REVIEW AND ASSESSMENT REPORT

OF THE

SPECIAL PROJECT FACILITATOR

ON

Case No. SPF-2020-11-01-0103

Complaint on Loans 3525 and 3526-MON: Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 2

March 2021
This report was translated by the Office of the Special Project Facilitator into Mongolian. In case of discrepancy, the English version will prevail.

This document is being disclosed to the public in accordance with ADB’s Access to Information Policy.
ABBREVIATIONS

ADB  Asian Development Bank
AP   affected people
EARD East Asia Department
GRM  grievance redress mechanism
LAR  land acquisition and resettlement
NGO  nongovernment organization
m²   square meter
MOU  memorandum of understanding
MUB  Municipality of Ulaanbaatar City
OSPF Office of the Special Project Facilitator
PMO  program management office

NOTE
In this report, "$" refers to United States dollars and “MNT” refers to Mongolian togrog.
CONTENTS

Project Fact Sheet i

I. ELIGIBILITY OF THE COMPLAINT 1
   A. The Complaint 1
   B. Determination of Eligibility 1

II. REVIEW AND ASSESSMENT 3
    A. Objectives and Methodology 3
    B. Identification of Stakeholders 3
    C. Assessment of Issues 3

III. AGREED COURSE OF ACTIONS AND NEXT STEPS 6

FIGURES
1. Ulaanbaatar Urban Services and Ger Areas Development Investment Program Map ii
2. Dambadarjaa Subcenter Location Map iii
3. Complainant Household Locations in Dambadarjaa 2
Project Fact Sheet

Project: The Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 2

Approved: 31 March 2017

Objective: To support the Ulaanbaatar City master plan in upgrading priority service and economic hubs (subcenters) in ger (traditional Mongolian tent) areas.

Expected Outcomes: Investments in a network of subcenters that improves core urban infrastructure and basic services along priority road sections and socioeconomic facilities based on community needs, and upgrades the management of subcenter services.

Implementation: A multitranche financing facility implemented in 3 tranches over 9 years.

Project Tranche 2: This tranche includes (i) completion of Tranche 1 in Selbe and Bayankhoshuu subcenters and upgrading of the Dambadarjaa and Denjin subcenters (Figures 1 and 2); (ii) support for socioeconomic facilities; and (iii) improved institutional strengthening and capacity building. Tranche 2 outputs are expected to include improvements in priority roads, bridges, and sidewalks; flood channels and drainage; electricity and telecommunications networks; water supply and wastewater; district heating; and sewerage systems.

Affected Communities: The resettlement safeguard documents for Tranche 2, prepared based on feasibility designs, assessed the project’s involuntary resettlement impacts as follows:
- 539 households, with 2,156 persons, and 16 government agencies;
- 220 khashaas (land parcels) out of 384 khashaas where households will have to be relocated;
- buildings (217) and gers (217); and
- nearly 13 hectares of land (mostly residential) that will be acquired.

Safeguard Categories:
- Environment: B
- Involuntary Resettlement: A
- Indigenous Peoples: C

Financing Plan:

<table>
<thead>
<tr>
<th>Loan Number</th>
<th>Description</th>
<th>Source</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3525-MON</td>
<td>Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 2</td>
<td>Ordinary capital resources</td>
<td>$37.11 million</td>
</tr>
<tr>
<td>3526-MON</td>
<td>Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 2</td>
<td>Concessional ordinary capital resources</td>
<td>$29.24 million</td>
</tr>
<tr>
<td></td>
<td>European Investment Bank</td>
<td></td>
<td>$19.64 million</td>
</tr>
<tr>
<td>Counterpart financing</td>
<td>Municipality of Ulaanbaatar City</td>
<td></td>
<td>$35.15 million</td>
</tr>
</tbody>
</table>
Figure 1: Ulaanbaatar Urban Services and Ger Areas Development Investment Program Map
Figure 2: Dambadarjaa Subcenter Location Map
I. ELIGIBILITY OF THE COMPLAINT

A. The Complaint

1. On 28 December 2020, four affected people (APs), supported by two nongovernment organizations (NGOs), lodged a complaint with the Office of the Special Project Facilitator (OSPF). OSPF acknowledged and registered the complaint on 4 January 2021. The complainants requested confidentiality and non-disclosure of their identity to the program management office (PMO).

