REVIEW AND ASSESSMENT REPORT

OF THE

SPECIAL PROJECT FACILITATOR

ON

Case No. SPF-2020-10-03-0102

Complaint Under Loans 3098–3099 and Grant 0380-MON: Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 1

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

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### ABBREVIATIONS

<table>
<thead>
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<td>AP</td>
<td>affected people</td>
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<td>EASS</td>
<td>Urban and Social Sectors Division</td>
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<td>GRM</td>
<td>grievance redress mechanism</td>
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<td>MNRM</td>
<td>Mongolia Resident Mission</td>
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<td>MUB</td>
<td>Municipality of Ulaanbaatar City</td>
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<tr>
<td>NGO</td>
<td>nongovernment organization</td>
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<td>OSPF</td>
<td>Office of the Special Project Facilitator</td>
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<td>PMO</td>
<td>program management office</td>
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<td>SPF</td>
<td>Special Project Facilitator</td>
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<td>SSIA</td>
<td>State Specialized Inspection Agency</td>
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### NOTE

In this report, "$" refers to United States dollars.
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Project Fact Sheet

Project: The Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 1

Approved: 17 December 2013

Objective: To support the Ulaanbaatar City master plan in upgrading priority service and economic hubs (subcenters) in ger areas\(^1\).

Expected Outcomes: Investments in a network of subcenters that (i) improve residents’ access to basic urban services, public space, and socioeconomic facilities; (ii) support local economic development; (iii) allow residents and businesses to take advantage of urban economies; and (iv) provide better housing options.

Implementation: A multitranche financing facility implemented in three tranches over 10 years. Figure 1 is the map of the program, showing the location of the three tranches.

Project Tranche 1: This tranche focuses on two subcenters, Selbe (Figure 2) and Bayankhoshuu.\(^2\) Tranche 1 outputs are expected to include road improvements, flood protection channels, bridges, heating plant, water supply systems, heating distribution network, water reservoir, sewage collector, electric lines and telecommunications networks, kindergarten, business incubator, and vocational training center.

Affected Communities: According to the respective land acquisition and resettlement plans prepared for the Selbe Subcenter Roads and Infrastructure Component and the Bayankhoshuu Subcenter Water Reservoir and Water Supply Component, the project affects around 825 landowners (living in about 1,400 households).

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

Financing Plan:

| Grant 0380-MON: Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 1 Urban Environmental Infrastructure Fund under the Urban Financing Partnership Facility | Grant | $3.70 million |
| Loan 3098-MON: Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 1 | Ordinary capital resources | $27.50 million |
| Loan 3099-MON: Ulaanbaatar Urban Services and Ger Areas Development Investment Program - Tranche 1 | Concessional ordinary capital resources lending | $22.50 million |
| Counterpart financing | Municipality of Ulaanbaatar City (MUB) | $33.15 million |

\(^1\) A ger is a traditional Mongolian tent.

\(^2\) This complaint is only concerned with issues raised by affected people (AP) in the Selbe subcenter.
Figure 1: Ulaanbaatar Urban Services and Ger Areas Development Investment Program Map

Source: ADB.
Figure 2: Selbe Subcenter Location Map

Legend:
- Red = district heating
- Blue = water supply
- Yellow = power
- Green = sewage

Source: PMO.
I. ELIGIBILITY OF THE COMPLAINT

A. The Complaint

1. On 28 December 2020, 11 affected people (APs), supported by two nongovernment organizations (NGOs), lodged a complaint with the Office of the Special Project Facilitator (OSPF). The Special Project Facilitator (SPF) acknowledged and registered the complaint on 4 January 2021. This is the third complaint on this project. The complainants requested confidentiality and that, initially, OSPF should not disclose their identities to the project management office (PMO). Subsequently, on 15 January 2021, the complainants agreed that their names may be released to the PMO. On 2 January 2021, the SPF appointed a local facilitator to assist in assessing and resolving the complaint. It must be noted that the review and assessment process derived significant benefits from the engagement of a local facilitator.

