

Haruhiko Kuroda, President  
Asian Development Bank  
6 ADB Avenue,  
Mandaluyong City 1550  
Philippines

cc:

Kunio Senga, Director General of Southeast Asia Department  
James Patrick Lynch, Director of Transport and Urban Development Division  
Putu Kamayana, Cambodia Country Director  
Peter Broch, Senior Transport Economist

**Re: Concerns about resettlement impacts from CAM: GMS Rehabilitation of the Railways in Cambodia Project**

21 October 2010

Dear President Haruhiko Kuroda,

We are a coalition of non-governmental organizations in Cambodia that are deeply concerned about the deplorable treatment of people affected by the GMS Rehabilitation of the Railways in Cambodia Project (hereafter "the Project"), to which the Asian Development Bank is contributing \$84 million in concessional loans. We are writing to bring your attention to our growing concerns, and in particular to the tragic deaths of two children, nine years and thirteen years of age, at the Battambang resettlement site.

Four days after the family of the children moved to the resettlement site in late May, the two children – a brother and sister - went to the pond near the site to collect water for washing dishes and to bathe. Since piped water has not been provided at the resettlement site, families there have no choice but to trek through a muddy rice field to access water from the pond, or use water directly from the adjacent rice field. These water sources are polluted by chemicals used for rice growing and have caused skin diseases and other illnesses. On this occasion the children went to collect water from the pond and never returned. The community searched for many hours, and the bodies of the children were eventually found at the bottom of the eight-meter deep pond.

The family did not know where to report the death or to whom they could complain. Like the other families at the resettlement site, they feel helpless and disconnected from society. Women at the site reported that they do not even know the name of the village or the commune in which they now reside.


Our interviews at the Battambang resettlement site have raised a plethora of very serious problems relating to a lack of access to food and basic services, and increased

impoverishment. It appears that almost all families have been forced to borrow money to survive, rebuild houses, connect to electricity (other families remain unconnected because they simply cannot afford to do so) and in some cases earn less per day than their interest repayments. Widows have been treated particularly unfairly in and in some cases have not received a separate plot of land. Instead they have been told to live with their parents or children, despite living separately at their former location. These women are extremely vulnerable and have received insufficient support, if any. Every family we spoke to reported that they were significantly worse off now than before they moved. They feel desperate and abandoned. Attached in Annex 1 is a full report on the situation in Battambang.

We have observed many similar problems occurring along the Southern Line in Sihanoukville. Families interviewed in August reported that inadequate compensation rates, coupled with inadequate services and facilities at the site, have made resettled residents vulnerable to increased poverty, unsanitary health conditions, and worsened living conditions. The costs of resettlement – both the monetary costs of moving and rebuilding a house and the lost income from foregone work resulting from resettlement – generally (and substantially) exceed the compensation provided. In addition, resettled Sihanoukville residents complained about the lack of electricity, piped water and the poor condition of the road leading to the resettlement site. Residents also reported that schools, health facilities, pharmacies and hospitals were too far away. Please see the full report on the situation in Sihanoukville attached in Annex 2.

People interviewed in Battambang and Sihanoukville – both at the resettlement sites and those who are partially affected and remain in the right of way (ROW) – were deeply concerned about the amount of compensation they had received, or will receive, stating that it was insufficient to cover the expenses of moving backwards into the ROW or to rebuild their houses at the resettlement site. Compensation rates set in the Resettlement Plan of 2006 are grossly inadequate and in some cases have resulted in people receiving in total less than US\$200 to move, rebuild their homes and restart their lives and livelihoods. Most resettled families are forced to borrow money from private moneylenders, exposing already poor residents to further indebtedness and usurious interest rates. This situation is a repetition of the problems encountered in the HW 1 Project. Based on this experience, the ADB should have learned how to avoid indebtedness due to inadequate compensation and restoration, particularly given how difficult it is, as shown by HW1, to rectify these financial burdens on communities retroactively.

Affected persons in Battambang and Sihanoukville consistently reported a lack of information disclosure and meaningful consultation. Uninformed, for example, of the project timeline or compensation rates, many families were forced to live with the threat of eviction looming over them. Most interviewees expressed that they did not know how the compensation for the taking of their homes and any surrounding structures was calculated and thus whether the compensation rates were based on a fair and reasonable standard. Many residents stated that they did not feel as if they could influence the resettlement plan, citing instances of intimidation and coercion by government authorities--practices that appear to be alarmingly prevalent. Not one person interviewed had been made aware of the local grievance mechanism. Nor were they aware of the ADB's role in the project, that safeguard policies applied to their





situation and their right to access the ADB's Accountability Mechanism if they suffer harm or will be harmed by the project.

