illness and rehabilitation of health. • The right of every child affected by the Project to education ... • The right to an effective remedy for persons whose rights have been violated. 	<p>F2/BP-4</p> <p>F2/OP-15</p> <p>F2/BP-4</p>	<p>assistance for relocation, including provision of relocation sites with appropriate facilities and services, and assistance for rehabilitation to achieve at least the same level of wellbeing with the project as without it.”</p> <p>“Assistance for relocation, including provision of relocation sites with appropriate facilities and services.”</p> <p>“Community and public resource losses to be considered as eligible for compensation include ... (ii) public structures such as ... health and educational facilities.”</p> <p>“Grievance redress mechanisms for affected people are to be established.”</p>
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APPENDIX 5: EXAMPLE OF A COMPENSATION DEFICIT PAYMENT SCHEME

1. The option described in this appendix is only an example and should not be viewed as a rigid scheme. Rather, it should be treated as a possible framework for a mass claims compensation deficit payment scheme. ADB management is encouraged to use this example, as appropriate, in developing its action plan to give effect to the recommendation.
2. The compensation scheme needs an oversight body. For example, such a body might be headed by ADB's country representative in Cambodia or by an appropriate senior GoC official. Other members of an oversight body might include a representative of AusAID (as co-financier of this project), an NGO representative, and a representative of the government or ADB's resident mission in Cambodia as appropriate.
3. The functions of the oversight body might include the development of guidelines for the administration and implementation of the compensation scheme and for ensuring that compensation payments are made as speedily and accurately as possible in an accountable manner. All policy decisions might also be entrusted to such an oversight body.
4. The oversight body can also examine and decide on appeals and grievances by AHs with regard to compensation computations and payments made by the scheme. Appeals will be decided on a time-bound basis and with finality.
5. The scheme could be implemented by the GoC or other experienced and competent entity selected and mandated by the GoC, with the assistance, advice and oversight of ADB.
6. Compensation payments will be made on a lump sum basis to any qualified AH who applies to the fund within a reasonable period fixed by the guidelines and announced widely to AHs at the resettlement sites as well as along the COI and ROW from where they were displaced.
7. The application forms and process ought to be kept simple and easy so that AHs may pursue their claims for deficit compensation without difficulty. They should be available in Khmer and English.
8. The scheme should also provide appropriate assistance to illiterate, differently-abled, women-headed and vulnerable AHs that need assistance in completing and submitting applications. Late applications may be accepted within a further stipulated period where good reasons prevented an AH from applying within time. These will be decided on a case by case basis on the strength and reasonableness of the explanation offered.
9. AHs will need to be informed about the varying levels of lump sum payments available for different categories of compensation deficits.
10. Different approaches are available for computing average compensation deficits. We provide three such examples below.

Computing Average Compensation Deficit for Loss of Property

11. In suggesting average lump sum levels for compensation payments for loss of property the following factors may be taken into consideration:

- a. The average compensation paid to a re-settling AH was \$751. Details of the average compensation paid to AHs at each resettlement site are in Table 6 of the report. The table is reproduced below for convenience as Table I.

Table I

Relocation Site	Affected Households receiving plots	Average compensation by Interministerial Resettlement Committee
Poipet	604	\$874.63
Battambang	48	\$862.23
Pursat	33	\$512.03
Phnom Penh	143	\$947.50
Sihanoukville	33	\$558.46

- b. With regard to those who applied to SPF for compensation adjustments, the SPF found that the large majority of compensation payments to AHs had been erroneously computed. The table below gives the details of the adjustments made by the SPF and the main reasons for the adjustments:

Table II

Relocation site	Number of AHs who applied for compensation adjustments	Number of AHs whose application for adjustment was allowed	Number of AHs whose claims were rejected	Number of AHs who refused to accept the adjusted compensation	Average compensation adjustment in \$ (Total compensation adjusted/total number of AHs granted compensation adjustments)	Main reasons for adjustments at site
Poipet	8	6	2	2	$2864.34/6 = 477.39$	Errors in Design and monitoring framework
Battambang	3	3	0	0	$1571.04/3 = 523.68$	Errors in DMS
Pursat	0	0	0	0		
Phnom Penh (along the railway track)	62	61	1	61	$15,414.53/61 = 252.70$	Errors in DMS
Phnom Penh (Trapeang Anh Chanch)	40 (please note that 2 were from Samrong Estate so calculations were not done for them as it needed to wait for the updated RP)	37	1	0	$32,196.66/37 = 870.18$	Errors in DMS
Sihanoukville	3	3	0	0	$860.12/3 = 286.71$	Errors in DMS

12. Based on these factors a lump sum average compensation adjustment for AHs whose names are on the DMS for the five resettlement sites can be computed along the lines set out in Table III below.

13. The lump sum ought to be adjusted for inflation by approximately 35%. This adjustment is lower than the accumulated Cambodian riel inflation rate of 46.3% between 2006 and 2012. The lower rate of 35% accumulated inflation is justified as the compensation payment was made in US dollars for which domestic inflation is lower than was the case with Cambodian currency. Any AH whose compensation has already been adjusted for DMS errors will receive only a 35% adjustment on the total compensation received so far. The basis of these adjustments will be the DMS for each site.

14. The percentage adjustment can be based on the total compensation currently paid or payable to each applying AH duly adjusted as set out in Table III below. The numbers provided in Table III should be seen as indicative and Table III is based on information supplied to CRP by CARM and SPF.

15. Compensation adjustments would not be claimable by those who have sold their resettlement site plot without constructing a house to another as at October 2013, since we assume that such AHs have had the benefit of the sale in lieu of compensation deficit payments. However, AHs who can provide evidence that they sold their plot after building a house on the resettlement site plot will be entitled to claim compensation adjustments under the scheme. It is more likely than not that such AHs sold their plots with houses because of indebtedness.

Table III

Site	Average compensation paid (rounded) \$	Average compensation adjustment made for DMS errors (rounded) \$	Percentage of compensation adjustment for DMS errors	Proposed percentage adjustment of compensation, including 35% for inflation
Poipet	875	477	55%	90%
Batambang	862	524	61%	96%
Pursat	512	0	0	35%
Phnom Penh (along railway line)	948	253	27%	62%
Phnom Penh (Trapeang Anchanh)	948	870	92%	127%
Sihanoukville	558	286	51%	86%

Computing Average Compensation Deficits for Transition Allowances

16. An upward adjustment of 70% is suggested for the transition allowance. Transition allowances of either \$75 or \$150 were paid to resettled households. Conflicting messages are provided in the resettlement plan and in the entitlement matrix about how the transition allowances have been established. Based on information provided by CARM, the most plausible information is, that the \$75 allowance is calculated on the basis of a 3 months rice allocation of 20 kg of rice per person times 5, assuming that the average household would consist of 5 persons. The \$150 transition allowance constitutes a 6 months allocation, which was paid to

vulnerable households and to AHs that occupied higher quality households which would take longer to rebuild. As transition allowances have been calculated based on 2006 rice prices and rice prices had increased very substantially in 2010 and 2011 when most of the resettlement took place, a 70% increase in transition allowances is suggested. Families that had received a \$75 transition allowance at the time of resettlement would thus be entitled to an incremental allocation of \$52.50. Families which received \$150 at the time of relocation would receive an incremental allocation of \$105. Table IV summarizes the assumptions for the calculations.

Table IV

Transition Allowances	Allowance Paid	Allowance to be paid at 70% increased rice prices	Incremental Payments to be made
3 months allocation of 20 kg rice/person/for 5 members per household	\$75	\$127.50	\$52.50
6 months allocation of 20 kg rice/person/for 5 members per household	\$150	\$255.00	\$105

Computing Average Compensation Deficits for Income Losses

17. One option for computing average income loss is to compare average income levels at each site before and after resettlement. Due to the lack of a pre-settlement baseline census no reliable income data of AHs prior to resettlement is available. Table V lays out information as provided by SBK (see Table 7 of CRP draft report). This information enables the computation of average income loss at each site. Income restoration activities at each site began with the IRP when training commenced. However, credit facilities and a social safety net fund was only established under the EIRP. Even with commencement of the EIRP, income could not be immediately restored, as funds under the EIRP provided to self-help groups were very limited and allowed increased income earning several months after the startup of the EIRP. Income compensation payments proposed below thus assumes an 18 month for compensation computation for income losses accumulated. No income adjustments are to be paid for the Poipet scheme, where data made available do not point to average income losses. No reliable income data was available to the CRP for the Sihanoukville site. Data made available by CARM showed no income losses. It is most unlikely that AHs resettled in Sihanoukville did not incur income losses as the resettlement site is at least 7 km from the original site of residence and families resettled lived from trade in the busy downtown center and from services provided to the fishing industry. At a minimum, resettled families incurred substantially increased transportation costs to and from the former place of residence. If no reliable income data before and after resettlement can be obtained, a lump sum payment for 18 months transportation costs for two income earners per household should be paid. It is not proposed to index the income loss adjustment to inflation as resettlement only took place in 2010 and 2011 and income adjustment payments should be made in US dollars for which domestic price increases are lower than for Cambodian currency. Table V provides this information as well as proposed income loss adjustment payments.

Table V³⁸⁵

Resettlement Site	Start of Relocation	Start of EIRP Training Activities	Household Income before Resettlement Per month (rounded) –\$	Household Income after Resettlement per month (rounded) –\$	Period for income loss computation (months)	Lump sum income loss adjustment \$ per household
Sihanoukville	October 2010	July 2012	To be determined	To be determined	18	To be determined
Battambang	Nov.2010	July 2012	171	86	18	1530
Pursat	Nov. 2010	July 2012	225	123	18	1836
Phnom Penh (Trapean Anhcanh)	Sept. 2011	July 2012	652	448	18	3672
Poipet	April-Nov.2011	July 2012	344	359	No Adjustment	Nil

Addressing Claims from Multiple AHs residing in One House

18. There remains certain AHs who continue to live along the railway and who claim to have only received one DMS for multiple households. Some of these AHs have not received any compensation because their claims are not recognized in the DMS. Such AHs will be encouraged to assert their claims through the grievance redress mechanism and special efforts will be made to properly investigate such claims with adequate due process for claimants and decisions will be communicated to such AHs within 12 months of the outcome of their claims. The decisions will contain written reasons which will also be communicated to the claimants. The claimants will be entitled to pursue any appeal procedure under the grievance redress mechanisms and each appeal stage will be concluded within 3 months and a decision with written reasons communicated to the claimants. Where the decision finds that the claimant did reside in a house at the date the DMS was done but was not included in the DMS, such claimants will be entitled to compensation duly pro-rated for the number of families in the house and adjusted as per this compensation deficit scheme. No compensation adjustments under this scheme will be paid out to AHs whose names are on the DMS where there is a claim by another AH alleging that they resided in the house as well until such multiple claims are fully decided on.

³⁸⁵Sources For Northern Line Resettlement sites: SBK Research and Development, Design and Implementation of Income Restoration Program for Northern Line Section, 25 December 2010; For Phnom Penh: SBK, Socio-Economic and Needs Assessment Report, Design and Implementation of Income Restoration Program, 11 May 2012; For Poipet: SBK, Design and Implementation of Income Restoration Program, Poipet Station, July 2012: Information provided by CARM

**APPENDIX 6: RESPONSES FROM ADB MANAGEMENT AND
REQUESTERS TO CRP DRAFT REPORT**



Asian Development Bank


Memorandum

Office of the Vice-President
(Operations 2)

20 December 2013

To: Compliance Review Panel

Through: Nirmal Ganguly
Advisor, Office of the Compliance Review Panel

From: Stephen P. Groff  20 DEC 2013
Vice-President (Operations 2)

Subject: **Loan 2288-CAM and Loan 2602-CAM/Grant 0187-CAM (Supplementary):
GMS: Rehabilitation of the Railway in Cambodia Project
— Management's Response**

With reference to your letter dated 28 November 2013, submitted herewith is Management's response to the Compliance Review Panel Draft Report on the GMS: Rehabilitation of the Railway in Cambodia Project.

cc: VPKM
DG/SERD
DDG, RSDD

**MANAGEMENT'S RESPONSE
TO THE DRAFT REPORT ON COMPLIANCE REVIEW OF
LOAN 2288-CAM AND LOAN 2602-CAM/GRANT 0187-CAM (SUPPLEMENTARY):
GMS: REHABILITATION OF THE RAILWAY IN CAMBODIA PROJECT**

I. INTRODUCTION

1. On 28 November 2013, the Compliance Review Panel (CRP) requested comments from Management on its draft report on the GMS: Rehabilitation of the Railway in Cambodia Project.
2. Pursuant to para. 125 of the Accountability Mechanism Policy (R79-03), Management provides comments to the draft report consisting of:
 - (i) Management's general comments set out in Section II below;
 - (ii) Management's specific responses to the CRP's 16 conclusions attached as Appendix 1; and
 - (iii) Management's specific responses to the CRP's 7 recommendations attached as Appendix 2.

