

**Final Report**

**on  
Compliance Review Panel Request No. 2012/1  
on the  
Integrated Citarum Water Resources Management Investment Program Project 1  
in the  
Republic of Indonesia  
(Asian Development Bank Loans 2500 [SF]–INO and 2501 [SF]–INO)**

**18 February 2013**



## CONTENTS

<b>Acknowledgments</b>	ii
<b>Executive Summary</b>	iii
<b>Abbreviations</b>	vi
I. INTRODUCTION	1
II. PROJECT BACKGROUND	2
III. REQUEST FOR COMPLIANCE REVIEW	3
IV. ELIGIBILITY OF THE REQUEST	4
V. SCOPE AND CONDUCT OF THE COMPLIANCE REVIEW	4
VI. BACKGROUND OF THE REQUEST	6
VII. ALLEGED HARM	8
VIII. PROJECT PREPARATION	9
A. Legal and Institutional Framework	10
B. Compensation and Livelihood Restoration	15
C. Information and Consultation	20
IX. PROJECT APPROVAL	21
X. PROJECT IMPLEMENTATION	23
XI. RESPONSE TO COMPLAINTS	24
XII. CONCLUSIONS AND LESSONS	26
A. Conclusions	26
B. Lessons	28
XIII. RECOMMENDATIONS	29
APPENDIXES	
1. Request for Compliance Review	30
2. Terms of Reference of the Compliance Review Panel	34
3. Persons Contacted during the Compliance Review	38
4. Comments of Management on the Draft CRP Report	40
5. Comments of Requesters on the Draft CRP Report (In Bahasa Indonesia)	55
6. Comments of Requesters on the Draft CRP Report (English Translation)	57

## **ACKNOWLEDGMENTS**

The Compliance Review Panel thanks all those who contributed to the preparation of this report: the Asian Development Bank (ADB) Board of Directors, in particular the representative of the Government of Indonesia and members of the Board Compliance Review Committee; ADB Management and staff, including the Office of the Special Project Facilitator, for the information and support they provided; the requesting parties, for their trust in the process; and the Government of Indonesia, for the additional information and support it extended during the compliance review.

## EXECUTIVE SUMMARY

This report was prepared by the Compliance Review Panel (CRP) in response to a request for compliance review of the Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1, approved in December 2008. This \$60 million project is the first tranche of a multitranche financing facility (MFF) for the integrated water resource management of the Citarum River Basin in Central Java. Its main component is the rehabilitation of a 54.2 kilometer stretch of the West Tarum Canal to improve the flow and quality of water from this main source of surface water supply to Indonesia's capital city, Jakarta. Because of the construction works on the canal, project-affected households numbering about 1,320 in July 2012, up from the 872 households estimated at the time of project approval, would have to be resettled and their livelihood restored. The project was classified as having significant involuntary resettlement impact and required a full resettlement plan before project approval. The resettlement plan was to be updated once detailed engineering design (DED) was completed.

In January 2012, three project-affected persons requested a compliance review through their authorized representative. They claimed they had been evicted from the project area without compensation even though they were among the affected households that were deemed eligible for compensation under the resettlement plan approved in 2008. Alleging that these evictions showed noncompliance by the Asian Development Bank (ADB) with its operating policies and procedures, the requesters demanded fair compensation, job opportunities, support in restarting their businesses, and access to information and consultation.

The 2008 resettlement plan went through a lengthy process of preparation and negotiation with government in an effort to bridge the gap between local government regulations and the ADB policy on compensation for affected households. At an early stage of preparation the project was delayed further by issues relating to the contracting of consultants to update the resettlement plan and support its implementation. During the 2.5 years between project approval and the hiring of the consultants, the local government evicted several households, allegedly for a project unrelated to the ADB-financed project, in an area overlapping the area covered under the resettlement plan. ADB was not aware of these evictions, which affected some households that were eligible for compensation under the 2008 resettlement plan, including the requesters. A year after ADB received the first complaint, ADB and the Government of Indonesia agreed that these households would remain eligible for compensation under the updated resettlement plan. At the time the CRP ended its investigation, the updated resettlement plan had not yet been approved by ADB.

On the basis of its review, the CRP concluded that the claims of harm suffered by the requesters were justified. Their families suffered significant harm because of the evictions: they lost their homes and jobs, and suffered other hardships. The CRP also found that the requesters did not receive adequate and timely information about the project and the resettlement plan.

The CRP assessed ADB's compliance with its policies on Involuntary Resettlement (2006), Public Communications (2005), the Incorporation of Social Dimensions into ADB Operations (2007), Loan Covenants (2003), and Processing of Loan Proposals (2003). This report focuses on (i) the actions of ADB during project preparation, approval, and implementation; (ii) the contents of the resettlement plan; and (iii) ADB's response to the complaints. It concludes that:

- (i) ADB's assessment of the complexity of the legal and institutional framework and consequential risks could have been more comprehensive and timely. ADB could have engaged more effectively with government and consultants from the early stages of project preparation, to ensure clear institutional roles and responsibilities, effective coordination mechanisms, and commitment to compliance with ADB policies at all levels of government.
- (ii) Before Board consideration, ADB approved a resettlement plan that only addressed some of the differences between local government regulations and ADB policy on compensation entitlements and did not ensure a firm commitment to the cash compensation mechanism in Bekasi district. The resettlement plan could have provided stronger assurances that the provisions of ADB's resettlement policy would be complied with.
- (iii) The ADB-approved 2008 resettlement plan did not ensure adequate compensation for lost assets at replacement cost and appropriate livelihood restoration measures to prevent impoverishment. It did not include a thorough analysis of viable alternatives that would be compliant with ADB policy and with national and local legislation.
- (iv) ADB did not assign the necessary staff resources to support the preparation of the resettlement plan and to ensure the continuity of the dialogue with government.
- (v) After project approval, in the face of the significant resettlement issues that had surfaced before Board approval, ADB could have done more to provide the necessary follow-up with government, to ensure that the preparation of the updated resettlement plan was synchronized with the engineering design. Further, ADB could have facilitated better on-site monitoring of resettlement issues.
- (vi) ADB did not ensure that the affected households received timely, meaningful, and regular information throughout project preparation and were given opportunities for consultation and feedback.

The CRP finds that ADB reacted appropriately to the complaints by considering the evictions by the local government to be related to the ADB-financed project. ADB also insisted on the continued eligibility for compensation of affected households that were previously included in the resettlement plan. Afterward, ADB engaged proactively with the different levels of government, assigned staff resources, monitored on-site developments, ensured information dissemination to affected persons, continued dialogue with nongovernment organizations, and worked diligently with government in updating the resettlement plan. The CRP also recognizes that ADB has taken important initiatives to strengthen the government's capacity to address land acquisition and resettlement issues.

Because the updated resettlement plan had not yet been approved at the time of the CRP's investigation, none of the CRP's findings relate to the updated resettlement plan.

The CRP recommends the following for the Board's consideration in future projects funded under this MFF that require involuntary resettlement:

- (i) ADB should ensure that due diligence and dialogue with government and other stakeholders are conducted early in the development of resettlement plans for future tranches of the MFF. ADB should also ensure that the design of resettlement plans for future tranches of the MFF is based on firm commitments, clear and effective institutional coordination mechanisms, and timely and transparent information and communication.
- (ii) The resettlement framework (which provides guidance for the resettlement plans for future tranches of the MFF) should be rewritten. The revised framework should ensure that, besides the institutional arrangements, the analysis of alternatives for resettlement, compensation at replacement cost, livelihood restoration, and information, communication and grievance redress receive priority. The revised resettlement framework must (a) focus on preventing the impoverishment of project-affected persons and provide such persons, especially the most vulnerable, with opportunities to improve their livelihood; (b) be developed with ample consultation and participation of affected people; and (c) include specific monitoring and evaluation mechanisms to ensure the accountability of all parties involved.
- (iii) ADB should assign the necessary staff resources to address resettlement issues early in the project cycle and continuously to provide support to the government as needed and to ensure the implementation of resettlement plans consistent with the time frame of construction work.

## ABBREVIATIONS

ADB	–	Asian Development Bank
ARUM	–	Aliansi Rakyat untuk Citarum (People’s Alliance for Citarum)
BAPPEDA		Badan Perencanaan Pembangunan Daerah (Regional Planning and Development Agency)
BAPPENAS	–	Badan Perencanaan dan Pembangunan Nasional (National Planning and Development Agency)
BBWSC	–	Balai Besar Wilayah Sungai Citarum (Citarum River Basin Organization), DGWR
CRP	–	Compliance Review Panel
DED	–	detailed engineering design
DGWR	–	Directorate General of Water Resources, Ministry of Public Works
ICWRMIP	–	Integrated Citarum Water Resources Management Investment Program
KRUHA	–	Koalisi Rakyat untuk Hak Atas Air (People’s Coalition for the Right to Water)
LRP	–	Livelihood Restoration Program
MFF	–	multitranchise financing facility
NGO	–	nongovernment organization
OCRP	–	Office of the Compliance Review Panel
OM	–	Operations Manual
OSPF	–	Office of the Special Project Facilitator
PJT II	–	Perusahaan Umum Jasa Tirta II (Indonesian state-owned company in charge of operating and maintaining the Citarum River Basin)
PPTA	–	project preparatory technical assistance
RETA	–	regional technical assistance
RRP	–	report and recommendation of the President
SERD	–	Southeast Asia Department
SPF	–	special project facilitator
TOR	–	terms of reference
WTC	–	West Tarum Canal

In this report, “\$” refers to US dollars.



