



Asian Development Bank

REVIEW AND ASSESSMENT REPORT

OF THE

SPECIAL PROJECT FACILITATOR

ON

**PHNOM PENH TO HO CHI MINH CITY HIGHWAY PROJECT
CAMBODIA**

ADB Loan 1659-CAM(SF) (15 December 1998)



October 2007

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ABBREVIATIONS

ADB	-	Asian Development Bank
AP	-	affected person
CARM	-	Cambodia Resident Mission
CDCam	-	Conservation and Development Cambodia (an NGO)
DMC	-	developing member country
EA	-	executing agency
IRC	-	Inter-Ministerial Resettlement Committee
MEF	-	Ministry of Economy and Finance
NGO	-	nongovernment organization
NR	-	national road
OCRP	-	Office of the Compliance Review Panel
OD	-	operations department
OSPF	-	Office of the Special Project Facilitator
PPS	-	private public sponsor
RAR	-	review and assessment report
SPF	-	Special Project Facilitator
SRAP	-	Summary Resettlement Action Plan

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EXECUTIVE SUMMARY

The Greater Mekong Subregion: Phnom Penh to Ho Chi Minh City Highway Project comprised a loan to Cambodia and one to Viet Nam, with the objective of encouraging traffic and trade flows between Cambodia and Viet Nam by improving the Project road and facilities at the border crossing. Under the Cambodia loan, 105 km of National Road (NR) 1 was reconstructed 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 loan to Cambodia was approved on 15 December 1998 and became effective on 9 November 1999. Due to the road reconstruction, a number of families needed to be resettled and a resettlement plan was prepared. In 2002 two nongovernment organizations (NGOs) submitted a report to the Asian Development Bank (ADB), claiming that some resettled families had not received adequate compensation and citing various provisions of the RRP and Loan Agreement that allegedly had not been followed. ADB proposed that an independent resettlement audit be conducted to investigate and recommend actions to address outstanding issues. The audit was carried out 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). Considerable effort has been made by the Government and ADB to ensure that APs receive the additional compensation due them, based on the audit findings, and payments of these amounts were made during 2005 and 2006. Some cases that allegedly have not yet received their full compensation are still being investigated.

The Office of the Special Project Facilitator (OSPF) on 30 July 2007 received two complaint letters from APs in the communities of Krang Khok and Steung Slot, both in Prey Veng province, comprising a total of 63 APs. 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. They requested additional funding, land titles, a project on job creation, and the conduct of a survey of affected households. OSPF reviewed and assessed these concerns and identified two primary issues, land titles and impoverishment. These issues had been raised and discussed for several years but to date have not been resolved. The complainants feel strongly that they are worse off now than before the Project and that they deserve further assistance, apart from the compensation provided under the resettlement audit.

The Government and Cambodia Resident Mission (CARM) have already devoted much attention to cases stemming from the audit and are focused on that effort. NGOs have been keenly interested in the Project's resettlement issues for several years, and one NGO, Conservation and Development Cambodia (CDCam), initially served as a channel of communication with the complainants in the present case. The complainants recently assigned CDCam to represent them. Resolution of the complaint through the consultation process will require a problem-solving commitment from all stakeholders.

OSPF proposes that the consultation process be pursued, with the next step being the circulation of this Report to the complainants and CARM, followed by the complainants' decision as to whether they wish to carry on with the consultation process. OSPF will provide an independent advisor for the complainants to aid them in understanding the Report, answer questions, provide clarifications, and give neutral advice on the consequences and implications of their decision. If the complainants decide to carry on with the consultation process, they and CARM will be asked to provide comments on the findings described in this Report. The independent advisor will help the complainants to prepare their comments. Based on the responses, OSPF will re-assess the likelihood of a successful consultation process and make a recommendation to the ADB President either to proceed and work out a course of action in

consultation with the complainant, CARM and the Government, or to conclude the consultation process because no further review would be purposeful. If the decision is to proceed with the consultation process, a series of meetings will be held among the stakeholders to enable them to reach agreement on how to resolve the issues raised by the complainants. The meetings will be facilitated either by OSPF or other facilitators acceptable to the stakeholders. The facilitators will plan the meetings jointly with the stakeholders, organize the meetings and facilitate them.

