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Aug 28, 2012

*Via Electronic Mail*

Secretary, Compliance Review Panel  
Asian Development Bank  
6 ADB Avenue  
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Philippines  
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**Re: Request for Compliance Review on GMS: CAM: Rehabilitation of the Railway of Cambodia Project**

Dear Secretary,

1. Inclusive Development International (IDI) is submitting this request to the Compliance Review Panel (CRP) on behalf of households affected by the CAM: GMS Rehabilitation of the Railway in Cambodia Project (the "Requesters") to investigate whether ADB has complied with its operational policies and procedures regarding the Project.
2. The Requesters currently reside in, or have been resettled from, sites along the railway tracks that are being repaired or constructed by the Project in the provinces or municipalities of Sihanoukville, Phnom Penh, Battambang and Poipet.
3. The Requesters have authorized IDI to submit this request for investigation by the CRP on their behalf, and to represent them throughout the CRP process (see Annex 1). The Requesters have asked that their names be kept confidential. This request is supported by three local Cambodian non-governmental organizations, which also decline to be publicly named.
4. The Requesters believe that they have, or are likely to, suffer damage or harm (set out in paragraphs 13 – 73) due to ADB's failure to comply with its operational policies and procedures and international law requirements (set out in paragraphs 86 – 97).
5. The Requesters have repeatedly raised their concerns through the Project Grievance Mechanism and with the ADB Cambodia Resident Mission, the relevant Operational Department, and ADB Senior Management at meetings and through written communications since late 2010. Several NGOs have also provided extensive evidence

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of harm suffered or likely to be suffered by Project-affected households as a result of non-compliance by the ADB with its operational policies and procedures since early 2010. Details of these efforts are provided in paragraphs 74-79.

6. The Requesters submitted a complaint to the Office of the Special Project Facilitator (OSPF) on 21 November 2011, which was deemed eligible on 11 January 2012. A course of action was finally agreed on 22 August 2012 and the OSPF process has now reached Stage 7. The Requesters now request that the CRP undertake a parallel investigation into ADB's compliance with its operational policies and procedures because they do not believe that the OSPF process will effectively address the non-compliance issues with which they are concerned. Additional reasons for this decision are provided in paragraphs 80– 85.

## **I. Background**

7. At least 4174 households<sup>1</sup> whose residences, other structures and/or assets were or are situated within the Corridor of Impact (COI) of the railway line or on land required for the construction of stations, depots or other Project-related infrastructure stand to be affected by the Project [hereafter “affected households” or “AHs”]. The COI extends 3.5 meters either side of the centerline of the tracks in Phnom Penh and provincial cities and 5 meters on either side of the centerline in other provincial urban centers. Resettlement activities commenced in the first half of 2010. As of August 2012, the majority of households in the COI have been relocated or displaced by the Project, while an estimated 60 families in Poipet and 66 families in Phnom Penh are still remaining within the COI. A further 231 families farm and/or reside on land within a 103.6 ha area known as Samrong Estate, which the Project seeks to acquire for use as a freight and cargo facility.
8. Affected households have been or are required to either relocate to a Project-sponsored resettlement site, or, if the part of their residence outside of the COI is at least 30 square meters, they are required to dismantle the part of the house and/or other structures within the COI but remain living in the residual Right of Way (ROW), where their security of tenure remains precarious. At least 1,200 households are totally affected and must relocate.
9. With the exception of residents living in Samrong Estate who have asserted their legal possession rights<sup>2</sup> to that land, the households affected by the Project live on land defined by the Cambodian Land Law (2001) as State Public Property and are regarded as “illegal settlers” by the Royal Government of Cambodia (RGC). Nonetheless, under the Project policy, their occupation of State Public Property does not preclude entitlements.

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<sup>1</sup> As per the updated Resettlement Plans (2009).

<sup>2</sup> According to Cambodian Land Law, persons who possess certain types of land and meet a number of criteria are recognized as legal possessors, conferring on them a bundle of rights almost akin to ownership. These households are eligible to apply for formal land title. The process of formally registering all land plots throughout Cambodia and issuing ownership title is currently ongoing and is years away from completion. The majority of Cambodian households that have recognizable claims under the Land Law as legal possessors of their land have not yet had the opportunity to have their possession rights converted into full ownership through the issuance of title deeds.

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10. Pursuant to Resettlement Plans (RPs) prepared under the Project, all AHs are entitled to compensation for their lost or partly lost structures and/or assets based on the Detailed Measurement Survey (DMS). According to the RPs totally affected households required to relocate were to be provided with three options: (1) relocation to project-sponsored sites with security of tenure, (2) re-organization onsite in the ROW with a guarantee of being able to remain there for at least the next 5 years, and (3) cash compensation for lost assets and self-arranged relocation. Vulnerable households are entitled to additional support. AHs are also entitled to compensation for transition costs, lost income due to resettlement and income restoration support. The overriding objective of these entitlements is to ensure that AHs receive assistance so that they would be at least as well-off as they would have been in the absence of the project, in accordance with the ADB's 1995 Policy on Involuntary Resettlement.
11. For reasons detailed below, full entitlements under the RPs were not provided or have not been offered to many households, including but not limited to the Requesters, and these households have been, or have a legitimate fear of being, made worse-off as a result of the Project. Furthermore, the RPs and resettlement budget were themselves inadequate to ensure that affected households would not be made worse off. These circumstances amount to non-compliance with, inter alia, the ADB Policy on Involuntary Resettlement.
12. A number of publications have been produced by NGOs in Cambodia that provide evidence of harm suffered by Project-affected households due to non-compliance with ADB policy. Information from these publications is used extensively throughout this Request for Compliance Review. These publications include:
  - Sahmakum Teang Tnaut (STT), Rehabilitation of Cambodia's Railways: Comparison of field data, July 2011 (see Annex 2).
  - Bridges Across Borders Cambodia (BABC), "DERAILED: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway," 2012 (see Annex 3).
  - STT and Housing Rights Task Force (HRTF), Railways Relocation in Phnom Penh: Six women tell their stories, Fact and Figures Issue 20, March 2012 (see Annex 4).
  - STT, Losing the Plot: Rapid Assessment of Household Debt in Trapeang Anhchanh, June 2012 (see Annex 5).

## **II. Harms suffered or likely to be suffered**

### Anxiety and stress due to inadequate access to information and consultation and threats and harassment:

13. AHs, including Requesters, were not provided with Project-related information or consulted in a manner that ensured that they were "fully informed and closely consulted on resettlement and compensation options," as required by ADB policy. Two main

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communication methods were utilized to make resettlement information available to affected households: the dissemination of public information booklets (PIBs) and community meetings. The PIB was not an appropriate or accessible method of communication for a high proportion of AHs as evidenced by the BABC 2012 report, which found that of the 200 households interviewed, 20 percent of men and almost 40 percent of women reported being illiterate. Community meetings did not ensure that AHs were closely consulted because of limited opportunities to ask questions or raise concerns and unsatisfactory responses by the Inter-Ministerial Resettlement Committee (IRC). A vast majority of people interviewed for the BABC study did not think that they received sufficient information about the Project.

