

ASIAN DEVELOPMENT BANK

**FINAL REPORT
OF THE
SPECIAL PROJECT FACILITATOR
ON THE
PHNOM PENH TO HO CHI MINH CITY HIGHWAY PROJECT
IN
CAMBODIA
ADB Loan 1659-CAM(SF) (15 December 1998)
(Complaint received 30 July 2007)**

June 2010

ABBREVIATIONS

ADB	–	Asian Development Bank
AP	–	affected person
CARM	–	Cambodia Resident Mission
CDCam	–	Conservation and Development Cambodia
IRC	–	Inter-Ministerial Resettlement Committee
MEF	–	Ministry of Economy and Finance
NGO	–	nongovernment organization
OSPF	–	Office of the Special Project Facilitator
RAR	–	review and assessment report
TA	–	technical assistance

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EXECUTIVE SUMMARY

The Greater Mekong Subregion: Phnom Penh to Ho Chi Minh City Highway Project comprised two loans, one to Cambodia and one to Viet Nam. The Cambodia component included reconstruction of 105 kilometers of road from the eastern landing of the Mekong River ferry crossing at Neak Loeung to Bavet at the border with Viet Nam, and new facilities were constructed at the border. The Ministry of Public Works and Transport was the executing agency, and planning and implementation of resettlement under the Project was handled by the Inter-Ministerial Resettlement Committee (IRC) headed by the Ministry of Economy and Finance.

In July 2007, the Office of the Special Project Facilitator (OSPF) received two complaint letters regarding the project from the communities of Krang Khok and Steung Slot in Prey Veng province, listing a total of 63 affected persons (APs) who had been resettled under the Project. The letters said that in spite of a resettlement audit and compensation payments, the APs' problems had still not been addressed and that the APs were poor, had lost their livelihoods and were heavily in debt. The letters requested various additional assistance including funding, titles to resettlement land, and a project on job creation.

On the basis of a mission to the project site and discussions with the stakeholders, OSPF found the complaint eligible for the consultation phase of ADB's accountability mechanism. OSPF conducted a review and assessment of the complaint that comprised a desk review of documents, and consideration of information collected during the mission. OSPF circulated the review and assessment report (RAR) within ADB and to the complainants (in Khmer translation) in October 2007.

The RAR identified the stakeholders as the 63 complainants, several nongovernment organizations (NGOs), the IRC, and ADB's Cambodia Resident Mission (CARM). The RAR subsumed the project issues under two main headings—land titles and impoverishment. The complainants expressed serious concern that they were not given titles to the land they moved to after being displaced by the road construction, as they worried that without titles, they might be vulnerable to losing their land. Many of the complainants lost their previous sources of livelihood when they were forced to relocate, and no programs had been provided to help them reestablish their livelihoods after relocation. Having lost their previous sources of income, and not being able to borrow from commercial banks due to the absence of land titles, many of the complainants borrowed from moneylenders at exorbitant interest rates and fell into a debt trap. They believed that a livelihood program and some form of debt relief were essential to restore their condition to what it was before the project.

The RAR recognized that commitment to the consultation process from some major stakeholders was not assured. MEF, IRC, and CARM believed that they could resolve the outstanding issues without recourse to the OSPF consultation process. On the other hand, the complainants were not confident that this approach would be successful, and the RAR concluded that while the probability that the problems of the complainants could be solved through consultation was difficult to estimate, on balance there was merit in continuing with the process. Under the circumstances, the RAR recommended that the best way forward was to pursue the steps described in OSPF's consultation process. The complainants would need to understand the RAR, and then decide whether to carry on with the consultation process, or abandon the consultation process, if they found the process not purposeful.

OSPF provided an independent advisor to help the complainants understand the RAR and the decision they had to make on proceeding with the consultation process. During meetings with the advisor, 52 of the 63 complainants indicated that they wanted to proceed with the consultation process. Meanwhile, in November 2007, CARM interviewed the 63 families and arranged meetings in November and December to discuss the findings of the interviews and consider next steps. CARM, IRC, and several NGOs agreed to a process entailing consideration of the complainants' responses during the interviews and comments from the NGOs, with a view to resolving the issues that had been raised.