II. MANAGEMENT'S GENERAL COMMENTS

3. ADB's Policy on Involuntary Resettlement (1995) recognizes differentiated responsibilities of ADB and its borrowers.¹ Under the policy, ADB's responsibilities are to: (i) inform the government about the policy requirements, (ii) assess the government's policies, experience, institutions, and legal framework to address any inconsistency with ADB's policy, and (iii) support the efforts of the government, when considered necessary for involuntary resettlement policy compliance.² The responsibility for *planning and implementing* involuntary resettlement rests with the government,³ and this is reflected in the financing agreement for the project. The financing agreement requires the government to implement resettlement activities in accordance with ADB-approved resettlement planning documentation and ADB policy requirements, and to compensate affected persons accordingly.
4. Due to the differentiated responsibilities of ADB and its borrowers, ADB cannot automatically be held accountable for involuntary resettlement outcomes that fall short of policy requirements. As can be seen from Management's specific responses to the CRP's conclusions, Management considers that most shortcomings identified by the CRP are not attributable to a failure of ADB to comply with its operational policies and procedures as they relate to the formulation, processing, or implementation of the project. In accordance with policy, (i) ADB also monitored and followed up on its borrower's obligations under the financing agreement, and (ii) where it observed cases of non-compliance, ADB has sought corrective measures in order to attain the original development objectives of the project.⁴ ADB continues to do so.
5. Management considers that capacity building for policy compliance is a long-term and continual process. The effectiveness of capacity building efforts is a function of the recipient institution's staff resources, particularly in terms of staff skills, experience, and willingness to learn and apply best practices. ADB gave due attention to capacity building needs prior to

¹ The differentiated responsibilities were further clarified under paras. 71-73 of ADB's Safeguard Policy Statement (2009).

² OM F2/OP, para. 6.

³ OM F2/OP, para. 7.

⁴ OM J4 BP, para. 6.

project approval and provided capacity building support throughout project preparation and implementation. The number of ADB staff and consultants providing resettlement implementation and capacity building support for this project increased from 2 persons in 2008 to 6 persons in 2010 and to 16 persons in 2012. While the institutional capacity of the Inter-ministerial Resettlement Committee (IRC) is significantly stronger than it was in 2006, both ADB and IRC recognize that there is still room for improvement. Management acknowledges the CRP's recommendations on how to further strengthen the capacity of IRC, and ADB will continue to offer capacity building support, both through the project itself and through separate interventions.

6. Management requests the CRP to withdraw its recommendation to establish an ADB fund for compensation payments for the following reasons:

- The recommendation contravenes the ADB Accountability Mechanism Policy and is outside the terms of reference and the competence of the CRP. The ADB Accountability Mechanism is not intended to provide judicial-type remedies, such as injunctions or money damages.
- By establishing an ADB fund for compensation payments, ADB would effectively assume the obligations of its borrower contrary to the Policy on Involuntary Resettlement (cf. para. 3 above).
- If ADB were to establish a compensation fund for this project, affected people with grievances under other ADB-financed projects would likely demand and expect that ADB set up similar funds to cover their compensation deficits.
- ADB does not have the financial and institutional framework to operate a fund of this nature. Establishment of a fully functional fund would be a complex and time-consuming process that would not serve the CRP's stated objective of speedily responding to outstanding compensation deficits.

Management considers that the government should remain responsible for the payment of compensation deficits. ADB will continue to support and engage in dialogue with the government to ensure that compensation deficits are rectified.

7. With respect to the other recommendations proposed by the CRP, ADB will consult with the government and other stakeholders (including non-government organizations and local authorities) in order to prepare a time-bound and verifiable action plan that responds to the current needs of affected households as well as implementation arrangements and capacities.

8. With reference to the CRP's draft report Section IX, Management agrees with the lessons in paras. 264–268, that: (i) ADB's approach should incorporate involuntary resettlement, environment, and public disclosure as integral parts of project formulation and implementation—and operationalize and mainstream lessons learned from implementing safeguards; (ii) timely and continuous assignment of ADB staff, and clear communication in resettlement planning and implementation is needed; and (iii) external monitors need to be reliable and effective – ADB will explore various modes of engagement to ensure independence of the monitoring in accordance with ADB policy requirements. As explained in the response to Conclusion 15, Management considers that Category A projects do not automatically require full Board discussion and that it is the prerogative of Management to apply a more liberal interpretation of the pertinent criteria in determining whether to submit a project proposal for full Board discussion. Management reminds CRP that all projects are subject to the same level of due diligence, regardless whether they are submitted for full Board discussion or for summary procedure.

Appendix 1	Management's Response to CRP's Conclusions
Appendix 2	Management's Response to CRP's Recommendations
Appendix 3	Defined Terms in the Response Matrices

Management's Response to CRP's Conclusions

CRP Conclusions on ADB Compliance	Management Response
<p>Conclusion 1 (page 19, para 62) The CRP finds that AHs did not receive compensation at replacement cost rates either because ADB did not ensure that the 2006 RP included provisions for indexing rates for compensation and other assistance to AHs to address inflation, or because resettlement budgets in URPs between 2008 and 2010 did not adequately reflect increases in the consumer price index or significant increases in the number of affected AHs. Accordingly, the CRP finds that ADB is noncompliant with OM F2/BP paras. 4(iii) and 4(x) and OM F2/OP para. 36, footnote 6.</p> <p>RSES did not properly execute (or even acknowledge, as evidenced in interviews with the CRP) its role of "monitoring compliance with ADB's safeguard policies," and the lack of follow-up by RSES to its 2006 recommendation regarding indexing of compensation prices for inflation—reiterated in connection with their review of the EMO replacement cost study—results in</p>	<p>Management considers that ADB is compliant with respect to the requirement that the government provide compensation to affected households (AHs) at replacement cost.</p> <ul style="list-style-type: none"> • The 2006 resettlement plan (RP) did not index rates for compensation because unit rates would be updated upon completion of the detailed measurement survey (DMS).¹ At the time of DMS, rates were not adjusted based on a determination that prices had remained substantially the same.² • In December 2010, ADB requested the government to have the external monitoring organization (EMO) verify if compensation paid under the URPs between 2008 and 2010 was at replacement cost.³ • EMO issued a study in April 2011,⁴ which ADB verified in January 2012,⁵ showing that the compensation rates were in accordance with market rates at the time of relocation. • Notwithstanding the foregoing, in view of CRP's findings, ADB will offer to the government that ADB and the government jointly review the unit rates applied at the time of compensation. <p>Management clarifies that the Updated Resettlement Plans (URPs) reflected the correct estimates of the number of AHs at the time of URP preparation.</p> <ul style="list-style-type: none"> • The Back to Office Report (BTOR) cited in footnote 39 of the draft CRP report included AHs from Samrong Estate. These AHs were identified in a separate RP for the supplementary loan and not in the URPs for the original loan. <p>Management takes the view that ADB, including RSES, did execute its role properly in accordance with OM F2 BP/OP.</p> <ul style="list-style-type: none"> • A Safeguard Policy Compliance Memorandum (SPCM) was prepared where it highlighted compliance issues of importance, including those related to the adequacy of compensation rates. Twice thereafter, the suggestion that compensation prices should be indexed for inflation was reiterated and looked into: first during the review of URPs prepared after

¹ 2006 Resettlement Plan (RP), Sections 15.1 and 15.2.

² 2009 Updated Resettlement Plan (URP) for Southern line, Section 3.4 states "that the replacement cost study was done in 2006 and there are no changes in the unit rates to date due to no or slight changes in the price level of construction materials." Third draft resettlement supervision and monitoring report, November 2010, Section 4.3.2. The government took the view that unit rates had not changed.

³ Appendix to Back to Office Report (BTOR) of Resettlement Mission dated 5 January 2011.

⁴ External Monitoring Organization (EMO) Replacement Cost Study, April 2011.

⁵ Final Note of January 2012. ADB's review concluded that "compensation rates paid for structures in Phnom Penh, Poipet and elsewhere in the project reflected current market prices at the time of resettlement."

CRP Conclusions on ADB Compliance	Management Response
noncompliance with OM F2/OP, para. 53.	detailed design and then following the review of EMO replacement cost study. ADB's due diligence eventually concluded that compensation rates paid for structures in Phnom Penh, Poipet and elsewhere in the project reflected current market prices at the time of resettlement.
<p>Conclusion 2 (page 29, para 90)</p> <p>(i) Limited consultation with APs during the preparation of the 2006 RP did not ensure that "specific opportunities [were] provided for them to participate in choosing planning and implementation options" [OM F2/BP, para. 4(v)], or that "the views of the affected people are taken into account in formulating the compensation and rehabilitation measures" (OM F2/OP, para. 44), resulting in noncompliance with these policy provisions.</p> <p>The implementation arrangements during the preparation of the 2006 RP were not adequate to ensure compliance, with the provision that: "Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation" [OM F2/BP, para. 4(v)].</p>	<p>Management considers that ADB fully informed the government of its responsibilities to comply with consultation requirements, and that ADB complied with its obligation to support and monitor implementation. Management notes that the draft CRP report does not include any reference to the 2007 Addendum RP.</p> <ul style="list-style-type: none"> • The 2006 RP shows that public consultations were held on nine separate occasions in the period April-June 2006, and these included village discussions and community meetings.⁶ • The 2007 Addendum RP⁷ shows that 963 AHs - representing 68% of the AHs that were due for relocation in Poipet, Battambang, Pursat and Sihanoukville - were consulted on relocation options and preferences, and their willingness to move to the proposed relocation sites. As part of these consultations, representatives of AHs were brought to the proposed relocation sites⁸ and their views on the selected sites as well as other feedback from consultations were reflected in the 2007 Addendum RP. <p>Management considers that the 2006 RP contained adequate implementation arrangements for social preparation activities to enhance participation by vulnerable groups.</p> <ul style="list-style-type: none"> • The 2006 RP set out specific social preparation activities to enhance participation by vulnerable groups, including the requirement that separate consultations be held with vulnerable groups and that the consultations take into account people's daily and seasonal responsibilities as well as the availability of communication methods appropriate to people's literacy levels.⁹ The 2006 RP also contained detailed terms of reference (TOR) for design of the income restoration program (IRP), including an assessment of AH's needs and preferences,¹⁰ and the need for separate social preparation requirements for women-headed households.¹¹ A separate section of the 2006 RP allocated responsibility for these activities among government agencies, consultants and a non-government organization (NGO).¹²

⁶ 2006 RP Section 7.1, page (p.) 47.

⁷ 2007 Addendum. The 2007 Addendum excluded Phnom Penh because a relocation site for Phnom Penh had not yet been identified.

⁸ 2007 Addendum RP, Section 3, pp. 10-11.

⁹ 2006 RP, Section 7.2, p. 49.

¹⁰ 2006 RP, Section 10 and Annex 4.

¹¹ 2006 RP, Section 11.

¹² 2006 RP, Section 12.