14. AHs were required to thumbprint post-it notes with handwritten compensation amount offers to receive payment. The post-it note was in most cases the first piece of documentation AHs received containing information about specific household entitlements. If AHs did not thumbprint the note because they disagreed with the amount offered they did not receive a copy.
15. BABC research indicates that an air of intimidation, threats and coercion has pervaded the resettlement process. Over one third of affected persons interviewed for the BABC study reported that they felt they had been intimidated or pressured by local authorities, including those tasked with Project implementation, during the resettlement process. The highest proportions of threats and intimidation were reported by respondents in Poipet, Phnom Penh and Battambang. In Poipet, nearly half of all respondents reported some form of coercion. Coercion techniques varied from overt threats of destruction of property without compensation to more subtle pressure to accept compensation and not complain.
16. Requesters report that the lack of information, the fear of complaining and the duress under which they have been placed to accept proffered compensation that they deem inadequate to ensure non-retrogression in their standard of living has resulted in a high level of anxiety and mental strain.

Households threatened with illegal forced eviction

17. Households residing within the COI in Poi Pet have been served with three eviction notices since April 2012. In the first notice dated 27 March 2012, twenty-two households were informed that they have 10 days “to remove their houses and buildings away from the railway.” The notice further states that “[f]or people who do not move within 10 days, city hall will take action according to the law and will not be responsible for any damage or loss of property.” The notice was issued by Poi Pet City Hall to residents on 5 April 2012, just one day before the deadline.<sup>3</sup> The notice did not provide a justification for the eviction, nor did it mention any legal recourse available to challenge the decision. Several of the households who received the eviction notice have complaints pending with OSPF.

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<sup>3</sup> See The Cambodia Daily, “*Eviction Notices Arrive Too Late, Villagers Say*,” 6 April 2012 (noting, *inter alia*, that the eviction letter was received one day before the deadline).

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18. In response to a letter of concern about the threatened eviction that 4 NGOs sent to the ADB, the ADB Country Director stated only that the IRC had assured the ADB that “no actions will be taken until after the Khmer New Year national holidays (13-16 April 2012).” ADB also stated that the IRC explained to ADB that only 8 of the 22 families are project affected households, while the 14 other households moved to the project site after the resettlement plan cut-off date and therefore have no entitlements under the Project.<sup>4</sup>
19. A second notice was issued to families in July and a third notice was issued on 20 August, but this time to 111 households, informing them that they had three days to move. In verbal communications following this notice, the ADB CARM Resettlement Specialist clarified that 111 households, 64 households are partially affected, 7 households are totally affected but have not yet signed resettlement agreements because they contest the proffered compensation, and 40 households are “illegal encroachers” who moved to the site after the 2009 cut-off date.<sup>5</sup>
20. IDI has learned that a number of the 64 households classified as partially affected would be left with less than 30 square meters of living space after removing the portion of their structures within the COI and are thus entitled to compensation for the full replacement cost of their structures and a plot at the resettlement site. The IRC has evidently told them that they have no more plots available for them.
21. With respect to the so-called “illegal encroachers,” it is important to note that the land that they occupy with their residences is in the area of the “Missing Link”, where there has been no railway track for decades. Without any physical demarcation, families who settled in this area were not on notice that they were encroaching on State land within the railway ROW. For those who purchased plots and/or housing in the area after the cut-off date, it is unclear if they were duly informed about the Project. BABC’s research found that information disclosure to affected people in all Project areas was severely lacking. Regardless of Cambodian domestic law provisions with respect to illegal occupation of State land, the International Covenant on Economic, Social and Cultural Rights, to which Cambodia is a State party, protects the right to adequate housing. This provision entails the prohibition of forced evictions and the deprivation of housing without the provision of alternative adequate housing. There are no exceptions, including cut-off dates for development projects, to the basic human right to adequate housing. Therefore even so-called encroachers should be entitled, under the Project, at minimum to the replacement cost of their housing and other improvements to the land so that they are not left destitute as a result of the development project.

Indebtedness and impoverishment resulting from inadequate compensation and loss of income

22. Many AHs, including Requesters, have not received compensation amounts according to their entitlements under the RPs or ADB policy. These AHs have not received full replacement cost-based compensation for lost structures and assets as required by the

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<sup>4</sup> Letter to 4 NGOs by ADB Country Director Putu Kamayana, 12 April 2012.

<sup>5</sup> Verbal correspondence with ADB CARM Resettlement Specialist, 24 August 2012.

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RPs. Moreover, AHs that have lost their means of livelihood as a result of the Project have not been “compensated and assisted so that their economic and social future will generally be at least as favourable with the project as without it,” as required by ADB policy.

23. There is evidence of inaccuracies in the categorization of structure types and other measurements and a systematic downgrading of compensation entitlements for structures. The July 2011 STT report compared the information recorded on household compensation documentation provided by the IRC with STT's own household survey of four Phnom Penh railway communities. According to the report, in “the clear majority of cases, data collected by STT showed households were eligible to receive (sometimes significantly) higher rates of compensation” than that afforded to them by the IRC. The report identified a number of patterns that indicate systematic inaccuracies in compensation amounts offered, and therefore, presumably, flaws in the DMS. These patterns included the exclusion of households that should have been categorised as “totally affected” and been eligible for corresponding entitlements; the systematic downgrading of housing structures into a lower category of structure quality and corresponding compensation entitlements; failure to compensate households properly for multi-floor structures; and some multiple family households receiving only single-family entitlements. The last pattern was found to have occurred in relation to widow-headed households in the BABC 2012 report. In a few cases widows were treated as belonging to the same household as their fathers or sons, despite living in separate houses prior to resettlement and did not receive a separate plot at the resettlement site.
24. Project compensation rates for losses and costs of resettlement were calculated in 2006, when the original Resettlement Plan was prepared. Compensation payments, however, began in 2009 and are continuing well into 2012. In more than five years, with the possible exception of Phnom Penh, the compensation rates were not adjusted to reflect annual inflation. According to the International Monetary Fund (IMF), average consumer prices rose every year between 2006 and 2010, except in 2009 in which there was a slight deflation of consumer prices, after a nearly 25 percent inflation rate in 2008. The ADB itself has released data that shows a 4.7 percent rise in the consumer price index in 2006, 5.9 percent in 2007, 19.7 percent in 2008, -0.7 percent in 2009 and 4 percent in 2010.
25. The BABC report found that the average amount of compensation received by totally affected households required to resettle interviewed is US\$757.50, with a few households receiving \$200 or less and the vast majority receiving less than US\$1000. These compensation amounts were supposed to cover loss of structures and assets, transition costs, loss of income and all other resettlement-related losses, costs and expenses. Unsurprisingly three quarters of interview respondents reported that they felt unsatisfied with the compensation package. AHs gave various reasons for being dissatisfied including that the amount is not enough to rebuild decent shelter, to connect to essential services, to cover lost income and to cover transportation and reconstruction costs. Female-headed households in particular said that they could not afford to hire laborers to construct shelters for the families.
26. According to the NGO Habitat for Humanity, which has built houses for some of

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Cambodia's most impoverished communities, the cost of constructing a basic adequate 4 x 4 meter stilt wooden house is at least US\$1,925.75, constituting US\$1,660.75 in materials and US\$265 in labor. Constructing a 4 x 6 meter brick house costs a total of at least US\$1,040, constituting US\$800 in materials and US\$240 in labor costs. The average total compensation provided to totally affected households (US\$757.50 according to BABC's survey) falls well short of these amounts and is supposed to cover *all* resettlement related losses, costs and expenses. In some cases partially affected households had to demolish their entire houses in order to clear the COI because the structures were made from concrete. Some were nonetheless only compensated for the part of their structure in the COI. The average compensation rates received by partially affected households interviewed for the BABC study was US\$206.60.

