

DECISION OF THE BOARD OF DIRECTORS OF THE ASIAN DEVELOPMENT BANK

On 31 January 2014, the Board considered DOC.R1-14: CRP Final Report – Compliance Review Request on the Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project - Loans 2288-CAM and 2602-CAM, and Grant 0187-CAM, and made the following final decision regarding the recommendations set out in Section X of the CRP Final Report. The Board approved recommendations 2, 3, and 4 as proposed by CRP and approved recommendations 1, 5, and 6 with modifications.

Taking into account the modifications as approved by the Board, Section X of the CRP Final Report would read as follows:

264. The CRP has given long, serious, and earnest consideration to these recommendations. Their main purpose is to bring the project into compliance with ADB safeguard policies, in view of the noncompliance on the part of ADB that the CRP compliance review disclosed. The recommendations also seek to avoid further harm to affected persons.

265. **Recommendation 1: Establish a compensation deficit payment scheme.** With regard to our findings under sections A.1 (on the adequacy of resettlement plan preparation and implementation), B.1 (on the adequacy of compensation for property losses), B.2 (on the adequacy of transition assistance for affected households), and B.3 (on the adequacy of compensation for lost income and income restoration), the most obvious recommendation appeared to be a fresh independent replacement cost study from 2006 to 2013 and a resettlement audit of compensation payments with a follow-up payment program to ensure that full compensation is paid to all AHs.¹ However, on further reflection the CRP concluded that a resettlement audit would not fully serve the purpose of speedily bringing this project into compliance. An audit would take at least 2 years to complete and another year would be spent making compensation payments to AHs. These AHs need assistance as soon as possible and the delay is not justifiable. Besides, the CRP's interviews with government officials clearly showed that the government does not favor a resettlement audit.

266. The CRP therefore turned to examining alternative ways of bringing this aspect of the project into compliance. It identified international and national mass compensation claims processing techniques as a model for a potential solution. There is considerable experience and knowledge on mass claims processing techniques in a wide range of situations including post-conflict war reparations to victims, dormant account claims on Swiss banks, and refugee and immigrant compensation schemes at the international level,² as well as natural disaster compensation schemes at the national level. The CRP's recommendation for addressing compensation deficits for property and income losses, as well as transition allowances, draws on these experiences and models. The CRP believes

¹ This is a key recommendation made in a confidential ADB Report of 12–22 September 2012.

² Howard Holtzmann and Edda Kristjansdottir, eds. 2007. *International Mass Claims Processes: Legal and Practical Perspectives*. Oxford University Press.

ADB would thus be able to address the compensation deficits and rectify noncompliance effectively and quickly.³ The recommendation below is provided with the expectation that if and when it is approved by the Board, it would be used by ADB Management as a guide in crafting its action plan for implementing the recommendations. The recommendation must therefore be seen as a broad framework and not as a rigid scheme.

267. The CRP recommends that ADB require the GoC:

- a. to establish a remedial action program to compensate the AHs. Such a program must ensure that AHs are compensated in accordance with ADB's safeguards policy and applicable ADB procedures and the guidelines set forth below, which CRP estimates would likely fall in the range of \$3 million to \$4 million. The source of funding for such program should be an ADB loan or other sources of funds; and
- b. to agree to the implementation and administration of such program, consistent with the guidelines set forth below, with the assistance, advice and oversight of ADB.

268. There are several options for how such a program could be established and operated and what factors might be considered in computing compensation deficits, but the operations of the program have to satisfy the following guidelines, consistent in any case with ADB's safeguards policy, applicable ADB procedures, and relevant loan covenants:

- (i) The program must be established and the compensation paid to AHs quickly (within 12-18 months of the approval of these recommendations by the Board) and efficiently.
- (ii) The program might not compute compensation deficits with precision but should establish sufficient and clear entitlements for compensation categories (property loss, cost adjustments for inflation, transition allowance, income loss, etc.) in compliance with ADB's safeguards policy and applicable ADB procedures for which AHs could apply.
- (iii) The program has to mitigate property, transitional, and income losses suffered by AHs so that they are not made worse off as a consequence of the resettlement.
- (iv) As required by paragraph 128 of the Accountability Mechanism Policy, all remedial actions will be carried out in accordance with applicable ADB policies and procedures, and with the consent of GoC as contemplated by such paragraph 128.

³ This would include the additional 248 AHs in Phnom Penh that were initially assessed as partially affected, but later found to be fully affected (paras. 153–154). The still pending Addendum RP for Phnom Penh was intended to provide compensation and resettlement assistance for the 105 AHs that opted to move to the Phnom Penh resettlement site. The remaining AHs who choose to relocate close to their original place of habitation would apparently not receive any additional compensation although their houses had been found to be fully affected.

- (v) Appropriate arrangements (including necessary skills and infrastructure) will be devoted to implement the program.
- (vi) The program should operate transparently.
- (vii) The program must have an oversight body which can also act as a single-tier appeal body regarding computation and payment of compensation.

269. An illustrative example of how such a scheme could be designed and implemented is provided in Appendix 5 of this report.