CRP Conclusions on ADB Compliance	Management Response
	<ul style="list-style-type: none"> • These provisions in the 2006 RP reflected consultations undertaken at that time, and also formed the basis for consultations undertaken with vulnerable groups during the preparation of the 2007 Addendum RP (see above) and the URPs.¹³ This process included bringing representatives of AHs to the proposed relocation sites.¹⁴
<p>(ii) Inadequate arrangements for the participation of AHs in the conduct and verification of the DMS resulted in noncompliance with the provision that: "The resettlement documents [including an asset inventory] are to be developed in consultation with those affected" (OM F2/OP, para. 34). Notwithstanding the assertion in the updated RPs that APs were fully informed about the project, both ADB's own mission reports and independent sources of information (OSPF) indicated that this was not the case, and that resettlement information on compensation and resettlement options had therefore not been disclosed to APs "in a form and language that they can understand" (OM F2/OP, para. 45), in part since the project had not considered that "for nonliterate people, other communication methods will be appropriate" (OM L3/OP, para. 22).</p>	<p>Management considers that the 2006 RP contained adequate arrangements for the participation of AHs in the conduct and verification of the DMS. ADB raised shortcomings in the DMS process as soon as it became aware of them and has consistently required the government to take corrective actions.</p> <ul style="list-style-type: none"> • In accordance with the 2006 RP, the Inter-ministerial Resettlement Committee (IRC) staff conducted meetings at the commune level in the Khmer language, and provided copies of a public information booklet (PIB) that contained details of entitlements based on the types of losses while preparing the URPs. They explained the DMS process, sought feedback from the AHs and, after the meeting, carried out house-to-house inventories in the presence of the AHs.¹⁵ • However, during implementation the government did not provide AHs with complete information on the measurement of their assets. Therefore, AHs were unable to verify the accuracy of their DMS record.
<p>(iii) Neither the RRP of November 2006 nor the RP of October 2006 considered a strategy for involving NGOs or other civil society entities, and during project preparation there was noncompliance with the requirement that: "In preparing the resettlement planning documents, ADB requires the borrower to take into account the views of affected groups and civil society groups where relevant, including nongovernment organizations" (OM F2/OP, para. 55[iii]). The absence of a strategy for dealing with NGOs or other civil society entities also means that the requirement that "To facilitate dialogue with affected people and other individuals and organizations...ADB shall ensure that the project's design</p>	<p>Management considers that the 2006 RP did contain a strategy for involving NGOs.</p> <ul style="list-style-type: none"> • The 2006 RP required that an NGO, specialized in community development and/or vocational training, be hired to help design and implement the income restoration program.¹⁶ The TOR for the IRP included the identification of existing or planned programs of NGOs and other organizations within the project area to design appropriate strategies to link up with such programs or expand such programs.¹⁷

¹³ 2006 RP, Section 7, p. 47; 2007 Addendum RP, Section 6.1, p. 17.

¹⁴ 2007 Addendum RP, Section 3, pp. 10-11 and 17-18

¹⁵ 2008 URP for the Northern line and Missing Link, Section 2.6; 2009 URP for the Southern Line, Section 2.6; 2010 URP for Poipet, Section 2.5; 2010 URP for Phnom Penh, Section 2.5.

¹⁶ 2006 RP, Section 12.4.

¹⁷ 2006 RP, Annex 4, Section 2, p. 1.

CRP Conclusions on ADB Compliance	Management Response
allows for stakeholder feedback during implementation" (OM L3/OP, para. 15), involving "communications plans for certain projects and programs, particularly those likely to generate a high level of public interest" with recommendations on how to "increase involvement of grassroots and civil society organizations in the development process" (OM L3/OP, para. 16) was not complied with.	
<p>Conclusion 3 (page 36, para 113)</p> <p>ADB did not perform adequate due diligence regarding the planning (and associated budget allocation) in the October 2006 RP of resettlement site facilities, since it ignored the need for additional dedicated services at the Poipet resettlement site (an oversight that was repeated when the updated RP for Poipet was finalized in May 2010). Despite ADB's enhanced supervision effort and attention to the lack of facilities in resettlement sites from early 2010 and onward, and despite the subsequent engagement of SERD senior management and agreements with the government to rectify this issue, there has been lack of compliance with the requirement in both the Involuntary Resettlement Policy and the RPs that appropriate facilities in resettlement sites are provided prior to relocation, which continued into 2013. Consequently, the CRP concludes noncompliance with the following: OM F2/BP, para. 4;¹⁸ OM F2/OP, para. 15;¹⁹ and OM F2/OP, paras. 15 and 34.²⁰</p>	<p>Management considers that ADB performed adequate due diligence regarding the planning and budgeting of resettlement site facilities. ADB acknowledges that many AHs were resettled to locations with insufficient site facilities. This happened contrary to the requirements under the 2006 RP and without ADB's knowledge. ADB requested the government to take corrective action as soon as ADB became aware of this.²¹</p> <ul style="list-style-type: none"> • The 2006 RP assessed the availability of public services in possible relocation sites, including for Poipet.²² The budget included the development of the possible resettlement sites, including necessary site facilities.²³ The 2006 RP also included an implementation schedule for all relevant resettlement activities to be undertaken prior to relocation.²⁴ The possible relocation sites for Poipet were near hospitals and schools²⁵ and there was no need for additional dedicated services. • In the 2007 Addendum RP, the government proposed relocation sites for all subproject areas, except Phnom Penh. All proposed relocation sites, including Poipet, were evaluated using criteria that included: "offers good access to socio-economic services and facilities, such as clinics or hospitals, school, and place of worship or at least the same access conditions they had before moving". The 2007 Addendum RP concluded that all proposed relocation sites satisfy the criteria, with the exception of Sihanoukville.²⁶ This confirmed that

¹⁸ Affected people should enjoy "at least the same level of well-being with the project as without it."

¹⁹ The policy specifies that "Community and public resource losses to be considered as eligible for compensation include...public structures such as markets, health and educational facilities, water and washing points, and meeting houses; and...infrastructure such as roads, bridges, and other transport lines; power facilities; telecommunication lines; and water sanitation and drainage facilities."

²⁰ One of the three important elements of the involuntary resettlement policy is "assistance for relocation, including provision of relocation sites with appropriate facilities and services," and that a "schedule for providing resources and opportunities for reestablishing housing, facilities, networks, incomes, and livelihoods, prior to relocation should be included in the resettlement plan."

²¹ Memorandum of Understanding (MOU) August 2010 para 31-32; Second Resettlement Supervision and Monitoring Report, September 2010, Section 3.1; Letters to Ministry of Public Works and Transport (MPWT) and Ministry of Economy and Finance (MEF) of 8 September 2010, 12 October 2010, and 2 November 2010.

²² 2006 RP, Section 9.5, pp. 54-56.

²³ 2006 RP, Tables 48-52.

²⁴ 2006 RP, Table 37.

²⁵ 2006 RP, Table 35.

²⁶ 2007 Addendum RP, Section 4.1 pp. 13-14.

CRP Conclusions on ADB Compliance	Management Response
	Poipet did not require additional dedicated services. The budget in the 2007 Addendum RP included the development of the possible resettlement sites, including required site facilities.
<p>Conclusion 4 (page 39, para 123)</p> <p>While the principle in the resettlement policy that AHs are compensated for lost assets prior to dispossession has been complied with, both the compensation rates provided in the entitlement matrix and the execution of the DMS defining the losses of individual AHs were not in compliance with ADB policy (section A.1 above). Nor were the commitments that resettlement sites would be fully developed before the APs had to move to them complied with (section A.2).</p> <p>Regarding the requesters' specific complaint on the evictions from the Poipet section, ADB is in compliance since it responded promptly when it became aware of the eviction issues there and demonstrated due diligence over several missions to get these issues resolved.</p>	<p>Management refers to its responses to Conclusion 1 and Conclusion 3.</p> <p>Management agrees with CRP's conclusion that ADB is in compliance regarding the complaint on evictions in Poipet.</p>
<p>Conclusion 5 (page 43, para 136)</p> <p>During project preparation, ADB did not ensure that adequate grievance redress arrangements were in place with sufficient detail to provide operational guidance to executing entities, and that APs were adequately informed about these arrangements. The result is noncompliance with OM F2/BP, para. 4(v),²⁷ and OM F2/OP, para. 45.²⁸ During implementation, ADB did not act on early information from its own supervision missions on systemic problems with the functioning of the grievance redress process, and in particular the lack of capacity on the part of the government entities managing this process. Notwithstanding later efforts by ADB to address this issue, the omissions during the early stages of implementation resulted in noncompliance with OM F2/BP, para. 5.²⁹</p>	<p>Management takes the view that the 2006 RP provided adequate grievance redress arrangements since the 2006 RP was meant to be updated during implementation. Management acknowledges that the arrangements for the grievance redress mechanism (GRM) in the URPs contained insufficient detail to provide operational guidance to executing agencies. ADB has been providing capacity building support for the GRM from 2010 onwards.</p>

²⁷ "Grievance redress mechanisms for affected people are to be established. Where adversely affected people are particularly vulnerable groups, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation."

²⁸ "Public disclosure of resettlement plans and frameworks is mandatory.... In similar fashion... grievance procedures... must be disclosed to the affected people."

²⁹ "ADB may also offer assistance to build the capacity of the [executing agency] and other project sponsors to prepare and implement the agreed resettlement planning document effectively."

CRP Conclusions on ADB Compliance	Management Response
<p>Conclusion 6 (page 47, para 152)</p> <p>During project preparation, ADB did not act on knowledge provided during the RRP review meetings that the executing agency had a weak track record of resettlement implementation and did not develop adequate planning and budget provisions for timely capacity building for the entities (including IRC) responsible for planning and implementing resettlement. This omission contributed to the fulfillment of the risk recognized in the RRP that "compensation, resettlement, and income restoration measures might not be delivered as agreed" was a self-fulfilling prophecy.³⁰</p> <p>During implementation, ADB was slow to address identified capacity shortcomings in the entities involved in planning and implementing resettlement, which contributed to inadequate consultation, grievance redress, and DMS. The result is noncompliance with OM F2/BP, para. 5,³⁴ OM F2/OP, para. 7,³⁵ and GP47, para. 12.³⁶</p>	<p>Management considers that ADB acted appropriately on knowledge and recommendations provided during the RRP review meetings, and included adequate planning and budget provisions through the project supervision consultant and ongoing technical assistance (TA).</p> <ul style="list-style-type: none"> • Management clarifies that the RRP review meetings, or the interdepartmental review process for that matter, did not lead to any new insights on the resettlement implementation capacity of the executing agency. The resettlement audit of Loan 1659-CAM: Ho Chi Minh to Phnom Penh Highway Improvement Project ("Highway One Improvement Project") had shown that capacity was weak and the resettlement planning documentation incorporated lessons learned from the audit.³¹ • Also, ADB <i>did</i> act on the recommendation at the RRP review meeting to engage an independent party for compliance monitoring in view of the executing agency's poor track record in project implementation. • Management clarifies that, at the time of project preparation, Cambodia was already receiving TA to enhance its capacity on resettlement planning and implementation through the TAs entitled <i>Capacity Building for Resettlement Risk Management</i>³² and <i>Technical Assistance to the Kingdom of Cambodia for Enhancing the Resettlement Legal Framework and Institutional Capacity</i>.³³ <p>Management considers that ADB undertook best efforts to address capacity shortcomings in the entities involved in planning and implementing resettlement during project implementation.</p> <ul style="list-style-type: none"> • ADB provided capacity building support through the two above-referenced TAs. ADB fielded a resettlement consultant in 2007.³⁷ The project supervision consultant fielded its resettlement specialist from January 2008 onwards. ADB conducted monitoring and

³⁰ Other contributing factors stemming from ADB planning omissions were inadequate consultation, the lack of inflation indexing of compensation rates, relocation to inadequately prepared resettlement sites, resettlement sites located too far from previous homes to allow continuation of livelihoods, and the initially inadequate and delayed income restoration measures.

³¹ See also Management response to Conclusion 10.