2. The complaint raised issues on (i) delayed payment of compensation to nontitle holders, (ii) land and property valuation, (iii) land acquisition and compensation, (iv) lack of reliable and meaningful consultation, and (v) ineffective project grievance mechanism. Through meetings and discussions with OSPF’s local facilitator, it became clear that the complainants requested OSPF to assist in resolving the following negative impacts:
   - The same house sections of some complainants have been valued differently and did not follow the memorandum of understanding (MOU) previously facilitated by OSPF and signed by the Municipality of Ulaanbaatar (MUB), PMO, NGOs, and the complainants.
   - Compensation payments have been delayed and peoples’ lives were interrupted from December 2019 until September 2020 even after packing all belongings and waiting to move.
   - Claims of nontitle holders have not been resolved as agreed previously in the MOU.
   - ADB’s Safeguard Policy Statement was violated when MUB and PMO only offered cash compensation without any other forms of support or assistance.
   - The land acquisition process was carried out in a haphazard, unplanned, and nontransparent manner.
   - “Absence due to COVID-19 has been used to cut resettlement compensation etc.”

3. Due to the corona virus disease (COVID-19) outbreak, OSPF was unable to conduct a fact-finding mission to Mongolia, so the necessary stakeholder meetings were held online. During lockdowns and quarantine, online resources (short messaging service, chat groups, voice and data messaging) have been the main means of communications with the complainants. OSPF’s local facilitator also conducted training for the complainants on using online media and communications. The review and assessment process derived significant benefits from the engagement of our local facilitator. On 13 January 2021, the complainants agreed with OSPF to release their names to the PMO.

B. Determination of Eligibility

4. ADB’s Accountability Mechanism Policy stipulates that any group of two or more persons who are “directly, materially, and adversely affected” by an ADB-financed project and have made prior good faith efforts to solve the problems with the operations department may file a complaint seeking assistance from the OSPF to solve the problems that precipitated the complaint.

5. Following a review of the relevant project-related documents and a series of virtual meetings during 6-15 January 2021 with all stakeholders, including the PMO, ADB staff from the East Asia Department (EARD) and Mongolia Resident Mission, and the NGOs and complainants, ADB’s Special Project Facilitator declared the complaint to be eligible for problem-solving on 18 January 2021.

1 Oyu Tolgoi Watch and Zurgaan Buudal Citizens’ Right Protection Association
3 Excerpt from an original complaint form filed on 28 December 2020 with OSPF.
4 ADB Accountability Mechanism Policy (2012), paras. 138-144.
Figure 3: Complainant Household Locations in Dambadarjaa
II. REVIEW AND ASSESSMENT

A. Objective and Methodology

6. The objectives of the review and assessment were (i) to understand the history of the complaint and the issues, (ii) to identify the key stakeholders and facilitate an initial dialogue among them, (iii) to ascertain the dynamics of the proposed joint problem-solving, and (iv) to recommend a course of action and next steps.

7. The review and assessment encompassed the following actions: (i) documentation review; (ii) discussions and virtual meetings with the complainants, NGOs, the PMO, the MUB, and ADB staff in EARD and resident mission; (iii) capacity building for the complainants, particularly to better understand conflict resolution, negotiation, and communication; and (iv) joint site visits. The capacity-building initiative is a key feature of OSPF’s endeavors to solve APs’ complaints effectively and efficiently.

8. OSPF’s local facilitator led the review and assessment, under the guidance of the Special Project Facilitator. During the coronavirus pandemic, the engagement of local facilitators has proved to be a significant contributor toward the successful achievement of the objectives of the review and assessment.

B. Identification of Stakeholders

9. The Complainants. There are four complainants who are APs in the Dambadarjaa subcenter area.

10. Representation. The complainants are represented by the Oyu Tolgoi Watch NGO and the Zurgaan Buudal Citizens’ Rights Protection Association NGO. The two NGOs provided advice and guidance to the complainants regarding ADB policies and procedures, assisted them in the preparation and submission of the complaint to ADB, and participated in the review process.

11. Confidentiality. Although the complainants initially requested confidentiality, they agreed with OSPF for their names to be released to the other stakeholders and this facilitated the further processing of the complaint.

12. Government agencies. Key government agencies involved in helping to resolve the complaint are the (i) MUB, the project executing agency, acting through the Mayor’s Office, and (ii) the PMO.