2. The complaint raised issues in the Selbe subcenter area on (Figure 3) adherence to (i) Mongolian standards on road, safety on people, property, health, noise, and harassment by workforce employed by the implementers; (ii) instability of buildings and fences; (iii) physical injuries to residents due to a lack of safe temporary pedestrian passages; (iv) loss of safe entry and exit routes to property and (v) nondisclosure of information and lack of meaningful consultation. Through meetings and discussions with OSPF’s local facilitator, it became clear that the complainants alleged that the project triggered the following negative impacts:
   - damage caused by road construction, including structural damage to housing and other structures (e.g., walls, windows, flooring, fences, and so on);
   - loss of physical stability of buildings and furniture;
   - reduction in property values, which would jeopardize the negotiation of compensation;
   - reduction in land plot values as a result of partial land acquisitions that left plots too small or too close to a road;
   - loss of interest or justification to maintain a livelihood and/or property in the area;
   - complete loss of access to property, home, and garage;
   - loss of safe entry and exit routes to property;
   - elevated road construction above family plots, particularly located near bridge connections, that do not include protection barriers nor fortification of road slopes, which leads to the risk of vehicles or debris falling into family plots from the road or slopes;
   - emotional pain and insecurity due to constant fear of car accidents and the heightened risk to children necessitating the burden of added childcare;
   - physical injuries to residents due to a lack of safe temporary pedestrian passages;
   - continuing road construction expanding into housing areas, which forces residents to leave the area without a compensation or which may result in complaints or even legal action; and
   - “Attempting to address in a piecemeal manner further hurting affected households with potential to fall into poverty due to loss of land, property/home and livelihood resources etc.”

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3 Oyu Tolgoi Watch and Zurgaan Buudal Citizens’ Rights Protection Association
5 Excerpt from an original complaint form filed on 28 December 2020 with OSPF.
Figure 3: Complainant Household Locations in Selbe Subcenter

Source: OSPF Local Facilitator, in collaboration with PMO. This figure is handwritten.
3. Due to the coronavirus disease (COVID-19) pandemic, OSPF and its local facilitator have had to adopt innovative means to handle this complaint. For example, OSPF was unable to conduct a face-to-face fact-finding mission in Mongolia, so the necessary stakeholder meetings were held online. During lockdowns and quarantine, OSPF and its local facilitator have employed online resources (short messaging service, chat groups, voice and data messaging) to communicate effectively with the complainants. Also, OSPF’s local facilitator conducted additional training for the complainants on using online media and communications. Fortunately, notwithstanding the impediments presented by the pandemic, OSPF’s local facilitator was still able to arrange important and valuable site visits in Selbe.

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-assisted project and have made prior good faith efforts to solve the problems with the relevant operations department may file a complaint seeking assistance from the SPF to solve the problems that precipitated the complaint.6

5. On 18 January 2021, following a review of the project-related documents and a series of virtual meetings during 6-15 January 2021 with the key stakeholders of the complaint—PMO, ADB project team from Mongolia Resident Mission (MNRM) and Urban and Social Sectors Division (EASS) of the East Asia Department, NGOs, and complainants—the SPF declared the complaint to be eligible for problem-solving.

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 included the following actions: (i) documentation review; (ii) discussions and virtual meetings with the complainants, NGOs, PMO, MUB, and ADB staff in EASS and MNRM; (iii) capacity building for the complainants, particularly to better understand conflict resolution, negotiation, and communication; and (iv) joint site visits in the Selbe subcenter area. 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 SPF. During the COVID-19 pandemic, the engagement of local facilitators has proved to be a significant factor toward the successful achievement of the objectives of OSPF’s review and assessment process.

B. Identification of Stakeholders

9. Figure 4 presents the stakeholders of the complaint.

10. **Confidentiality.** Although the complainants initially requested confidentiality, they agreed with OSPF for their names to be released to the other stakeholders in order to expedite the processing of the complaint.

11. **Gender.** There are seven female and six male complainants from Selbe. During the review and assessment phase, both husbands and wives in affected households participated equally in the discussions and meetings, expressing their concerns related to the project. Moreover, an additional three complainants submitted claims to the OSPF local facilitator, but their grievances have been referred to the project-level grievance redress mechanism (GRM) as those three complainants have not made a good faith effort to resolve their issues with the PMO and ADB operations' team.

C. **Assessment of Issues**

(i) **Mongolian standards**

12. Two-thirds of the complainants stated in their claims that the road is built too close or almost attached to their homes and that the elevated road is making it possible for cars and debris from the road and road slopes to crash into the APs' plots. The complainants raised the issue of security due to the constant fear of car accidents and for the safety of children. All of complainants...
insist that a 50-meter buffer zone must be applied in accordance with Mongolian road standards. This also created confusion as to whether land plots must be fully acquired or may only be partially acquired.

13. The current project road is classified as an “urban collector road.” General system of standard technical documentation for Roads and Road facilities, Auto Road Planning, CNR 22-004-2016 (Third Edition), 2016, defines the buffer (border area) width for urban collector roads to be at least 2.4 meters (or 8 feet), including the sidewalk width.

14. While the highway design standards, have a clear definition on the buffer zone requirements along existing roads, there are inconsistencies in the road buffer requirements in master plan documents and other new settlement-planning standards. Though these are not fully applicable to the project road context, the guidelines are summarized below:

- The “Ulaanbaatar City Development Master Plan update for 2020; and Development Trends for 2030” Volume III, stipulates that the road buffer zone must be 9 meters from the road shoulder (p.100). This document was ratified by the Parliament Decree #23 in 2013. However, this is a master plan recommendation and not a road standards requirement.
- Another document “Norm and Standard for the city and village planning and construction БНбД30.01.03” specifies a buffer zone requirement of 50 meters for secondary street roads, from the road shoulder to the construction redline (Article 6.19). This document was approved by the Ministry of Infrastructure in 2003 and remains effective. However, this standard is mostly applicable for the roads to be built in new settlement areas and is not directly applicable to the roads in existing ger areas.