27. This situation is reflected in a survey conducted by the External Monitoring Organization (EMO) and reported in the 12<sup>th</sup> Quarterly Social Monitoring Report. The EMO found that 60% of AHs reported that the compensation they received was inadequate to restore their lost property.
28. One result of all of the above is that AHs were unable to construct adequate housing post-resettlement without going into debt. For the reasons outlined above, in many cases AHs did not receive replacement cost compensation; however even if replacement cost had been provided, for families living in inadequate shelters previously, this amount would not have been enough to ensure that they could live in basic adequate housing with protection from the elements and sufficient space and privacy post-resettlement. Families living in inadequate shelter prior to resettlement should be regarded as vulnerable and alternative housing or assistance through a minimum threshold compensation amount should have been provided to ensure access to adequate housing upon resettlement.
29. Exacerbating the harm caused by inadequate compensation amounts, totally affected households claim that their incomes have dropped significantly as a result of resettlement. AHs not yet resettled fear that their incomes will diminish once they relocate. AHs have not received compensation to cover these losses.
30. The primary reason that income levels have dropped post-resettlement is that three out of five of the Project-sponsored sites are too far away from centers of economic activity and previous sources of livelihood. The extra distance to jobs or income earning opportunities means that the cost of transport may either outweigh or substantially cut into daily income.
31. The 2006 Resettlement Plan states on page 59 that “[o]ff-site relocation will be to sites within close proximity (3 to 5 km) of current locations, wherever possible, to minimize distance from current livelihood activities and to enable [their] continuation.” Selection of sites beyond that distance was only to occur “under exceptional circumstances,” where closer sites cannot be found.
32. In Phnom Penh, one peri-urban resettlement site has been established for all Phnom Penh affected communities, regardless of their pre-resettlement location. While the Phnom Penh resettlement site in Trapeang AnhChanh, is only a few kilometers away

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from the Samrong Station communities, it is between 20 to 25 kilometers from other pre-resettlement communities, such as Mittapheap and Toul Sangke A. Trapeang AnhChanh is located well outside the busy urban center, in which residents from inner-city communities derive their incomes. Project-affected women who have moved to the site have especially reported facing difficulties in finding jobs and in some cases have stopped work altogether. Despite being specifically forewarned by NGOs and the United Nations Human Rights Office (UNOHCHR) about the likely risks of a drop in living standards following a move to Trapeang AnhChanh,<sup>6</sup> the ADB nonetheless approved the Updated Phnom Penh Resettlement Plan, including the selection of Trapeang AnhChanh as the Project-sponsored resettlement site. ADB asserted at the time that land within a 3 to 5 km radius of pre-existing settlements in Phnom Penh was too expensive to purchase.<sup>7</sup>

33. In Battambang, the resettlement site is approximately 5 to 7 kilometers from most previous places of residence. In Sihanoukville, the site is 10 kilometers from many former homes. The relevant Resettlement Plans state that the sites are 4 kilometers (Battambang) and 2 kilometers (Sihanoukville) from former locations, but this measurement is not an accurate description for many resettled households. Resettled households in both these areas expressed dissatisfaction with the location of the site because of, inter alia, reduced income-earning opportunities. The distances are considerable for families that do not own a car or motorbike, and in many cases, even a bicycle. As a consequence, over 50 percent of resettled families in both Sihanoukville and Battambang do not live at the resettlement site and some are instead renting near their sources of livelihood at their own expense. Some families in Sihanoukville have reportedly sold their plots. The same pattern has repeated at the Phnom Penh resettlement site.
34. The combined factors of reduced income, increased expenses and insufficient compensation have led to widespread household indebtedness. Many AHs, including Requesters, claim that they have had no choice but to borrow from moneylenders at exorbitant interest rates ranging from 5 to 7 percent per month, using their plot of land at resettlement sites as collateral.
35. AHs have expressed fear that they will lose their plots to creditors once (or even before) they receive title because they are unable to manage their monthly repayments because of their reduced income-earning potential. According to RPs, resettled households are to receive title to their plots five years after resettlement; however the unmanageable debt burdens on AHs pose a severe threat to their security of tenure. As indebtedness increases and remains unaddressed, the risk that AHs will become landless and homeless escalates.
36. AHs have said that despite being aware of the risk of indebtedness they felt they had no choice but to borrow to meet the basic needs of their families including food. NGO

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<sup>6</sup> Email correspondence between BABC and ADB Social Advisor Pierre Arnoux between May – June 2010, and meeting on 23 July 2010 at CARM office, including Peter Broch (ADB), Pierre Arnoux (ADB consultant), NGO representatives and staff of UNOHCHR.

<sup>7</sup> Email communication from ADB Social Advisor Pierre Arnoux, May 21, 2010.

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investigations have found that principle loan amounts range from between \$500-\$2000 dollars. See Annex 5 for more information about the indebtedness impacts of the Project.

37. Due to the urgency of the problem, the issue of indebtedness has been raised with the ADB repeatedly by both AHs and NGOs verbally and in writing. ADB has stated repeatedly that it will not provide debt relief to AHs. Rather ADB has stated that the debt issue will be addressed indirectly through the IRP and the Enhanced IRP, supported by a 1 million USD grant from AusAID in late 2011 (see Annex 6).<sup>8</sup> This is discussed further in paragraphs 40-43.
38. Income Restoration Programs had not commenced at any of the resettlement sites at the time or for a considerable period of time after families had relocated. In a December 2010 letter to NGOs the ADB acknowledged that “[t]he income restoration programs for the Northern and the Southern Lines are both unacceptably late” (see Annex 7).<sup>9</sup>
39. As a part of the IRP, skills training workshops were held at resettlement sites beginning in 2011. The quality of these workshops and the applicability of the skillset covered at these workshops, including chicken raising and mushroom growing, are reported to be low. Some relocated households had problems growing mushrooms due to the lack of space on their plots. This also posed an obstacle to raising chickens or animals. Some AHs reported that despite the training they lack the capital to begin businesses. Some AHs reported that they think the IRP is “useless” for them because it is not what they are interested in doing.
40. ADB has not yet disclosed to AHs or monitoring NGOs the detailed terms of reference or detailed budget breakdown for the EIRP, nor were they consulted on its terms. According to correspondence received from the ADB on 10 April 2012, under the EIRP the Government is establishing “self-help groups and will include social safety nets provision and access to revolving community credit schemes to assist affected households during the transition period.” In its letter, the ADB claims that the EIRP “will improve relocated household’s ability to earn a living through livelihood opportunities near the new community” (see Annex 6). In an “NGO Round Table on the Enhanced Income Restoration Program,” held at the ADB CARM office on 27 August 2012, a presentation was made to NGOs on the broad aims and structure of the EIRP; however no documentation was provided with detailed information about how the program will work or how the budget is allocated.
41. AHs have reported that they are required to form savings groups, or “self-help groups” (SHGs) and that if they do not participate in the SHGs, they will not have access to seed capital or other support through the program. Some AHs have complained that since they are unable to even meet their loan payments and basic family needs they do not have any money to contribute to a savings group. ADB clarified in the EIRP round table on 27 August that AHs are not required to contribute savings to the SHG in order to become a member; however this has apparently not been communicated to AHs, who

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<sup>8</sup> ADB response to 02 April 2012 letter from Trapeang AnhChan community letter, 10 April 2012.