³² ADB 2002. *Technical Assistance for the Capacity Building for Resettlement Risk Management*, Manila (TA-6091-REG approved in December 2002 for \$500,000). Three DMCs participated, including Cambodia.

³³ ADB 2004. *Technical Assistance to the Kingdom of Cambodia for Enhancing the Resettlement Legal Framework and Institutional Capacity*, Manila (TA 4490-CAM approved in December 2004 for \$530,000). See Management Response to Recommendation 4 for further details on these TAs and other resettlement capacity building support provided to the government.

³⁴ "ADB may... offer assistance to build the capacity of the [executing agency] and other project sponsors to prepare and implement the agreed resettlement planning document effectively, to enhance a DMC's national standards and capacities for involuntary resettlement, and to develop consistent sector standards."

³⁵ "ADB offers support for the efforts of the [executing agency] or other project sponsors, when considered necessary for involuntary resettlement policy compliance, for...providing technical assistance to strengthen the capacity of agencies responsible for involuntary resettlement."

CRP Conclusions on ADB Compliance	Management Response
	supervision missions in 2007 and 2008. ADB reviewed the EMO's quarterly reports after commencement of resettlement activities.
<p>Conclusion 7 (page 55, para 165) Design flaws in the 2006 RP are a leading cause of the mis-categorization of losses and insufficient compensation.</p> <p>The RP did not lay out adequate arrangements for the participation of AHs in the conduct and verification of the DMS (see section A.1. above). This results in noncompliance with the provision that: <i>"The resettlement documents [including an asset inventory] are to be developed in consultation with those affected"</i> (OM F2/OP para. 34).</p> <p>Another cause of insufficient compensation results from the 2006 RP not including provisions for inflation indexed compensation and other assistance rates to AHs (OM F2/BP para. 4, 4(iii) and footnote 6).³⁸</p> <p>A third design flaw in the 2006 RP is the lack of provisions for replacement housing of minimum standard as a measure to improve the status of the poor and vulnerable people affected by the project (OM F2/OP para 16).³⁹</p>	<p>Management considers that none of the alleged design flaws were a leading cause of miscategorization of losses and insufficient compensation.</p> <ul style="list-style-type: none"> As explained in the response to Conclusion 2(ii), Management considers that the 2006 RP did set out adequate arrangements for the participation of AHs in the conduct and verification of the DMS. As explained in the response to Conclusion 1, Management considers that ADB is compliant with respect to the requirement that the government provide compensation to affected households (AHs) at replacement cost. Management considers that the lack of provisions for replacement housing of minimum standard does not constitute a design flaw. OM F2/OP, para. 16, lists a range of measures and strategies to improve the status of the poor and vulnerable. Replacement housing of minimum standard is only one of those. Increased security of tenure is another. In this case, it was chosen to increase security of tenure by providing a plot of land to relocating households who were non-titled. This was in addition to compensation of structures and other assets at replacement cost, transport allowances so that AHs could bring their salvaged materials and other moveable assets to the relocation site, and other allowances afforded to AHs rebuilding their houses at the relocation site.⁴⁰

³⁸ The need for such support from ADB should be determined prior to implementation, and during "appraisal staff should... assess the capacity and commitment of the executing agency to fulfill its intended role to promote a sustainable, participatory approach. The project's social preparation might also include sensitizing and training the executing agency staff...."

³⁷ 2007 RP Addendum, Section 1, para. 9.

³⁸ One of the three important elements of the involuntary resettlement policy is "compensation to replace lost assets, livelihood, and income", and for lost assets "all compensation is based on the principle of replacement cost." Replacement cost "means the method of valuing assets to replace the loss at market value, or its nearest equivalent, plus any transaction costs such as administrative charges, taxes, registration, and titling costs. Where national law does not meet this standard the replacement cost will be supplemented as necessary."

³⁹ "... measures to improve the status of the poor and vulnerable people should focus on strategies to avoid further impoverishment and create new income opportunities. Among them are ... replacement housing of minimum standard ..."

⁴⁰ 2006 RP, Entitlement Matrix, Table 32.

CRP Conclusions on ADB Compliance	Management Response
<p>Though starting fairly late into project implementation, ADB's enhanced supervision efforts from 2010 and the attention to the faulty categorization of AH losses demonstrated due diligence in attempting to address the problems, though this effort does not appear to have resulted in a significant proportion of AHs obtaining the correct amount of compensation they were entitled to. Under ADB's involuntary resettlement policy, ensuring all affected AHs receive the correct compensation they are entitled to is fundamental to ADB credibility and the efficacy of its policies.</p>	<p>Noted.</p>
<p>Conclusion 8 (page 58, para 171) The CRP finds noncompliance with the requirement in the policy on involuntary resettlement that all <i>"eligible affected people ... are entitled to receive one-time financial assistance to cover losses of the move, as well as economic and social rehabilitation. Such entitlements may include (i) relocation and transfer expenses, [and] (ii) assistance for transitional income and livelihood support ..."</i> (OM F2/OP para. 13). The main cause of the insufficient living/transition allowances is the design flaw in the 2006 RP, which did not include provisions for inflation indexing of rates for compensation and other assistance to AHs (see section A.1. above). However, ADB's recognition of the inadequacy of the allowances, although it only happened a year after the payments began, demonstrated due diligence in attempting to address the problem. At the same time, this effort has not resulted in all AHs obtaining the compensation they were entitled to. ADB's efforts resulted in some AHs receiving the correct compensation while those paid before this effort did not. This has resulted in a situation of inequality which is not an acceptable way to implement ADB safeguard policies.</p>	<p>Management acknowledges that living allowances were not adjusted commensurate with the increase in the price of rice prior to compensation. Based on ADB's request⁴¹, government agreed to adjust the living allowance for AHs who have yet to be compensated, but has not acted yet on ADB's request to take corrective action for those who have already been paid.</p>

⁴¹ ADB letter of 27 September 2012.

CRP Conclusions on ADB Compliance	Management Response
<p>Conclusion 9 (page 64, para 190)</p> <p>Preparatory work for the design of an appropriate income restoration program and budget allocations for the program were insufficient. This resulted in both inadequate design of the income restoration program and serious delay of the start-up of income restoration activities, resulting in noncompliance with OM F2/BP para. 4(ix).⁴² OM F2/OP para. 16.⁴³ During implementation, when ADB recognized that the income restoration measures in the RP were inadequate, it undertook a major effort to establish an effective income restoration program incorporating asset building strategies as provided for in the policy on Involuntary Resettlement. While these interventions have improved the IRP and EIRP, further fine tuning is needed to make it work better for the AHs. The very substantial delays of an appropriate income support program resulted in substantial income losses to resettled households.</p>	<p>Management clarifies that the design and budget allocation for the IRP in the 2006 RP were sufficient at the time. ADB acknowledges the shortcomings identified during implementation. These were addressed in the design of the expanded income restoration program (EIRP) prepared in 2011.</p> <ul style="list-style-type: none"> • It was expected that the relocation sites would be within 3-5 kilometers of the existing sites and that the various income sources of the APs would not substantially change after relocation.⁴⁴ The RP clarified that the detailed IRP would be finalized during implementation according to the actual need of RPs, and it attached sample TORs for that purpose. • During implementation, it became clear that most of the relocation sites would not be within 3 to 5 kilometers of the existing sites, as had originally been expected.
<p>Conclusion 10 (page 68, para 202)</p> <p>The CRP finds that the design and implementation of the resettlement program was a contributory factor in the indebtedness of a significant number of AHs. The 2006 RP did not adequately assess and address the indebtedness issue, although this was a known impact from the Highway One Improvement Project. The CRP therefore finds noncompliance with OM F2/BP para. 4 and OM F2/OP para. 16.</p>	<p>Management considers that the 2006 RP adequately considered key lessons on indebtedness from the Highway One Improvement Project.</p> <ul style="list-style-type: none"> • As indicated in the CRP findings, it is difficult to attribute the indebtedness of AHs to this project. However, Management acknowledges that increased vulnerability and indebtedness of some AHs may have resulted from the miscategorization of lost assets, the lack of an adjustment mechanism for the transition allowance and the delay in IRP implementation. • The 2006 RP considered key lessons on indebtedness from the Highway One Improvement Project by including (i) an IRP, (ii) compensation at replacement cost without depreciation or deductions for salvageable materials, (iii) payment of compensation prior to relocation, (iv) readiness of relocation sites prior to relocation of AHs, and (v) capacity building for IRC.⁴⁵

⁴² The involuntary resettlement policy requires specific measures to "create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and] (iv) reducing vulnerability to poverty through asset-building strategies such as development grants ..." (F2/OP para. 16).

⁴³ The involuntary resettlement policy requires specific measures to "create new income opportunities. Among them are: (i) reducing barriers ... to employment opportunities ...; [and] (iv) reducing vulnerability to poverty through asset-building strategies such as development grants ..." (F2/OP para. 16).

⁴⁴ During the 2006 RP, relocation sites were not yet finalized and there was an expectation that the relocation sites would be within 3-5 kilometers of the existing sites, where possible. This is relevant because this would mean that the various income sources of the APs would not substantially change after relocation. At the same time, the 2006 RP required that AHs would need to be assisted in income restoration if under exceptional circumstances off-site relocation sites cannot be found within 3 to 5 kilometers of the existing sites. (Cf. 2006 RP, Section 10, pp. 59-62).

⁴⁵ 2006 RP Entitlement Matrix Table 32 pp. 41-46, Section 9, pp. 52-56, and Section 10, pp. 59-62.

CRP Conclusions on ADB Compliance	Management Response
<p>Conclusion 11 (page 75, para 224)</p> <p>For these reasons, the CRP is of the view that the AHs in Samrong Estate who claim title on the basis of possessory receipts or witnessed title transfers should be treated as having a "legalizable" title for the purposes of ADB's policy on involuntary resettlement and compensation computed accordingly. The rehabilitation measures in the Samrong RP were not determined in consultation with the affected community (OM F2/BP para. 4, footnote 4), and their current classification as untitled is a noncompliance with OM F2/OP para. 9. The CRP also wishes to express its concern with regard to the lack of due diligence in the way legal firms were chosen in this case.</p>	<p>Management considers that ADB had to conduct its own due diligence as to whether AHs in Samrong Estate should be classified as having a legalizable title. For this purpose, independent legal advice was the appropriate method pending a final resolution of the matter under local law. ADB's due diligence indicates that the AHs do not have legalizable title.</p> <ul style="list-style-type: none"> • The policy defines 'legalizable' affected people as 'those who do not have formal legal rights to land ... but could claim rights to such lands, <u>under the DMC's laws</u>'⁴⁶ (underlined for emphasis). • ADB recruited two lawyers through a reputable international law firm (DFDL Legal and Tax [DFDL]) to obtain independent legal advice on the matter, who - in their turn - procured the legal opinion from a local relationship firm (Honest and Balanced Services Law Firm [HBS]). Both the report from DFDL and the legal opinion of HBS considered the submissions made by the NGO as well as the government, and came to the conclusion that the affected people could not claim formal legal rights. • Management notes that matters relating to the procurement of goods and services fall outside the scope of compliance review.⁴⁷ Nevertheless, Management clarifies that the lawyers were recruited as individual consultants through DFDL pursuant to para. 2.34 of ADB's Guidelines on the Use of Consultants and on the basis of their qualifications for the assignment.
<p>Conclusion 12 (page 77, para 230)</p> <p>While the transfer of freight and train maintenance operations from the confined and congested central station in Phnom Penh to Samrong likely represents a "feasible alternative project design and location option" to reduce resettlement impact (OM F2/OP para. 3), the planning of resettlement for the Samrong Estate did not seek to "to minimize resettlement where population displacement is unavoidable" (OM F2/BP para. 3). By requiring displacement of households from all of the 104.1 ha of the Samrong Estate, which is an area significantly larger than that directly affected by the infrastructure financed by the project, the supplementary project does not comply with the policy objective of ADB's Involuntary Resettlement Policy to minimize resettlement. The absence of a satisfactory and formal feasibility study for the facility prior to the loan or as part of ADB's facilitation is disturbing because it signals a lack of due diligence and rationality in decision making.</p>	<p>Management acknowledges that no feasibility study for Samrong was undertaken as part of processing the supplementary loan. However, ADB and railway experts of the construction and supervision consultants reviewed the concept layout plan prepared by the railway experts of the Concessionaire and found that the proposed facility at Samrong and the land area were appropriate.</p>

⁴⁶ OM F2/OP, para. 9(ii).