## I. INTRODUCTION

1. This report was prepared by the Compliance Review Panel (CRP) in response to a request for compliance review of the Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1. The purpose of the compliance review phase of the Asian Development Bank (ADB) Accountability Mechanism<sup>1</sup> is to investigate alleged noncompliance with ADB policies and procedures that directly, materially, and adversely affect local people during the formulation, processing, or implementation of an ADB-financed project.<sup>2</sup> The review focuses on ADB's conduct and not on that of the borrowing country, the borrower, the executing agency, or the private project sponsor. As a forum for affected persons, compliance review provides such persons with an opportunity to voice complaints, and ADB with a means of increasing its accountability and strengthening project performance. As an independent body, the CRP reports to the ADB Board of Directors (Board), from which it derives its authority to conduct compliance reviews. The Board approves the recommendations of the CRP.

2. The CRP has established procedures<sup>3</sup> for carrying out compliance reviews and for preparing reports in line with the steps and time frames prescribed in paras. 53–65 of the Operations Manual (footnote 2). In accordance with step 8, the CRP issues this draft report to the ADB Board of Directors, having taken into consideration the comments of Management and the requesters on its draft report. These comments were received on 7 and 8 February 2013 in compliance with the time period specified in the Accountability Mechanism Policy (2003). Once the Board has considered the report and decided on its recommendations, the report and its appendixes will be disclosed to the public. The CRP carried out this compliance review under the Accountability Mechanism Policy (2003) as the Accountability Mechanism Policy (2012) took effect on 24 May 2012, after this request was filed (on 30 January 2012).

3. The request for compliance review was sent to the CRP in January 2012 by three affected persons through their authorized representative. They claimed they had been evicted from the project area without compensation even though they were among the affected households that were eligible for compensation under the 2008 resettlement plan. They alleged that these evictions resulted from ADB's noncompliance with its policies and procedures, and they demanded fair compensation, job opportunities, support in restarting their businesses, and access to information and consultation.

4. This report is the result of the CRP's investigation of alleged harm linked to ADB's noncompliance with its operating policies and procedures. All three members of the CRP are in agreement regarding its findings, conclusions, and recommendations. The five sections that immediately follow this introductory section give the project background (section II) and describe the request for compliance review (section III), the assessment of the eligibility of the request (section IV), the scope and conduct of the CRP's investigation (section V), and the background of the request (section VI). The core sections of the document present the findings of the CRP regarding the alleged harm suffered by the requesters (section VII) and the review of ADB's compliance with its operating policies and procedures during project preparation (section VIII), project approval (section IX), and project implementation (section X). The report continues with a review of ADB's response to the complaints (section XI) and ends with the CRP's conclusions based on its findings (section XII) and the CRP's recommendations (section XIII).

---

<sup>1</sup> ADB. 2003. *Review of the Inspection Function: Establishment of a New Accountability Mechanism*. Manila.

<sup>2</sup> ADB. 2003. ADB Accountability Mechanism. *Operations Manual*. Manila (OM L1/Operational Procedures [OP] issued on 29 October, para. 38).

<sup>3</sup> ADB. 2004. *Operating Procedures for the Compliance Review Panel*. Manila.

## II. PROJECT BACKGROUND

5. The ICWRMIP was approved by the Board on 4 December 2008 as a \$921 million investment program using the multitranche financing facility (MFF) to fund a range of interventions needed for integrated water resources management in the Citarum River Basin. It is the first phase of a 15-year, \$3.5 billion program within the framework of a road map coordinated by the National Planning and Development Agency (BAPPENAS). The first tranche under the MFF, amounting to \$65.3 million,<sup>4</sup> is concerned mainly with the rehabilitation of a 54.2 kilometer stretch of the West Tarum Canal (WTC) to improve the flow and quality of water.<sup>5</sup> The Citarum River provides about 80% of the surface water supply to Indonesia's capital city, Jakarta.

6. The Directorate General of Water Resources (DGWR) of the Ministry of Public Works is the executing agency of the WTC project, and many other national government agencies, including BAPPENAS, are involved in project implementation. DGWR has established a project coordination and management unit in its Citarum River Basin Organization (BBWSC), which has overall responsibility for the management and coordination of the activities under the investment program. The state-owned company Perusahaan Umum Jasa Tirta II (PJT II) operates and maintains the WTC and manages the public lands along the banks of the canal. Local government agencies, while not implementing agencies, have an important role in the preparation and implementation of the involuntary resettlement under the WTC rehabilitation project. ADB staff members recognize that "the project and [the] associated TA are extremely complex with 16 components, 13 proposed consulting contracts, and 9 [executing and implementing agencies]."<sup>6</sup>

7. ADB delegated the management and implementation of Project 1 of the ICWRMIP to the Indonesia Resident Mission on 1 July 2010. Previously, the project was prepared and implemented from ADB headquarters through the Environment, Natural Resources and Agriculture Division (SEER) of the Southeast Asia Department (SERD).

8. At the time of project approval, a resettlement plan was presented to address the relocation of an estimated 872 affected households along the right-of-way of the canal. Among these households were residents, businesses, and farmers. None of the affected households held title to the land they occupied. As the project was considered to be of significant impact (category A for involuntary resettlement impact), a full resettlement plan was required. This resettlement plan was to be updated after the completion of the detailed engineering design (DED) during project implementation. The resettlement plan, approved by ADB in August 2008, was the product of long and difficult negotiations with government in an effort to bridge the gap between local government regulations and ADB's policy on compensation. Significant delays in project approval and implementation were linked to delays in the preparation of the resettlement plan, problems with the hiring of resettlement consultants after project approval, and continuing differences with the government regarding the eligibility of affected households and the manner in which they were to be compensated. Between project approval and the hiring of the resettlement consultants, the local government conducted evictions in the project area that

<sup>4</sup> ADB. *Project Data Sheet: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. <http://www.adb.org/projects/37049-023/main>.

<sup>5</sup> ADB. 2008. *Report and Recommendation of the President to the Board of Directors: Proposed Multitranchise Financing Facility for the Integrated Citarum Water Resources Management Program in Indonesia*. Manila (November).

<sup>6</sup> ADB Indonesia Resident Mission, n.d. *Note to File: Integrated Citarum Water Resources Management Investment Program, Project 1*. Jakarta (para. 9).

included some households that were eligible for compensation under the 2008 resettlement plan. Two years after project approval, the Office of the Compliance Review Panel (OCRP) received a request for compliance review related to these evictions.

### III. REQUEST FOR COMPLIANCE REVIEW

9. The OCRP received the request for compliance review of the ICRWMIP project on 30 January 2012 (Appendix 1). Hamong Santono of the nongovernment organization (NGO) People's Alliance for Citarum (ARUM) signed the request letter under the letterhead of the People's Coalition for the Right to Water (KRUHA), a member of ARUM.<sup>7</sup> The three requesters explicitly sought to keep their identities confidential and signed a power of attorney authorizing Mr. Santono to act on their behalf. On 14 February 2012, the OCRP acknowledged receipt and registered the request. During the eligibility mission of the CRP and the OCRP to Jakarta on 20–22 February 2012, the requesters confirmed Mr. Santono's authority to represent them and their request to have their identities kept confidential.

10. The request letter (translated from Bahasa Indonesia, 24 January 2012, Appendix 1), alleged that the requesters were evicted from their homes, businesses, and agricultural plots in the project area after the ADB-financed project took effect, and that they had suffered significant harm as a result. Their properties had been surveyed when the resettlement plan was prepared in 2008, they pointed out, and their names were on the list of affected households that were eligible for compensation. The requesters attributed the evictions and the resulting harm to noncompliance by ADB with its operating policies and procedures, "especially with regards to the Resettlement Policy, Public Communication, and Environmental Policies."<sup>8</sup> The request letter also set out five desired outcomes or remedies:

- (i) provide a guarantee regarding the just compensation in accordance with ADB policy on resettlement and job opportunities for the evicted persons; (ii) provide funds to [evicted persons] for their relocation; (iii) provide guarantee for a definite location where the victims can live decently; (iv) provide capital to the victims to start their businesses again, which were affected by the arbitrary eviction; (v) ensure that the impact is mitigated and that compensation is given and that all processes related to the ICWRMIP are followed, specifically the information process, consultation process and the eviction planning process in the entire project area, for accountability purposes.<sup>9</sup>

<sup>7</sup> ARUM, a coalition of NGOs including KRUHA, had publicly opposed the ICRWMIP for several years. In September 2008, an alliance of KRUHA, ARUM, the Environmental Law Alliance Worldwide (ELAW)–Indonesia and Debtwatch–Indonesia, in cooperation with the Bank Information Center–SE Asia, petitioned ADB, through its Board of Directors and President, to reconsider the project. A critical analysis of the project and its resettlement plan was attached to the petition. After meeting with ADB in November 2008 and before the Board's consideration of the loan on 4 December 2008, ARUM submitted another report further detailing its position regarding the 2008 resettlement plan.