15. According to the PMO, the total land acquisition width for the road was 11–23 meters depending on the embankment height. A distance of 3 meters (including 1 meter along the embankment slope) from the pedestrian road was used to define the affected persons for the Ger Areas Development Investment Program, based on the previous practice. The PMO insisted that the road design and implementation have adhered to all relevant national standards and regulations, specifically БНбД 32-01-04 for the auto-road design drawing; and ЗЗХбД 22-004-2016 for the construction of the road. Currently, БНбД 32-01-04 standard on “Street and road planning in urban and settlement areas” is being updated by the Ministry of Road and Transportation Development.7

16. During the review and assessment phase, OSPF’s local facilitator and the parties jointly conducted the field trip to visit and understand existing ger area road situations, especially the buffer zones. The joint team visited four different ger area roads, both financed by the MUB budget and ADB. During the visits, the MUB and PMO confirmed that, regardless of the funding source, roads built in new settlement areas are possible to have larger buffer zones on both sides of the road, and roads built in existing residential sites may have a buffer zone of 0–3 meters either on one or both sides, as availability of the land is limited.

17. The site visits carried out during the review and assessment phase confirmed that provision of the minimum buffer of 2.4 meters as required in the national standards have not been complied with along several sections of the road, which has resulted in impacts on the adjoining properties and the consequent security risks.

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7 Government of Mongolia, Road and Transport Development Center. [http://rtdc.gov.mn/content/155?mid=23](http://rtdc.gov.mn/content/155?mid=23)
(ii) Instability of buildings and fences

18. Almost all complainants raised concerns about damage to housing and other structures, including walls, windows, flooring, fences, and so on, caused by vibration and the use of heavy road construction equipment. Complainants are concerned that property damage will lead to reduced compensation and, eventually, this will mean that residents will be disinclined to maintain a livelihood and/or property in the area. Some complainants complained that elevated road construction has rendered their land plot, garage, and property inaccessible, due to the difference in elevations of the road and the AP’s land plot, respectively.

19. Consultations with the PMO and its valuation experts showed that the valuation process was based on the construction materials without any depreciation or reduction for structural failures or deficiencies, and that the concerns of the complainants regarding a lower valuation and consequently reduced compensation of damaged properties will be clarified during subsequent consultations. However, the PMO agreed that the process for fair valuation of damages to buildings and fences due to road construction and the basis for attributing damages to road construction needs to be established to avoid any delays in compensating such affected persons.

20. In the past, both the PMO and at least one complainant requested the State Specialized Inspection Agency (SSIA)\(^8\) to inspect the houses in the ger area to ascertain whether the cracks and fractures to houses and fences are due to the road construction carried out in the neighborhood. SSIA responded that as most ger area houses are built without engineering designs and structure on swampy land near Selbe river, it cannot issue professional conclusions on such buildings. In any event, the PMO also insisted that due to swampy soil formation in the area, the houses and buildings at that site can be slightly lifted during the winter and subside during the summer.

21. During the review and assessment phase, numerous visits have been made, involving NGOs, the ADB project team, PMO, Land Agency specialists, and complainants to the Selbe subcenter, and the joint teams observed fractures, cracks, and other damages to houses and fences; however, it was hard to determine whether that damage was caused by the road construction vibrations in the absence of baseline data on existing buildings and fences adjacent to the construction site.

22. As a part of the review and assessment phase, the SPF has recommended that the PMO and ADB jointly engage an independent road safety expert to inspect the situation and provide professional recommendations.

(iii) Physical injuries to residents due to a lack of safe temporary pedestrian passages

23. Due to a lack of safe temporary pedestrian passages, one complainant fell and sustained head injuries and required medical attention, incurring costs to treat the injuries. The PMO explained that the road construction site had cautionary signs and temporary pedestrian stairs in certain places, but agreed to install permanent stairs to ensure the safety of community members living in the construction site neighborhood.

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\(^8\) The State Specialized Inspection Agency is the government authority in charge of carrying out specialized inspection in all sectors in order to ensure the implementation of national laws, and create a healthy and safe for people to live in healthy and safe environment, use quality products and services, and enable human and social sustainable development and a favorable business environment.
(iv) Loss of safe entry and exit routes to property

24. Three complainants requested the repair of the entry and exit access road to their land. According to the complainants, temporary blockage of entry and exit access road has caused the complainants to attempt alternative routes, leading to damage to vehicles, significant delays, missed appointments, and general inconvenience. The PMO agreed to repair the access road through its contractor companies; however due to several intermittent lockdowns (due to the COVID-19 pandemic) and non-construction during the winter season from October to April, entry and exit access road maintenance can only start in late April 2021.