MAP



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]). This was the first Project to be developed under ADB's Greater Mekong Subregion initiative, and its objective was to encourage traffic and trade flows between Cambodia and Viet Nam by improving the Project road and facilities at the border crossing and by facilitating efforts of the two countries to reduce bureaucratic and procedural constraints to cross-border trade. The Cambodia component, amounting to \$50.7 million in total cost including an ADB loan of \$40.0 million (SDR28,402,000), comprised reconstruction of 105 km of national road (NR) 1 from the eastern landing of the Mekong River ferry crossing at Neak Loeung, traversing sparsely-populated and rice-producing communes in the provinces of Prey Veng and Svay Rieng, to Bavet at the border with Viet Nam, including reconstruction or rehabilitation of bridges and construction of customs and immigration buildings and facilities on the Cambodian side of the border crossing (see Map). Also included in the Project were minor improvements of about 60 km of the road from Phnom Penh to the ferry crossing on the Mekong River, and consulting services which included, among other things, monitoring of resettlement and land acquisition. 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.

2. The RRP for the Project stated that "...the Project will require minor resettlement and displacement of people as the Project road generally follows the existing alignment, except for short lengths where new alignments will be constructed to bypass settlement areas." The RRP included as an Appendix a "Summary Resettlement Action Plan—Cambodia Component" (SRAP), which was a condensed version of the Resettlement and Rehabilitation Action Plan prepared by consultants under ADB technical assistance as a prerequisite to Project appraisal. The SRAP stated that the Project would require acquisition of about 210 hectares of land, affecting 5,920 people living in 1,184 dwellings, and that "The vast majority of the buildings would be affected partially and only a small number would require relocation." The SRAP further stated that "Subsequent site inspections have indicated that these numbers, for structures and people in particular, are substantially overestimated." Loan effectiveness was delayed by, among other things, the need to revise the resettlement implementation plan to meet ADB's requirements. 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 Finance¹ (MEF), rather than by the Executing Agency.

3. In 2002 two NGOs submitted a report to ADB on behalf of 99 families living along the road in Prey Veng province, claiming that they had not received adequate compensation and citing various provisions of the RRP and Loan Agreement that allegedly had not been followed. An ADB Resettlement Review Mission in June 2002 found some basis for the NGOs' allegations and proposed that an independent resettlement audit be carried out to investigate further and recommend actions to address any outstanding issues. Government did not agree with the conduct of an audit and committed to act on the complaints, but some of the problems

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; MPWT; Ministry of Agriculture, Forestry and Fisheries; Phnom Penh Municipality Council; and the Governors and Deputy Governors of Prey Veng and Svay Rieng Provinces.

continued and in 2004 ADB again called for an audit and the Government finally consented. A resettlement audit conducted by a team of consultants (and financed by an ADB technical assistance²), together with the IRC and the NGO Forum on Cambodia, started in November 2004 and culminated in a draft report in March 2005 and draft final report dated July 2005. The audit found a number of outstanding problems and concluded that the Affected Persons (APs), especially the poor, continued to be vulnerable to a number of risks. The audit recommended that an action plan be implemented including provision of outstanding compensation and allowances and other forms of assistance that were not given to eligible APs, with a total cost of just under \$625,000. Since the audit, considerable effort has been made to ensure that APs receive the additional compensation due them, based on the audit findings. Payments of these amounts were made during 2005 and 2006. The NGO Forum on Cambodia, however, in late 2006 raised issues regarding certain households that allegedly had not received all their compensation, and some of these cases are still under discussion. The NGO Forum on Cambodia has requested more time to document some of the cases. When all outstanding payments have been made, the final audit report is to be uploaded on ADB's website. As requested by the NGOs, ADB agreed that the Project Completion Report would be processed only after the audit activities had been completed satisfactorily. According to ADB and the Government, NGOs also agreed that "...no further cases will be entertained since adequate information and opportunity has been given to all people along the NR1 to come forward with any claims."