In Phnom Penh, although the process of resettlement has not yet begun, affected households are reporting similar problems relating to lack of information and consultation, as well as irregularities in the DMS. Indeed, the IRC has already begun contract-making activities with affected households, yet the Updated Resettlement Plan for Phnom Penh has not been made public.

The resettlement site that was reportedly bought by the Inter-ministerial Resettlement Committee (IRC) in Trapeang Anchanh is some 20 kilometers from many current homes. Any future relocation is likely to result in the same severe deterioration of livelihoods and living standards as in Battambang and Sihanoukville and indeed as invariably experienced by other resettled Phnom Penh communities to this and similar sites over the past decade.

The most serious and immediate issue in Phnom Penh relates to Communities 104 and 105 along the tracks. Devastated by a fire in March, these two communities of 257 families remain in limbo. With no other options, residents have rebuilt homes on the site. ADB has stated that residents with DMS numbers from before the fire (i.e. those residing in the COI, 13 according to Pierre Arnoux) will be compensated according to project guidelines; however, on 21 September 2010 the Governor of Toul Kork district issued an order stating all households within an arbitrary 10m of the railway axis would have to dismantle their homes or face immediate "administrative measures", a euphemism for eviction. According to the loan agreements between the ADB and RGC of March 2007 and January 2010 (Schedule 5, article 9 and Schedule 5, article 7 respectively) all households within the ROW are to be afforded the protections of the ADB Involuntary Resettlement Safeguard Policy, including the provision of compensation, resettlement and livelihood support. The eviction of households within the ROW without such provision amounts to a breach of contract on the part of the RGC.

A further major problem relates to the affected households within Samrong Estate in Phnom Penh, whose legitimate rights to their land are being wrongfully denied by the Cambodian Government. According to the draft resettlement plan for Samrong Estate, households will not be compensated for their land at replacement cost, despite having legal possession rights - akin to ownership - to their land. Contrary to assertions in the resettlement plan, the area is distinct from other land affected by the project because it is not State property according to definitions under the Land Law of 2001. Thus the taking of the land from private persons with demonstrable possession rights to the land without the provision of market-based compensation in advance amounts to a violation of Cambodian laws, including the Expropriation Law of 2010. Please see the full legal memo about Samrong Estate prepared by Bridges Across Borders Cambodia, which is attached in Annex 3. This memo was sent to Peter Broch, Senior Transport Economist and Mailene Buendia, Transportation and Urban Development Division SERD, on 13 September, however we have not received a response or even an acknowledgement that it was received.

We have raised the problems and concerns described above with ADB staff in Phnom Penh and the Resettlement Specialist on numerous occasions, including via regular





email correspondence and in meetings on 19 May and 23 July. Most recently, following our discovery of the deaths of the children in Battambang, we sent an email to Peter Broch, the Project Officer, and Pierre Arnoux, Resettlement Specialist consultant on 4 October. Given the serious nature of the issues at hand, our email requested that they respond promptly regarding the action that will be taken to remedy the harm, including the provision of reparations for the family of the two drowned children. We also urged the ADB to take immediate steps to ensure that water pipes are installed at the site to prevent a recurrence of this incident and that urgent and immediate assistance be provided to the many families who are now languishing at the Battambang resettlement site.

In our view, the ADB's response has been inadequate. The only response to the aforementioned email came from Pierre Arnoux on 8 October and it refers, for example, to requests put to the IRC to give instructions to the External Monitoring Organization (EMO) to assess the situation at the resettlement site. This response demonstrates an alarming lack of urgency on the part of the ADB in the face of a situation that is deteriorating on a daily basis, in which families are finding it increasingly difficult to survive and in which two children have already died as a result of a grievously mismanaged resettlement process, while other children remain vulnerable to drowning and other hazards. We have yet to see any remedial actions whatsoever being taken by the Cambodian Government, which can only lead us to conclude that the process and methods of project supervision by the ADB in this case are ineffective and negligent.

According to the 1995 and 2009 ADB policies on involuntary resettlement, people should not be made worse off as a result of ADB-financed projects. Affected persons should be compensated at full replacement cost for lost property. Anyone who is not eligible for compensation for land that will be expropriated for the project has the right to be resettled in a suitable location with access to all necessary services and facilities. With a view to improving the living standards of poor households, livelihood assistance should be provided to resettled families. Affected persons are entitled to access to information about the project, its resettlement impacts and compensation rates and they are to be provided with genuine options about which they are to be meaningfully consulted.