<sup>8</sup> An e-mail from the requesters' representative to the CRP dated 24 February 2012 clarified the reference to ADB's Environment Policy. It pertained, Mr. Santono said, to the consultation process during environmental assessment. Given the similarity of the consultation provisions of OM F1/OP (footnote 2, para. 9) issued on 29 October 2003 to those of the Involuntary Resettlement Policy, the CRP did not consider the Environment Policy in its review.

<sup>9</sup> Request for Compliance Review Letter (translated from Bahasa Indonesia), 24 January 2012, para. 6.

#### IV. ELIGIBILITY OF THE REQUEST

11. After reviewing the project documents, ADB policies and procedures, and the review and assessment report of the special project facilitator (SPF) to assess the eligibility of the request, the CRP determined that none of the exclusions for compliance review applied to the case and that it met the requirements for eligibility under the 2003 Accountability Mechanism Policy (footnote 2, paras. 10–11). The CRP told the executive director representing Indonesia about the request. It also informed Management and senior staff of SERD and the Regional and Sustainable Development Department of ADB.

12. On 29 February 2012, the CRP submitted to the Board its eligibility report<sup>10</sup> recommending a compliance review, and on 21 March 2012, the Board authorized the review. The CRP cleared its terms of reference (TOR) for the compliance review (Appendix 2) with the Board Compliance Review Committee on 3 April 2012 and sent copies of the cleared TOR to the Board and the requesters. The TOR was posted on the CRP website on 4 April 2012. On 4 May 2012, the CRP requested the Government of Indonesia to authorize a site visit, and the government granted the request on 21 May 2012. The CRP conducted the site visit from 21 to 25 May 2012.

#### V. SCOPE AND CONDUCT OF THE COMPLIANCE REVIEW

13. As mandated under the 2003 Accountability Mechanism Policy, the CRP “investigates alleged violations in any ADB-assisted project that directly, materially and adversely affect local people in the course of the formulation, processing, or implementation of the project.... The CRP investigates ADB’s operational policies and procedures that have resulted, or are likely to result, in direct, adverse and material harm to project affected persons in the course of formulation, processing or implementation of the ADB assisted project” (footnote 2). If ADB is found to be noncompliant, the CRP “makes recommendations [to the Board] to ensure project compliance, including those, if appropriate, for any remedial actions in the scope or implementation of the project” (footnote 3). Unless the Board declares otherwise, the CRP monitors each year the implementation of its recommendations and remedial actions and prepares a monitoring report, which is posted on the CRP website.

14. The conduct of parties other than ADB, including the government, the borrower, and the executing agency, is not investigated unless it is directly relevant to assessing compliance with ADB’s operating policies and procedures. Compliance review is also not intended to provide legal remedies such as injunctions or monetary damage (footnote 1, para. 61; footnote 3, para. 9).

15. In its compliance review the CRP considered ADB policies and procedures applicable to the specific issues raised by the requesters. While the request centered on the evictions and the eligibility for coverage under the 2008 resettlement plan, the primary underlying concerns were: just compensation, guarantees for a permanent relocation site, support for livelihood restoration, and information, consultation, and participatory planning in accordance with ADB policy. The CRP considered the following ADB operating policies and procedures that were in effect in December 2008, at the time the project was approved:

---

<sup>10</sup> ADB Compliance Review Panel. 2012. *Report on Eligibility to the Board of Directors*. Manila (29 February). [http://compliance.adb.org/dir0035p.nsf/attachments/Final%20Eligibility%20Report%20for%20CITARUM.pdf/\\$FILE/Final%20Eligibility%20Report%20for%20CITARUM.pdf](http://compliance.adb.org/dir0035p.nsf/attachments/Final%20Eligibility%20Report%20for%20CITARUM.pdf/$FILE/Final%20Eligibility%20Report%20for%20CITARUM.pdf)

- (i) OM F2/OP and BP: Involuntary Resettlement (issued on 25 September 2006);
- (ii) OM L3/OP and BP: Public Communications (issued on 1 September 2005);
- (iii) OM C3/OP and BP: Incorporation of Social Dimensions into ADB Operations (issued on 25 April 2007);
- (iv) OM J4/OP and BP: Loan Covenants (issued on 29 October 2003); and
- (v) OM D11/OP and BP: Processing Loan Proposals (issued on 29 October 2003).

16. The CRP focused its review on the resettlement plan specific to the WTC under Project 1 of the MFF and not on the resettlement framework, which, though similar in its basic features to the resettlement plan, is more general and also covers subsequent stages of the MFF. Because the updated resettlement plan had not yet been approved at the time of the CRP's investigation, none of the CRP findings are based on the updated resettlement plan. The review touched on the resettlement framework only in its recommendations concerning future stages of the MFF. In addition to the project itself (which is financed with loans 2500 [SF]–INO and 2501 [SF]–INO), the CRP likewise examined relevant aspects of the project preparatory technical assistance (PPTA 4381-INO), whose first phase, was approved in August 2004.<sup>11</sup> The compliance review dealt in particular with Bekasi district, one of the three local jurisdictions in the project area and home of the requesters.<sup>12</sup>

17. In its review the CRP used the following terms, consistent with the Involuntary Resettlement Policy<sup>13</sup> and procedures<sup>14</sup> and the terms used in the project documents: (i) the “resettlement framework”<sup>15</sup> for the entire MFF; (ii) the “short resettlement plan” for Project 1 before it was reclassified from category B to category A for involuntary resettlement impact; (iii) the “full resettlement plan” prepared after the reclassification of Project 1; and (iv) the “updated resettlement plan,” based on the detailed engineering design to be prepared during project implementation.

18. The CRP investigation consisted of (i) a desk-based document review; (ii) interviews with ADB Management and staff at ADB headquarters in Manila; (iii) meetings in Jakarta with ADB staff at the resident mission, with DWGR, BBWSC, and BAPPENAS officials, and with the project consultants; (iv) meetings in Bandung and Bekasi district with local officials and consultants of BAPPENAS, DWGR, the Administrative Police, and other agencies; and (v) a meeting in Bekasi district with the requesters and their authorized representative. The CRP also visited the project site, including the area where the evictions had taken place. A list of the persons contacted by the CRP during the compliance review is in Appendix 3.

19. The lead reviewers in charge of the investigation were Antonio La Viña (part-time), Anne Deruyttere (part-time), and CRP Chair Rusdian Lubis, who had overall responsibility for the compliance review. Mr. La Viña completed his term on 31 May 2012 and was replaced in October 2012 by Lalanath De Silva, who was actively involved in the review of the draft reports. Mr. Lubis, an Indonesian national, had limited participation in the investigation itself to avoid the

<sup>11</sup> ADB. 2004. *Technical Assistance to the Republic of Indonesia for the Integrated Citarum Water Resources Management Investment Program, Project 1*. Manila (TA 4381-INO) included the preparation of a short resettlement plan for the rehabilitation of the WTC. Later phases of the technical assistance involved the preparation of a full resettlement plan for the WTC project after its reclassification from category B to category A for resettlement impact, and the preparation of a resettlement framework for the MFF to guide the preparation of resettlement plans for other projects under the MFF.

<sup>12</sup> The rehabilitation of the WTC in project 1 involves the districts of Bekasi and Karawang and the city of Bekasi.

<sup>13</sup> ADB. 1995. Doc. R179-95. *Involuntary Resettlement*. 12 September. Manila.

<sup>14</sup> ADB. 2006. *Involuntary Resettlement. Operations Manual*. Manila (OM F2/Operational Procedures [OP] issued on 25 September).

<sup>15</sup> Also referred to in this project as the “Compensation Policy Framework and Procedural Guidelines.”

perception of conflict of interest. The CRP was supported by a resettlement expert from Indonesia, a compliance review researcher, and an interpreter. The OCRP provided technical, logistic, and administrative support.