13. ADB. EARD’s Urban and Social Sectors Division and the Mongolia Resident Mission are responsible for the administration of the project. The project officer is based in the resident mission and, among other things, provides advice and guidance to the PMO.

C. Assessment of Issues

(i) Hardships caused by delayed payment of compensation

14. Complainants asserted that they negotiated compensation packages for land and property during July-August in 2020 and expected to receive compensation payments in the fall of the same year, so that they could resettle before the succeeding winter. Some complainants packed belongings ready to move. The compensation has not been paid and due to the uncertainty as to precisely when it will be paid, the complainants have been unable to plan their lives. Subsequent
to the PMO negotiations with the affected households in June, July 2020, in late September 2020, the complainants were informed that they could remain through winter; however, due to the stalled arrangements, they were ill-prepared for the winter season. Some complainants claim that the land could have been acquired prior to 1 October 2020.

15. The primary cause of this problem of delayed payments is that MUB reduced its 2020 budget due to the impact of the COVID-19 on Mongolia’s economy. UB City Parliament was committed to make budget amendments towards the end of the year, but the pandemic prevented this, which deprived the PMO of funds to allocate to compensation payments.

(ii) Issues relating to property valuations and compensation packages

16. The complainants were dissatisfied with various aspects of property valuations and compensation arrangements. For example,
   - complainants’ land was valued at MNT60,000/square meter (m²) in Selbe, while other APs had already negotiated and agreed to land value of MNT80,000/m². This discrepancy caused 6 months’ delay in negotiations and considerable frustration for the complainants.
   - The complainants were dissatisfied with the valuation methodology: (i) one complainant alleged that in 2019, APs were advised not to improve property and thus suffered lower valuations upon acquisition; and (ii) one complainant saw the first storey and the second storey of her 2-storey house, respectively, valued differently.
   - A complainant alleged that nontitle-holder households were treated differently to the title holder on the same property, which was contrary to arrangements previously agreed with other APs.
   - One complainant household had already resettled on the expectation of receiving compensation in the fall and yet compensation still had not been paid.
   - Complainants wish to claim the unexpected costs and losses incurred by APs due to the delays in payment of compensation.

17. One of the main reasons for this problem appears to be the lack of updated sample values for construction facilities and materials, which are normally approved by the Ministry of Construction and Urban Development. The valuation of buildings and structure have been carried out by the valuation appraiser based on the current replacement costs, with the exception of materials (wooden fence, iron fence, concrete area, garage and wooden barn. The valuation of these materials was based on MCUD’s “2016 value for construction materials and facilities”. While APs were frustrated using the 2016 values instead of using prevailing market rates, the appraiser explained that (i) 2016 values for above-mentioned 5 items are the most recent formal document available for use by appraisers; and, in any event, the 2016 sample values are close to and consistent with the current market rates; (ii) the rates used for valuation of all other items are based on the current market rates. However, given that there is delay of about a year since the valuation of properties has been carried out and do not reflect the current rates after COVID-19, the PMO explained the need to carry out the valuation again to reflect the current values, which was consistent with the complainants’ concerns raised.

(iii) Communication and consultation, including with nontitle holders

18. The complainants alleged that there have been no effective consultations with APs. There has been little to no information on issues such as: (i) how compensation was being calculated, including the methodology for valuation; (ii) the appraisers who carried out the valuations; (iii) copies of valuation reports; and (iv) the status of resettlement (until September 2020) thus putting lives on hold since December 2019.
19. The PMO stated that they organized public consultation meetings on 24 May 2020, 8 June 2020, 11 June 2020, and 14 June 2020, and disseminated updated information to likely APs in July 2020, August 2020, and October 2020. That information included details of: (i) the project and its progress; (ii) general information on: ADB’s Safeguard Policy Statement and principles, resettlement framework, entitlements, eligibility, compensation valuation (full replacement value), grievance redress mechanism (GRM), the land acquisition and resettlement (LAR) implementation procedures, cut-off dates, and applicable Mongolian legislation; (iii) the Dambadarjaa subcenter subprojects and scope of LARs; and (iv) details as to the likely delay of compensation payments. APs and attendees were asked to sign in to confirm that they had received this project-related information.