Considering the complainants' decision to proceed with the consultation, OSPF moved to the next step in the consultation process, and in January 2008, asked the complainants and CARM to provide comments on the RAR. CARM provided comments, but the complainants did not and instead asked OSPF to postpone the consultation process while the efforts of CARM and IRC to solve their problems were underway. OSPF agreed to postpone its process and await the results of the joint efforts of CARM and IRC to resolve the issues raised by the complainants.

The efforts of CARM and IRC to work out a solution to the complainants' problems were delayed for various reasons, but in October 2009, ADB approved technical assistance that included an income restoration program aimed at helping the APs deal with their accumulated debt burdens and reestablish their livelihood activities. This development appeared to offer hope for resolving the problems that the complainants had originally brought to OSPF. OSPF informed the complainants in November 2009 that it would close the complaint, and in May 2010 the Special Project Facilitator visited the complainants to close the complaint and turn over work on their problems to the technical assistance team.

MAP

CAMBODIA AND VIET NAM GREATER MEKONG SUBREGION: HO CHI MINH CITY TO PHNOM PENH HIGHWAY PROJECT



I. BACKGROUND

A. The Project

1. The Greater Mekong Subregion: Phnom Penh to Ho Chi Minh City Highway Project was approved by the Asian Development Bank's (ADB) Board of Directors on 15 December 1998 and comprised two loans, one to Cambodia (Loan 1659-CAM[SF]) and one to Viet Nam (Loan 1660-VIE[SF]). The Cambodia component included reconstruction of 105 kilometers of national road 1 from the eastern landing of the Mekong River ferry crossing at Neak Loeung to Bavet at the border with Viet Nam, and new facilities were constructed at the border (map, page vi). The loan became effective on 9 November 1999 and was closed on 20 July 2006. The Ministry of Public Works and Transport was the Executing Agency. The planning and implementation of resettlement under the Project was handled by the Inter-Ministerial Resettlement Committee (IRC) headed by the Ministry of Economy and Finance (MEF).¹

2. In 2002 two nongovernment organizations (NGOs) submitted a report to ADB claiming that some resettled families had not received adequate compensation and citing various provisions of the Report and Recommendations of the President and Loan Agreement that allegedly had not been followed. ADB proposed that an independent resettlement audit be carried out to investigate and recommend actions to address outstanding issues. This audit was conducted by a team of consultants [financed by ADB technical assistance (TA)²], together with the IRC and the NGO Forum on Cambodia, between November 2004 and March 2005, and its report recommended that an action plan be implemented including provision of outstanding compensation and allowances due to eligible Affected Persons (APs).³ ADB and the government made considerable effort to ensure that APs received the additional compensation due them, based on the audit findings, and payments of these amounts were made during 2006.⁴ The NGO Forum on Cambodia, however, continued to raise issues regarding certain households that allegedly had not received all their compensation. The Project Completion Report was issued in December 2007.⁵

B. The Complaint

3. On 30 July 2007 the Office of the Special Project Facilitator (OSPF) received two complaint letters in Khmer⁶ regarding the Project as attachments to an email sent by the Acting Director of the local NGO, Conservation and Development Cambodia (CDCam). One letter was

¹ The IRC was created in February 1999 by an edict of the Ministry of Economy and Finance. The other members of the IRC are representatives from the Council of Ministers; MWPT; Ministry of Agriculture, Forestry and Fisheries; Phnom Penh Municipality Council; and the Governors and Deputy Governors of Prey Veng and Svay Rieng Provinces.

