

Edith Brown Weiss
Chairperson

August 10, 2006

MEMORANDUM TO THE EXECUTIVE DIRECTORS
India – Mumbai Urban Transport Project (MUTP)
(Loan No. 4665-IN; Credit No. 3662-IN)
Disposition of Additional Claim to the Panel related to MUTP

1. The Inspection Panel would like to inform the Board of Executive Directors that it received a new complaint (“the Additional Claim”) related to the MUTP. The Panel has decided not to register the complaint as a formal Request as explained below.
2. On May 15, 2006 the Panel received a letter from the Powai Merchant’s Social & Welfare Association (“the Association”), claiming to represent 218 private and commercial land owners who have shops in Adi Shankaracharya Marg, IIT Market, Powai, Mumbai. The complainants assert that under the MUTP they have been incorrectly treated as slum dwellers and, as a result, will be adversely affected by the Project. They claim that the Bank has failed to ensure that they are treated as private land owners and compensated appropriately.
3. The Panel notes that the issues raised in the complaint were considered in its Investigation Report of this Project submitted to the Board on December 21, 2005 (INSP/R2005-0005). Management’s Response to the Investigation Report (INSP/R2005-0005/4; dated March 7, 2006) referred to these issues, but did not address them in detail.
4. The Panel’s MUTP Investigation Report addresses the issue of private land owners several times and includes a section on “*Private Ownership of Land and Shops at the Old Locations*” (pp. 79-83). In its Report, the Panel noted several instances in which affected persons claimed to have private ownership of their land and their structures. The Panel found that complex tenure and ownership issues had not been addressed adequately under the MUTP, which the Panel concluded was not in compliance with OD 4.30.
5. Since Management’s Response to the Panel’s Report did not address the issues raised in the Additional Claim in detail, the Panel notified Management of the complaint and asked Management to indicate whether the issue raised in the complaint were covered by its Response and Action Plan. On July 21, 2006, Management informed the Panel that since November 2004, it had been in contact

with the implementing agency, MMRDA, regarding the issues raised by the Association. (Management's note of July 27, 2006 is attached). Management indicated that MMRDA had asked the Association to submit supporting documentation regarding the members' ownership claims.

6. Management also stated that under the MUTP affected owners of private property would be compensated as follows: *"Land may also be acquired under the Land Acquisition Act by paying compensation at market value for land and structures. In the case of MUTP, an additional MUTP-specific compensation is to be provided, which includes: an alternative house or shop unit equivalent to the area lost subject to a maximum of 20.91 sq.m.; an additional area of up to 70 sq.m. on payment, or a cash supplement equivalent to the cost of construction of floor space occupied subject to a maximum of 20.91 sq.m. ... [T]here is an option to purchase an additional 49.09 sq.m., which can be paid from the compensation amount. The market value of the property is determined using rates prevailing in registered sale transactions on the date of first notification, plus a 30% solatium for compulsory acquisition and 12% interest per annum from the date of notification to date of payment of compensation. The land owner has the option to take either cash compensation for affected property, or TDR which may be sold on the open market and normally fetches more than cash compensation"* (Management's note of July 27, 2006).
7. In an e-mail to the Panel, dated August 2, 2006, Management agreed that the actual cash compensation may fall short of full market value/ replacement cost. This is because the compensation under the Land Acquisition Act, which is based on the value of registered land transactions, is usually less than the actual cost involved. However, Management stated that this shortfall is off-set by providing additional support in the form of a choice between a housing or shop unit free of costs or a cash supplement and the possibility to purchase extra space. Management noted that it is *"confident that this set of measures makes the compensation consistent with Bank policy"*.
8. The Panel has to make a determination on how to proceed with the Additional Claim and whether the provisions of paragraph 14 (d) of the 1993 Resolution¹, would apply in this case. This paragraph provides that the Panel shall not hear *"[R]equests related to a particular matter or matters over which the Panel has already made its recommendation upon having received a prior request, unless justified by new evidence or circumstances not known at the time of the prior Request."*²
9. After a careful review of the Additional Claim, the Panel believes that it should not be registered as a Request at this time. In the Panel's view, the claims that the Association raises regarding compensation for private property have been

¹ Resolution No. IBRD 93-10 of September 22, 1993.