## VI. BACKGROUND OF THE REQUEST

20. The approval of PPTA 4381-INO (footnote 12) in December 2004 marked the start of the preparation of the project, which was originally conceived as a stand-alone project for the rehabilitation of the WTC and related activities. The project was first assigned category B for involuntary resettlement,<sup>16</sup> on the basis of the initial poverty and social impact assessment, and therefore required only a short resettlement plan according to ADB's Involuntary Resettlement Policy (para. 17 above). The preparation of the resettlement plan was included in the scope of work of the PPTA. But when the government and ADB decided to make this project the first phase of the multiphase, MFF-funded ICWRMIP, a resettlement framework was also needed, to guide the preparation of resettlement plans for future projects under the MFF. In August 2007, the project was reclassified from "B" to "A" for involuntary resettlement. Supplementary funds were allocated under the PPTA for the preparation of a full resettlement plan as well as the resettlement framework. Both the resettlement plan for the WTC<sup>17</sup> and the resettlement framework for the MFF were attached to the project documents approved by the Board. The updating of the resettlement plan for the WTC was to coincide with the DED, after loan approval, and was covered by the contractual agreement with the government.<sup>18</sup>

21. The resettlement plan for the WTC went through a long process of preparation, which contributed to delays in project approval.<sup>19</sup> The first draft that was prepared under the PPTA was not acceptable to ADB. The plan required several rounds of redrafting and negotiation, especially with the local government of Bekasi district, which refused to compensate the affected households, on the premise that they were "squatters" and were illegally occupying the right-of-way of the canal.<sup>20</sup> The resettlement plan presented to the Board included a list of the names and locations of 872 affected households, identified through a census (survey). According to the resettlement plan (footnote 16, p. 37 [Table 6.5]), about half of the affected

<sup>16</sup> ADB's Involuntary Resettlement *Operations Manual* defines three categories of projects according to their potential involuntary resettlement impact: category A, for projects with considerable impact, which therefore require a full resettlement plan; category B, for projects that are likely to have moderate resettlement impact and that require only a short resettlement plan; and category C, for projects with no foreseeable resettlement impact and no requirement for any action plan. MFF-financed projects require a resettlement framework before MFF approval to guide the preparation of specific resettlement plans for projects financed under the different tranches of the MFF.

<sup>17</sup> DGWR. 2008. *Resettlement Plan: Integrated Citarum Water Resources Management Investment Program (West Tarum Canal Rehabilitation)*. August. This resettlement plan was included as Supplemental Appendix K to the RRP (footnote 6). Its Executive Summary was included as Appendix 15 to the RRP.

<sup>18</sup> ADB. 2009. *Loan 2501 [SF]-INO - Loan Agreement: Integrated Citarum Water Resources Management Investment Program*, Project 1. Manila (Schedule 5, para. 25; agreement signed on 22 April).

<sup>19</sup> According to the project concept paper for the MFF, the project was originally expected to be approved in September 2007. ADB. 2006. *Project Concept Paper: Multitranchise Financing Facility for the Integrated Citarum Water Resources Management Investment Program*. Manila (August).

<sup>20</sup> "All households found within the Project area are considered squatters. These households who do not have title deeds (*hak milik*), or traditional or customary rights (*adat* or *ulayat*) but have exploitation rights (*hak guna usaha*) or use rights (*hak pakai*) over the affected property and [affected households] that do not have any such formal documents but who are recognized by the community as having ownership or user/possessory rights over the affected property and who satisfy the cut-off date requirement are not entitled to compensation for land. However, they are entitled to compensation at replacement for non-land assets and rehabilitation assistance in cash or in-kind or in the form of a special program in order to restore their pre-project conditions. Moreover, affected households who belong to the poorest and vulnerable groups will be assisted to improve their socio-economic status." [footnote 17, para. 43]

households were in Bekasi district and 74% of these affected households in Bekasi district were poor or vulnerable.<sup>21</sup> The 2006 survey had turned up only 527 affected households. By the time the CRP concluded its investigation, the total had increased further to 1,320 (4,702 people), according to the January 2012 survey conducted in preparation for the updating of the resettlement plan.<sup>22</sup>

22. Of the 872 affected households covered by the 2008 resettlement plan, more than half would have to relocate; others would lose agricultural land, shops, or employment. The households comprised families living on the embankment of the canal or nearby, farmers whose land was requisitioned for the construction works, and informal shop owners and their employees who lost their businesses or employment. None of the affected households, as these were defined in the resettlement plan, on the basis of the surveys in 2006–2008, had titles to the land they occupied. The estimated total cost of implementing the resettlement plan varied between a low of \$1.14 million and a high of \$1.87 million in the report and recommendation of the President (RRP) and the resettlement plan.<sup>23</sup> All resettlement costs (except those for consultants) were to be financed entirely with local counterpart funds. The resettlement plan presented to the Board would be updated after project approval once the DED studies were completed. The affected households were to be fully compensated before ADB authorized the start of the construction works.

23. Project approval was originally scheduled for 2006 but was postponed repeatedly until December 2008 (footnote 20), mainly because of the late submission of studies acceptable to ADB, in particular the resettlement plan and the resettlement framework. After the project took effect in April 2009, the start-up of project activities was delayed further by unforeseen problems with the procurement for the DED of the construction works and the omission from the TOR of the DED of support for the updating and implementation of the resettlement plan. The DED was supposed to include the updating of the resettlement plan in tandem with the preparation of the final engineering designs.

24. The request letter to the CRP mentioned that evictions in the area had taken place in August and October 2009, and again in March and December 2010.<sup>24</sup> As confirmed during the meetings of the CRP with government officials, those evictions of occupants of the right-of-way of the WTC were part of a separate beautification project alongside the canal. But some areas where evictions had occurred overlapped with the area covered by the resettlement plan and included many affected households that were part of the original survey. Without access to updated information about the project, the affected households said that they had assumed the evictions were related to the ADB-financed project. As early as July 2007, during the review of

<sup>21</sup> The poverty data on the affected households were based on a poverty line set at a monthly per capita income of Rp200,000, comparable to the official poverty threshold of Rp183,416 per capita per month, the minimum wage (resettlement plan [footnote 17], page 37 [Table 6.5]). Poor households, as well as households headed by women or elderly people, were considered vulnerable (resettlement plan [footnote 17], para. 73 and Table 7.1).

<sup>22</sup> During the site visit in May 2012, government representatives estimated the number of affected households that were eligible under the resettlement plan at 1,100. By the time the census was completed in July 2012, according to the Indonesia Resident Mission, the number of eligible affected households had risen to about 1,320.

<sup>23</sup> The RRP (footnote 5) contained two different cost estimates for the land acquisition and resettlement component of the WTC project: \$930,000 according to Table A7.1 (p.44) and \$1.14 million in Table A7.2 (p. 45). The resettlement plan (footnote 17), on the other hand, estimated the direct cost of implementing the plan at \$1.68 million (table on p. 58 of the plan), covering the replacement cost of lost assets, the livelihood restoration program (including the special program for the Bekasi district), and the cost of hiring an NGO to update and implement the resettlement plan and the external monitoring and evaluation entity.

<sup>24</sup> The requesters also referred to the implementation of the resettlement plan as another eviction they expected would happen in 2011.

the first draft of the resettlement plan, ADB staff<sup>25</sup> had been made aware of the evictions, but this information was not reflected in the resettlement plan (paras. 38 and 44 below).

25. The requesters had first filed a complaint in December 2009 with the Office of the Special Project Facilitator (OSPF), which is responsible for the consultation phase of the Accountability Mechanism. But that complaint was declared ineligible by the SPF because it had not previously been presented to the ADB operations department in charge of the project. On the other hand, a second complaint received in January 2011 was found eligible. In a review and assessment report to the parties on 23 March 2011, the SPF recommended a course of action that included workshops, dialogue between the parties, and multi-stakeholder consultations. Before filing their request for compliance review, the requesters had terminated the consultation phase of the Accountability Mechanism, which, under the 2003 Accountability Mechanism Policy, is a condition for submitting a request for compliance review. The complainants explained in their request letter that “in the end [they had] discontinued the process because it [was] taking too long and the end [was] not evident” (Appendix 1 of this compliance review report, para. 4).

26. The requesters said that they had not received compensation for the eviction although they claimed that they were entitled to it as their names were on the list of eligible affected households to be compensated under the 2008 resettlement plan. Entitlement to compensation for the loss of assets and means of livelihood for displaced affected households is a central principle of ADB’s Involuntary Resettlement Policy. The basic objective of the policy is to avoid the impoverishment of affected households and ensure that they are compensated at full replacement cost, obtain new housing, and are assisted in reestablishing their income and livelihood after they are displaced.

## VII. ALLEGED HARM

27. During the meetings with the CRP, both those carried out separately and those held in the presence of their designated representative, the requesters<sup>26</sup> confirmed the statements they had made in their request letter. In 2008, they said, they had been included in the “inventory of losses” and their houses and other properties surveyed had been marked with yellow signs.<sup>27</sup> They were forcibly evicted three times, in October 2009 and in March and December 2010, and had not been compensated for their losses. Each eviction had led to further deterioration in the socioeconomic condition of their families. Two of the households had been living on the banks of the canal since 1987, and one household, since 1998. After each eviction they had built temporary shelters of lower quality than before, nearby. All three requesters had lost their means of livelihood. Two of them now lived in shacks and the third one had moved in with relatives. Two of the requesters, farmers who had lost the plot of land they were cultivating, together with standing crops and a cattle shed, were now working as occasional day laborers. The third had lost his job in a small workshop.

<sup>25</sup> ADB. 2007. Internal E-mail Communications among ADB Staff. July. (The CRP considers references to internal communications confidential.)

<sup>26</sup> The meeting with the requesters and their representative took place on 24 May 2012 at an undisclosed location so as not to compromise their request for confidentiality. In its meeting with the requesters on 21 February 2012 during its eligibility mission, the CRP/OCRP had confirmed the identities of the requesters against their identification cards.

<sup>27</sup> This information is consistent with the findings of the SPF (ADB Special Project Facilitator. 2011. *Review and Assessment Report: Integrated Citarum Water Resources Management Investment Program, Project 1*. Manila [23 March]. <http://www.adb.org/sites/default/files/citarum-final-rar-23Mar-english.pdf>).