² ADB. 2002. *TA for Capacity Building for Resettlement Risk Management*. Manila (TA 6091-REG). [http://wpddoc1.asiandevbank.org/482573EF00C8A15/AlIByUnid/AEDFD18370D73B084825757900245A59/\\$FILE/R36-03.pdf](http://wpddoc1.asiandevbank.org/482573EF00C8A15/AlIByUnid/AEDFD18370D73B084825757900245A59/$FILE/R36-03.pdf)

³ ADB. 2006. *Resettlement Audit: Phnom Penh to Ho Chi Minh City Highway Improvement Project (Loan 1659-CAM), Final*. Manila. http://www.adb.org/Documents/Resettlement_Plans/CAM/30513/default.asp

⁴ See the report on Phase 2 of the Resettlement Audit (ibid).

⁵ ADB. 2007. *Completion Report: Kingdom of Cambodia and Socialist Republic of Viet Nam: Greater Mekong Subregion: Phnom Penh to Ho Chi Minh City Highway Project*. Manila. http://www.adb.org/Documents/PCRs/VIE/30316-VIE-PCR.pdf?bcsi_scan_7823DFCE46415F3E=2IRyoCW3PfEN5Jf0yDiUGqYAAAAHSvkE&bcsi_scan_filename=30316-VIE-PCR.pdf

⁶ These letters are posted in Khmer, together with their English translations, in the Complaints Registry on the OSPF website, www.adb.org/spf. The letters in Khmer are found in <http://adb.org/Documents/Translations/Khmer/Krang-Khok-KH.pdf> and <http://adb.org/Documents/Translations/Khmer/Steung-Sloth-KH.pdf>. English translations can be viewed in <http://adb.org/SPF/documents/Krang-Khok.pdf> and <http://adb.org/SPF/documents/Steung-Sloth.pdf>.

from a community leader in Krang Khok, Prey Veng province, and listed 41 affected persons, while the other letter was from a community leader in Steung Slot, also in Prey Veng, and listed 22 affected persons. The letters referred to the audit but said that the APs' problems had still not been addressed and that the APs were poor, had lost their livelihoods and were heavily in debt. The two letters requested "additional funding," titles to their resettlement land, "a project on job creation," that OSPF "conduct a survey, not only for us, but also for other affected households including those affected but not completely compensated," and that OSPF "undertake develop project process in a way that people are not affected by it." They also said they would submit additional documents. Both letters authorized the Acting Director of CDCam to be their contact.

4. OSPF acknowledged receipt of the letters on 3 August 2007, registered the complaint on 6 August 2007, and received additional documents on 20 August 2007. The additional documents included a list of 170 additional villagers "who are affected by the project [but] still have not received fair and just compensation and are suffering," and the complainants asked that the Special Project Facilitator also investigate these cases. The complainants said that they did not request confidentiality and that they gave OSPF the right to publish the information in the complaint.

C. Determination of Eligibility

5. An OSPF eligibility Mission visited Cambodia from 28 August to 4 September 2007 and met with concerned Cambodia Resident Mission (CARM) staff, personnel of CDCam, officials of the IRC, the Deputy Secretary General of the MEF, and the two community leaders who had submitted the complaint. The Mission traveled to Krang Khok where it held discussions with the two community leaders and also visited the resettlement site at Steung Slot. The problems of the complainants had been raised for several years but to date had not been resolved. The complainants felt strongly that they were worse off than before the Project and that they deserved further assistance, quite apart from the compensation provided under the resettlement audit. On the basis of the Mission's findings, OSPF declared the complaint eligible on 19 September 2007.

II. REVIEW AND ASSESSMENT

A. Methodology

6. OSPF planned to field a review and assessment mission to meet with all the stakeholders and discuss the complaint and possible approaches to working out a solution, but the government requested that the mission postpone its visit until the government had wrapped up the resettlement issue. The review and assessment was therefore based on (i) documents provided by the complainants, (ii) documents in ADB files, and (iii) the findings of OSPF's eligibility mission.