² This is further addressed in the Panel Operating Procedures, paragraph 22 referring to paragraph 2 (d), adopted by the Panel on August 19, 1994.

considered in the Panel's MUTP Investigation Report and covered to some extent in Management's Response to the Panel's Report and its note dated July 27, 2006. Importantly, Management is actively engaged in addressing their concerns at this time.

A handwritten signature in black ink that reads "Edith Brown Weiss". The signature is written in a cursive style with a large initial "E".

Edith Brown Weiss
Chairperson
Inspection Panel

(Attachment: Management note dated July 27, 2006).

**Management Note on Additional Case
Submitted to the Inspection Panel under MUTP
July 27, 2006**

Representation from Powai Merchants Social and Welfare Association regarding land ownerships issue

1. The Bank has been in contact with MMRDA on this issue for some time. As early as November 2004 the Bank first met with the Association during a supervision mission, (see para. 12 / annex 5 of the November 2004 supervision mission aide-memoire). From that point forward, the Bank continued to correspond with and look into the concerns of the Association. In July 2005 the Bank also forwarded to them the copy of the relevant RIP at their request. MMRDA held a meeting on 4 May, 2006 with the President and Joint Secretary of the Association to discuss land ownership issues. During the meeting, MMRDA has asked the Association to submit necessary documents in support of their ownership claim. The minutes of the meeting have been issued to the Association by MMRDA in June 2006, an advance copy of which was shared with Bank earlier.

2. Documents determined by MMRDA as necessary to verify ownership are as follows:

- **A 7/12 abstract of city survey map:** This is a certificate which gives the name of the current owner of the property as recorded in the city survey map. This certificated can be easily obtainable from the revenue department by paying a nominal fee within 2 working days.
- **A title search report:** This report explains the various transactions taken place on a particular propriety and indicates the current owner of the property. This report can be obtained from the revenue department. This normally takes about 2 weeks and is usually obtained through a lawyer or valuer.
- **Building Permission from MCGM:** This document should be available with every structure owner if the structure is an authorized one since prior permission from MCGM is necessary before undertaking any legal construction.
- **Abstract of Tax Registrar:** This certification confirms the payment of property tax to a local authority,(i.e. MCGM), and also shows the name of the owner/ occupier of the structure. The latest property tax payment receipt should suffice.

3. The Bank has been informed by MMRDA that every owner would normally possess the last two documents; and the first is easily obtainable. The only document that takes time to obtain is a search report. MMRDA indicated that they would be willing to proceed without the title search report if the other three documents are in order. Should a legal challenge to ownership ensue, MMRDA can put the process on hold and wait until the title search report is obtained and reviewed.

4. MMRDA has decided to request from these claimants to submit documents supporting their entitlements within a specified period of time. MMRDA intends to compensate the

legitimate owners according to MUTP policy. Other shopkeepers will be resettled as per MUTP policy/process for non-owners. This issue and its application procedure were discussed on July 26, 2006 between MMRDA and the Association.

5. The applicable State and MUTP policy and legal agreements provide sufficient entitlement to affected land owners; these include as follows:

- Land acquisition may be carried out using the Maharashtra Regional and Town Planning Act, 1966 (MR&TP)... The Development Control Regulations formulated using MR&TP provisions offer incentives to land owners to surrender their land by way of Transfer of Development Rights (TDR) in lieu of cash compensation.
- Land may also be acquired under the Land Acquisition Act by paying compensation at market value for land and structures. In the case of MUTP, an additional MUTP-specific compensation is to be provided, which includes: an alternative house or shop unit equivalent to the area lost subject to a maximum of 20.91 sq.m; an additional area of up to 70 sq.m. on payment, or a cash supplement equivalent to the cost of construction of floor space occupied subject to a maximum of 20.91 sq.m.

6. The following provides an example of how the process will operate: if an owner of a property of 100 sq.m. is affected, he/she will receive cash compensation at market value as defined under Land Acquisition Act for the land and structure. In addition there is an option to receive a free house or shop, (as the case may be), of 20.91 sq.m. or cash equivalent to the construction cost of 20.91 sq.m.. If he/she opts for house/shop, there is an option to purchase an additional 49.09 sq.m., which can be paid from the compensation amount. The market value of the property is determined using rates prevailing in registered sale transactions on the date of first notification, plus a 30% solatium for compulsory acquisition and 12% interest per annum from the date of notification to date of payment of compensation. The land owner has the option to take either cash compensation for affected property, or TDR which may be sold on the open market and normally fetches more than cash compensation.