⁴⁷ OM L1/OP, para. 11.

CRP Conclusions on ADB Compliance	Management Response
<p>Conclusion 13 (page 79, para 238) ADB was not in compliance with the requirements for consulting APs when the June 2010 RP for Samrong was developed, but has apparently (belatedly) begun to incorporate lessons learned from the preparation of the four updated RPs for the other sections of the railway line and of the initial draft RPs for Samrong, and – while the final updating of the Samrong RP is still not available – it appears that there is ongoing due diligence to ensure that compensation rates will be revised to reflect replacement costs at current market rates, that a new DMS is carried out in a genuinely participatory manner involving the AHs, and that both AHs and staff from the entities involved in carrying out the DMS receive adequate prior information on this exercise.</p>	<p>Management clarifies that the June 2010 version of the RP for Samrong is merely a draft and is therefore not approved by ADB.</p> <ul style="list-style-type: none"> • The RP will be updated by IRC, and reviewed and approved by ADB if the Samrong component is implemented. The CRP draft report accurately describes the actions that are pending to satisfy ADB requirements, including with respect to consultations with APs. Pending the completion of those actions, ADB has not approved the RP.
<p>Conclusion 14 (page 81, para 247) As belatedly recognized by ADB and described in Section C.3, the compensation rates based on the May 2009 replacement cost study would not have been adequate to provide replacement costs at current market rates as required by the policy on Involuntary Resettlement (OM F2/BP para. 4).</p> <p>The CRP also finds the differential rates for those who came to possess before and after 2005 unjustified and all AHs should be entitled to one rate for compensation purposes.</p> <p>Beyond this, the CRP is unable to make a finding with regard to the adequacy of compensation as the updated RP for Samrong is not available.</p>	<p>Management clarifies that, if the Samrong component is implemented, the RP will be updated by IRC based on a new replacement cost survey, and will be subject to review and approval by ADB.⁴⁸</p> <p>Management considers that the differential rates are justified.</p> <ul style="list-style-type: none"> • As explained in Management's response to Conclusion 10, ADB does not consider any of the AHs on Samrong Estate "legalizable" within the meaning of ADB's Policy on Involuntary Resettlement, regardless whether they possessed the land prior to the 2005 government ban on land transactions or thereafter. • The differential rates were meant to compensate those AHs that had resided and used the land before 2005 and already derived their livelihood from the land prior to the government ban. <p>Noted.</p>

⁴⁸ BTOR of 16 October 2012, para. 5.

CRP Conclusions on ADB Compliance	Management Response
<p>Conclusion 15 (page 84, para 257)</p> <p>The CRP considers that, given the project's classification under category A for resettlement impact and the considerable risks involved, the approval of the original loan in December 2006 by summary procedure rather than by full Board consideration is not in compliance with the policy on processing of loan proposals (OM D11/BP para. 12). Furthermore, based on the significant additional resettlement impact in the Samrong Estate the assignment of a "C" category and the processing by summary procedure was not in compliance with the involuntary resettlement policy (OM F2/OP para. 19) and the policy on the processing of loan proposals (OM D11/BP para. 12).</p>	<p>Management clarifies that Category A projects do not automatically require full Board consideration. Category A projects may not necessarily present significant risks where satisfactory safeguard plans have been developed. It is Management's prerogative to apply a more liberal interpretation of the criteria in determining whether to submit a project proposal to the Board for discussion.</p> <p><u>Original loan</u></p> <ul style="list-style-type: none"> • The provisions on summary procedure in the 2003 version of OM D11/BP (Processing Loan Proposals) were not applicable because they had been superseded by the Board Paper on Revision of the Summary Procedure (R249-05).⁴⁹ • The revised policy allows Management to apply a more liberal interpretation in respect of the criteria that the project should not have the potential for significant adverse environmental, and/or social impact, particularly on vulnerable groups that may be unable to absorb such impact. • The decision to adopt summary procedure was cleared by Director General, Southeast Asia Department (DG SERD) and by Vice President (Operations 2) (VP02).⁵⁰ <p><u>Supplementary loan</u></p> <ul style="list-style-type: none"> • Management clarifies that the supplementary loan was category A for involuntary resettlement.⁵¹ • The 2008 version of OM D11/BP reflected that Management may apply a more liberal interpretation in respect of the criteria that the project should not have the potential for significant adverse environmental, and/or social impact, particularly on vulnerable groups that may be unable to absorb such impact. • The decision to adopt summary procedure was cleared by DG SERD and by VP02.⁵²
<p>Conclusion 16 (page 88, para 261)</p> <p>In this particular case, the CRP does not have to review the alleged human rights allegations as they are covered and dealt with by ADB's safeguard policies listed in this report. The CRP therefore makes no recommendations concerning this part of the request.</p>	<p>Noted.</p> <ul style="list-style-type: none"> • Management reminds CRP that, pursuant to Section B.5 (<i>Scope and Exclusions</i>) of OM L1/OP, the CRP examines whether ADB failed to follow <u>ADB's</u> operational policies and procedures. (underlined for emphasis)

⁴⁹ Strategy and Policy Department (SPD) Memorandum of 17 October 2005.

⁵⁰ Justification for Board Consideration through Summary Procedure, Attachment 3 to Memorandum of 18 October 2006.

⁵¹ Safeguard Policy Compliance Memorandum (SPCM) of 10 September 2009 and Memorandum of 14 August 2009 attaching the involuntary resettlement categorization form. The categorization form that CRP refers to in para. 253 of the draft CRP report was not for the supplementary loan but for a proposed change of the original loan. The proposed change of scope did not proceed.

⁵² Memorandum of 10 November 2009.

Management's Response to CRP's Recommendations

CRP Recommendations	Management Response
Recommendation 1 Establish an ADB fund for compensation payments.	<p>Management's position with respect to property, transition, and income losses is summarized in its responses to Conclusion 1, Conclusion 8, Conclusion 9, and Conclusion 10. Management agrees that compensation deficits should be rectified. However, Management considers that establishment of an ADB fund for compensation payments is not the appropriate mechanism and that this recommendation must be withdrawn, for the following reasons:</p> <ul style="list-style-type: none"> • The recommendation contravenes the ADB Accountability Mechanism Policy. The ADB Accountability Mechanism is not intended to provide judicial-type remedies, such as injunctions or money damages.¹ This was also reflected in para. 10 of the CRP's terms of reference, as cleared by the Board Compliance Review Committee. Management therefore considers that the recommendation is outside the terms of reference and the competence of the CRP. • Management considers that the payment of compensation to affected households (AHs) should remain the responsibility of the government. By establishing an ADB fund for compensation payments, ADB would effectively assume the obligations of the government contrary to the differentiated responsibilities of ADB and its borrowers under the Policy on Involuntary Resettlement. • If ADB were to establish a compensation fund for this project, affected persons with grievances under other ADB-financed projects would likely demand and expect that ADB set up similar funds to cover their compensation deficits. This would also undermine the credibility of the grievance redress mechanism and would defeat the principle that ADB should assist and build the capacities of its borrowers. • ADB does not have the financial² and institutional framework to establish and operate a fund of this nature.³ Establishment of a fully functional fund would be a complex and time-consuming process that would not serve the CRP's stated objective of speedily responding to outstanding compensation deficits. <p>While Management considers that the government should remain responsible for the payment of compensation deficits, ADB is prepared to support the government as follows:</p> <ul style="list-style-type: none"> • assist the government in determining <i>property compensation deficits</i> due to miscategorization⁴ and resolving them through the improved grievance redress mechanism; • continue its dialogue with the government to ensure that the government pays all eligible AHs <i>transition compensation deficits</i> in cases where allowances were not duly adjusted.⁵ • work with the government to assess the most appropriate methodology for calculating <i>income loss adjustment payments</i>, including the lump sum payment approach proposed by CRP.⁶

¹ OM L1/BP (Accountability Mechanism), para. 9.

² If the compensation fund were to be financed from ADB's own resources, it appears that approval from the Board of Governors would be required.

³ There is no precedent for establishment of such a fund in ADB and, to ADB's knowledge, in any other multilateral development bank.

⁴ See Management's response to Conclusion 10.

⁵ See Management's response to Conclusion 8. The government has already adjusted transition/living allowances (to the extent that these were related to miscategorization) for affected households (AHs) who participated in the problem solving process with OSPF. This process should be followed for all transition/living allowance compensation deficits.

CRP Recommendations	Management Response
Recommendation 2 Improve facilities at resettlement sites.	<p>Management agrees that shortcomings in the facilities at resettlement sites must be rectified, and is currently working with the Australian Aid Program (AAP) and the government to address these shortcomings.⁷ As part of the Office of the Special Project Facilitator (OSPF) process, ADB and the government have consulted with AHs to identify their facility improvement needs at resettlement sites and these are now under implementation.⁸</p> <p>Management confirms that ADB is prepared to expand its support for improving facilities at resettlement sites. Management agrees with the principle that the relocation sites must provide AHs with improved access to essential services, and that the identification and prioritization of facility improvements must be undertaken in a participatory manner through consultations with AHs and local authorities.</p> <p>Management clarifies that medical insurance for AHs is funded through the social safety net fund (SSNF) of the expanded income restoration program (EIRP). While there are remaining funds for the continuation of the medical insurance scheme, the decision whether to continue financing the scheme through the SSNF is a decision of the self-help groups (SHGs), and not ADB or the government. This medical insurance provides AHs in Phnom Penh with access to hospitals and medical centers without cost.⁹ Management considers that refurbishment of the medical center at the Phnom Penh site may therefore not be necessary.</p> <p>Management deeply regrets the unfortunate death of two children at the Battambang relocation site, and one child in Poipet. ADB conducted investigations of the incidents in 2010 and 2011, and found no link between these incidents and a failure of ADB to comply with its operational policies and procedures.¹⁰</p>
Recommendation 3 Improve the functioning of the grievance redress mechanism, to be reflected in a time-bound and verifiable action plan.	<p>Management agrees with the CRP recommendation to improve the functioning of the grievance redress mechanism. Management proposes that ADB prepare a time-bound and verifiable action plan in consultation with the government, and that this plan include capacity building activities for the grievance redress mechanism.</p>

⁶ For example, an aggregate sum could be calculated for each community at a resettlement site. This sum could then be used to top-up both the community development fund (CDF) and the social safety net fund (SSNF) established for each community. This arrangement would allow AHs at the relocation sites to access loans, expand businesses, or fund new livelihoods as well as provide AHs with increased ability to respond to crises and emergencies. Because the use of these funds is determined by the communities, the communities could also decide to use the top-up for additional shared community benefits.

⁷ AAP is funding the construction of new community centers in all five relocation sites and the government has provided additional land for this purpose, even though this is not required under the RPs.

⁸ These comprise: (i) overhead water tanks, household water connections, and fencing for the water supply pond in Battambang, (ii) repairs to the access road and drilling a deep well for Sihanoukville, (iii) road grading, fencing for a borrow pit at the relocation site, and a solid waste management (SWM) campaign in Poipet (including provision of waste bins), (iv) a drain well, roof, and concrete patio for the water system in Pursat, and (v) an SWM campaign in Phnom Penh (including provision of waste bins).

⁹ There is a well-equipped health center about 4 kilometers from the relocation site and a referral hospital about 9 kilometers from the relocation site (Mid-term Review Mission, May 2012).

¹⁰ Please see Management's response to Conclusion 3.