270. ADB Management in its response to the *draft* CRP report stated that it “agrees that compensation deficits should be rectified” but that the “establishment of an ADB fund for compensation payments is not the appropriate mechanism” for the reasons set out in its response. One reason adduced by ADB Management was that the recommendation constituted “damages” and was not within the competence of the CRP. The CRP believes that the recommendations contained in this *final* report fall squarely within the definition of compensation payable to AHs under ADB operational policies and procedures and its recommendation seeks to bring this project into compliance.

271. The requesters in their comments on the CRP draft report state that the “broad contours of the proposed compensation deficit payment scheme represent an acceptable remedy for the issues of inadequate compensation for losses.” However they assert that “there is too much discretion granted to ADB Management in the CRP’s recommendation to design the scheme” and “(g)iven their experience over the past four years, the requesters have little faith that the ADB will follow through appropriately with this recommendation unless the basic structure and principles of the scheme are clearly prescribed as recommendations by the CRP and adopted by the Board.” In the CRP’s view, the guidelines set out in the recommendation if and when adopted by the Board will need to be followed by the ADB Management, and the CRP will have an opportunity to comment on Management’s action plan drawn up in pursuance of those guidelines and to monitor the implementation of the action plan if and when it is approved by the Board.

272. **Recommendation 2: Improve facilities at resettlement sites.** With regard to its findings in section A.2 (on adequacy of basic services and facilities at resettlement sites), the CRP acknowledges that considerable efforts are under way to ensure that the access roads are improved after the rainy season ends in November 2013. The CRP also found that all the sites now have water and electricity supply, though in Battambang the quality of the water supply is still a significant issue. A primary school has been built in Poipet and the school at the Phnom Penh resettlement site is being enlarged to accommodate 10 more classrooms. The CRP also expects to see the continued provision of the medical insurance scheme formerly provided by SKY. The CRP recommends that the medical center at the Phnom Penh site be refurbished, provided with a better supply of medication, and properly staffed with a medical doctor. ADB Management should present a time-bound action plan that spells out, in some detail, both urgent and longer-term actions to be taken to improve and maintain the facilities on all sites.

273. **Recommendation 3: Improve the functioning of the grievance redress mechanism, to be reflected in a time-bound and verifiable action plan.** The CRP's findings under section A.4 acknowledge the improvements that have been made in the grievance redress mechanism. Yet it is still not functioning as expected. The CRP suggests that the ADB Management review this mechanism and propose interventions, including training and capacity building, as well as a greater up-front role for IRC in providing guidance on complaint handling. ADB Management should have an action plan with specific time-bound and verifiable actions for improving the functioning of the grievance mechanism.

274. **Recommendation 4: Develop an appropriate program to build capacity for resettlement in the IRC, to be reflected in a time-bound and verifiable action plan.** With regard to the CRP's findings under section A.5, ADB has taken action to build the capacity of the executing agency (IRC) for resettlement. In CRP interviews with the IRC, it was clear that the resettlement committee has an enthusiastic group of young staff, many of whom are willing to learn best practices and find ways to improve performance in resettlement and other safeguards. IRC now provides services to many projects funded by different donors and it is therefore in the interests of ADB to continue to build the capacity of the IRC by offering training and exchange visits to other places in Asia where resettlement is being carried out more successfully. The CRP suggests that ADB, in consultation with IRC, develop an appropriate capacity-building program for IRC, to be reflected in a time-bound and verifiable action plan. The plan may include training and other interventions such as the provision of expertise.

275. **Recommendation 5: Establish a debt workout scheme to help highly indebted families repay their accumulated debts through a dedicated credit line and a debt workout facility.** The dedicated credit line would provide funds at a highly subsidized interest rate and at sufficiently long maturity. ADB loans or other funds could be used to finance this debt work out scheme. Funds could be used only to repay debts. Funds provided under the debt workout program would be disbursed directly against AH loan repayment obligations, and would not be disbursed to indebted households. The repayment of informal lenders that have lent at usury rates to AHs presents a special challenge. Households interested in participating in the debt workout scheme should be consulted on how procedures for repaying debts to informal money lenders directly through the debt workout facility could be established. AHs would be required to use the incremental compensation payments proposed in recommendation 1, for debt repayment. Funds provided under the facility to a single household would need to be capped, for example at \$1,000, to avoid fund capture by better-off households, which could borrow larger amounts because they have more valuable assets. AHs participating in the scheme would also be required to participate in basic financial training to improve household financial management. The scheme could be implemented by an NGO or other suitable institution that can demonstrate adequate financial management competence. Further data on the debt levels of resettled households would be required to establish the approximate size of the fund for a debt workout.

276. **Recommendation 6: Implement the expanded income restoration program in a sustained and sustainable manner.** The EIRP now being implemented is an appropriately designed program. It provides funds to SHGs for capacity building, some

funds for investments, and training support. For the program to be sustainable, capacity building should be provided over an extended period, to allow SHGs to develop into sustainable institutions and eventually savings groups, and SHG systems and financial management processes to mature. In light of the vulnerabilities and high indebtedness experienced by many AHs during the resettlement process, support under the EIRP to resettled households should be continued.

With respect to recommendation 7 relating to the freight facility at the Samrong Estate, the Board noted that the government of Cambodia has requested that the development of that freight facility be removed from the project scope. The Board also noted Management's advice that an appropriate amendment to the project scope was being processed, and would be presented to the Board for consideration in due course. The Board did not adopt recommendation 7 pending a final determination of the scope change.

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