



Final Report of the Special Project Facilitator

Project Number: 42417-023
Approval Number: Loan 2752
December 2017

Armenia: Sustainable Urban Development Investment Program – Tranche 1 (Complaint Received: 5 September 2017)

This document is being disclosed to the public in accordance with ADB's 2011 Public Communications Policy.

Asian Development Bank

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.

ABBREVIATIONS

ADB	-	Asian Development Bank
AMD	-	Armenian Dram
ARRM	-	Armenia Resident Mission
CAP	-	Corrective Action Plan
CD	-	Country Director
CWRD	-	Central and West Asia Department
DCD	-	Deputy Country Director
GRM	-	grievance redress mechanism
IR	-	involuntary resettlement
LAR	-	land acquisition and resettlement
LARP	-	land acquisition and resettlement plan
OSPF	-	Office of the Special Project Facilitator
PIU	-	project implementation unit
SPF	-	Special Project Facilitator
SUDIP	-	Sustainable Urban Development Investment Program
USD	-	United States Dollar
YM	-	Municipality of Yerevan

CONTENTS

	Page
EXECUTIVE SUMMARY	i
I. BACKGROUND	
A. The Project	1
B. The Complaint	1
C. Determination of Eligibility	2
II. REVIEW AND ASSESSMENT	
A. Objectives and Methodology	2
B. Identification of Stakeholders	3
1. The Complainant	3
2. The Municipality of Yerevan	3
3. Armenia Resident Mission	3
C. Mission Findings and Agreed Course of Action	3
D. Lessons Learned	5
III. CONCLUSION	5
APPENDIX 1 Complaint Letter Sent to ADB	7
APPENDIX 2 Photos of Damages and Field Assessment	8

EXECUTIVE SUMMARY

The Sustainable Urban Development Investment Program (SUDIP) is financed by the Asian Development Bank (ADB) under a multitranche financing facility. Tranche 1 was approved on 9 May 2011 for USD 60 Million and Tranche 2 was approved on 29 September 2015 for USD 150 Million. The Project under Tranche 1 is divided into 2 subprojects. Subproject 2, a 3.7 kilometer (km) alignment, includes the widening of Arshakunyats Avenue, new connection from Artashat Highway to Shirak Street and the widening of the Artashat Highway to Noragavit 1st Street. The implementing agency is the Municipality of Yerevan (YM).

The Project is classified as category A for involuntary resettlement (IR). The impact of subproject 2 was significant as more than 200 individuals have been affected for which a Land Acquisition and Resettlement Plan (LARP 3) was prepared and approved by ADB on 12 May 2014 and by the Republic of Armenia Government on 11 September 2014. The Complainant's location is covered in LARP 3. The LARP implementation started in 2014 and was finalized in July 2015. The commencement of construction works for subproject 2 was in September 2015 and operations began in December 2016.

On 5 September 2017, the Office of the Special Project Facilitator (OSPF) received a complaint from one family (the Complainant) that was deemed eligible for problem-solving on 29 September 2017. The Complainant's concern was about the impact of the construction and/or operation of the road on their residence. The Complainant initially expressed such concerns in October 2015 with letters to the Armenia Resident Mission (ARRM) and the Project's grievance redress mechanism (GRM). However, a mutual agreement on an appropriate resolution could not be reached in a timely manner.

An OSPF Review and Assessment Mission was fielded to Yerevan between 16-18 October 2017. Discussions were held with the ARRM, representatives of the YM, and the Complainant (including their lawyer). With the support of an independent engineering study commissioned by ARRM, the Special Project Facilitator (SPF) confirmed that substantial damage to the Complainant's property was caused or pre-existing degradation worsened by the Project. Working closely with the Country Director (CD) and Deputy Country Director (DCD), the OSPF Mission facilitated an agreement on a course of action intended to quickly establish a compensation agreement between the Complainant and the YM.