<sup>9</sup> ADB letter to NGOs, 13 December 2010.

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continue to believe that they are required to contribute a minimum amount per month in order to become a member. Furthermore, ADB explained that the EIRP was only available to AHs at the resettlement sites. ADB could not respond to questions about how AHs who have not moved to the resettlement site because they claim that their compensation was insufficient to rebuild their homes will be supported to relocate, build new housing, and receive their entitlements to livelihood assistance.

42. Importantly, there is no provision under the EIRP to compensate people for their actual loss of income and livelihood sources, including net income lost during the transition period. Provision of such compensation is required by the 2009 ADB Safeguard Policy Statement (SPS).<sup>10</sup> While the Project may not have been subject to the SPS under the Loan Covenant, this requirement of the SPS is best practice that should have guided ADB and AusAID in designing mitigation measures such as the EIRP (three years after the adoption of the SPS) to address harms caused by the extreme tardiness and inadequacy of transitional development assistance programs for economically displaced households. ADB has consistently declined to respond to inquiries about this issue when raised during meetings throughout 2011-2012.

43. ADB confirmed again during the 27 August NGO roundtable discussion that the EIRP would not provide debt relief to vulnerable AHs who are heavily indebted as a result of resettlement. IDI and the Requesters believe that the refusal by ADB to provide debt relief will mean that the EIRP will not successfully reverse impoverishment of vulnerable families who are heavily indebted. As noted above, the debt burdens that these families face are a direct result of the Project, and specifically its failure to 1) provide compensation at the actual replacement cost for many totally affected families due to flawed DMS and failure to update rates based on the market price at the time of resettlement; 2) provide an option of alternative housing or a minimum floor compensation rate to cover the costs of basic adequate housing upon resettlement; 3) protect these vulnerable families from predatory private money-lenders when they were resettled, at least by assisting them to access affordable micro-finance and avoid loan-sharks; and 4) displacing people from their livelihoods without first establishing adequate income restoration programs and leaving them without any meaningful support for up to two years. The provision of debt relief to these families is not only essential to ensure the success of the EIRP, but it is essential to repair the harms that have been caused by acts and omissions of ADB with respect to its obligations under the Policy on Involuntary Resettlement.

Loss of access to basic services and unsafe conditions at resettlement sites leading to deaths

44. Households resettled under the Project, including Requesters, have in some cases reduced access to basic services, including water and electricity, as compared to their pre-resettlement situation. None of the five Project-sponsored resettlement sites were properly prepared with services prior to relocation of households, in contravention of RP commitments and ADB policy. Many of the services have since been installed but some remain absent or inadequate. For example, AHs in Battambang report that water trucks, which had been delivering subsidized water to affected people at an affordable price

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<sup>10</sup> ADB Safeguard Policy Statement, June 2009, Appendix 2, para 12.

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following ADB's intervention in December 2010, have stopped. A new pond and water filter installed behind the resettlement site replaced this service and was intended by ADB and IRC as a permanent water solution, contrary to ADB's assurances in its 13 December 2010 letter to NGOs that piped water would be made available (see Annex 7). AHs report that there is an insufficient supply of pond water to meet the water needs of the families. Some families have been forced to return to fetching water from the rice fields, while others purchase unsubsidized water trucked in by private companies at a higher rate than they were paying at their previous location. In Poipet, AHs report that the drainage system is broken and that the IRC has informed people that it is no longer their responsibility to maintain it.

45. Resettled households were required to pay connection fees for services in at least three of the resettlement sites, contrary to previous commitments by the IRC and ADB, exacerbating their financial strain. Only some AHs have since been reimbursed. Others have been only partly reimbursed. Some AHs have not connected to electricity because they cannot afford the fee. On 4 April 2012, 166 affected families resettled to the Phnom Penh site delivered a complaint letter to CARM for the ADB President stating that they "are disconnected from electricity," and are "living in the dark at night" (see Annex 8).
46. A chart of services available at resettlement sites as the time of relocation and as of December 2011 is available on the last page of the BABC report.
47. The 2006 Resettlement Plan states on page 54 that before any households relocate, resettlement sites "will be developed with all basic infrastructures: access roads, water supply, electricity, drainage and toilet facilities (pit latrines)." These requirements were confirmed in December 2010, when the IRC and the ADB adopted a "Resettlement Checklist" to be completed before any further relocation of affected households could take place.<sup>11</sup> The introduction of the checklist system was presented as a new safeguard to prevent a repeat of problems that had already occurred in Sihanoukville and Battambang, where affected households had been resettled before the site was prepared. A year later, however, the ADB reported that the checklist system had been abandoned - without explanation.<sup>12</sup>
48. Tragically, two children, a brother and sister aged 9 and 13 respectively, drowned in an eight-meter deep pond near the Battambang site four days after resettlement in May 2010. The pond was used as a source of water for resettled families since no other source of water was provided at the site.<sup>13</sup> The deaths of the children underscore the lack of due diligence measures undertaken to ensure availability of essential services and a reasonable level of safety at the resettlement sites. All residents should be able to access basic services and facilities without putting themselves at risk. (See also, paragraph 51 below.)

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<sup>11</sup> See ADB letter to NGOs, 13 December 2010 (Annex 6).

<sup>12</sup> Meeting at CARM between NGOs and community representatives, AusAID staff, ADB CARM staff, SERD staff and DG Kunio Senga, 15 November 2011.

<sup>13</sup> Richard Baker and Nick McKenzie, "Two child deaths linked to AusAID Cambodia project," The Age, 1 November 2010. See <http://www.theage.com.au/national/two-child-deaths-linked-to-ausaid-cambodia-project-20101031-178w7.html>. See also testimony from the deceased children's parents at: Zoe Daniel, "Cambodian rail line to displace country's poor," ABC News, 13 May 2011. See <http://www.abc.net.au/lateline/content/2011/s3216781.htm>.

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Loss of access to health centers and schools and other facilities at resettlement sites

49. The distance of the resettlement sites from previous residences and urban centres and the failure to provide health facilities and schools at the sites has reduced access of AHs, including Requesters, to these essential facilities. In some cases children have stopped attending school as a result. This is especially the case at the Phnom Penh site. In Battambang and Poipet mothers have expressed concern about the distance that their children have to travel to attend school and feel that this poses a risk to their safety.
50. In Phnom Penh, as a result of inadequate health care at the resettlement site, residents at the Trapeang AnhChanh site resorted to requesting medical assistance from local human rights NGO LICADHO in April 2012. The local village chief however denied the medical team access to the site and hence the opportunity to treat the residents. (See paragraphs 59-62).
51. A third resettled child died at the Poipet site in November 2011. The 11-year old, whose family had recently moved to the site, was crossing a main road, walking back from school when he was hit by a truck. The boy died from his injuries. The boy was attending his old school near to his former home, since there was no closer school to the resettlement site. He had not needed to cross a busy road to get to the school previously.