28. The requesters also informed the CRP that, at a meeting held during the surveys to inform them about the project, they were told they would receive full compensation for their assets before construction started. What the compensation would consist of and when they would receive it was not mentioned. No other information was provided to the requesters between the 2008 survey and their first complaint to the SPF in January 2010. They added that they found the information material they received in 2008 too complicated and not very easy to understand.<sup>28</sup>

29. During the CRP's meeting on 24 May 2012 with the local government of Bekasi district, which included the district head of the Regional Planning and Development Agency (BAPPEDA) and representatives of the Administrative Police, the district government confirmed that it had carried out a total of 10 evictions since 2007. These evictions, the local authorities clarified, were done to regulate "building permits, spatial planning and cleanliness" and were part of a city beautification project that would qualify the district for a coveted national award. They affirmed the full authority of the local government to perform the evictions, which, the local authorities added, were unrelated to the ADB-financed project. Regarding compensation, the Bekasi district government explained that, under a decree it had issued in 2007, evicted households were given a small amount<sup>29</sup> of goodwill money (*uang kerohiman*), a recourse common in Indonesia, but that it had suspended the handouts in 2009 (after ADB approved the project), to avoid encouraging the return of those previously evicted (no records of evicted people were kept) and to forestall tensions between neighbors. The Bekasi government did, however, express concern about the poverty and vulnerability of some evicted households, and indicated that it might be willing to consider alternative forms of support, such as a community development program that would include the affected households as well as other poverty-stricken families.

**30. The CRP finds that the claims of harm suffered by the requesters were justified on the basis of the facts verified during the interviews with the requesters and their representative, government representatives, resettlement consultants, and ADB staff, as well as the reports issued by the SPF and the list of affected households appended to the 2008 resettlement plan.**

## VIII. PROJECT PREPARATION

31. To ascertain whether the harm suffered by the requesters was caused by ADB's actions or ADB's failure to comply with its operating policies and procedures, the CRP addressed both the content of the resettlement plan and the manner of ADB's support for its preparation, negotiated with government, approved the resettlement plan, monitored the early stages of its implementation, and responded to complaints. ADB's Involuntary Resettlement Policy requires a full resettlement plan with

- (i) organizational responsibilities; (ii) community participation and disclosure arrangements; (iii) findings of the socioeconomic survey and social and gender analysis; (iv) legal framework, including eligibility criteria and an entitlement matrix; (v) mechanisms for resolution of conflicts and appeals procedures; (vi) identification of alternative [relocation] sites and selection; (vii) inventory, valuation of, and compensation

<sup>28</sup> ADB. 2008. *Public Information Brochure: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1* (trans. Bahasa Indonesia). Manila. The requesters received this brochure in August 2008, as part of the public disclosure of information, and made the comment during the CRP/OCRP eligibility mission in February 2012.

<sup>29</sup> Given the data in footnote 22, the amount of goodwill money provided to an average family of five was equivalent to about 2.2 or 3.3 or 5.5 times the minimum income, depending on the condition of their residence.

for lost assets; (viii) landownership, tenure, acquisition, and transfer; (ix) access to training, employment, and credit; (x) shelter, infrastructure, and social services; (xi) environmental protection and management; (xii) monitoring and evaluation; (xiii) a detailed cost estimate with budget provisions; and (xiv) an implementation schedule, showing how activities will be scheduled with time-bound actions in coordination with the civil works. (OM F2/OP [footnote 14], para. 26)

32. The CRP identified four key issues in reviewing policy compliance during project preparation: (i) the legal and institutional framework, (ii) compensation and livelihood restoration, (iii) approval of the resettlement plan, and (iv) assignment of ADB staff to resettlement issues.

## A. Legal and Institutional Framework

### 1. Legal and Institutional Analysis

33. The request for compliance review alleged that the requesters had been evicted on several occasions and associated the evictions with the ADB-financed project. ADB was not aware of these evictions until 1 year after project approval. The CRP reviewed the resettlement plan to determine the following: (i) the adequacy of ADB's assessment of the institutional and legal framework, and (ii) the role of ADB in engaging with government and supporting the preparation and implementation of resettlement activities. ADB's policy requirements regarding the analysis of the legal and institutional framework of the resettlement plan are as follows:

*Starting early in the project cycle, ADB [should assess] government policies, experiences, institutions and the legal framework for involuntary resettlement to address any inconsistencies with the policy. (Involuntary Resettlement Policy, OM F2/OP para. 6; emphasis added)*

*From inception of the PPTA..., all aspects of the project [should be] reviewed in detail by the project team, the borrower, the consultants and other stakeholders.... [The] technical, financial, economic, institutional, social, environmental, [and] resettlement [aspects should be included].... (Policy on Processing Loan Proposals [2003], OM D11/OP para. 10; emphasis added)*

34. The 2008 resettlement plan acknowledged the complexity of the laws and procedures applicable to the project and drew attention to gaps between ADB policy and Indonesian law. However, the resettlement plan dealt solely with presidential decrees and legislation related to land acquisition and missed other important legal provisions<sup>30</sup> intended to protect occupants of public land from impoverishment. These laws and regulations have been successfully applied in other projects,<sup>31</sup> and their description or analysis in the resettlement plan would have aided in

<sup>30</sup> Besides Presidential Decrees 36/2005 and 65/2006 and related regulations on the power of eminent domain, provisions of other laws, including Presidential Decrees 51/1961, 39/1999, and 51/1960, and the Basic Agrarian Law, were overlooked. As the Indonesia Resident Mission pointed out (in its memo of 26 April 2011), there are other "sectoral laws, No. 21/1961 on land revocation, No. 38/2004 on roads, and others, that recognize entitlement of compensation for state land users or people using state land." At the local level relevant regulations related to evictions and compensation include the following: (i) Local Regulation of Bekasi District No. 4 year 1988 on Orderliness, Cleanliness, and Beauty; (ii) Local Regulation of Bekasi District No. 4 Year 2003 on Spatial Planning of Bekasi District year 2003 – 2013 as amended by the Local Regulation No. Year 2007 on the Amendment of Local Regulation of Bekasi District No. 4 Year 2003.

<sup>31</sup> These laws have been successfully applied (including provisions for compensation) in other resettlement plans in Semarang, Surabaya, Jakarta, and Solo. The new Public Law No. 2/2012 on Land Acquisition for Development in the Public Interest, issued in January 2012 (regulated in August 2012) recognizes entitlement to compensation for loss of assets, including those for which the asset holders have no legal title and will facilitate compensation for

the exploration of alternatives for compensation that complied with ADB policy and were also acceptable to the Bekasi district government. Furthermore, the resettlement plan did not include some information on the local regulations regarding evictions and compensation. The CRP considers the analysis of these local regulations essential in assessing whether the local legal framework was adequate to ensure that resettlement would be carried out in compliance with ADB policy. As demonstrated during project implementation, these local regulations allowed the Bekasi government to evict the requesters and other project-affected persons. (See footnote 31.)

35. Similarly, the resettlement plan could have addressed better the complex institutional framework, particularly the institutional coordination<sup>32</sup> among the executing and implementing agencies, the provincial and district governments, and Perusahaan Umum Jasa Tirta II (PJT II), which manages the right-of-way of the WTC. Given the government's decentralization measures,<sup>33</sup> including the delegation of land acquisition to the provinces or districts, the role of each agency, its capacity, and the adequacy of its funding arrangements for tackling the institutional complexities of the project had to be clearly understood.

36. At the time the resettlement plan was prepared, ADB had been made aware of the Bekasi district's concerns regarding compliance with ADB policy for compensating displaced households. During the internal project review in October 2007, ADB staff brought out the need to:

add information on the adequacy of the institutional arrangements, experience and track record of the [executing agency] to ensure that preparation and implementation of resettlement can be carried out effectively and elaborate how the institutional responsibilities for implementing such a complex project will actually deliver safeguards on the ground.<sup>34</sup>

37. According to the resettlement plan, “the district governments will provide the main workforce in the preparation and implementation of the [resettlement plan]” and “will manage and disburse funds for the compensation of lost assets” (footnote 17, p. 46, para. 88; footnote 6, para. 9). While not considered implementing agencies, the three local governments had a major role in the implementation of the resettlement plan as they would carry out the removal of the structures and the compensation measures. The institutional analysis in the 2008 resettlement plan did not describe the local governments' technical and financial capacity, their prior experience with land acquisition, relocation, and compensation, and their specific responsibilities in the preparation of the resettlement plan and its implementation.

38. Of particular concern is the omission of all mention of the Bekasi district's history of evictions, even though ADB was aware of that record as early as July 2007. In their internal communications, ADB staff made this assessment of the compensation given by the district government to the affected households:

---

involuntary resettlement in the future. The law was prepared with support from an ADB technical assistance grant (TA 7038-INO).

<sup>32</sup> The resettlement plan indicated that coordination among the institutions in the districts would be achieved through a “resettlement working group” with representatives from each institution, including a representative from the project implementation unit, without giving details about the authority and methods of the resettlement working group and the division of labor among the participating agencies.