B. Identification of Stakeholders

7. The review and assessment report (RAR) identified the stakeholders as the 63 complainants, several NGOs, government institutions including prominently the IRC, and ADB's CARM.

8. The RAR identified the complainants as the 63 persons whose names were included in the two letters that OSPF received on 30 July 2007. OSPF did not accept the second group of

177 persons as complainants, as none had signed or submitted any authorization for others to represent them, and their cases were under active consideration by IRC and CARM.

9. Several NGOs were stakeholders. The complainants initially authorized the Acting Director of the Cambodian NGO, CDCam, to be their contact person and later (on 1 October) authorized CDCam to represent them. Various NGOs besides CDCam had also been involved in advocating the interests of APs under the Project since at least as early as 2002. These included the NGO Forum on Cambodia, Legal Aid of Cambodia, Mekong Watch, Oxfam Australia, the International Accountability Project, and the Bank Information Center.

10. The IRC, within the MEF, was the key government institution relevant to this complaint. The IRC had responsibility for all matters pertaining to resettlement in the country and had a clear stake in complaints regarding resettlement. The IRC was closely involved in the implementation of the recommendations of the resettlement audit and had made considerable efforts in that regard. The IRC was not supportive of the present complaint, which it viewed as a complication that was redundant with then-current discussions and unhelpful for the resolution of ongoing cases. In addition to IRC, government institutions at the provincial and district level had a stake in the complaint, as they played a role in the provision of land titles or land certificates.

11. ADB and CARM had an obvious stake in the project. ADB provided the project loan as well as a TA grant that supported the resettlement audit and had been devoting much attention to the project and its resettlement issues, particularly carrying out the recommendations of the resettlement audit. CARM, which had been administering the Project since 2002, was a major stakeholder and would have to play an important role in any resolution of the complaint.

C. Findings and Recommendations

12. The RAR subsumed the project issues under two major headings—land titles and impoverishment.

13. **Land Titles.** The complainants expressed serious concern that they were not given titles to the land they moved to after being displaced by the road construction. They worried that without titles, they might be vulnerable to losing their land. IRC took the position that under Cambodian law, land titles could only be provided after the APs had been living on their land for five years. Some APs had apparently been living on their new property for five years or more but had still not been given titles.

14. **Impoverishment.** Many of the complainants lost their previous sources of livelihood when they were forced to relocate, and no programs were provided to help them reestablish their livelihoods after relocation. After resettlement and during the five or six years between relocation in 2000 and the final compensation payment in 2005-2006 (following the resettlement audit), a number of the complainants lacked money for new land and houses and daily necessities. Having lost their previous sources of income, to a greater or lesser extent depending on the individual case, and not being able to borrow from commercial banks due to the absence of land titles, many of the complainants reportedly borrowed from moneylenders at exorbitant interest rates. Thus they fell into a debt trap, accumulating debts ranging from several hundred to over a thousand dollars and having little prospect of being able to pay off their debts. The complainants believed that a livelihood program and some form of debt relief were essential in order to restore their condition to what it was before the project.

D. Proposed Course of Action

15. The RAR recognized that commitment to the consultation process from some major stakeholders was not assured. MEF, IRC and CARM believed that they could resolve the outstanding issues without recourse to the OSPF consultation process. On the other hand, the complainants were not confident that this approach would be successful. In addition, several avenues to resolution could be envisaged, suggesting that a favorable outcome was possible. The RAR concluded that while the probability that the problems of the complainants could be solved through consultation was difficult to estimate, on balance there was merit in continuing with the process.