The CD, ARRM subsequently led the implementation of the course of action including, among other actions, (i) engaging an Armenian lawyer to assist in further negotiations and draft a legal agreement between the Complainant and the YM and (ii) directly mediating the final agreement on the compensation amount. This support was critical for the timely conclusion of this case. A Corrective Action Plan (CAP) in compliance with the ADB Safeguards Policy Statement was prepared with a compensation amount payable to the Complainant based on the technical investigation. The Complainant and the YM signed a legal agreement on 5 December 2017 and the agreed compensation of AMD 5,971,031.63 (USD 12,388) was paid to the Complainant on 7 December 2017. The agreement provides for sufficient funding to repair all the damages to the Complainant's property directly or indirectly caused by or worsened by the construction and/or operation of the Project. The Complainant agreed to complete works as described in the agreed design within one year of payment. ARRM will support a verification process to validate the completion of the works at appropriate stages and will keep OSPF informed.

Overall, this case is a good example of how the Accountability Mechanism problem-solving function should work with appropriate and timely interventions by SPF/OSPF to secure an agreement among key stakeholders and with subsequent implementation of actions led by

the operational department, in this case Central and West Asia Department (CWRD)/ARRM. The Complainant is satisfied with the result of the ADB intervention and OSPF considers this complaint closed. A complaint Management Timeline is presented in Table 1.

Table 1: Complaint Management Timeline

1. Eligibility assessment concluded	29 September 2017
2. Review and Assessment Mission	16-18 October 2017
Action Plan Implementation	
3. Scope of work and cost estimate prepared	15 November 2017
4. Agree on compensation amount	30 November 2017
5. Legal agreement between Municipality of Yerevan and Complainant	5 December 2017
6. Court case withdrawal by the Complainant	30 November 2017
7. Payment of the agreed compensation to the Complainant	7 December 2017
8. OSPF case closure	15 December 2017

I. BACKGROUND

A. The Project

1. The Sustainable Urban Development Investment Program (SUDIP) is financed by the Asian Development Bank (ADB) under a multitranche financing facility. Tranche 1 was approved on 9 May 2011 for USD 60 Million and Tranche 2 was approved on 29 September 2015 for USD 150 Million. The Project under Tranche 1 is divided into 2 subprojects. Subproject 2, a 3.7 kilometer (km) alignment, includes the widening of Arshakunyats Avenue, new connection from Artashat Highway to Shirak Street and the widening of the Artashat Highway to Noragavit 1st Street. The implementing agency is the Municipality of Yerevan (MY).

2. The Project is classified as category A for involuntary resettlement (IR). To facilitate the implementation of the Land Acquisition and Resettlement (LAR), the Project area was divided into the following three parts for which separate Land Acquisition and Resettlement Plans (LARPs) were prepared:

LARP 1 - Arshakunyats street section and Artashat highway section

LARP 2 - Argavand Highway section

LARP 3 - New Shirak Street Section

3. The impact of subproject 2 was significant as more than 200 individuals were affected for which LARP 3 was prepared and approved by ADB on 12 May 2014 and by the Government of Armenia on 11 September 2014. The Complainant's location is covered in LARP 3. The LARP implementation started in 2014 and was finalized in July 2015. The commencement of construction works for subproject 2 was in September 2015. The road has been in operation since December 2016. A grievance redress mechanism (GRM) was established during the LARP implementation to receive and facilitate the resolution of affected persons' concerns and grievances. Tranche 1 works impacted a total of 248 households and a total amount of AMD 2,389 Million (USD 6.03 Million)¹ compensation was paid by July 2015.

4. Complaints relating to SUDIP largely relate to packages under Tranche 1 with a total of seventy-five recorded in the Project's grievance log as of October 2017 and eight under Tranche 2. For Tranche 1, eight complaints remain outstanding for closure including this complaint and another similar case being managed by Central and West Asia Department (CWRD).

B. The Complaint

5. The Complainant's residence was built in 1998. In the first complaint forwarded to Armenia Resident Mission (ARRM) on 28 October 2015, before road construction commenced, the Complainant expressed concern that the road construction would damage their house which was already in a deteriorating condition and requested that relevant specialists assess this risk. ARRM on 27 November 2015 advised the Complainant to "follow the Project's GRM" since the same complaint was submitted to the project implementation unit (PIU) on the same day. Figure 1 shows the location of the Complainant's residence and the distance between the outside curb of the access road and the Complainant's residence.