B. The Complaint

4. On 30 July 2007 the Office of the Special Project Facilitator (OSPF) received two complaint letters in Khmer³ regarding the Project as attachments to an email sent by Mr. Sauth Sophon, Acting Director of the local NGO, Conservation and Development Cambodia (CDCam). One letter was signed by Ms. Sinh Chinh, a community leader in Krang Khok community, Kampong Seung commune, Preah Sdech district, Prey Veng province, and listed 41 affected persons. The other letter was signed by Ms. Phen Vanna, a community leader in Steung Slot community, Neak Loeung commune, Peam Ror district, Prey Veng province, 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. In addition, the letter from Krang Khok community requested that OSPF "help Hem Chhay, 60, who is our community member affected by this Highway Construction Project as currently he has not received a new land for resettlement and he and his family have been living in the street." Both letters authorized Mr. Sauth Sophon of CDCam to be their contact person and requested that responses be sent in both Khmer and English.

5. OSPF had the letters translated into English and replied in both English and Khmer on 3 August 2007, acknowledging receipt of the letters and stating that OSPF would register the complaint and proceed with inquiries in order to determine whether the complaint is eligible for

² TA No. 6091-REG, Technical Assistance for Capacity Building for Resettlement Risk Management, approved on 19 December 2002.

³ 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-Slot-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>.

consideration under the Consultation Phase of ADB's Accountability Mechanism. OSPF registered the complaint on 6 August 2007. OSPF's reply letters sought clarification on the act or omission of ADB that resulted in harm to the complainants, the steps they had taken to address their problems first to the Cambodia Resident Mission (CARM) [which had been administering the project], when OSPF could expect to receive the additional documents, whether the complainants wanted their identities kept confidential, and whether they authorized OSPF to publicly release the information in the complaint.

6. OSPF received the promised additional documents on 20 August 2007 which comprised "Additional Explanations," including (i) a listing of ADB's acts and omissions, (ii) a list of the complainants' rights and interests that had been negatively affected, together with narratives of the experiences of 14 APs from Krang Khok and 9 APs from Steung Slot, (iii) a list of their good faith efforts with "ADB Management," together with copies of various earlier letters to and from ADB, and minutes of a related meeting, concerning the resettlement complaints, (iv) a list of 170 additional villagers⁴ "who are affected by the Project [but] still have not received fair and just compensation and are suffering" and which cases the complainants ask that the Special Project Facilitator (SPF) also investigate, and (v) references to the Resettlement Audit and a Country Report on Cambodia prepared under TA 6091-REG. The complainants also 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

7. An eligibility Mission originally planned to visit Cambodia immediately after receiving the additional information, from 21 to 31 August 2007, and intended to collect information for the review and assessment of the complaint in addition to determining eligibility. However, the MEF on 17 August requested that the Mission be deferred because of ongoing discussions with the NGO Forum on Cambodia regarding complaints about the Project that they (mistakenly) believed were the same as the complaints submitted to OSPF. After receiving clarifications on the lack of overlap in the complaints, and with the intercession of CARM and an assurance that the Mission would be focused exclusively on determining the eligibility of the complaint, the MEF on 21 August accepted OSPF's proposal that the Mission be conducted from 29 August to 3 September. The Mission comprising the Special Project Facilitator therefore arrived in Cambodia on 28 August and departed on 4 September 2007.

8. The Mission met with concerned 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 in the house of Ms. Sinh Chinh 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 now 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, the complaint was declared eligible on 19 September 2007.

⁴ The list contained 177 names, but 7 of them overlapped with the 63 persons submitted with the first two letters.

II. REVIEW AND ASSESSMENT

A. Objectives and Methodology

9. The objective of OSPF is to assist the stakeholders to work out a solution to the problems raised by the complainants, and to initiate and guide the consultation process. OSPF offers help to the parties involved to resolve their issues through (i) providing the complainants a conducive environment for their decision-making, providing opportunities for them to meet and discuss strategies, acquiring much needed information, and (ii) setting the stage for all parties involved to come to solutions. It is OSPF's responsibility to treat all parties with respect, care for them and assure procedural fairness. It is not OSPF's role to take decisions on right or wrong, solve problems, detect the truth or arbitrate in favor of one of the parties involved. This Review and Assessment Report (RAR) is not intended to provide a definitive judgment on any issue related to the project, an evaluation of any stakeholder group or individual, or a set of expert recommendations on how the issues should be solved. It is intended to assist the stakeholders to understand better each other's goals and concerns and to help them consider options to address those concerns. Given this understanding, this RAR presents an independent and neutral assessment. It is provided to the complainants (in English and Khmer) and to CARM first. Once the complainants have decided to continue with the consultation phase, and if both the complainants and CARM agree, the report will be made available to the Government as well.