Impacts on children: Food insecurity, drop in school attendance and reduced access to health services

52. In July 2012, IDI's local partner Equitable Cambodia (EC) conducted interviews with 13 parents who had moved to the Phnom Penh resettlement sites to find out what the impacts of resettlement have been on children. Almost all parents interviewed stated that because of the drop in their income they are no longer able to feed their children three nutritional meals per day. Some have relied on limited food aid from an NGO. Most parents also said that one or more of the children have stopped going to school. Both younger and older children are affected, but while there is a primary school nearby, there is no secondary school so teenage children are more likely to have dropped out. Parents reported noticing a regression in children's grades or skills, including reading. In some cases children are working to supplement household income instead of attending school. Resettled people interviewed also said that although there is a health post on the site, it is often closed and travel costs to the hospital in Phnom Penh coupled with treatment could be prohibitive if their children fall ill. A description of some of the families' situations follows in paragraphs 53-58. Full survey results are on file with EC and can be made available to the CRP.
53. A 47-year-old mother told EC that before her family resettled her children still in her care (aged 12, 15 and 18) ate three meals per day of "whatever they wanted from the market" and she was also able to give her children money for a daily snack. Since they have resettled she can only feed her children one or two meals per day and they are eating snails. There is not always enough money to buy rice. She no longer has enough money to send all her children to school (to pay for the food and snacks necessary), so two out of three have dropped out. One daughter now works at a factory and the other

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stays home and helps her cook and clean. She says that her children were not often sick before resettlement and are now “always sick” with headaches because they are hungry. Her children “are more stressed because they are angry with their mother since they don’t have enough to eat.” The health post is always closed or there is no doctor or nurse there, and “they don’t have enough instruments.”

54. A 59-year-old *tuk-tuk* driver and father said that while prior to resettlement he generally (although not always) fed his children three meals of vegetables and meat per day, at the resettlement site his children do not have enough food to eat. He told EC that his two youngest children, aged 14 and 18, who still live with him, had to stop studying after the move because of a drop in household income. Both children now work at a factory. At the new site they have a larger house and plot of land to live on “with more fresh air, and his children are sick less often than before; however he said he has never seen a doctor at the health post, and that if he had to take his children to a hospital he would need to travel to Phnom Penh at considerable cost. He said that his youngest child is more “stressed” now than before.
55. A 38-year-old mother of three, whose family received a total of US\$400 in compensation, said that since her family resettled there is less food to eat. She still feeds her children (aged 12, 9 and 1) three meals per day but the meal sizes are much smaller than before. There are not enough doctors and nurses at the health post on the site, which she described as “not good” so they would need to travel to Phnom Penh hospital. She is concerned that she would be unable to cover the costs of treatment because she lost her job. Both school age children still attend school but she thinks that the quality of education is worse than at their old school because the teacher does not always turn up and they have “mixed some of the grades, so its boring.” Her children’s marks have dropped since they changed schools. She is also concerned about what will happen when her children are older since there is no secondary school near the site.
56. A 35-year-old divorced man with HIV has one of his three children, an eleven-year-old daughter, living with him at the resettlement site. Before they moved his daughter did not have enough food to eat, although she ate three meals a day – often fast food from the market. Now at the resettlement site “it’s worse than before”. She eats only two meals per day and misses breakfast. In the afternoon she eats at the Christian English school. She has stopped going to [public] school because he can’t afford to send her, but has been attending the Christian school “that teaches English for three months.” The father said that he wants “her to have a good education and have a better life and he has nothing to give her.”
57. A 39-year-old mother of three said that before her family moved she provided her children (aged 13, 9 and 7) three full meals, snacks and fruit every day. Since living at the resettlement site she can only feed her children two insufficient meals per day. Sometimes they eat snails and frogs, or whatever else they can find near their house. She told EC that sometimes there is no nurse or doctor at the local health post. She tries to take care of her children’s health because she won’t be able to afford the treatment if they fall seriously ill and would need to borrow money to do so. She sends all her children to school, but her eldest son’s marks have dropped. She says “this is because he is upset with me that sometimes I am unable to give him money to go to school or send

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him to study English as before.” She is concerned about the lack of access to secondary school at the site and fears she will be unable to afford to send them far away to study.

58. A 47-year-old mother of two teenagers told EC that before “I provided food to my children three times [a day].... I cooked delicious food for my children, because I had enough income to spend on food...” Now, she feeds her children two meals per day. She says, “my children never eat delicious food since my family moved here, because I have no income, no job.” She said: “Since my family has moved from my old place to here, it is very different related to my children’s living. In my old place, my children lived so happily. They had enough food to eat. But in the new place my children aren’t happy. Both sleeping and eating. In the new place sometime my son becomes a construction worker, when he is not studying. My son is just 13 years old.” Her 15 year old daughter has stopped going to school completely: “From day to day, she always asks my neighbors about a job because she doesn’t want to study, she wants to find a job in order to earn income to help mother. When I was in my old place my children were so happy. In the morning I gave them money for school, [and to] buy snacks for eating. They didn’t think about anything besides studying.” Since there is sometimes no free medicine at the health post she says: “I tell my children to endure, because I have no money to buy medicine.”

Mental and physical harm due to abuse and threats of abuse at Phnom Penh resettlement site

59. On the evening of 5 April 2012, Trapeang AnhChanh Boun village chief Chan Sy Dara and others carried out a violent and unprovoked assault on Project-affected persons living at the Trapeang AnhChanh resettlement site, Phnom Penh. Specifically, the village chief targeted Ms Ros Bopha, a female community representative who had led her community of 166 households to file a complaint to the ADB Cambodia Resident Mission earlier that week regarding problems arising from inadequate compensation and lack of income restoration activities, mounting debt and utilities issues.
60. Earlier in the day on 5 April, Ms Bopha had requested medical assistance for the community from the NGO LICADHO. Upon the medical team’s arrival at the site the local authorities denied them permission to treat the villagers. The situation escalated when the village chief and an estimated 30-40 villagers from the host community entered the site carrying electric batons, knives and sticks, which they then used to assault Project-affected people resettled. Bricks and rocks were also thrown at the residents. Despite police presence, the attack continued into the evening, resulting in injuries for many Project-affected persons, including the elderly. Two people were hospitalized overnight. Given the lack of adequate health facilities at or near the site, they were required to travel some 20 km away from the resettlement site in order to receive emergency care. The village chief reportedly later returned to Ros Bopha’s house holding a gun. He called on her to come out of her house and threatened to shoot her. Bopha however was hiding in a different house at the time and continued to do so until the village chief left.<sup>14</sup>

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<sup>14</sup> Amnesty International, “Cambodian Woman Threatened With Death,” Urgent Action Appeal, 13 April

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61. The unprovoked and violent nature of this attack underscores the hostile environment into which these families have been relocated under the auspices of the Project. Prior to the incident, the community had told the ADB about problems related to the behavior of the village chief, whom residents accuse of having defrauded them in relation to electricity and water connection costs. The incident highlights the desperate situation of Project-affected households, who are resorting to public protests that put them at serious risk of harm. It also highlights the lack of adequate health care at or near the site, which places Project-affected persons at risk particularly in emergency situations.
62. Numerous people resettled to the Trapeang AnhChanh site have alleged that they were also threatened by the village chief and his supporters, who warned them that they would be harmed if they entered the territory of the adjoining community. They are afraid to use the access road to get in and out of the resettlement site, especially at night.