6. Structures near the road which were included in the LARP were demolished. One such house was adjacent to and shared a common wall with the Complainant's house. As a result, an interior wall and the foundation beneath it were exposed to climate impacts such as rain and

¹ Exchange rate – 1USD= 472.89 Armenian Dram, July 2015

freeze/thaw. The second complaint letter was sent to ARRM on 29 June 2016. In addition to concerns expressed in the first letter, the Complainant felt that a number of cracks and other damage were caused by the road construction. At ADB's request, PIU investigated and reported that "cracks and other deterioration was generally unchanged and evidence that the road construction activity had impacted the house could not be found."² The same report was forwarded to the Complainant committing that "further investigations during construction stage would be conducted." According to ARRM, at the start of the construction work the contractor verbally offered, several times, to renovate the surrounding area and reconstruct the outside wall but the Complainant refused.

7. The PIU submitted to the Project design & supervision engineers (EGIS International) an updated report with detailed mitigation actions (to renovate the surrounding area and reconstruct the outside wall of the house) on 21 October 2016 and the respective letter with the updated report to the Complainant with suggestion to implement the required actions on 31 October 2016. At the same time, the Complainant submitted to ARRM their own investigation report prepared by "Babayan-Lat Naxagic" LLC assessing the house conditions and suggesting mitigation measures (including reconstruction of the foundation of the house). The report said that the house is "damaged" and is at 2nd and 3rd degree emergency and the cellar at 4th degree level of emergency. Videos of cracks and other damages to the house recorded in a CD have been shared by the Complainant and are in OSPF files. It appears that, because the reports were prepared in parallel, the EGIS report was not considered by the Complainant.

8. The Complainant also claimed that the distance of their house from the road is only 5 to 7.5 meters (m). The complaint letter states that according to national regulations³, "distance of the edges of basic pass way of main roads up to the line of regulations of residential building should be considered not less than 50 m and in condition of accepting noise-proof devices not less than 25 m." Apart from the road distance to their house, it was also mentioned that the proximity of relocated pipes (gas, water, drainage, and telephone) on their property is another violation of the national law. The Complainant sought adequate and fair compensation for the damages caused to their property due to the Project's construction and/or operation.

C. Determination of Eligibility

9. OSPF staff discussed the complaint with the Project team, reviewed documents, and conducted tele- and video-conferences with the Complainant to determine the eligibility of the complaint. The Special Project Facilitator (SPF) concluded that the complaint met the ADB Accountability Mechanism criteria for eligibility of a complaint for problem-solving, and hence declared it eligible on 29 September 2017.

II. REVIEW AND ASSESSMENT

A. Objectives and Methodology

10. An OSPF review and assessment mission⁴ was fielded to (i) better understand the history and the key issues of the complaint, (ii) confirm the key stakeholders and understand their respective views about the issues submitted by the Complainant, (iii) explore the

² Report issued by the Egis international on the 6 July 2016.

³ According to ARRM Project team, the regulation that is quoted by the Complainant is for a road. However, the Project is classified as a street which has different requirements in terms of width of right-of-way, speed limit, asphalt composition, lighting, etc.

⁴ Mr. James Warren Evans, Special Project Facilitator and Ms. Sushma Kotagiri, Senior Facilitation Specialist, OSPF.

stakeholders' readiness for joint problem-solving and possible options for resolution, and (iv) recommend a course of action with an implementation timeline. The review and assessment included documentation review, one-on-one interviews with the Complainant, discussions with the Project team and the Project consultants, and meetings with the YM. The mission also met with the Deputy Minister of International Economic Integration and Reforms for a debriefing.

Figure 1



B. Identification of Stakeholders

11. The review and assessment in the field identified the following stakeholders:

1. The Complainant

12. The Complainant is a household headed by the husband with the wife as co-signatory to the complaint, who are the residents of the house impacted by the project. They have designated their legal counsel as their representative. The Complainant initially requested that their identities be kept confidential. However, given the engagement with the ARRM, YM, GRM and the court system, the Complainant recognized that it was not necessary or possible to keep the SPF case confidential.