10. 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. This review and assessment (Step 4 of the consultation process) is therefore based on (i) documents provided by the complainants, (ii) documents in ADB files, and (iii) the findings of OSPF's eligibility mission. As required by ADB's Public Communications Policy⁵, this report will be made publicly available at a later stage, subject to the consent of the complainants and the government.

B. Identification of Stakeholders

1. Complainants

11. There are two main groups of complainants. The first group comprises the 63 complainants whose names are included in the two letters that OSPF received on 30 July 2007, from the communities of Krang Khok (41 complainants) and Steung Slot (22 complainants), in Prey Veng Province. The covering letters listed several issues regarding the 63 complainants, including poverty, livelihoods, debt, and land titles.

12. The second group comprises 177 persons listed in a table received by OSPF on 20 August 2007; these persons are from 14 different communes in two provinces (Prey Veng and Svay Rieng). Seven of the 63 complainants in the first group are also listed among the 177 persons in the second group. The list of 177 persons was accompanied by a letter signed by the same two community leaders who submitted the 63 names, and a statement that "Besides members of our communities, many villagers, who are affected by the Project, still have not received fair and just compensation and are suffering. Please refer to Attachment 8 [the list of 177 persons] for a list of outstanding individual cases. We would like SPF to investigate these

⁵ Public Communications Policy, ADB, 2005. See paragraph 119(iv).

cases, too.” According to the list, the 177 persons fall into two categories: those who received “no compensation at all,” and those who were “not sufficiently compensated.” There is no mention of the issues raised in the case of the 63 original persons, i.e. poverty, livelihoods, debt, and land titles. During the eligibility mission OSPF learned that the 177 persons were also among those whose cases had been raised by the NGO Forum on Cambodia and were being considered by the IRC and CARM.

13. The 177 persons did not sign or place their thumb prints on any communication to OSPF, nor did they submit any authorization of the two community leaders to represent them. Furthermore, the additional communication referred to in para. 17 below was accompanied by the thumbprints of the 63 original complainants but did not mention the 177.

14. In summary, the cases of the second group are under active consideration by IRC and CARM; the issues in their cases appear to be limited to the level of compensation agreed under the resettlement audit, rather than the other issues raised in the case of the 63 complainants; and the 177 persons did not sign or place their thumbprints on the complaint or formally authorize the two community leaders to represent them. OSPF therefore concludes that they should not be recognized as complainants in the present case, with the exception of the seven persons included among the original 63 complainants.

2. NGOs

15. The complaint was submitted to OSPF by the Cambodian NGO, CDCam with the statement by the two village leaders that “we would like to authorize Mr. Sauth Sophon, Acting Director of ... CDCam, as our contact person.” OSPF therefore considered CDCam as a channel of communication between the complainants and OSPF, not as a representative of the complainants. During the eligibility mission, CDCam and the two village leaders confirmed this understanding.

16. However, on 1 October 2007 OSPF received letters from each of the two communities, including thumbprints of all 63 complainants, stating that “We wish to transfer our rights for coordination, file a complaint, and other proposal of our community pertaining settlement of the problem to Mr. Sauth Sophon as Acting Chief of [CDCam] ... We wish to inform you that because all of us do not have sufficient knowledge, do not understand the legal procedure, do not understand and do not know how to file a complaint, and we do not have both knowledge of neither Khmer nor English languages. Please kindly accept our request as the aforementioned.” Thus the complainants have authorized CDCam to represent them.