Threat of unlawful land acquisition and expropriation of property without provision of compensation based on the full market price at the time of expropriation

63. The 231 AHs in a 98-hectare area known as Samrong Estate are distinct from other AHs in that they claim legal possession rights to the land that they reside upon and/or farm. In the Draft Resettlement Plan for Samrong Estate, however, the MPWT claims that the area is property of the Royal Railway of Cambodia (RRC). The MPWT has granted a concession over the area to the Australian-Cambodian joint venture, Toll Royal Railway, for the development of a freight and cargo facility as a part of the Project.
64. According to section 38 of the Cambodian Land Law (2001), persons who possess certain types of land and meet a number of criteria are recognized as legal possessors, conferring on them a bundle of rights akin to ownership. These households are eligible to apply for formal land title. The process of formally registering all land plots throughout Cambodia and issuing ownership title is currently ongoing and is several years away from completion. To date, the majority of Cambodian households that have recognizable claims under the Land Law as legal possessors of their land have not yet had the opportunity to have their possession rights converted into full ownership through the issuance of title deeds. Under the Cambodian Expropriation Law (2010), in the event that their land is needed for a public interest project, these households are entitled to have their rights to the land adjudicated, and if confirmed, to receive the same treatment as full owners, including fair market value for their land.
65. In the Resettlement Plan for Samrong Estate, the MPWT states that the area was acquired by the government for use of the RRC in the 1950s. However, this acquisition has no bearing on present day claims to the land because, pursuant to article 7 of the Cambodian Land Law (2010), the slate was wiped clean from 1979 with respect to all claims to land, including State claims. After the fall of the Khmer Rouge regime in 1979, families began settling on the Samrong Estate with the consent of local authorities. From 1989, when a private property system was re-introduced after two decades of collective and State ownership, families occupying the area were issued with possessory receipts and the plots in Samrong Estate began to be sold or otherwise transferred with

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attestation by commune officials. This practice continued unabated until 2005, with subsequent possessors considering themselves akin to owners of their plots - an understanding confirmed by the acts of local officials.

66. The MPWT claims that in 2000 the RRC gave notice to various levels of government that the area was State-owned; however, the evidence suggests that the general public and the families residing on or farming the area were not put on notice at this time. In 2005, the Municipality of Phnom Penh and the RRC issued an instruction banning the transfer, sale and the use as collateral of plots within Samrong Estate. At least some residents of Samrong Estate were made aware of this instruction. Nonetheless, households by and large ignored this ban, possibly both out of necessity and because they were uncertain of its validity since they regarded themselves as legal possessors, and continued to deal with the land as before. Indeed, there appears to be no legal basis upon which the State could issue such an instruction to legal possessors. Moreover the penal provisions of the Land Law makes any act or conduct that hinders the peaceful possessor of land whose ownership rights have not yet been fully strengthened under the law an offense.<sup>15</sup> The 2005 instruction banning the sale of Samrong Estate land may have constituted such an offense.
67. In 2008, the systematic land registration process commenced in Samrong Estate. Households received receipts after their land plots were surveyed in exchange for documentation that they provided as evidence of their lawful possession. However, the land registration process was aborted without explanation to the households. The following year the households were informed that the land was State property that would soon be used for the Project, requiring them to vacate.
68. Samrong Estate AHs are entitled under Cambodian law, at a minimum, to have their claims adjudicated through an impartial process in accordance with the law. As with the 2005 ban on land transfers, approval by the ADB of the current Draft Samrong Resettlement Plan, which denies residents' land rights, could constitute an offense under the penal provisions of the Land Law.
69. BABC sent two memos to ADB with extensive legal analyses and supporting documentation regarding the legal tenure status of Samrong Estate residents in September 2010 and January 2012 respectively (See Annex 9). The findings of that analysis were that the Samrong Estate land is not State public property but rather the private property of Samrong residents who have legally acquired or purchased possession rights over the land. Upon receiving the September 2010 BABC memo, ADB undertook to commission its own legal assessment on the matter. In late 2010, ADB informed BABC and Samrong AHs that it had engaged DFDL law firm to carry out the legal assessment. Some two years later, on 17 August 2012, ADB released on its website an "ADB Statement on Samrong Estate Legal Opinion," along with a legal opinion provided not by DFDL law firm but by the firm Honest and Balanced Services (HBS).<sup>16</sup> The HBS legal opinion did not review key records and documents that substantiate the residents' claim to possession rights. Moreover, the opinion reads not as

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<sup>15</sup> Law Law 2001, article 248.

<sup>16</sup> See <http://www2.adb.org/projects/cam-railway/default.asp#time19>.

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a balanced, good faith effort to determine the facts and impartially analyze the applicable law, but rather as one written to justify the State's claim to the land. On several points, the opinion makes statements about the Land Law that are manifestly wrong. This calls into question the independence of the firm that provided the opinion.

70. At the time of writing, the documents cited by HBS as those that were relied upon to form its opinion have not yet been disclosed to the Samrong residents, despite their request to ADB to promptly do so.
71. In the "ADB Statement on Samrong Estate Legal Opinion," ADB insinuates that it accepts the HBS findings and will proceed with approval of an Updated Resettlement Plan. Despite the strength of the legal arguments to the contrary and the weaknesses of the HBS opinion, it thus continues to regard Samrong Estate as State public land and denies AHs their legal right to market-based compensation for their land in accordance with the Cambodian Expropriation Law.
72. Requesters from the Samrong Estate area request that the CRP undertake an independent legal assessment of their land rights in order to determine whether ADB has complied with its operational policies requiring compliance with national laws.

Other harms or likely harms

73. The above may not be an exhaustive list of harms suffered or likely to be suffered by AHs, including Requesters. We request that the CRP conduct an exhaustive investigation into all harms and likely harms suffered by all Project-affected persons.

**III. Attempts to seek redress through grievance mechanism**

74. Despite the pervading environment of intimidation, which has inhibited aggrieved AHs from complaining, a significant number of people have sought redress through the Project grievance mechanism. According to the ADB website, as of 30 November 2011 the IRC reported that the grievance mechanism had been accessed by 499 households through 102 letters of concerns and complaints about Project impacts. The number of households who have submitted a complaint represent 12 percent of the total number of affected households.
75. The Project grievance mechanism, however, has not worked for the vast majority of complainants. According to the BABC 2012 report, it appears from a review of Phnom Penh grievance cases that many have been deemed closed by the IRC after the IRC sent a response dismissing rather than resolving the problems and concerns raised.
76. In addition to the environment of intimidation, the BABC report identifies a number of demand and supply-side barriers to accessing remedies, including limited awareness about the grievance process, low literacy levels, a lack of legal aid and a general feeling amongst AHs that submitting a complaint would be futile. It also identifies supply-side barriers, including low capacity of relevant authorities and lack of understanding of their roles and responsibilities. Despite being aware of the multitude of grievances of AHs and problems with the grievance process, the ADB did not carry out capacity building workshops until July/August 2011, and only in March 2012, after the vast majority of

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resttlement was already occurred, produced a pamphlet, called a "quick reference guide" setting out the basic principles and process of resettlement and the grievance mechanism.

77. It is unclear whether the process has improved since that time, however the ongoing harms and concerns detailed above suggest that no significant improvements have ensued.

#### **IV. Attempts to seek a resolution through communications and with ADB CARM and Management**

78. As detailed above, the Requesters and local NGOs monitoring the Project have previously made extensive good faith efforts to address the aforementioned problems and harms with ADB Cambodia Resident Mission, the relevant ADB Operations department, and the Senior Management of ADB, through numerous written communications, meetings, and submissions of evidence, documentation and reports since May 2010.
79. This correspondence, up until November 2011, is summarized in Annex 10. IDI will make any correspondence referred to therein, as well as correspondence after November 2011, available to CRP upon request.