CRP Recommendations	Management Response
Recommendation 4 Develop an appropriate program to build capacity for resettlement in the Inter-ministerial Resettlement Committee (IRC), to be reflected in a time-bound and verifiable action plan.	Management proposes that ADB prepare a time-bound and verifiable action plan in consultation with the government and development partners, ¹¹ and that this plan include capacity building for IRC and local authorities in resettlement planning and implementation. In addition to the assistance noted in section A.5 of the CRP's draft report, ADB has provided project-specific capacity building support ¹² as well as substantial stand-alone capacity building activities for the government and IRC through a number of technical assistance (TA) projects ¹³ and workshops. ¹⁴
Recommendation 5 Establish a debt workout scheme to help highly indebted families repay their accumulated debts through a dedicated credit line and a debt workout facility.	Although it is difficult to attribute indebtedness of AHs to the project, Management considers that ADB and the government should work together to assess the extent of indebtedness of AHs and design an appropriate debt workout scheme informed by the assessment's findings.

¹¹ Development partners that have provided similar capacity building support include Japan International Cooperation Agency (JICA) and World Bank. JICA provided the Technical Cooperation Project on Capacity Enhancement of Environmental and Social Considerations for Resettlement (2010-2012) to IRC, including the preparation of a handbook on resettlement. JICA is also preparing a study (2013-2014) which will produce a handbook on livelihood restoration and improvement for relocated households. The World Bank provided a Social and Environmental Safeguards Training Workshop to project implementation units in October 2010.

¹² For the Railway Project, capacity building on project policy and implementation (including the grievance redress mechanism) IRC, relevant ministries and local authorities including representatives of AHs. The training was conducted (i) from 17 June to 29 July 2011, (ii) from 20 February 2012 to 2 March 2012, and (iii) on 26 July 2012.

¹³ Regional Technical Assistance (RETA) 6091: Capacity Building for Resettlement Risk Management (\$500,000) approved in December 2002; Technical Assistance (TA) 4490-CAM: Enhancing the Resettlement Legal Framework and Institutional Capacity (\$530,000) approved in December 2004; TA7366-CAM: Capacity Building on Income Restoration Program (\$500,000) approved in October 2009; and TA7566-REG: Strengthening and Use of Country Safeguards Systems (CAM: Preparation of Draft Sub Decree on Informal Settlers) (\$250,000) approved in August 2011. For TA 7366-CAM, capacity building included short and long term trainings provided to executing agencies (EAs), implementing agencies (IAs), Resettlement Department, Ministry of Economy and Finance (RD/MEF), non-government organizations (NGOs), firms implementing income restoration program (IRP: SBK and Envisioning), local resettlement consultants. In addition, The TA supported study tours in the Philippines (14-18 November 2010) and People's Republic of China (20-24 March 2011) for government officials (IRC/RD/MEF). The short course trainings had two rounds: (i) Phase 1 (2-4 March 2011) on procedures of involuntary resettlement) and Phase 2 (24-27 August 2011) on income restoration, and (ii) from 11-14 October 2011, and 3-4 November 2011, respectively. The long term training had 2 cohorts: (i) from 2010-2012, and (ii) from 2011-2013, respectively.

¹⁴ Regional Workshop on Involuntary Resettlement Implementation and Management from 23-27 February 2009 in Phnom Penh (Workshop participants include: (i) ADB staff in headquarters (HQ) and resident mission (RM) staff from Cambodia, Viet Nam, Lao PDR, and Indonesia, (ii) officials from key government agencies (IRC/MEF, MPWT, Ministry of Water Resources and Meteorology (MOWRAM), Electricite du Cambodge (EDC), Telecommunication, Ministry of Interior, Ministry of Land Management, Ministry of Environment, and Ministry of Women Affairs), (iii) firms implementing IRP, (iv) East West Management Institute, and (v) NGOs/civil society (NGO Forum, Urban Poor Development); ADB Safeguards Policy Statement (SPS) briefing on 18 January 2010 [Participants included ADB RM, Government (RD/MEF, Ministry of Labour and Vocational Training (MOLVT), Ministry of Forestry and Fisheries (MAFF), Ministry of Rural Development (MRD), Ministry of Environment (MOE), MOWRAM, Ministry of Industry, Mining, and Energy (MIME), EDC, Council of Ministers (COM), State Secretariat of Civil Aviation (SSCA), Ministry of Tourism (MOT), and MPWT), local resettlement consultants, multi-stakeholders (NGO Forum, LAC, Sahnakum Teang Tnaut (STT), Conservation & Development on Cambodia (CDCam), Human Rights Task Force (HRTF), Community Peace-Building Network (CPN), Bridges Across Borders Southeast Asia (BABSEA), and (Cambodian League for the Promotion and Defense of Human Rights) (LICADHO)]. OSPF training on Capacity Development for Grievance Redress Mechanism on 3-4 November 2011 to RD/MEF, Phnom Penh Municipality, MPWT, MRD, EDC, AusAID, and resettlement consultants.

CRP Recommendations	Management Response
<p>Recommendation 6 Implement the expanded income restoration program (EIRP) in a sustained and sustainable manner.</p>	<p>Management agrees with the recommendation that the EIRP should be implemented by the government in a sustained and sustainable manner, but does not agree with the automatic 5-year extension recommended by CRP.</p> <p>The EIRP has been providing support to the SHGs in the management of funds. An exit strategy will be piloted for more established SHGs¹⁵ so as to enable them to become self-sufficient in terms of fund management and operations. The pilot will also help ADB and the government to determine what additional support each SHG will require, and for how long.</p> <p>The exit strategies will be time-bound and will identify the arrangement for handing over full control of the operations to the SHGs. ADB will further support these efforts by providing additional consulting services.</p>
<p>Recommendation 7 Adopt specific safeguards for the development of a freight facility in Samrong Estate</p>	<p>Management clarifies that, if the Samrong component is implemented, the 2009 RP will be updated by the government, and will be subject to review and approval by ADB. Subsequent to ADB's discussions with the government on the updating of the RP for Samrong, the government has officially requested the removal of Samrong component from the project.¹⁶ ADB is currently preparing a change in project scope. ADB has requested the government to prepare a communication plan in order to inform the AHs identified in the 2009 Samrong RP of the proposed removal of the Samrong facility from the project scope.¹⁷</p>

¹⁵ For example, those which had completed several loan cycles.

¹⁶ The government has requested ADB to remove the Samrong freight facility (i.e. Inter-Modal Terminal) from the project scope through letters dated 17 May 2013 and 12 August 2013. In lieu of the freight facility planned for Samrong Estate, the Concessionaire has constructed a hard stand facility at the CWT Dry Port in Phnom Penh, which is now being used for loading and unloading of train cargo.

¹⁷ Letter to MPWT dated June 2013 and Back to Office Report (BTOR) November 2013 Mission.

Defined Terms in the Response Matrices

ADB	Asian Development Bank
AAP	Australian Aid Program
AHs	affected households
APs	affected persons
BTOR	back to office report
CDF	community development fund
DFDL	DFDL Legal and Tax
DG	Director General
DMC	developing member country
DMS	detailed measurement survey
EIRP	expanded income restoration program
EMO	external monitoring organization
GRM	grievance redress mechanism
HBS	Honest and Balanced Services Law Firm
IRC	Inter-ministerial Resettlement Committee
IRP	income restoration program
MEF	Ministry of Economy and Finance
MOU	memorandum of understanding
MPWT	Ministry of Public Works and Transport
MRM	Management Review Meeting
NGO	non-government organization
OM/BP	Operations Manual/Bank Policies
OM/OP	Operations Manual/Operational Procedures
OSPF	Office of the Special Project Facilitator
PIB	public information booklet
PPTA	project preparatory technical assistance
RETA	regional technical assistance
RP	resettlement plan
RRP	Report and Recommendation of the President to the Board of Directors
SERD	Southeast Asia Department
SHG	self-help group
SPCM	Safeguard Policy Compliance Memorandum
SPD	Strategy and Policy Department
SSNF	social safety net fund
SWM	solid waste management
TA	technical assistance
TASF	technical assistance special fund
TOR	terms of reference
URP	updated resettlement plan
VPO2	Vice President (Operations 2)

**Comments by Requesters on the Draft Report on the Compliance
Review Panel Request on the GMS: Rehabilitation of the Railway Project
in the Kingdom of Cambodia**

The Requesters, represented by Equitable Cambodia (EC) and Inclusive Development International (IDI), have reviewed the *Draft Report on the Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*, and have the following comments.

The Requesters are sincerely gratified that the Compliance Review Panel (CRP) has validated the claims that they and NGO monitors have been making about the Railway project's non-compliance with ADB safeguard policies since mid-2010. With several notable exceptions set out below, the CRP's findings are consistent with the Requesters' experience of the resettlement process under the Project. Implementation of the CRP's draft recommendations will make a significant contribution toward the remediation of a deeply flawed project that has caused grave and widespread harm to affected families. With several important modifications set out below, the Requesters urge the swift and full adoption of the CRP's recommendations by the Board.

The Requesters have limited their comments below to addressing the gaps in the draft report and the findings and recommendations with which they disagree.

1. Lack of Consultation on Resettlement Options for Fully Affected Households Remaining Along the Railway

While CRP acknowledges the failure of the Project to meaningfully consult AHs and ensure that "specific opportunities [were] provided for them to participate in choosing planning and implementation options [OM F2/BP],"¹ the draft report does not address the specific complaints of the Phnom Penh families who are entitled to be resettled but do not agree to move to the Trapeang Anhchhan resettlement site. These include families who have not yet cut their houses out of the Corridor of Impact (COI) as well as those who have cut their houses and shifted back into the residual Right of Way (ROW) but are living in cramped plots with less than 30 square meters remaining. These families have not been presented with any options other than moving to a site that they reasonably expect would be detrimental to their livelihoods. Neither remaining onsite in cramped housing or relocating to Trapeang Anhchhan are acceptable options.

¹ Compliance Review Panel (CRP), Draft Report on the Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway

28 families in remaining along the railway in the Toul Sangke neighborhood have proposed two options that they would find acceptable: a) provision of resettlement plots with secure tenure at the Stung Meanchey site that was included as one of three options in the original 2006 Resettlement Plan (and then dropped because it was deemed too expensive), in addition to their other entitlements for loss of property and income and transitional allowances; **OR** b) 8000 USD in lieu of replacement land, which they will use to purchase their own alternative land, in addition to their entitlements for loss of property and income and transition allowances.

The Requesters urge CRP to recommend that ADB ensure that these options are made available by the Project to all fully affected families remaining along the railway in Phnom Penh (ie. those with less than 30 square meters remaining after cutting their structures out of the COI).

An omission by the CRP to address this situation in its recommendations is certain to exacerbate existing harms and result in future harms and policy violations. ADB Management has demonstrated its unwillingness to address the situation unless mandated by the Board.

2. Lack of Security of Tenure for Affected Families Remaining in the Right of Way

Partially affected families remaining in the ROW have received no documentation to confirm their 'right of residence' and they are unclear when the declared 5-year moratorium on resettlement in the ROW began and will end.

The project has left these families in a state of legal limbo and extremely vulnerable to displacement *without application of safeguards* in the future. Project documents contend that this design was intended to meet the ADB policy standard of 'avoiding and minimizing resettlement impacts'; however the real effect of this project design is that ADB avoids *responsibility* for future resettlement impacts. By 'activating' the defunct railway, the Project has also activated the railway ROW, thus impacting the tenure status of families that have been living there, often long before the government legally classified this land as a ROW. Families remaining in the ROW are in a far more precarious tenure situation than they were before the Project. As such, the Project should have ensured that they enjoyed long-term, legal security of tenure, such as through a thirty-year lease agreement with the State (the same deal offered to the Railway concessionaire), or they should have been assisted to resettle to another location with secure tenure like those families categorized as fully affected. This is a significant act of non-compliance with the Policy on Involuntary Resettlement, which is not addressed in the draft CRP report.

The CRP should recommend measures to ensure the security of tenure of partially affected households remaining in the ROW.