20. The PMO requested the Municipality’s Emergency Committee to permit the project staff to organize community consultation activities with limited number of APs. However, the National Emergency Management Office advised that amid the coronavirus pandemic and quarantine measures in Ulaanbaatar, the PMO disseminated information through “team leaders” for the APs, which would avoid physical interaction with multiple people. For example, all 38 persons affected by the heating plant were organized as an AP group with a team leader appointed. The PMO organized numerous consultations and communications engaging each affected household, which was more effective. But it was difficult for the PMO to ensure that the information disseminated through the AP team leader would be properly understood by each household. This may have triggered misunderstanding and frustration among the APs.

21. The complaint also raises issues relating to nontitle holders and their treatment as part of a “household.” It has been unclear how, if at all, nontitle-holder households will be defined and whether they will be entitled to separate compensation. The PMO clarified that the entitlements for non-title holders for Tranche 2 will be consistent with the provisions of the resettlement framework prepared for the project. To estimate the number of separate households affected by the project, the PMO used an internationally accepted definition of affected household as “all persons residing under one roof and eating from the same kitchen, who are adversely affected by the project, or any of its components; may consist of a single nuclear family or an extended family group.” While there have been extensive interactions between the PMO and the APs, this expression of “household” has been understood differently by different APs and this has created confusion among APs as to how households will receive the compensation. Thus, the PMO agreed to the need for additional explanation about the difference between “household” and “family” throughout the project cycle.

(iv) Grievance redress mechanism

22. The complainants expressed their dissatisfaction with how their complaints have been handled by the PMO at the project level, stressing the application of pressure and intimidation, organizing households into groups, and spreading misinformation, particularly with comments that the authorities have the right to evict the complainants. The PMO maintains that three complainants’ grievances on land valuation were handled by the project-level GRM in April to May 2020 and, as a result, the land value was increased to MNT80,000/m² for all subcenter APs, pursuant to the Mayor’s Ordinance #A/855 dated 25 June 2020. It should be noted that this complaint is the third complaint under the program. The earlier complaints also raised similar concerns and issues, and this has necessitated the PMO to continue to improve grievance redress at the project level. OSPF continues to regard sound GRMs as an important component of effective, early-stage problem-solving.
III. AGREED COURSE OF ACTIONS AND NEXT STEPS

23. Based on the discussions among all stakeholders to date, OSPF has concluded that the complaint can be resolved through ADB’s structured problem-solving process, involving more consultations, joint meetings, and continued dialogue among stakeholders. The stakeholders acknowledged that the complaint issues were legitimate and should be addressed effectively. The stakeholders indicated their willingness to participate in further meetings or other forums with the complainants, to address the issues and solve the complainants’ problems. OSPF strongly recommended to all parties to ensure that the process is participatory, fair, and consultative while following a structured, time bound process.

24. Due to COVID-19, the problem-solving phase will largely be conducted virtually, deploying necessary communications and technical support to achieve and document consensus on the resolution of the complaint. OSPF is employing emerging technology, especially in remote facilitation of meetings, to assist in handling complaints.

25. A project working group, headed by the deputy coordinator of the PMO, was established on 26 January 2021. The MUB, in principle, agreed to address the key issues from the complainants, including (i) expedited documentation processing related to land acquisition; (ii) allow revaluation of the property; and (iii) accepting non-title holders’ household status, based on the Khoroo Governor’s verification, and thereby providing compensation for such APs. The parties agreed that each complainant’s household-specific issues may be negotiated separately, on a case-by-case basis, during the problem-solving process.

26. In terms of compensation, due to the impact of COVID-19 on Mongolia’s economy and the country’s urgent need to implement emergency response measures to address the consequences of the pandemic, the MUB faced budget constraints to pay the compensation, thus MUB, ADB, and the Ministry of Finance are working together to allocate the required funds to pay the LAR-related compensation under Tranche 2. During the review and assessment, OSPF was informed that funds allocation is likely to be available by May 2021. The parties have a shared interest in resolving the complaint immediately through dialogue and problem-solving. Moving forward, it was agreed that the OSPF local facilitator will facilitate the case-specific negotiation meetings among stakeholders to flesh out the agreement and support on a day-to-day basis in this complaint-resolution process.

27. OSPF completed the review and assessment of the complaint and will now move forward to the problem-solving stage.