2. The Municipality of Yerevan

13. The Project implementing agency is the YM which is responsible for overall management of the Project, including supervision of the design and implementation of civil works and the implementation of the LARP.

3. Armenia Resident Mission

14. The ADB Project supervision was delegated to ARRM. As such, ARRM is responsible to monitor and supervise the Project implementation.

C. Mission Findings and Agreed Course of Action

15. Prior to the OSPF Mission, the relationship between the Complainant and the YM had deteriorated to the point that communications had ceased. Neither side trusted the other nor wanted to meet the other. On 30 November 2016, the Complainant appealed to the Court of Common Jurisdiction of Kentron and Nork-Marash District of the city of Yerevan against the YM.

There were serious misunderstandings regarding the types and severity of damage to the Complainant's property with the Complainant blaming virtually every structural fault to the house and other structures on the Project and the YM not recognizing the reality that the Project did cause a substantial amount of damage.

16. The ARRM commissioned an independent engineering assessment of the Complainant's house and other related structures allegedly damaged by the Project construction and/or operation. OSPF requested the results be made available prior to the Mission to Yerevan. This was fortuitous in that the Complainant expressed trust in the independent engineer and both the Complainant and the YM eventually agreed to use the independent engineer's report and cost estimates as a basis for negotiating a compensation package. The independent engineer confirmed that major impacts outlined in his report were caused by the Project. Most serious was the external wall which was previously a shared internal wall and had exposed a part of the building foundation. In addition, the Project construction caused some structural damage to an auxiliary building and likely some minor exacerbation of already existing cracks of second floor walls. The independent engineer explained that this is largely due to the second floor being structurally less stable than the first floor and consequently more susceptible to vibration during road construction. He also expressed that the dilapidated condition of the basement⁵ was caused slowly (over at least 15 years) by exposure to moisture but could not rule out that increased exposure to moisture resulted from infiltration due to the Project. A rough cost estimate was provided by the independent engineer for rehabilitation works which OSPF used as a point of reference for the initial discussions with both the Complainant and the YM.

17. Once there was agreement by each of the parties (Complainant and the YM) that a starting point for negotiations on the monetary compensation would be based on a more detailed cost estimate by the independent engineer for rehabilitation/restoration of the Complainant's property for damages directly and indirectly associated with the Project construction and/or operation, OSPF facilitated agreement on a course of action that included the following steps:

- (i) refine cost estimate for agreed scope of work;
- (ii) agree on the compensation amount from YM to the Complainant;
- (iii) prepare and sign a legal agreement between YM and the Complainant on the agreed compensation amount;
- (iv) withdrawal of the court case by the Complainant; and
- (v) payment of the agreed compensation by YM to the Complainant.

Further, it was agreed that these steps should be concluded by the end of 2017.

18. Subsequent to the OSPF mission, the independent engineer provided a detailed scope of work including the costs for the restoration and reinforcement of the Complainant's property. The independent engineer also recommended that any further use of the basement is dangerous for human life and health (technical state of the basement is emergency-fourth degree), thus it should be filled and sealed.

19. The ARRM Project team developed a Corrective Action Plan (CAP) in compliance with the ADB Safeguards Policy Statement. The CAP recommends the compensation amount payable to the Complainant based on the technical investigation. All compensation costs of impacts measured and valued will be covered by the contingency from Tranche 1 LARP 3.

⁵ The "basement" (more of an earth cellar) was a source of confusion prior to the OSPF Mission. There was a view that the Complainant had undermined his own structure by digging a basement under the foundation and then blaming the Project for its deteriorating and dangerous condition. The Mission found that the basement was an old cellar adjacent to the original house and when the house was enlarged, it was extended over part of the cellar.

The CAP was approved by the Environment and Safeguards Division of the Sustainable Development and Climate Change Department due to its IR category A.