17. Various NGOs besides CDCam have been involved in advocating the interests of APs under the Project since at least as early as 2002. These include the NGO Forum on Cambodia and the Legal Aid of Cambodia, which submitted a letter to ADB in 2002 raising serious questions about resettlement issues; Mekong Watch, which participated in various meetings concerned with resettlement under the Project; the International Accountability Project, which helped prepare a presentation on resettlement issues under the Project at ADB’s 2007 Annual Meeting; and the Bank Information Center, which advised the complainants on the submission of their complaint. This may not be a complete list of NGOs that have devoted attention to resettlement issues under this Project. To some extent all of these organizations have a stake in the issues raised in this complaint.

3. Government Institutions

18. The key government institution that is relevant to this complaint, and to all resettlement issues in Cambodia, is the IRC, within the MEF. The IRC has responsibility for all matters pertaining to resettlement in the country and has a clear stake in complaints raised with regard to resettlement. The IRC has been closely involved in the implementation of the recommendations of the resettlement audit and has made considerable efforts in that regard, and it has also been engaged in recent discussions concerning the remaining cases under the audit. Partly as a result of that ongoing effort, the IRC is not supportive of the present complaint, which it views as a complication that is redundant with the ongoing discussions and unhelpful for the resolution of those cases. In addition to IRC, government institutions at the provincial and district level have a stake in the complaint as they play a role in the provision of land titles or land certificates.

4. ADB—Cambodia Resident Mission

19. ADB and CARM have an obvious stake in the project. ADB provided a loan of \$40.0 million for the project as well as a TA grant of \$500,000 that provided (among other things) support for the resettlement audit. ADB has been devoting much attention to the Project and its resettlement issues, particularly carrying out the recommendations of the resettlement audit. The final outstanding cases under the audit are currently being considered by CARM together with the IRC. CARM, which has been administering the Project since 15 April 2002, is a major stakeholder and will play an important role in any resolution of this complaint.

C. Identification of Issues

20. The complainants raised several issues, as noted above in para. 4. The various issues can be subsumed under two major headings: (i) land titles, and (ii) impoverishment.

1. Land Titles

21. The complainants expressed serious concern that they were not given titles to the land they moved to after being displaced by the road construction. With the increased traffic and commercial activity along the improved road, adjacent land has become more desirable, and the complainants are concerned that without clear land titles, they may be vulnerable to powerful interests acquiring their land.

22. Land titles had been promised in the RRP (Appendix 13, para. 22). IRC took the position that under Cambodian law,⁶ land titles could only be provided after the APs had been living on their land for five years. For the Steung Slot resettlement site, the APs were settled there mostly in 2003, so the five-year residence requirement would be satisfied sometime in 2008. Some APs who relocated to other sites after being displaced have already lived on their new property for more than five years. The complainants believe that provision of land titles needs to be expedited in order to protect them from losing their land.

2. Impoverishment

23. 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

⁶ Sub Decree No. 19 ANK/BK on Social Land Concessions, Article 18

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 (10, 20 or even 30% per month). 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.⁷ The complainants believe that a livelihood program and some form of debt relief is essential in order to restore their condition to what it was before the Project.

D. Assessment of Problem-Solving Probability

24. The probability that the problems of the complainants can be solved through the consultation process is difficult to estimate. Several avenues to resolution can be envisaged (see paras. 25-26 below), which suggests that a favorable outcome is possible. MEF and IRC believe that they can resolve outstanding issues without recourse to the OSPF consultation process. Commitment from these institutions and CARM to the consultation process is needed if the process is to succeed. On balance, there appears to be merit in continuing with the consultation process.

III. RECOMMENDATIONS AND PROPOSED COURSE OF ACTION

A. Remedial Action and Recommendations

25. **Land Titles.** The complainants believe that without land titles they are in jeopardy of losing their land to powerful interests. Acquisition of land titles is therefore one of the major remedies they are seeking through the consultation process. Since 2002, NGOs and APs have been citing the statement in the RRP that land titles would be provided to APs (see para. 22 above) as obligating ADB to ensure that such titles are provided. NGOs have also referred to certain other projects in which land titles have been provided to resettled persons in an expeditious manner.