(v) Nondisclosure of information and lack of meaningful consultation

25. The complainants alleged that there has been a lack of meaningful consultations with them. There has been little information on issues such as: i) the planned location of bus stops along the road; (ii) the compensation calculations, including the valuation methodology; (iii) the credentials of the appraisers who carried out the valuations; (iv) copies of valuation reports; and (v) how decisions were made to acquire the land, fully or partially, and the criteria used for those decisions.

26. According to the PMO, periodic community meetings and consultations have been organized in 2019–2021. Under the Tranche 1, a total of 67 community meetings including consultations, workshops, and project construction progress update with public safety concerns as well as functioning GRM were organized and participated by a total of 1839 residents, of which 57.5% are female representatives; and in 2020–2021, 62 households received the project construction progress update information with the safety warnings.

27. The PMO explained that as a part of the project-level GRM, land acquisition resettlement specialists and a GRM specialist interacted with the complainants directly to address their concerns. Some complainants agreed to settle the issues, which was documented in the PMO's GRM meeting notes. Despite having settled their grievance with the GRM, some of these complainants joined the complainants in the OSPF case. Thus, the documents presented during the GRM process, which resulted to the settlement in the GRM, had to be re-examined by the local facilitator.

III. AGREED COURSE OF ACTION

28. 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 further 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.

29. Due to several intermittent red-color lockdowns (due to the COVID-19 pandemic), 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 continues to employ emerging technology, especially in remote facilitation of meetings, and adopt innovative techniques to assist in handling complaints.

30. On 26 January 2021, the parties agreed to establish a project working group, headed by the deputy coordinator of the PMO. The MUB, in principle, agreed to address the key issues from
the complainants, including (i) to discuss buffer zone norms and standards for the road to be built in residential ger areas in Ulaanbaatar and fairly address the complainants’ request to acquire their land fully; and (ii) recommend improved road safety measures, including the appropriate location for speed bumps, road signs, etc. according to the relevant regulations. Moreover, 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.

31. During the review and assessment phase, the OSPF local facilitator arranged for the parties to agree to implement additional temporary actions to address the road safety issues.

Table 1. Temporary Actions to Address Road Safety Issues

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<th>Agreed Actions</th>
<th>Timeframe</th>
<th>Responsible Body</th>
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<tr>
<td>1</td>
<td>Engage independent audit experts to assess road safety.</td>
<td>March 2021</td>
<td>PMO, ADB</td>
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<td>2</td>
<td>Place cautionary boards/signs reminding people that the road is not officially commissioned yet and not allowed for driving, thus any issues happened on this road will be sole responsibility of the driver. Order and place six cautionary boards.</td>
<td>February 2021</td>
<td>PMO</td>
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<td>3</td>
<td>Build speed bumps (build temporary speed bumps until permanent ones are constructed during construction season) at eight locations.</td>
<td>February 2021</td>
<td>PMO upon consultation with MUB WG</td>
</tr>
<tr>
<td>4</td>
<td>Place safety, road signs.</td>
<td>February 2021</td>
<td>PMO upon consultation with MUB WG</td>
</tr>
<tr>
<td>5</td>
<td>Build metal guard rails along the selected locations of road, build road protection barriers along the pedestrian road, and implement such actions with additional funding. Until then, place temporary cement blocks on the sidewalk.</td>
<td>February 2021</td>
<td>PMO</td>
</tr>
<tr>
<td>6</td>
<td>Provide the net blocks on the specific locations with the higher level of the embankment.</td>
<td>When the construction season starts in the spring</td>
<td>PMO</td>
</tr>
<tr>
<td>7</td>
<td>Build access stairs for pedestrians (provide temporary stairs until permanent stairs are built during construction season), install handrails for the existing stairs.</td>
<td>When the construction season starts in the spring</td>
<td>PMO</td>
</tr>
<tr>
<td>8</td>
<td>Improve access road to the complainants’ land plots, as agreed pursuant to individual negotiations.</td>
<td>When the construction season starts in the spring</td>
<td>PMO</td>
</tr>
<tr>
<td>9</td>
<td>Repair structures and buildings damaged during construction, based on an assessment by structural engineers.</td>
<td>When the construction season starts in the spring</td>
<td>PMO</td>
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ADB = Asian Development Bank, MUB WG = Municipality of Ulaanbaatar City Working Group, PMO = program management office

Source: OSPF.
32. 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 and provide ongoing support on a day-to-day basis in this complaint resolution process.

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