#### **V. Requesters' dissatisfaction with OSPF process**

80. The Requesters submitted a complaint to the Office of the Special Project Facilitator (OSPF) on 21 November 2011, which was deemed eligible on 11 January 2012.
81. None of the Requesters' major suggestions for reforming the consultation process and altering the draft course of action were incorporated into the final course of action. They requested, for example, that the Resettlement Plans and DMS be subject to review as part of the course of action, but this proposal was rejected.
82. Requesters have also been denied their right to negotiate solutions collectively and be represented by individuals and organizations of their choosing, thereby further weakening their position in the mediation process. Not only are AHs prohibited from being represented and/or advised in negotiations by NGOs with specialized knowledge about ADB safeguard policies; apparently only the heads of households whose names are registered on the DMS are allowed to participate in the individual negotiations facilitated by OSPF. If this is in fact the case, this exclusion will disproportionately affect women and further marginalize them in the resettlement process.
83. Due to the deep-seated power imbalances and lack of procedural fairness in the OSPF-led consultation process, Requesters do not believe that it will lead to a satisfactory outcome. They reluctantly agreed to the course of action out of a sense of hopelessness and because they were informed that the CRP would not accept their request until the consultation process reached Stage 7 and the course of action was agreed.
84. Furthermore, Requesters believe that the entitlements, processes and principles enshrined in ADB's Operational Policies, including the Policy on Involuntary

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Resettlement, must be respected and applied in order to comprehensively remedy their situation, and indeed to ensure that they are not made worse off by displacement in the long-run. They believe that until a rigorous assessment of areas of non-compliance with operational policies is conducted and a full corrective action plan is put in place to bring the Project back into compliance with policies, the harms they are suffering will not be fully remedied. ADB adherence to the principles and requirements of the Policy has explicitly not been considered or addressed by OSPF.

85. IDI wishes to add that the OSPF-led consultation process is flawed in that it limits its attempts at problem-solving to those individuals who signed the complaint letter, thereby ignoring the plight of other affected families who have been harmed as a result of systemic flaws in the resettlement process, but who have not been made aware of their right to complain to OSPF, have had their complaints rejected by OSPF on procedural grounds,<sup>17</sup> or are too afraid of the repercussions to do so.

## **VI. Acts and omission of the ADB**

86. We submit that the following acts or omissions have resulted in non-compliance by the ADB with operational policies and procedures:
- a. Inadequate identification and mitigation of risks during the Project design, appraisal, and approval stage;
  - b. Approval of resettlement plans and budgets that are unsatisfactory to meet the requirements of the Policy on Involuntary Resettlement and to ensure the restoration of the social and economic base of those relocated;
  - c. Failure to provide the required resources and capacity-building to ensure compliance with the Policy on Involuntary Resettlement by ADB staff and the RGC, including in relation to information disclosure and dissemination, meaningful consultation, resettlement processes and schedules, detailed measurement surveys, income restoration programs, resettlement sites, compensation rates, grievance mechanisms and the overall budget for resettlement;
  - d. Failure to adequately conduct due diligence, review, and supervision throughout the project cycle to ensure that the RGC complies with the requirements set out in the Policy on Involuntary Resettlement and related contractual obligations between ADB and RGC; and

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<sup>17</sup> See for example: <http://www.adb.org/sites/default/files/complaint-letter-en-cam-railway-2012.pdf>. This complaint, filed by three affected persons without any assistance or representation by an NGO, was rejected by OSPF on the grounds that the complainants “have yet to solve the problem with the concerned operations department.” OSPF disregarded the fact that the complainants had complained on several occasions to the local Project grievance mechanism and that NGOs had raised the problems they were experiencing numerous times with ADB over the course of two years. Moreover, given that a complaint on the same project was already deemed eligible by OSPF, it is unreasonable that OSPF would not have added their names to the registry of the pending complaint.

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- e. Failure to take effective action, within the tools and remedies available to ADB, to prevent foreseeable harms related to ongoing resettlement activities, which were previously experienced by other AHs and reported by the external monitoring agency and monitoring NGOs, and to ensure effective remedial measures are put in place to repair harms that have already been caused to AHs.

87. This may not be an exhaustive list of acts and omissions of the ADB that have resulted in non-compliance with operational policies and procedures and harms suffered or likely to be suffered. We request that the CRP conduct a comprehensive investigation into such acts and omissions of the ADB.

## **VII. Non-compliance with operational policies and procedures by the ADB**

88. We submit that the acts and omissions of the ADB listed above amount to non-compliance with ADB's Involuntary Resettlement Policy (1995) and Safeguard Policy Statement (2009), Safeguard Requirements 2: Involuntary Resettlement. While the Project Loan Agreements bind the RGC to the 1995 Policy and the first, although not the second, Loan Agreement was entered into before the 2009 Policy came into effect, we submit that the provisions of the 2009 Policy affirm, clarify, and in some cases extend, the ill-defined requirements of the 1995 Policy and as such, in instances in which the 1995 Policy provisions are unclear, the 2009 Policy should be used to ascertain precise requirements.

89. In particular, we believe that the Involuntary Resettlement Policy has not been complied with in relation to requirements for, inter alia:

- a. the preparation of a socioeconomic baseline of all AHs;
- b. access to information and meaningful consultation;
- c. social preparation of AHs and in particular vulnerable AHs;
- d. Full replacement cost-based compensation prior to resettlement for lost structures, assets, improvements, and loss of income and livelihood sources, including net income lost during the transition period;
- e. adequate relocation assistance;
- f. the provision of appropriate land, housing, infrastructure and other compensation and appropriate facilities and services at resettlement sites / better housing at resettlement sites with comparable access to employment and production opportunities and civic infrastructure and community services;
- g. secured tenure to relocation land;
- h. provision of sufficient resources and opportunities so that AHs are able to reestablish their livelihoods as soon as possible / transitional support and development assistance, such as land development, credit facilities, training, or employment opportunities, and opportunities to derive appropriate development

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benefits from the project, including the establishment of a comprehensive rehabilitation program, supported by an adequate budget, prior to resettlement to help displaced persons improve, or at least restore, their incomes and livelihoods;

- i. appropriate assistance to female-headed households and vulnerable AHs;
  - j. the economic and social integration of resettlers into host communities;
  - k. the establishment of a mechanism to receive and facilitate the resolution of affected persons' concerns and grievances promptly, using an understandable and transparent process that is readily accessible to the affected persons without retribution;
  - l. Assistance by the ADB to the government to (i) adopt and implement the above policy objectives and principles; and (ii) build the capacity of the government to effectively plan and implement involuntary resettlement; and (iii) strengthen the government's capacities and macro frameworks for involuntary resettlement.
90. In relation to Samrong Estate AHs, who have claims to the land that are recognizable under national laws, we submit that the potential approval and implementation of the draft RP would amount to, in addition to the above, non-compliance with ADB policy requirements to compensate project affected people at replacement costs for lost assets, including land, and to comply with national laws.
91. In general we submit that the harms suffered and likely to be suffered described above represent a failure to meet the objectives of the policies to: ensure that AHs are "compensated and assisted so that their economic and social future will generally be at least as favourable with the project as without it" (1995); and "enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups" (2009).
92. In addition, we believe that the following operational policies and procedures may not have been complied with by the ADB:
- a. OM Section J4/BP on Loan Covenants (2003)
  - b. OM Section C2/BP and OP on Gender and Development in ADB Operations (2010)
  - c. OM Section C3/BP and OP on Incorporation of Social Dimensions into ADB Operations (2010)
  - d. OM Section C4/BP and OP on Governance (2010)
93. The above may not be an exhaustive list of operational policies and procedures that have not been complied with by the ADB and we request that the CRP investigate all possible areas of non-compliance.