26. **Impoverishment.** The complainants consider that they are worse off since being relocated, having lost their former sources of livelihood and in many cases fallen into a debt trap due to the delay in their compensation. They think that they deserve to be provided with a livelihood program to lift them out of poverty and restore them to their pre-Project status, and that this program must include a means of helping them to extract themselves from their crushing debt burden. The complainants have requested that a survey be conducted. Alternative means of providing a livelihood program and debt relief should be examined and a suitable approach worked out. Further resources may be needed for this, including additional support to individual APs.

B. Proposed Course of Action

27. Under the circumstances, the best way forward is to pursue the steps in the consultation process, with two key decision points--for the complainants at Step 5, and for OSPF at Step 6 of the process (see Appendix 1). As part of the review and assessment (Step 4 of the process), OSPF will provide this report 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

⁷ "Inadequate compensation forced APs to go into debt...the [focused group discussions] were full of accounts of this." Resettlement Audit, Draft, July 2005, para. 211, page 72.

process, or abandon the consultation process if they find the process not purposeful (and file a request for compliance review if they so wish). Both CARM and the complainants may want to clarify issues with OSPF before commenting and taking decisions. While CARM can easily communicate with OSPF through telephone, e-mail or videoconference, communication with the complainants is more difficult. In line with OSPF's principles of treating parties equally, OSPF will have to assure that a level playing field for the complainants is provided: complainants need to understand this report, be provided with opportunities to ask for clarifications, and receive independent and neutral advice on the consequences and implications of their decision. OSPF therefore plans to provide an independent advisor to the complainants. If the complainants decide to carry on with the consultation process, OSPF will ask them and CARM to provide comments on OSPF's findings as described in the report (Step 5 of the consultation process). Again, complainants would need the independent advisor to support their preparation of comments. Upon receipt of those comments, the report can also be provided to MEF/IRC for their comments, if the complainants and CARM agree. Based on the responses, OSPF will re-assess the likelihood of a successful consultation process, with the next step (Step 6 of the consultation process) dependent on that assessment. Under Step 6, 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. Appendix 2 shows the details of steps 4 to 8 and the schedule.

28. If the decision is to proceed with the consultation process, and if OSPF's pursuit of this case in Cambodia is accepted, OSPF staff would act as the facilitating party. If the stakeholders do not accept OSPF's pursuit of this case in Cambodia, but still would like to pursue the consultation process, OSPF would recommend and recruit other facilitators acceptable to the stakeholders. In any case, 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 following steps to prepare for a series of meetings would be needed:

- (i) Identify which stakeholders would participate in which meetings, and explore the stakeholders' understanding of the situation, their roles, responsibilities, and expectations;
- (ii) Explore the readiness of the stakeholders to meet, the conditions they would want to be met before coming to the table, and the ground rules they would want to be followed during the consultation process (Appendix 3 has a sample set of ground rules);
- (iii) Propose a sequence of meetings to enable the stakeholders to reach agreement on how to resolve the issues raised by the complainants. This proposal would include: objectives for the meetings including the agenda, the process, the participants, a time estimate (how many meetings would be necessary, how long the individual meetings would last, what would be a convenient time for meeting from the perspective of the different stakeholders), a conducive meeting environment (for example a quiet place, where people feel comfortable), translators, interpreters, reporting, and visuals to be prepared.

29. OSPF would cover the costs for a complainants' advisor, for facilitators, translators, interpreters, transport for complainants, a conducive venue, food, and an appropriate amount to compensate for complainants' lost income. OSPF would not cover the expenses of CARM or the Government. NGOs involved often do not want to receive any compensation for their activities since this would affect their impartiality.

STEPS IN THE CONSULTATION PROCESS

Step 1: Filing of the Complaint

- The complaint is filed with the Special Project Facilitator (SPF) or will be forwarded to SPF if received by Management or another department at ADB headquarters or by an ADB office.

7 days from receipt of the complaint

Step 2: Registration and Acknowledgement of the Complaint

- SPF will register the complaint in the registry of complaints and will send an acknowledgement to the complainant, with a copy to Management.
- If SPF determines that the complaint cannot be accepted because it is not within ADB's mandate or he/she cannot assist with the problem, he/she will notify the complainant, with a copy to Management.