<sup>33</sup> ADB. 2010. Independent Evaluation Department. *Special Evaluation Study: Asian Development Bank Support for Decentralization in Indonesia*. Manila (July).

<sup>34</sup> ADB. 2007. *Issues Paper for the Management Review Meeting (2 October): Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (Comments Matrix, p. 1).

Bekasi is...relocating thousands of informal dwellers from the outer banks of the WTC for a Bekasi-financed road project and applying their standard lump-sum amounts.... The [amounts are] unacceptable. ADB [involuntary resettlement] policy requires compensation at replacement value for structures. [Furthermore,] the people affected by the road are just meters away from those who will be affected by our canal clearance.<sup>35</sup>

39. Almost from the start of the project cycle, ADB was aware of both the complexities of the institutional relationships and responsibilities,<sup>36</sup> and the absence of clearly defined laws and regulations on land acquisition and resettlement.<sup>37</sup> A thorough analysis and understanding of the legal and institutional framework at that early stage could have avoided some difficulties encountered later on when the resettlement plan was updated and implemented.

**40. The CRP finds that ADB's review of the institutional and legal framework missed key elements of the resettlement component of this project, including information about past institutional experience (i.e., previous evictions). In the CRP's opinion, this incomplete analysis did not comply with ADB's Involuntary Resettlement Policy.**

## **2. Institutional Support**

41. As specified in the Involuntary Resettlement Policy, the executing agency is responsible for planning and implementing involuntary resettlement. However, ADB must approve the resettlement plan and ensure that it is satisfactorily implemented, in accordance with ADB policy. ADB must therefore see to it that the executing agency has, or can acquire, the capacity needed to address resettlement issues adequately. According to the Involuntary Resettlement Policy:<sup>38</sup>

The responsibility for planning and implementing involuntary resettlement rests with the [executing agency].... *ADB offers support* for the efforts of the [executing agency]...when considered necessary for involuntary policy compliance, for (i) formulating *and implementing resettlement policies, strategies, and plans*; (ii) providing technical assistance to strengthen the capacity of agencies responsible for involuntary resettlement;..." (OM F2/OP, para. 7; emphasis added)

In cases where there are gaps [between the resettlement plan submitted by the borrower and ADB policy, the project team advises and assists the borrower...in filling such gaps, and requires the borrower...to address these concerns during the project preparation phase. The project team assesses the borrower's/client's capacity to address...social impacts and risks, identifies capacity building needs, and integrates necessary capacity building programs into the project design. (OM F2/OP)

42. By virtue of the "moderate" resettlement impact deemed likely at the start of project preparation in 2004, the project was classified under category B for involuntary resettlement.<sup>39</sup>

<sup>35</sup> ADB. 2007. Internal Communications among ADB Staff. 7 July.

<sup>36</sup> The PPTA report (footnote 11 above), para. 10, also noted the weak coordination between local governments and the DGWR.

<sup>37</sup> New legislation prepared with support from ADB and issued in 2012 recognizes entitlement to compensation for the loss of assets, including those held without legal title (Public Law No. 2/2012 on Land Acquisition for Development in the Public Interest, issued in January 2012 and regulated in August 2012).

<sup>38</sup> Similarly, the Policy on Processing Loan Proposals (OM D11/OP) requires the early and systematic review and follow-up of PPTA studies by ADB staff.

<sup>39</sup> The categorization of a project for expected resettlement impact is a requirement of the initial poverty and social assessment, itself a requirement of the Policy on the Incorporation of Social Dimensions into ADB Operations (2007; OM C3/OP, para. 6; OM F2/OP, para. 23).

In fact, the project “could cause significant resettlement impact,” ADB resettlement specialists warned after reviewing the draft PPTA proposal. The specialists advised the project team “to screen resettlement issues in a rigorous manner and [to] include sufficient inputs [in the TA] to cover these aspects.”<sup>40</sup>

43. The draft final resettlement plan submitted by the consultant in March 2006, in ADB’s assessment, was of “unacceptable poor quality, [did] not reflect a programmatic approach, [did] not reflect government ownership, and [demonstrated] a lack of understanding of ADB and [Government of Indonesia] project preparation and of stakeholder consultation processes.”<sup>41</sup> ADB assigned additional resources under the supplemental TA<sup>42</sup> to the improvement and upgrading of the short resettlement plan to a full plan (since by then the project had been reclassified from category B to category A). ADB resources were also set aside for the preparation of a resettlement framework to cover subsequent phases of the MFF, which now included the originally stand-alone project. However, after rejecting the first draft of the resettlement plan (footnote 42), ADB did not monitor its further development or assign a resettlement expert to provide continuing support. It was no surprise, therefore, that the draft resettlement plan submitted for peer review before the Management review meeting of October 2007 was still “unsatisfactory” and “should be revised.”<sup>43</sup> ADB resettlement specialists, were particularly concerned about the lack of evidence in the report of “clear institutional arrangements, track record, and government commitment.”<sup>44</sup>

44. By July 2007, ADB staff members were also aware of evictions by the local government in the project area.<sup>45</sup> The concerns about differences in compensation policies between the government and ADB, and about the evictions, were raised at an early stage by the resettlement staff. Yet ADB did not engage with the executing agency and other government entities in a timely and decisive manner to address the evictions and the weaknesses of the resettlement plan. ADB also did not assign early enough the necessary staff resources to deal with the differences.

**45. Despite its early recognition of the importance of the resettlement issue in the project, the CRP finds that ADB did not provide enough support to the government and the resettlement consultants in the preparation of the resettlement plan. Therefore, the CRP concludes that ADB did not comply with its policy requirements.**

### **3. Assignment of Staff Resources**

46. From the start, ADB recognized that the project, particularly as it was part of the MFF, was a complex one. Given the decentralization of government, ADB saw the need for effective institutional arrangements for timely and coordinated project preparation and implementation

<sup>40</sup> ADB. 2004. Internal Communications among ADB Staff. 12 July; ADB. 2004. Minutes of the Staff Review Committee Meeting. Manila (3 August 2004); Initial Poverty and Social Assessment attached to the PPTA report (footnote 11 above).

<sup>41</sup> ADB. 2006. *Back-to-Office Report on the Review Mission: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (25 May).

<sup>42</sup> PPTA 4381-INO (footnote 11). Supplementary financing approved on 22 June 2006 for the third phase of project preparation covered the further preparation of the resettlement plan for the WTC and the resettlement framework for future projects under subsequent tranches of the MFF.

<sup>43</sup> Matrix prepared for the Management review meeting of 2 October 2007.

<sup>44</sup> ADB. 2007. Minutes of the Management Review Meeting. Manila (24 October); ADB. 2007. *Safeguard Policy Compliance Memorandum: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (October); ADB. 2007. Internal Communications among ADB Staff. 12–21 November).

<sup>45</sup> ADB. 2007. Internal Communications among ADB Staff. 7 July.

(para. 35). But ADB lacked diligence in ensuring the availability of staff support for the government in handling resettlement issues, to avoid delays in project approval and start-up. Resettlement issues, according to ADB policy, require close monitoring and support for executing agencies from the project unit.

*ADB offers support for the efforts of the [executing agency]...when considered necessary for involuntary resettlement policy compliance, for (i) formulating and implementing resettlement policies, strategies, and plans; (ii) providing technical assistance to strengthen the capacity of agencies responsible for involuntary resettlement....* (Involuntary Resettlement Policy, F2/OP, para. 7; emphasis added)

The Project...[must ensure] that *sufficient resettlement planning and management capacity* are provided during project implementation. (Involuntary Resettlement Policy, OM F2/OP, para. 39; emphasis added)

From inception of the PPTA...*all aspects of the project design [must be] reviewed in detail by the project team, including...resettlement....* (Policy on Processing Loan Proposals, D11/OP, para. 10; emphasis added)

47. Between project conception in 2004 and approval in 2008, seven different individuals—ADB staff members or staff consultants from the operations department (including three resettlement experts)—were assigned to provide support on resettlement issues, mostly at key moments in the project cycle.<sup>46</sup> ADB staff recognized this lack of continuity in staff support. After the review mission of May 2006, during which the first draft of the resettlement plan was found inadequate (paras. 36 and 43 above), the project team recommended that “...SERD immediately [nominate] a social safeguards expert to join the processing team.”<sup>47</sup>

48. More than a year later, after the project was reclassified from category B to category A, no resettlement specialist had yet been assigned solely to the project. Several resettlement specialists and other staff members assigned to cover resettlement issues succeeded one another in supporting the project team at critical junctures during project preparation and negotiations with government. The specialist asked to review the new draft of the resettlement plan, on learning of the large number of affected households and the risk that ADB policy would not be followed,<sup>48</sup> was “desperate”<sup>49</sup> and sought help from another ADB specialist. When the continued impasse regarding compensation further delayed project appraisal in July 2008, another resettlement specialist not previously affiliated with the project, was asked on short notice, to assist the project team in negotiations with government.<sup>50</sup> It was not until July 2009, 6 months after project approval, that a local resettlement consultant<sup>51</sup> was hired to provide

<sup>46</sup> Review by the Staff Review Committee, August 2004; review of the draft final consultant's report and project clearance, March–April 2006; project reclassification from category B for involuntary resettlement to category A, March 2007; review of the final draft of the resettlement plan before the Management review meeting, September 2007.