The problems faced by residents affected by the Project, due to either inaction or improper action, constitute a clear violation of the ADB Involuntary Resettlement Safeguard Requirements by the RGC. The inadequate due diligence, review and supervision of the resettlement process by the Operations Department of the ADB and the insufficient level of action taken to address and redress the problems and harm already suffered, in our view also amounts to non-compliance by the ADB with Bank Policies. The 2007 and 2010 loan agreements between the ADB and RGC are also breached as a result of the circumstances described.

Moreover, the situation of resettled households amounts to a serious violation of the International Covenants on Economic Social and Cultural Rights, to which Cambodia is a State Party. A number of Covenant provisions have been transgressed, most pertinently, article 11 on the right to an adequate standard of living, including the right to food and housing and article 12 on the right to health and the right to water as a component of both article 11 and 12. A number of provisions of the Convention on





the Rights of the Child, ratified by Cambodia, have also been violated by the treatment, neglect and resulting situation of children at the resettlement sites, including the unsafe conditions that led to the deaths of the two children.

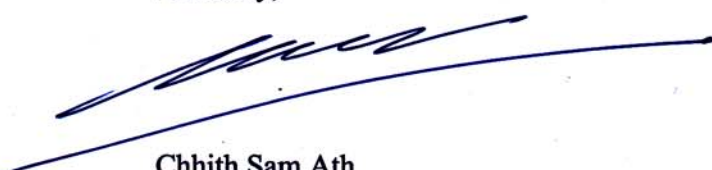
Immediate remedial actions must be taken by the ADB in light of these clear and direct violations of Cambodian laws, international treaty obligations, ADB policies, and contractual obligations as a result of the Project.

We urge the ADB to take the following measures to remedy the harm suffered and prevent further deterioration of the situation:

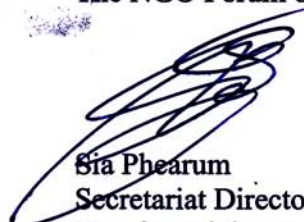
1. Conduct an immediate investigation into the circumstances of the deaths of the two children, including an assessment of the appropriate reparations to be provided to the family for the pain and suffering caused, and the prompt provision of those reparations. We urge the ADB to be mindful that the grieving family and other resettled families are particularly vulnerable and may feel scared to speak openly about their situation in front of government officials. The ADB should take appropriate steps to ensure that a team qualified to carry out an investigative mission and reparations assessment, with all due regard to the sensitivities of the situation, is tasked to do so.
2. Suspend the right of the RGC to make withdrawals from the Loan Account until the problems and concerns identified are rectified with supervision by a competent and fully resourced team of the ADB, including:
  - The immediate installation of piped water and other essential services and the Battambang and Sihanoukville resettlement sites;
  - The guarantee of free access to at least minimum necessary amounts of piped water, electricity and essential services at all resettlement sites;
  - The commencement of livelihood support programs at the resettlement sites and in the interim, the provision of social security payments until families are earning a subsistence income;
  - The provision of special assistance to widows and other vulnerable individuals;
  - The implementation of a wider assessment of conditions at the sites, followed by a rapid response to ensure that the sites meet the requirements of the ADB Involuntary Resettlement Safeguard Policy and the International Human Rights Law obligations.
  - The readjustment of compensation rates set out in the 2006 Resettlement Plan to current replacement cost levels, with a guaranteed minimum compensation amount that is suitable to build adequate housing without requiring the household to go into debt;
  - The immediate public disclosure of the Updated Resettlement Plan for Phnom Penh;
  - The guarantee that households evicted from the ROW, including those in Communities 104 and 105, are compensated and resettled in line with ADB Involuntary Resettlement Safeguard Policies;
  - The recognition of the full legal rights of residents in the Samrong Estate area;The implementation of a renewed campaign to disclose information and meaningfully consult affected persons.

We look forward to receiving your response to our concerns, including details of the remedial actions that will be taken by ADB to address them, by Friday 29 October.


Sincerely,




Chhith Sam Ath  
Executive Director  
The NGO Forum on Cambodia



Sia Phearum  
Secretariat Director  
Housing Rights Task Force



Ee Sarom  
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Sahmakum Teang Tnaut



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