20. The CD, ARRM agreed to further facilitate the process between the Complainant and the YM and implement the above course of action in close consultation with the SPF. Among other actions, day to day support of ARRM was essential for successful and timely closing of the case by (i) engaging an Armenian lawyer to assist in negotiations and draft a legal agreement between the Complainant and the YM and (ii) directly mediating the final agreement on the compensation amount.

21. The Complainant and YM signed a legal agreement on 5 December 2017 and the agreed compensation amount of AMD 5,971,031.63 (USD 12,388) was paid to the Complainant on 7 December 2017. The agreement provides sufficient funding to repair all the damages to the Complainant's property directly or indirectly caused by or worsened by the construction and/or operation of the Project. The Complainant committed to complete works as described in the agreed design within one year of payment. The CWRD will support a verification process to validate the completion of the works at appropriate stages and will keep OSPF informed.

D. Lessons Learned

22. **Project GRM:** The Project GRM became operational during LARP implementation. Conceptually, if the GRM had been operational at the time of LARP approval, grievances such as the subject complaint may have been managed more effectively.

23. **Project Design:** In future, preparation of this type of urban transport project should consider inclusion of vibration and noise assessment and appropriate mitigation for anticipated impacts.

24. **Project Supervision:** Improved Project supervision may have avoided the escalation of the complaint to the OSPF. The delay in addressing the complaint caused distrust of the YM by the Complainant which led to additional costs (the problem-solving process) and CAP documentation. Had the impact been identified and mitigation measures agreed during the period that the contractor was active on site, the measures would have been included in the contractor's environmental management plan. However, at this stage, with the works completed, the inclusion of this work in the contractor's defects liability would not provide for a timely solution.

III. CONCLUSION

25. Initially, the OSPF mission objective was limited to a review and assessment of the complaint. However, it became clear that there was an opportunity to reach agreement on steps to quickly close the case after the initial meetings with the stakeholders. The willingness of all stakeholders' participation and collaboration was critical for problem resolution. The key factors that contributed to the timely and successful case closure are as follows:

- the independent engineering study and the high level of trust by the Complainant in the independent engineer's analysis and recommendations were instrumental in reaching agreement on (i) the damages caused to the Complainant's property by the Project construction and/or operation and (ii) computing the total compensation amount;
- timely action from OSPF in responding to the Complainant including fielding a mission to Yerevan within two weeks of determining the eligibility of the complaint led to a high level of trust of the ADB by the Complainant;

- the direct involvement of CD, ARRM and strong support by CWRD Management and the Portfolio, Safeguards and Gender Unit in handling the further process of negotiations until case closure strengthened the Complainant's trust and kept all parties engaged;
- close collaboration and support of ARRM throughout the OSPF process and during the mission;
- excellent interpreter with a clear understanding of the issue and the facilitation process; and
- a highly qualified legal counsel that helped in drafting and negotiating the legal agreement between the Complainant and the YM.

26. The OSPF will continue to work together with the Project team as required and field a mission to review the implementation as may be deemed necessary for further documenting lessons learned. The CWRD requested that OSPF provide grievance redress and problem-solving capacity development training for the relevant project staff in 2018. The lessons learned from the SUDIP case will enrich such training.

27. OSPF consulted with the Complainant and determined that they were satisfied with OSPF's intervention to resolve their concerns. OSPF therefore considers the complaint closed.

APPENDIX 1: Complaint Letter Sent to ADB

To the Asian Development Bank Kasumigaseki building 8F.
3-2-5. Kasumigaseki. Chiyoda-ku.
Tokyo 100-6008 Japan
From: Norayr Mkrtychyan
Arshakunyats street 286/21
City Yerevan, Republic of Armenia
Tel: +374 99 377 271

Application

I am Norayr Mkrtychyan and I live at Arshakunyats street 286/21, city of Yerevan. The house where I live was built in 1999. Since 04.11.2015 the construction works of the North-South highway began and they lasted from 7am till 10pm. During demolition work for the North-South Highway, since My House is on the first line of the road and is a direct impact of the heavy equipment used, cracks that gradually increase in size from shock equipment and other external influences.