<sup>47</sup> ADB. 2006. *Back-to-Office Report on the Review Mission: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (27 April; para. 15). For the first time, the mission included a resettlement specialist, whose involvement in the project ended with this mission.

<sup>48</sup> ADB. 2007. Internal E-mail Communications. October; ADB. 2007. Minutes of the Management Review Meeting, Manila, 24 October).

<sup>49</sup> ADB. 2007. Internal E-mail Communications. July.

<sup>50</sup> CRP interviews, May 2012; ADB. 2008. *Back-to-Office Report on the Special Administration Mission: Integrated Citarum Water Resources Management Investment Program, Project 1*. Manila (18 July).

<sup>51</sup> ADB. 2009. Internal Communications among ADB Staff; CRP interviews, May 2012; ADB Indonesia Resident Mission. 2010–2012 Project Chronology. Jakarta.

continuous support. During the CRP interviews at ADB headquarters, several staff members were concerned about the lack of specialized staff assigned to address resettlement issues.<sup>52</sup>

**49. The CRP finds that the high turnover of resettlement staff as members of or advisors to the project team affected the quality of the resettlement plan and led to difficulties in resolving differences between ADB policy and local regulations. Therefore, in the CRP's opinion, the ADB policy was not complied with.**

## **B. Compensation and Livelihood Restoration**

### **1. Compensation for Lost Assets**

50. The major difference between ADB policy and local regulations centered on the principle of entitlement to compensation for lost assets. The CRP addressed this issue in light of the following provisions of the Involuntary Resettlement Policy:

Lack of formal title to land by any affected people is *not a bar* to ADB policy entitlement (OM F2/OP, para. 9; emphasis added).

[Affected people] will be compensated and assisted through replacement of land, housing, infrastructure, resources, income sources, and services, in cash or [in] kind, so that their economic and social circumstances will be at least restored to the pre-project level. *All compensation is based on the principle of replacement cost.*<sup>53</sup> (OM F2/BP, para. 4[iii]; emphasis added)

51. The CRP assessment emphasized four key issues during the investigation: (i) the adequacy of the compensation mechanism, in light of the ADB policy requirement of compensating for assets at replacement cost; (ii) the market value of the lost assets, compared with the cash handout and the in-kind services under the special rehabilitation program, to be provided in compensation to the affected households; (iii) the availability of housing options, business locations, or farmland;<sup>54</sup> and (iv) the ability of the affected households to pay for replacement structures.

52. In 2007, ADB resettlement staff found the lump-sum amount set by the Bekasi district “unacceptable”<sup>55</sup> and declared that “the entitlement matrix included in the [resettlement plan] does not ensure full replacement of lost assets” (i.e., structures, trees, and crops), as required under the Involuntary Resettlement Policy. To bridge the gap between local regulations and ADB policy, ADB agreed to lump-sum cash compensation (*uang kerohiman*) for affected households in Bekasi district. In addition, the households would be offered in-kind compensation under the Livelihood Restoration Program (LRP) to make up for the difference between the cash

<sup>52</sup> The turnover of resettlement specialists in the safeguards division during the period 2008–2011 was also high.

<sup>53</sup> The principle of replacement cost is clarified further in the Involuntary Resettlement Policy:

Replacement cost means the method of valuing assets to replace the loss at market value, or its nearest equivalent, plus any transaction costs such as administrative charges, taxes, registration, and titling costs. Where national law does not meet this standard the replacement cost will be supplemented as necessary. Replacement cost is based on market value before the project or dispossession, whichever is higher. In the absence of functioning markets, a compensation structure is required that enables affected people to restore their livelihoods to levels at least equivalent to those maintained at the time of dispossession, displacement, or restricted access. (F2/OP, para. 4(iii), footnote 6)

<sup>54</sup> The following was the only reference to this issue in the resettlement plan: “Based on the meetings with government, it has been confirmed that there are private lands available” (footnote 17, para. 93).

<sup>55</sup> ADB. 2007. Internal Communications among ADB staff. 7 July.

payment and the assessed value of the assets. The 2008 resettlement plan (footnote 18) did not specify the type and form of the in-kind compensation (para. 58); that was to be defined in the updated plan.

53. The resettlement plan stated that “for vulnerable households who may not have the ability to generate much income, the LRP will be designed to increase income levels sufficiently to be able to pay the full local market prices” (footnote 18, p. 30 [compensation eligibility matrix]). Again, it was unclear how and to what extent job training and micro credit would help pay for housing for affected households without small businesses and no housing costs while living on the embankment of the canal. According to the resettlement plan itself, more than half of all affected households were poor or vulnerable, one-tenth were headed by elderly people, and still others had no income.

54. The resettlement plan was also vague about how affected households would be compensated for other entitlements under the Involuntary Resettlement Policy, such as relocation and transfer expenses, or transitional income and livelihood support. The lack of detail on the compensation measures did not inspire confidence that all affected households could fully replace their homes, shops, and other assets, and cover their losses during the transition period. Further definition was once more left to the updated resettlement plan.

55. The resettlement plan included a broad estimate of the cost of the LRP (footnote 24, p. 58 [resettlement cost table]) to be funded with local counterpart funds earmarked for the project, but no specific reference to the source of funding for the *uang kerohiman* payments in Bekasi district. Information about the budgetary responsibilities and financing mechanism should have been provided to assure ADB that the *uang kerohiman* payments would be fully funded. Such assurance was especially important in view of the suspension of the decree establishing the payments after the project was approved.

**56. The CRP concludes that the measures defined in the resettlement plan for the compensation of affected households fell short of the requirement under ADB’s Involuntary Resettlement Policy. The policy requires that compensation for lost assets be at replacement cost so that the economic and social conditions of affected households would at least be restored to their pre-project level.**

## **2. Livelihood Restoration**

57. The LRP, which was part of the 2008 resettlement plan, consisted of in-kind support on request for poor and vulnerable households, and, in the case of Bekasi district, additional in-kind support to cover the gap between the assessed value of the assets lost and the lump-sum cash payments. To find out whether the assistance would at least restore the livelihood of all affected households to their pre-project levels after relocation, the CRP assessed the livelihood restoration provisions of the resettlement plan against the following requirements under ADB’s Involuntary Resettlement Policy:

The involuntary resettlement policy objectives are...to ensure that affected people receive assistance, preferably under the project, so that they will be *at least as well off as they would have been in the absence of the project...* (OM F2/BP, para. 3; emphasis added)



If [affected people] lose...their means of livelihood...they will be compensated, in cash or in kind, so that their economic and social circumstances will be *at least restored to the pre-project level*. (OM F2/BP, para. 4[iii]; emphasis added)

The affected people [must] be provided with *sufficient resources and opportunities to reestablish their livelihoods*. (OM F2/BP para. 4[iv]; emphasis added)

People requiring particular assistance, such as the poor and vulnerable, *including those without legal title to land...*[require] specific measures to assist them in *improving their livelihoods*. [These include] *restoration of their income and living standards...* (OM F2/OP, para. 6; emphasis added)

All eligible affected people, including tenants and employees of affected businesses *who stand to lose their jobs, incomes or livelihoods because of project impacts*, are entitled to *livelihood restoration measures*...that may include: (i) relocation and transfer expenses; (ii) assistance for transitional income and livelihood support; (iii) compensation for crop or business losses; (iv) reestablishment of agricultural or business production; (v) assistance for income restoration; and (vi) assistance for restoring social services, social capital, community property and resources. (OM F2/OP, para. 13; emphasis added)

58. The LRP was to be made available to the 489 affected households that were “significantly affected and vulnerable” (footnote 17, para. 97). It offered as “possible long term livelihood restoration measures” two basic types of assistance:

training for skills acquisition for job placement [and] microfinance if the [affected households] will engage in small scale business.... The [affected households] will also receive a transition subsistence allowance in the form of an [in-kind] program for a maximum of 6 months sufficient to provide the minimum basic needs of a household of 5 members. (footnote 17, para. 103 and Table 9.1)<sup>56</sup>

59. The socioeconomic survey and the limited consultation with affected households during the updating of the plan, however, did not allow an assessment of the support that the affected households wanted and that they needed to reestablish their livelihood. Without this information, the viability of the LRP could not be assessed and the households did not receive enough assurance that they would not be impoverished by relocation or loss of income. Whether the training activities in particular were needed or desired by the affected households and how the activities would be implemented was unclear. Resettlement was longitudinal along 54 kilometers of the canal, involving many different economic activities and sources of income, and there was uncertainty as to where the affected households would relocate. The lack of more specific information about the services to be provided under the LRP and the way the program would operate made it difficult to assess the adequacy of the budget estimate. Whether the support for the poor and vulnerable under the LRP would also be available through a separate program under the resettlement plan meant for affected households that the *uang kerohiman* would not provide compensation at replacement cost was also not made explicit. It was unclear as well how relocation expenses, temporary loss of income, and other transition costs would be covered since support for such costs in Bekasi district was to be provided in kind.