21 days from receipt of the complaint

Step 3: Determination of Eligibility of the Complaint

- SPF will screen the complaint to determine eligibility.
- The determination of eligibility includes a desk-based review and/or a site visit.
- If SPF rejects the complaint, he/she will inform the complainant of the reason why the complaint is ineligible and will also inform the complainant that a request for compliance review may be filed with the Office of the Compliance Review Panel (OCRP) if the complainant so wishes.

Upon receipt of notification by SPF that the complaint is ineligible, the complainant may file a request for compliance review if the complainant so wishes.

49 days from receipt of the complaint

Step 4: Review and Assessment of the Complaint

- If the complaint is accepted, SPF will review and assess the complaint.
- The review will normally include site visits, interviews, and meetings with the complainant and the executing agency (EA)/developing member country (DMC) government or the private project sponsor (PPS), as well as any other people SPF believes would be useful.
- SPF will obtain information from the operations department (OD), and if necessary, will request advice and support.
- SPF will review relevant documents and will field a fact-finding mission on his/her own initiative or participate, in consultation with the OD, in a special project administration mission of the OD.
- SPF will complete the review and assessment, and will report his/her findings to the President, with a copy to the Vice-President concerned.
- SPF will also refer his/her findings to the OD and the complainant.

If the complainant finds the consultation process not purposeful, the complainant may file a request for compliance review with OCRP if the complainant so wishes.

7 days from receipt of SPF's findings

- SPF will inform the complainant of the following two options: (i) the complainant can carry on with the consultation process and provide comments on SPF's findings (as provided for in step 5); or (ii) the complainant can abandon the consultation process if the complainant finds the process not purposeful, and file a request for compliance review with OCRP if the complainant so wishes.
- SPF will give the complainant 7 days from receipt of SPF's findings to respond to SPF with the complainant's decision.



14 days from the date of SPF's notification

Step 5: Decision by the Complainant to Carry on with the Consultation Process or to File a Request for Compliance Review

- Upon receipt of the complainant's decision to carry on with the consultation process and provide comments on SPF's findings, SPF will inform the OD and the complainant that they have 14 days from the date of SPF's notification to provide their comments on SPF's findings.
- Upon receipt of the complainant's decision to file a request for compliance review, SPF will close the complaint.

7 days from receipt of comments from the OD and the complainant

Step 6: Comments on SPF's Findings by the OD and the Complainant, and Recommendation by SPF

- Upon receipt of comments on SPF's findings from both the OD and the complainant, SPF will take into account their comments, make a recommendation, and seek the President's approval for either of the following actions: (i) determine that no further review will be purposeful and conclude the consultation process; or (ii) work out the proposed course of action in consultation with the complainant, the OD concerned, and the EA/DMC government or the PPS, and obtain the concurrence of the complainant and the EA/DMC government or the PPS concerned with its issuance.

If the complainant finds the consultation process not purposeful, the complainant may file a request for compliance review with OCRP if the complainant so wishes.

Step 7: Implementation of the Course of Action in the Consultation Process

- SPF will implement the course of action in the consultation process in consultation with the complainant, the OD concerned, and the EA/DMC government or the PPS.
- SPF may choose one or more of several approaches including (i) continuing the consultative dialogue on the consultation process in seeking to find a mutually acceptable solution to the complaint, (ii) facilitating the consultation process by creating a forum through SPF's good offices between the complainant and the EA/DMC government or the PPS, and (iii) facilitating the establishment of a mediation mechanism.
- When the consultation process using the consultative dialogue and/or good offices modes is complete, SPF will submit a report, including the settlement agreement (if any), subject to ADB's procedures, to the President with a recommendation agreed to by the complainant, the OD concerned, and the EA/DMC government or the PPS. SPF will issue a report incorporating the President's decision on the recommendation and furnish it to the complainant, the EA/DMC government or the PPS, and the Board for information.
- When the consultation process using the mediation mode is complete, the mediator will be required to furnish his/her report to SPF. SPF will submit the report to the President for information, with a copy to the Board.
- If SPF determines that no further consultation will be purposeful, he/she will submit a report to the President summarizing the complaint, giving the steps taken to resolve the issues raised in the complaint, and making a recommendation. The final report incorporating the President's decision on the recommendation will be furnished to the complainant, the EA/DMC government or the PPS, and the Board for information. Upon submission to the Board, the final report will be provided to the public.