As a result of the demolition of the house in the immediate vicinity of my house, the inner wall of our house became the outer wall, the foundations of the house were opened, which caused precipitation over the house, and the house became emergency and after each rain and snow the water ran under the basis of my house. Due to those works my house lost its durability, as my house was shaking during the work of tractors. Because the constant vibration and shaking cracks appeared on the walls and callings of the second floor and the bottom of the walls became noticeably wet.

It is also worth mentioning that the distance of my house from the road is only 5 metres while according to paragraph 4.9 of table 1CH PA IV-11.05.02-99 it must be 100 metres. Within this month I have several times complained to the ADB, to the Defender of Human Rights of Armenia, to the Prime Minister of Armenia, to the Mayor of Yerevan, to the municipality of Yerevan, to the Management of the Department for the implementation of investment development projects in Yerevan (SNCO).

After seeing the condition in which my house appeared, they accepted their guilt, but after leaving the house, they forgot their promises and did nothing to help me.

According to paragraph 6.19 CH 2.07.01-89 distance of the edges of basic passway of main roads up to the line of regulations of residential building should be considered not less than 50 metres and in condition of accepting noise-proof devices providing CH P II-12-77, not less than 25 metres.

The distance of the edges of basic passway parts of streets, local or lateral driveways up to the line of building should be considered not less than 25 metres. In case of exceeding the specified distance, it should be provided for the distance not but 5 metres from the line of building, the line with the width of 6 metres, suitable for the travel of fire trucks.

I hired the engineer from the company named «BABAYAN -LAT». He noted, that the house was damaged and it had 2nd -3rd degree of emergency and the cellar had 4th degree of emergency.

The concrete which formed the basis of the house is eroded so that one can even break it and turn into ashes with bare hands. A video recording will be attached to the following paper. With the help of which you would be convinced in the veracity of the above said. It would like to mention as well that at the distance of metres from my house four different pipes /one for gas, one for water, one for drainage, one for telephone/ ran under the asphalt, which is again a violation of law.

There are 7 people in my family: Norayr Mkrtychyan, Arusyak Grigoryan, Eduard Mkrtychyan, Qristine Khorenyan, Norayr Eduard Mkrtychyan, Arusyak Eduard Mkrtychyan, Angelina Eduard Mkrtychyan.

I would also like to attract your attention on the problem of safety as the road is situated above my house and my family is not guaranteed from car accidents. Thus the whole family lives in horror as on the one hand house may pull down one day and on the other hand a car may hit the house.

We are demanding a justice and in case justice not restored we will turn to the European Court of Human Rights.

With great respect and hopes

Norayr Mkrtychyan

APPENDIX 2: Photos of Damages and Field Assessment



Cracks in different areas of the house.



This wall used to be an "internal" wall but is now external and causes rain water seeping into the house.

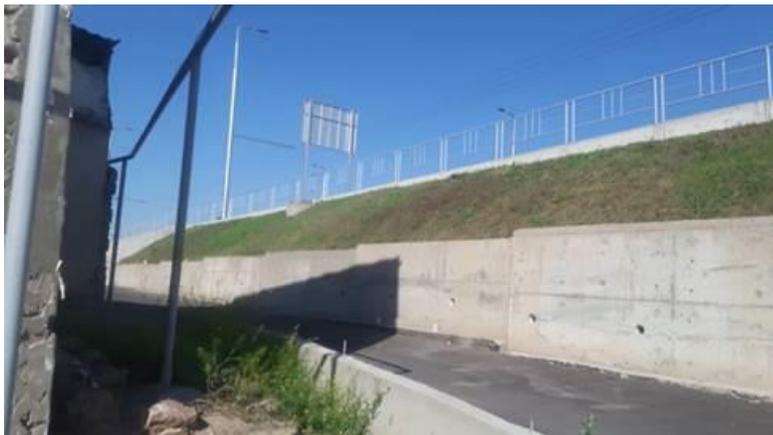


Photo shows distance of the house to the constructed road.