16. Under the circumstances, the RAR recommended that the best way forward was to pursue the steps described in OSPF's consultation process⁷, with two key decision points—one for the complainants and one for OSPF. OSPF would provide the RAR in English and Khmer to the complainants and CARM, with an explanation to the complainants that they must decide whether to carry on with the consultation process, or abandon the consultation process if they found the process not purposeful (and file a request for compliance review if they so wished). In order to help the complainants understand the RAR and the decision they had to make on proceeding with the consultation process, OSPF proposed to provide them with an independent advisor. If they decided to carry on with the consultation, OSPF would ask them and CARM to provide comments on OSPF's findings as described in the report. The independent advisor would help them to prepare comments. Based on the responses, OSPF would re-assess the likelihood of a successful consultation process, with the next step dependent on that assessment. OSPF would then make a recommendation to the ADB President either (i) to proceed and work out a course of action in consultation with the complainant, CARM and MEF/IRC, or (ii) to conclude the consultation process because no further review would be purposeful.

17. The RAR recommended that if the decision was to proceed with the consultation process, OSPF or another team of facilitators would plan a series of meetings (and field visits if needed) jointly with the stakeholders, organize those meetings, and facilitate them. The RAR also outlined steps that would be needed to prepare for such a series of meetings and stated that OSPF would cover various associated costs. OSPF circulated the RAR within ADB on 24 October 2007 and to the complainants (after translation into Khmer) on 31 October 2007.

III. COURSE OF ACTION

18. Pursuing the course of action proposed in the RAR, OSPF recruited a local consultant as an independent advisor in November 2007 and briefed him in Manila. The advisor met with the complainants during December 2007 to explain the RAR to them in detail and to make sure they understood the import of their decision regarding proceeding with the consultation process. During meetings with the advisor, 52 of the 63 complainants indicated that they wanted to proceed with the consultation process.

19. Meanwhile, in November 2007 CARM interviewed the 63 families and arranged meetings in November and December to discuss the findings of the interviews and consider next steps. CARM, IRC and several NGOs agreed to a process entailing consideration of the

⁷ The steps in the OSPF consultation process are shown on the OSPF website (<http://www.adb.org/spf/consultation-process.asp>) and described in detail in the *OSPF Consultation Primer* <http://www.adb.org/Documents/SPF/OSPF-Primer.pdf>

complainants' responses during the interviews and comments from the NGOs, with a view to resolving the issues that had been raised.

20. Considering the complainants' decision to proceed with the consultation process, OSPF in January 2008 asked the complainants and CARM to provide comments on the RAR. CARM provided comments, but the complainants did not and instead asked OSPF to postpone the consultation process while the efforts of CARM and IRC to solve their problems were underway.⁸ They were unsure whether those efforts would be successful and viewed the OSPF consultation process as their last resort in case a resolution could not be worked out. OSPF agreed to postpone its process and await the results of the joint efforts of CARM and IRC to resolve the issues raised by the complainants. During the subsequent months while the consultation process was on hold, OSPF kept in contact with the complainants with the help of CDCam.

21. The efforts of CARM and IRC to work out a solution to the complainants' problems were delayed for various reasons, but in October 2009 ADB approved technical assistance that included an income restoration program aimed at helping the APs deal with their accumulated debt burdens and reestablish their livelihood activities.⁹ This development appeared to offer hope for resolving the problems that the complainants had originally brought to OSPF. In view of this, and considering that the consultation process had been held in abeyance for nearly two years, OSPF determined that its further involvement in the process would no longer be purposeful and informed the complainants in November 2009 that it would close the complaint. The complainants were not sure the technical assistance would solve their problems, and OSPF told them that they could come back to OSPF if they thought the program would adversely affect them.

22. In May 2010 the Special project Facilitator visited the communities together with consultants hired under the technical assistance and representatives of CARM and IRC, to close the complaint and turn over work on the complainants' problems to the technical assistance team. The community members expressed thanks for the efforts of CARM, IRC and OSPF and were optimistic that the income restoration program would resolve their problems.

⁸ OSPF's request for comments, and the complainants' request to postpone the consultation process, were dispatched on the same day and crossed enroute to their destinations.

⁹ ADB. 2009. *Kingdom of Cambodia: Capacity Development for Income Restoration Programs*. Manila (TA 7366-CAM). <http://www.adb.org/Projects/project.asp?id=43174>