3. Proposed Compensation Deficit Scheme

The Requesters have the following comments on the proposed Compensation Deficit Payment Scheme:

- The broad contours of the proposed compensation deficit payment scheme represent an acceptable remedy for the issues of inadequate compensation for losses. However, there is too much discretion granted to ADB Management in the CRP's recommendation to design the scheme. Given their experience over the past four years, the Requesters have little faith that the ADB will follow through appropriately with this recommendation unless the basic structure and principles of the scheme are clearly prescribed as recommendations by the CRP and adopted by the Board.
- The Requesters agree that there should be an oversight body for the scheme, which includes a range of stakeholders. The Requesters' NGO representatives should be a part of this oversight body.
- The scheme must be implemented by a competent non-governmental agency, which is acceptable to the Requesters and contracted directly by ADB.
- The example in Appendix 5 does not address the CRP's finding that the compensation should have enabled AHs to build houses of a minimum standard. This finding requires setting a floor compensation amount, for example, based on the cost of a Habitat for Humanity house adjusted for household size. CRP should recommend that this be set as a minimum level of compensation. All fully affected households should receive whichever is greater: the 'minimum standard adjustment' or their DMS and inflation adjustment.
- The Requesters are concerned about the proposal that AHs must apply for the fund in order to receive compensation. The majority of AHs are illiterate and vulnerable. Such an administrative hurdle could foreseeably prevent access to due entitlements. It should be incumbent upon the scheme to identify all the eligible beneficiaries and compensate them accordingly. There should be a mechanism through which any household that has been inadvertently left out of the identification process can claim their due entitlements.
- Compensation deficit payments must be made to those who sold their resettlement plots, as many of these families represent those who have been harmed the most by the failed resettlement process. Payments must also be made to those who have not moved to the resettlement sites and are renting houses close to their jobs. Special efforts must be made by ADB to find these people and ensure that they are duly compensated.
- The Requesters query the figure "253" in the "average compensation adjustment made for DMS errors" for "Phnom Penh (along the railway line)" in Table III of Appendix 5. There are numerous AHs along the railway line in Phnom Penh who had two-story houses but whose DMS only recognized one-story. These AHs report being offered between \$1000-\$3000 by OSPF - considerably higher amounts than the \$253

cited in the table. We note that these families did not accept the OSPF offer because they do not agree to move to the Trapeang Anhchhan resettlement site. Table II indicates that 61 AHs refused to accept the adjusted compensation.

- It would be manifestly unfair if Pursat AHs were to get no compensation adjustment for DMS simply because there were no OSPF complainants from Pursat. The Pursat AHs are just as likely as any of the other locations to have had DMS errors. Moreover, as CRP has noted, it is not possible to build a house of minimum standards with the \$512 that Pursat AHs received on average in compensation.
- The Requesters disagree that there have been no accumulated income losses in Poipet and Sihanoukville. Requesters from these areas report that they have suffered income losses. Given that much of the data CARM has relied on in the past on a range of resettlement issues has been faulty, Requesters have little reason to trust this data unless it is published, along with its methodology, and subject to verification by independent researchers.
- There remains a need to audit the DMS for certain AHs who are remaining along the railway who claim to have only received one DMS for multiple households. This audit is necessary to rectify the problem of rights-holders being left out of the process of compensation and rehabilitation. Such households would not receive any relief under the proposed Compensation Deficit Payment Scheme because they never received a DMS.

4. Clarifications and Objections to Particular Excerpts of the Draft Report

Compliance Review Panel draft report (excerpts)

Requesters Comments

5. Barely 20 years after the Paris Peace *Accords*, Cambodia is emerging from decades of civil war, mass trauma, and political change [emphasis added]...

We note that the reference in this paragraph should be to the Paris Peace *Agreement*. The "Accords" refer to the 1972 agreement.

9...Legal investigations commissioned by ADB supported the government's position.

It should be noted here that legal investigations by NGOs supported the residents' position.

12. Some AHs complained to the SPF and adjusted compensation was offered to 111 and accepted by 110 of them.

This statement is inconsistent with information received by Equitable Cambodia from the community representatives of the complainants, which indicates that 20 AHs who were offered adjusted compensation by OSPF rejected it. It is also

	<p>inconsistent with Table II in Appendix 5 of the draft report, which indicates that 61 AHs refused to accept the adjusted compensation offered by OSPF.</p>
<p>13...The CRP discussed the issues with nongovernmental organizations (NGOs) that were involved in resettlement, with experts such as Michael Cernea (resettlement) and George Cooper (Cambodian land laws), and with Honest and Balanced Services (HBS), a Cambodian law firm retained by ADB to issue an opinion and land title to Samrong Estate.</p>	<p>This sentence should be corrected to state that Honest and Balanced Services (HBS) was tasked with the preparation of an opinion on the legal status of the land parcel at Samrong Estate.</p>
<p>14...The CRP also found design flaws in the IRP, which were later rectified through the expanded income restoration program.</p>	<p>The Requesters disagree that the EIRP has rectified the design flaws of the IRP. There was no consultation on the design of the EIRP, and its impact on restoring incomes thus far appears to be marginal at best. We note that no evidence is provided by CRP to support the assertion that the design flaws have been rectified.</p>
<p>15...CARM and staff in Manila are exerting greater efforts, at expected levels, to correct past mistakes and strengthen the implementation of project safeguards, with the OSPF filling a significant role. These proactive efforts at engagement with the government and on-site improvements should continue into the future.</p>	<p>The Requesters strongly disagree that OSPF played a significant role in rectifying past mistakes and strengthening the implementation of the project safeguards. OSPF merely provided some of the complainants whom it deemed eligible with a modest compensation adjustment in exchange for their commitment not to pursue further complaints. Many of the complainants felt pressured by the OSPF to accept this compensation when they did not feel it was sufficient redress. The OSPF declined to address systemic problems with the resettlement process, and its methodology served to exacerbate existing unequal power relations between the affected people on the one hand and the government and ADB on the other.</p>

- 18... At the southern end of the railway line, the resettlement site in Sihanoukville is on the outskirts of the city, 7 km from the location adjacent to the harbor from which the affected families were displaced. The 7 km distance violates the principle stated in the 2006 RP that resettlement sites should be located less than 5 km from the former residence of the resettlers, so as not to disrupt livelihoods.
- We note that some AHs in Sihanoukville were relocated as far as 30 km from their initial location in Stung Hao district.
- 19... **Phnom Penh (Trapeang Anhchanh).** This resettlement site outside Phnom Penh city, surrounded by rice fields and wetlands, is about 20-30 km from the location in Phnom Penh from which the affected families were displaced. *It is part of a larger resettlement site for people displaced by three earlier projects* [emphasis added].
- These earlier cases were not resettlement for "projects" but forced evictions of poor city residents by private real estate speculators.
- 21... Of the 48 families scheduled for relocation, 38 have settled on the site since May 2010.
- EC's monitoring records indicate that 55 families were relocated in May 2010.
- 21... In the interim, the resettlers relied first on supply from private water trucks, which they considered costly. From February 2011, this supply was subsidized by the project.
- Resettled families in Battambang continue to rely on private water trucks because the pond does not supply water for the families living at the site. The water from the trucks has not been subsidized by the project since early 2012.
- 26... Innovative features of the 2006 RP were the provision of plots with land title to AHs relocating to resettlement sites, a guaranteed 5-year right of residence for AHs moving from the railway COI but remaining within the ROW of the railway line, 13 an IRP for AHs, and grievance redress arrangements.
- The Requesters note with concern that AHs remaining in the ROW have received no documentation to confirm this right of residence, or their right to be resettled after 5 years in accordance with the principles of the ADB resettlement policy. It is unclear to AHs when the 5-year period began and when it will end, or what will happen after the 5 years is over.
- 27... Moreover, following complaints from AHs in the Phnom Penh section of the railway line, it was recognized
- This leaves at least 137 AHs living in a precarious tenure situation, in homes that are too small by the

that an additional 242 AHs had houses that would be fully affected, and of these, 105 AHs opted to move to the resettlement site. This impact was to be addressed through an addendum RP for Phnom Penh, which was to be submitted to ADB by the end of June 2013 but had not yet been submitted by the end of October 2013.

Project's own standards to be considered viable. These families do not wish to move to the Trapeang Anhchhan resettlement site because of the significant impoverishment risks that they will face there, and they have not been consulted on any other options, which is a violation of ADB's Policy on Involuntary Resettlement. It is critical for CRP to address the plight of these families.

28. A supplementary project (Loan 2602) to establish a new freight and rolling-stock maintenance facility at Samrong Estate, about 10 km west of Phnom Penh, was approved on 15 December 2009 and became effective on 21 April 2010.

This paragraph should indicate the value of the supplementary loan. We note that Project Data Sheet for Loan 2602 states that the loan was approved on 12 January 2012. This discrepancy should be explained.

30...In September 2010, ADB decided to contract its own land law specialist, 24 and hired the specialist in October 2010. After significant delays in obtaining the required information, the draft report of December 2011 determined that Samrong Estate was state public land.²⁵ This conclusion was disputed by NGOs, which claimed that some AHs in Samrong Estate had documentary proof of ownership to their plot. To assess the merits of this claim, the ADB consultant continued the investigation and submitted a legal opinion from another legal firm in July 2012 reconfirming the earlier finding of state ownership.

This paragraph should indicate that Bridges Across Borders Cambodia (BABC) submitted two detailed legal memoranda, with evidence in support of the residents' claim to the land and challenging the State's claim. ADB's legal assessment failed to respond to or refute the substantive legal arguments made by BABC.

44...(ii) **Indexing of compensation rates.** AHs complained that compensation rates were not at replacement cost. A January 2012 report from an external monitoring organization (EMO) justified the compensation rates from the 2006 RP reflecting current replacement costs. However, a recommendation from the review of the 2006 RP by ADB safeguards specialists to index

It should be noted here that ADB posted the January 2012 EMO report on its website along with a statement on 26 March 2012, indicating that ADB approved of its methodology and findings.

compensation rates to inflation in the RPs was not followed up on, and the January 2012 EMO report did not consider the consumer price index or inflation rate.

44...(iv) **Insufficient compensation based on inadequate DMS and grievance redress ...** ADB staff had encouraged AHs to use the grievance redress mechanisms but these were not functioning at all or functioned poorly at the time. Later AHs were encouraged to seek the assistance of OSPF, which they did.

This statement is misleading. ADB staff only encouraged AHs to use the project grievance mechanism after they sent complaints to ADB via NGOs. ADB staff never encouraged AHs to seek assistance from OSPF. It was Bridges Across Borders Cambodia / Equitable Cambodia that encouraged and supported AHs to seek assistance from OSPF.

44...(vi)...Based on the material we have examined, it is safe to say that senior ADB management did not know of, or knew of but did not act on the above issues until NGOs complained to the ADB President in December 2010. Long response times have led AHs to suffer harm or experience difficulties throughout the project implementation phase.

The NGOs complained to the ADB President on October 21, 2010. ADB responded to the letter December 2010.

73. During its visit to Cambodia from 20 to 29 October 2013, the CRP explored the requesters' allegation that an "air of intimidation, threats and coercion has pervaded the resettlement process." Interviews with affected persons, including requesters at the four-resettlement sites visited by the CRP, did not reveal any specific instances of overt physical intimidation, threats, and coercion. The evidence gathered by the CRP only indicated that government officials had informed AHs that refusal to accept compensation offered would not result in increases. While the CRP believes that some AHs may have felt pressured to vacate their homes as a result, and accept the compensation offered, no atmosphere of intimidation, threat or coercion was

The Requesters reject this finding. BABC carried out a survey of more than 230 AHs in each of the major impacted areas, which found that a majority of respondents claimed to have been subjected to intimidation during the resettlement process. During a consultation meeting on the draft CRP report on 17 December 2013 with 140 affected people, when asked if anybody had experienced threats and intimidation during the resettlement process, nearly every hand in the room was raised (see attached photo).