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## **VIII. Violations of international human rights law**

94. We submit that the harms suffered amount to violations of the ratified international treaty obligations that are binding of the Kingdom of Cambodia, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the United Nations Convention on the Rights of the Child, and specifically:

- The right to be protected from forced eviction, defined under international law as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protections, including *inter alia* access to alternative adequate housing.<sup>18</sup>
- The right to adequate housing, as a component of the right to an adequate standard of living, including sufficient space, privacy and protection from the elements, and access to basic services and facilities in an appropriate location close to livelihood opportunities;<sup>19</sup>
- The right to an affordable and adequate supply of water, as a component of the right to an adequate standard of living, in accordance with World Health Organization guidelines on water quantity and quality,<sup>20</sup> on a non-discriminatory basis, including on the grounds of their housing or land status.<sup>21</sup>
- The right to be free from discrimination on the grounds of property and land tenure status.<sup>22</sup>
- The right of every child to an adequate standard of living for the child's physical, mental, spiritual, moral and social development, including in case of need to be provided with material assistance and support programs particularly with regard to nutrition and housing.<sup>23</sup>

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<sup>18</sup> Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 11; and UN Committee on Economic, Social and Cultural Rights, General Comment 7 (1997), para. 3.

<sup>19</sup> Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 11; and UN Committee on Economic, Social and Cultural Rights, General Comment 4, (1994).

<sup>20</sup> See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002; and WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993).

<sup>21</sup> Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 11; and UN Committee on Economic, Social and Cultural Rights, General Comment 15, (2002), paras 12 and 16.

<sup>22</sup> Constitution of Cambodia (1993), article 31; International Covenant on Economic, Social and Cultural Rights (1966), article 2.2; and UN Committee on Economic, Social and Cultural Rights, General Comment 20 (2002), para. 25.

<sup>23</sup> Constitution of Cambodia (1993), article 31; United Nations Convention on the Rights of the Child

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- The right of every child to the enjoyment of the highest attainable standard of health, including through the provision of clean drinking water, and to facilities for the treatment of illness and rehabilitation of health.<sup>24</sup>
- The right of every child affected by the Project to education on the basis of equal opportunity;<sup>25</sup>
- The right to an effective remedy for persons whose rights have been violated.<sup>26</sup>

95. In respect of the above acts and omissions of ADB, we recall the following statement of the United Nations Committee on Economic, Social and Cultural Rights, in its General Comment No. 2, that:

international agencies should scrupulously avoid involvement in projects which, for example... involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation... [W]herever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights...

Every effort should be made, at each phase of a development project, to ensure that the rights contained in the Covenant are duly taken into account.<sup>27</sup>

96. We further refer to the ADB Operations Manual Bank Policies (BP), OM Section F1/BP, issued on 4 March 2010 (paragraph 6), which states:

ADB will not finance projects that... do not comply with the host country's social and environmental laws and regulations, including those laws implementing host country obligations under international law.

97. Furthermore, we refer to Schedule 5 of the 2007 Loan Agreement, echoed in the 2010 Loan Agreement, entered into by the RGC and the ADB, which stipulates:

The Borrower shall...ensure that all Works contracts under the Project incorporate provisions and include the necessary budget to oblige the contracts to . . . comply with all applicable laws and regulations of the Borrower, including ratified international treaty obligations . . .

## **IX. Remedies sought by Requesters**

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(1989), article 27.

<sup>24</sup> Constitution of Cambodia (1993), article 31; United Nations Convention on the Rights of the Child (1989), article 24.

<sup>25</sup> Constitution of Cambodia (1993), article 31; United Nations Convention on the Rights of the Child (1989), article 28.

<sup>26</sup> Constitution of Cambodia (1993), article 31; International Covenant on Civil and Political Rights (1966), article 2.3.

<sup>27</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comment 2 (1990), para. 6 and 8 (d).

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98. The Requesters seek the following remedies for harm suffered or likely to be suffered:
- a. A comprehensive, independent and transparent review and revision of the compensation policy such that it 1) meets the ADB standard of full replacement value at current market rates, and 2) provides a compensation “floor” that is sufficient to ensure that displaced households are able to secure adequate housing upon relocation;
  - b. Reimbursement for the actual costs of replacing lost assets for each household that have not yet been compensated and retroactive compensation adjustments for those who have already been resettled and compensated at less than the actual replacement value;
  - c. Repayment of debt principle and interest incurred as result of inadequate compensation and resettlement processes for each household that is indebted due to resettlement;
  - d. An independent and transparent assessment of the legal status of the Samrong Estate land parcel by the Compliance Review Panel; and if confirmed by the assessment that the land is in fact legally possessed by residents, amendment of the Samrong Estate Resettlement Plan to provide compensation, at current market rates, for all immovable property acquired from legal possessors in advance of expropriation.
  - e. Delivery of cash payments for loss of income, including past losses, at a minimum to cover household daily subsistence needs, until income levels are restored to their pre-Project levels through the EIRP;
  - f. Access to affordable basic services at relocation sites, including at a minimum, potable water and electricity connected free of charge, adequate drainage and sanitation facilities, access roads, lighting at resettlement sites for safety, primary and secondary schools, and health centers;
  - g. Support to enable parents to reenroll in school children who dropped out following resettlement. Support should also include free school buses or other transport to ensure primary and secondary age school children at all resettlement sites can safely travel to and from school.
  - h. Adequate replacement land allocation, in an appropriate and acceptable location, including provision of one plot of land for each affected family with their own family book;
  - i. An immediate moratorium on evictions and removal of the threat of eviction for all people affected by the Railway project, including alleged illegal encroachers until all legal protections and safeguards under the ADB Policy on Involuntary Resettlement and international law are put in place, including *inter alia* access to information, meaningful consultation on resettlement and compensation options, and the assurance that nobody will left homeless or impoverished.

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99. We request that the Compliance Review Panel carry out a full and comprehensive investigation into the harms suffered and likely to be suffered by AHs, including the Requesters, due to acts and omissions of ADB constituting, contributing to, or resulting in non-compliance with ADB's operational policies and procedures.

Sincerely,



David Pred  
Managing Associate  
Inclusive Development International

**List of Annexes:**

**Annex 1:** Requesters' representation authorization letter

**Annex 2:** Sahmakum Teang Tnaut (STT), Rehabilitation of Cambodia's Railways: Comparison of field data, July 2011.

**Annex 3:** Bugalski, N. and Medallo, J. "DERAILED: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway," Bridges Across Borders Cambodia (BABC), 2012.

**Annex 4:** STT and Housing Rights Task Force (HRTF), Railways Relocation in Phnom Penh: Six women tell their stories, Fact and Figures Issue 20, March 2012.

**Annex 5:** STT, Losing the Plot: Rapid Assessment of Household Debt in Trapeang Anhchanh, June 2012

**Annex 6:** ADB response to Community Petition, 10 April 2012.

**Annex 7:** ADB letter to NGOs, 13 December 2010

**Annex 8:** Community petition to ADB, 2 April 2012.

**Annex 9:** BABC memos to ADB and AusAID re Samrong Estate on 13 September 2010 and 25 January 2012.

**Annex 10:** NGO Railways Resettlement Communications Matrix