If the complainant finds the consultation process purposeful but has serious concerns on compliance issues, the complainant may also file a request for compliance review while carrying on with the implementation of the course of action.

Step 8: Termination of the Consultation Process

- All parties to the consultation except SPF can "walk away" from the process if there is no consensus on the course of action or if its implementation is not working in SPF's reasonable opinion. Termination of mediation is subject to the procedural rules of mediation.

If the complainant finds the consultation process not purposeful, the complainant may file a request for compliance review with OCRP if the complainant so wishes.

CONSULTATION PROCESS AND SCHEDULE

STEP 4: Review and Assessment

Review and Assessment Report (RAR), English Version	19 October 2007
Translation into Khmer approx. 7 days	26 October 2007
OSPF sends RAR to ADB President, cc VP; to complainants and CARM	Approx. 26 October 2007 <i>Note: Government does not get report at this stage</i>
OSPF provides independent advisor to explain report to communities	5 – 9 November 2007

STEP 5: Complainants' Decision to Carry on with Consultation Process or File for Compliance Review - 7 days according to policy

Complainants decide to continue	16 November 2007
NGO communicates complainants' decision to OSPF in Khmer by e-mail	16 November 2007
OSPF gets translation and informs CARM	Immediately
CARM informs Government of complainants' decision to continue	Upon receiving the information from OSPF
OSPF provides RAR to Government, if Government expresses interest and CARM and complainants consent	Upon receiving consent

STEP 6: Comments on SPF's Findings from OD and Complainant – 14 days SPF's Recommendation to President – 7 days from receipt of comments –

Complainants provide comments on report	30 November 2007
Independent advisor assists complainants in formulating their comments (Khmer); send comments to OSPF	30 November 2007
OSPF gets translation of comments into English	4 December 2007
CARM might want to discuss report with Government	Between 16 November and 30 November 2007
CARM provides comments on report	30 November 2007
OSPF recommends to President <ul style="list-style-type: none"> ➤ decision on continuation purposeful or not ➤ if purposeful – work out a course of action, suggestions for this course of action to be drawn from RAR, comments from complainants and CARM, OSPF's suggestions 	By first week of December 2007
OSPF or other facilitator facilitates working out the course of action <ul style="list-style-type: none"> ➤ all parties involved (CARM, Government, complainants, NGO) ➤ <u>Facilitated Consultation(s)/Series of Meetings, with Stakeholders</u> – Objective: to agree on course of action and modalities for its implementation 	First week of December 2007

STEP 7: Implementation of the Course of Action – time frame depending on agreed activities and to be agreed by all stakeholders

STEP 8: Termination of Consultation Process

SAMPLE GROUND RULES

All parties involved in the dialogue process will follow the following rules: ¹

- (i) No media will be allowed into the meetings and no stakeholder will release information to media before an agreement has been achieved;
- (ii) Participants to the consultation process are only those agreed beforehand;
- (iii) Only one person will speak at a time, and no one will interrupt when another person is speaking;
- (iv) Each participant will wait to be recognized by the facilitator before speaking;
- (v) Each person will express his or her organization's and constituents' views rather than speaking for others;
- (vi) In view of time constraints, and in order to allow for maximum participation, participants will commit to keeping their comments short and to the point;
- (vii) Each participant will refrain from making personal attacks, will make every effort to stay on track with the agenda, and avoid grandstanding and digressions in order to keep the discussion focused and constructive;
- (viii) The facilitation team will help implement the ground rules once they are accepted by all participants. The facilitation team will be impartial and neutral in its facilitation;
- (ix) Following the series of meeting or for each separate meeting, the facilitator will produce and circulate a report on the results in English and Khmer to all parties.

¹ Stakeholders decide which of these suggested rules they want to be applied in the dialogue process, suggest revisions, and add other rules important to them. Ground rules are not cast in stone – if, in a consultation process the facilitator or participants consider it necessary to add or remove rules, they can do so, as long as everybody agrees.