Many affected households were threatened that they their homes would be demolished and they would get zero compensation if they did not thumbprint the resettlement contracts

created.

and accept the proffered compensation. Others were told that they would be also be subject to fines amounting to double or triple their proffered compensation payments. Several outspoken APs in Poipet and Phnom Penh were threatened with arrest because of their advocacy and community organizing activities.

We note that during its site visits, the authorities accompanied the CRP. Accordingly it is not surprising that AHs did not volunteer to share this information with CRP. During the meetings that CRP held with AHs and Requesters that were attended by EC and IDI, CRP members did not enquire about intimidation. Consequently, we respectfully submit that CRP is not in a position to conclude that there was "no atmosphere of intimidation, threat and coercion" because it appears to not have thoroughly investigated this allegation.

81... They suggested that AHs were provided with a Post-It note listing the structures affected and the allowance for compensation. It was clear from interviews that ADB staff was aware of the faulty DMSs and were encouraging AHs to invoke the grievance redress mechanisms under the project, including the SPF. However, the staff also admitted that the local grievance redress mechanism was not fully operational at the time. It would seem that the staff had encouraged resort to SPF because the grievance redress mechanisms did not address the issues in accordance with standards and procedures expected under ADB's safeguard policies.

Again, we reject the assertion that ADB staff encouraged resort by AHs to OSPF. Hundreds of complaints to the local grievance mechanisms and 156 complaints to the OSPF came as a result of NGO awareness raising and support, and not because of the encouragement of ADB. It must also be noted here that when several AHs tried to file a complaint with the OSPF on their own (without support from NGOs), the SPF rejected their complaints on the dubious grounds that the AHs in question failed to try and resolve their grievances with the relevant Operational Department.

82... Significant numbers of uneducated and vulnerable APs did not have the understanding or the

It should be noted here that the remaining families in Phnom Penh who refuse to move to the Trapeang

needed information to participate fully in the RP planning and implementation. The CRP concludes that, as a result of these actions and omissions of ADB, APs and AHs were denied an adequate opportunity to present options for resettlement and to influence the RP decision-making process.

85...From then on, over the following years, numerous meetings were held with the NGO Forum and specific NGOs, as they started raising specific concerns when resettlement implementation started in May 2010 and the compensation and relocation of AHs began.

89...CARM staff spoke positively about the current NGO relations, stating that "communication is...important and some NGOs are...serious about the welfare issues of the affected households," that they understood what CARM staff were trying to do, and that the issues could be resolved.

93. Overall, resettlement under the project has been characterized by inadequate planning for facilities in relation to the needs of the resettlers (Poipet and Phnom Penh resettlement sites), inadequate consultation on the sites...

95...Both the Sihanoukville and Battambang sites are about 7 km from where the AHs were displaced...

99...By December 2011, a year after

Anhchhan resettlement site continue to be denied an adequate opportunity to present options for resettlement and to influence the RP decision-making process. These families have requested to relocate to one of the sites that was considered by the Project in the original 2006 Resettlement Plan but their request has not been entertained.

It is unclear why NGO Forum is singled out here. Equitable Cambodia (formerly BABC), IDI, STT and HRTF have been the main organizations monitoring the resettlement process and raising concerns with ADB.

CARM's positive opinion about NGO activities is appreciated. However, since 2010 the ADB has consistently dismissed NGO recommendations regarding the myriad of problems associated with the Railway project resettlement process. It must also be noted here that several NGOs were threatened with closure by the Cambodian Government, and one NGO (STT) was suspended, following a letter NGOs wrote to the ADB president. There is credible evidence that this crackdown occurred at the behest of an ADB consultant.

This is also true of Sihanoukville and Battambang. It is unclear why only Poipet and Phnom Penh are identified here.

This is often asserted by the ADB when in fact the Sihanoukville site is up to 30 km away from the original residences of some AHs.

It should be noted here that despite

ADB had agreed with IRC on resolving issues at the resettlement sites, some but not all the planned services had been delivered, and for some of the services delivered new issues were surfacing, namely, those of maintenance and inadequate design...

100. During its investigation in January 2012, OSPF visited the resettlement sites in Phnom Penh, Poipet, Battambang and Sihanoukville and reported that: "The complainants in the relocation sites have acknowledged that the environment is better compared with their previous sites, and that they now have a plot of land..."

110...If the CRP were possessed of all the facts and had a mandate to investigate all actors concerned and come to findings on the nature and extent of accountability, the panel might have been able to come to factual findings on ADB's accountability for the deaths. However, that is not the case.

this fact, the resettlement of AHs moved ahead in Phnom Penh and Poipet, where the sites were also ill-prepared.

The complainants specifically rejected this assertion by OSPF in the compilation of comments on the OSPF assessment that BABC submitted on their behalf on March 28, 2012. BABC stated: "*Many complainants, particularly those from Phnom Penh, disagreed strongly with these statements. They note that they did not submit the complaint to OSPF because they are satisfied with their situation. While the new location at the resettlement site has provided benefits to some, relocation has also resulted in serious problems, particularly decreased incomes and lack of livelihoods...Overall, they felt that the characterization in this paragraph puts a very positive spin on a situation that they describe themselves as terrible.*"² OSPF failed to take into account these and other comments provided by the complainants, contributing to their lack of faith in the OSPF process.

The Requesters would like to call attention here to the fact that ADB enjoys sovereign immunity from legal liability, and so if ADB's own internal accountability mechanism is unable to make findings on ADB's liability for the children's deaths, then the bank operates completely outside the rule of law. This impunity is unacceptable. The Board should take the necessary remedial actions to hold the institution and its staff accountable for loss of

² Bridges Across Borders Cambodia (BABC), *Comments on the OSPF Review and Assessment Report*, 28 March 2012.

lives that would not have occurred if not for the Project and for ADB's gross negligence in supervising implementation of its resettlement policy.

Another serious concern, not addressed in the CRP draft report, but brought to CRP's attention during its investigation, is the allegation that ADB staff were involved in an attempted cover up of the cause of the children's deaths. As CRP is aware, it was alleged by one of the APs whom the CRP interviewed at the Battambang resettlement site that ADB staff visited the site with the IRC and told the family of the deceased children that if they are asked, they should say that the children went to the pond to collect snails and crabs. Other APs confirmed to CRP that this story is not believable because the pond is too deep to catch snails and crabs, and if one wants to get snails and crabs, then the place to look is in the rice paddies and not in a deep pond. The police report of the incident was also amended *post factum* in order to add that the cause of deaths of the children was drowning while "collecting snails". If ADB staff were indeed involved in this alleged obstruction of justice, this is a criminal act that must be investigated and those responsible held to account. These are credible allegations, which should be noted in the CRP report and further investigated.

123...Regarding the requesters' specific complaint on the evictions from the Poipet section, ADB is in compliance since it responded promptly when it became aware of the eviction issues there and demonstrated due diligence over several missions to get these issues resolved.

ADB may have responded promptly and demonstrated due diligence but if the government still intends to evict the 25 families, despite the evidence cited by CRP that their presence in the COI is supported by aerial photos taken at the time of DMS, what assurances are there that these people will be covered under the RP? These families should be given the

	benefit of the doubt and ADB should require that they be granted full resettlement rights and privileges in order to avoid making them worse off.
139... During implementation, ADB was slow to address identified capacity shortcomings in the entities involved in planning and implementing resettlement, and this contributed to inadequate consultation, grievance redress and DMS.	It also contributed to inadequate income restoration.
Section 6. Conclusions regarding Resettlement Planning and Implementation... CRP Findings on ADB Compliance... A.1. Adequacy of resettlement plan preparation (Including resettlement budget)...	The conclusions in Section 6 omit the failure of the Project to undertake a baseline socio-economic census, which CRP found "regrettable" in Paragraph 176. The lack of this data at the planning stage prevented the preparation of an adequate income restoration plan and budget and has made it impossible for resettlement monitoring to determine whether AHs have in fact been restored to their pre-project income and living conditions.
Section 6. Conclusions regarding Resettlement Planning and Implementation... CRP Findings on ADB Compliance Consultation on RP preparation, Detailed Measurement Survey, and with civil society... No evidence of overt intimidation, threats and coercion.	CRP would have found evidence of intimidation had it looked for it more diligently. The Requesters are of the opinion that CRP did not thoroughly investigate allegations of intimidation, threats and coercion. The Requesters therefore reject this finding.
Section 6. Conclusions regarding Resettlement Planning and Implementation... CRP Findings on ADB Compliance A.3. Adequacy of eviction safeguards and procedures... ADB is in compliance since it responded promptly when it became aware of the eviction issues there in the Poipet section and demonstrated due diligence over several missions to get these issues resolved.	We disagree with the finding that the issues have been resolved since the families remain under threat of eviction without a guarantee of receiving RP entitlements and protections.
156... From late 2010 onwards, ADB attempted to address the issues of	We disagree that from late 2010 onwards, ADB has attempted to

inadequate compensation, but this effort does not appear to have resulted in all AHs obtaining the correct amount of compensation they were entitled to...

address to the issues of inadequate compensation. For example, ADB was well aware of the inflation issue, yet ADB management endorsed the obviously deceptive cost assessment conducted by the EMO.

186. During a consultation mission on EIRP Guidelines in February 2012, the final version of the guidelines was agreed between IRC, ADB, and AusAID...

It should be noted that there was no consultation on the EIRP design with AHs or with the NGOs that had been monitoring the resettlement process and assisting AHs.

195. The 2006 RP did not assess indebtedness of AHs as an issue in its socio-economic survey. Possible indebtedness of AHs was first identified by ADB's monitoring consultant as an issue in the BTOR for a Resettlement Review Mission undertaken in December 2010...

The indebtedness of AHs in Battambang was first identified by BABC during its monitoring visit to the Battambang resettlement site and relayed to ADB's monitoring consultant in May 2010.

198. The joint review mission in November-December 2012 found that there were indebted Ahs in all the resettlement sites, but that the issue was most severe in the Phnom Penh site, where 86% of the Ahs had borrowed an average of \$1200 from moneylenders...The mission also found that all the AHs in the Sihanoukville resettlement site had improved their housing compared to the pre-displacement situation, while the figures were 77% in Poipet, 63% in Pursat, and 47% in Phnom Penh.

Given the lack of household specific baseline data, it is unclear what evidence these statistics are based upon.

259...As a preliminary matter, the CRP examined these alleged violations and assessed if they may be adequately dealt with under applicable ADB safeguard policies. The results of this examination are reproduced in Appendix 4. On the basis of that examination, the CRP concludes that all the human rights allegations could be adequately addressed under applicable ADB safeguard policies.

IDI and EC disagree that the applicable safeguard policies are adequate to address the human rights violations. By way of example, the policy permits the forced eviction of people deemed to be "encroachers." It contains no requirements to ensure that impacted households are aware of the Project and the cut-off dates for entitlements before they settle in the area. There are no due diligence requirements in the policy to guard against improper categorization of

	households as encroachers. And these households are left vulnerable to homelessness and a range of human rights violations once they are evicted, in contravention of international law obligations.
260... Under ADB's Accountability Mechanism Policy the 2009 Safeguards Policy does not apply to this loan as it was granted in 2006. While the 2009 Safeguards Policy may have grounded a claim for violation of human rights, it has no application to this case...	We reject the finding that the 2009 Safeguards Policy does not apply to the loan in question. We note that it is a condition of AusAID's MoU with the ADB on the Project that the 2009 SPS be applied. As such, we regret that CRP does not express any opinion as to whether the harms it has found constitute human rights violations.
280. Recommendation 6: Implement the expanded income restoration program in a sustained and sustainable manner...	There is a need for an independent review of the EIRP to determine whether it is performing well, if it needs to be expanded, or if it needs to be fundamentally redesigned. Affected people report that the loans provided by the self help groups (SHGs) established by the EIRP are far too small and too short-term to enable them to establish new businesses. The Requesters agree with the CRP's recommendation to increase the funds for SHGs, to enable them to be able to provide larger loans to members, and to lengthen the maturities for loans. This should be a firm recommendation by CRP and not a suggestion for ADB to consider.