<sup>56</sup> No further details about the in-kind support were given in the plan, other than that it would be defined in the updated resettlement plan and would be offered on the basis of a needs assessment to be made during the process of updating the resettlement plan. To that end, a “local [NGO] or any [other] organization with expertise in social development and training” would be engaged for the project.

60. The CRP finds that, without clearly stated objectives, needs assessment, and defined livelihood restoration activities and temporary transition measures, the resettlement plan did not assure affected households that they could regain their livelihood after relocation. Therefore, the CRP concludes that ADB did not comply with the livelihood restoration requirement of the Involuntary Resettlement Policy.

### 3. Analysis of Alternatives

61. ADB's Involuntary Resettlement Policy offers flexibility in how the resettlement plan can be designed and implemented to be viable and compliant with the provisions of the policy and with national legislation. An analysis of alternatives is required. The CRP reviewed this aspect of the resettlement plan in light of the following provisions and requirements under the policy:

Efforts [must be made] to *review feasible alternative project design and location options*. The reviews allow evaluation of risks, alternatives and tradeoffs.... (OM F2/OP, para. 3; emphasis added)

Each involuntary resettlement is conceived and executed as part of a development project or program. ADB and executing agencies...during project preparation assess opportunities for affected people to share in project benefits.... ADB may treat resettlement *either as part of the main investment or as a free standing resettlement project* that is prepared, financed and implemented in association with the main investment. (OM F2/BP, paras. 3 and 4[iv]; emphasis added)

ADB's support...includes the offer of *assistance...through grant or loan financing, to adopt and implement...the principles of ADB's involuntary resettlement policy within the [borrower's] own legal, policy, administrative and institutional frameworks*. (OM F2/BP, para. 5; emphasis added)<sup>57</sup>

A full resettlement plan includes...*identification of alternative sites and selection*.... (OM F2/OP, para. 26; emphasis added)

Resettlement assistance to nontitled affected people may also include replacement land, although there is no entitlement to this for such people. Land based strategies *may include provision of replacement land, ensuring greater security of tenure, and upgrading livelihoods of people without formal land titles*. (OM F2/OP, para. 11; emphasis added)

The policy treats involuntary resettlement as a development opportunity.... (OM F2/BP, para. 3)

Relocation and rehabilitation *may be considered for inclusion in ADB loan financing*.... (F2/BP, para. 4[xi]; emphasis added)

62. The resettlement plan did not consider alternatives for relocation such as (i) assistance to poor and vulnerable affected households in finding their own replacement housing or shops, and (ii) the provision of alternative housing to affected households or a housing site plot in a resettlement site secured on nearby public or private land.<sup>58</sup> ADB staff pointed out that, while providing land to non-titled affected households is "not a policy requirement, it is good

<sup>57</sup> The policy has this similar provision: "Relocation and rehabilitation *may be considered for inclusion in ADB loan financing* if requested, to assure timely availability of the required resources and to ensure compliance with involuntary resettlement procedures during implementation." (OM F2/BP, para. 4[xi]; emphasis added)

<sup>58</sup> Implementing agency staff and resettlement consultants interviewed by the CRP mentioned the availability of public land in the project area.

development practice.” Staff also emphasized that if affected households “do not have other land, they will surely occupy public land again and the [Involuntary Resettlement Policy] will not be met.” The staff wanted to know: “If the Bekasi [district] government insists on giving cash compensation only, how can [it] arrest the illegal occupation of public land in [the] district? Is there a nearby land improvement project in Bekasi district?”<sup>59</sup> The foregoing compensation options could have been explored further, as ADB staff suggested, not merely to ease the problem of displacement but to benefit a broader number of poor and vulnerable households.

63. In justifying its decision to discontinue the *uang kerohiman* payments, the Bekasi district government cited budgetary limitations and the need to avoid creating a perverse incentive to reoccupy land vacated by evictees and to avert tensions among neighbors. Compensation options that would satisfy both ADB policy and local regulations could have been analyzed in the resettlement plan. The policy provisions cited above allow alternative solutions such as the inclusion of affected households in a free-standing project associated with but not necessarily part of the main investment, where the households are part of a larger group of beneficiaries. Integrated community development, land improvement, resource management, and poverty reduction projects, for example, could comply with ADB policy while circumventing local government restrictions on direct compensation for illegal occupants. Measures similar to the community-based initiatives already included in the ICWRMIP could have been considered.

64. Government officials whom the CRP met during its site visit said that with more funds, they might have been open to alternative solutions such as a parallel community development program under which affected households and other vulnerable households would be relocated to available public land nearby and provided with the necessary services. Such a program would also avoid the risk of worsening the problem of land scarcity in the area and leaving affected households with no choice but to occupy other areas illegally.<sup>60</sup> During the final negotiation meetings between ADB and the government in July 2008, government participants mentioned several options of existing programs “that include social capital, community development and poverty alleviation based on community group establishment [and] economic development...in line with local regulations.” A “revolving fund scheme” was possible, the Bekasi district government said. Besides, there was “still time to improve the current status of the [resettlement plan]” before the scheduled construction in 2010.<sup>61</sup> Similar alternatives had been suggested earlier by ADB staff who reviewed the resettlement plan.<sup>62</sup> In other words, compensation options might have been available but were not given due attention during project preparation, when there was still time to change course.

65. According to the Involuntary Resettlement Policy, ADB can provide direct loan or grant financing for eligible resettlement expenses. If budgetary concerns were among the local government’s decision to suspend the *uang kerohiman* payments,<sup>63</sup> then direct loan or grant financing might have been provided instead of the mostly local counterpart financing under the project.<sup>64</sup> An analysis of relocation experiences elsewhere in Indonesia might also have brought out feasible alternatives (footnote 32 above). These alternatives should have been considered,

<sup>59</sup> ADB. 2007. Internal Communication among ADB Staff. 7 July.

<sup>60</sup> This argument was also made in People’s Alliance for Citarum (ARUM). 2008. *An Assessment of the Draft Resettlement Plan and other Safeguard Preparations of the Integrated Citarum Water Resources Management Investment Program (ICWRMIP)*. Jakarta (p. 19).

<sup>61</sup> Draft minutes of meeting between ADB and government representatives on 8 July 2008.

<sup>62</sup> Internal communications among ADB staff, 7 July 2007.

<sup>63</sup> The Bekasi district government indicated that the *uang kerohiman* allowance was discontinued in 2009 because of budget limitations. ADB. 2009, Internal Report on the Meeting between the Indonesia Resident Mission and the Bekasi District Government on 2 December.

<sup>64</sup> This excludes the consulting services financed under TA 4381-INO (footnote 11 above).

as required under the Involuntary Resettlement Policy, particularly since ADB was aware from the start of the difficulties involved in reconciling national regulations with ADB policy and since the risk of impoverishment under the compensation mode adopted in the resettlement plan was high.

**66. The CRP finds that the resettlement plan did not include a thorough analysis of viable alternatives. In the CRP's opinion, this does not comply with ADB's Involuntary Resettlement Policy.**

### **C. Information and Consultation<sup>65</sup>**

67. The requesters informed the CRP that, since 2008, they had not received information about the status of the project and the mechanisms for compensating affected households and restoring their livelihood. The CRP reviewed project documentation to assess whether and how affected households were informed and consulted during project preparation, as required under ADB policy. Both the Involuntary Resettlement Policy and the Public Communications Policy emphasize information, consultation, and participatory planning involving affected households.

*ADB shall share information with affected people early enough for them to provide meaningful inputs into the project design and implementation. (Policy on Public Communications, OM L3/BP, para. 5; emphasis added)*

*The affected people are to be fully informed and closely consulted...on compensation and/or resettlement options, including relocation sites, and socioeconomic rehabilitation. Pertinent resettlement information is to be disclosed...at key points, and specific opportunities provided for them to participate in choosing, planning, and [implementing] options. (Involuntary Resettlement Policy, F2/BP para. 4[v]; emphasis added)<sup>66</sup>*

*The consultation is to be carried out as early as possible in the project cycle so that the views of the affected people are taken into account in formulating the compensation and rehabilitation measures. (Involuntary Resettlement Policy, OM F2/OP, para. 44; emphasis added)*

*The borrower...shall make available...to the affected persons...a draft resettlement plan before appraisal.... The information...can be made available [in] brochures, leaflets, or booklets, using local languages. For non-literate people, other communication methods should be used. (Involuntary Resettlement Policy, OM F2/OP, para. 46; emphasis added)*

68. The first Public Information Brochure (PIB; footnote 28 above) was translated into Bahasa Indonesia, and approved by ADB in September 2007. But it was disseminated only before the ADB appraisal mission in August 2008, more than 2 years after the affected households were first surveyed. A demand of the requesters was for ADB to comply with its policy, "...specifically with information process, consultation process and eviction planning process..." (Appendix 1 of this report). During the meetings with the CRP the requesters confirmed that they had not been informed about the status of the project or the timing and

<sup>65</sup> The CRP recognizes that frequent, sound, and constructive dialogue with local communities occurred during project identification and during the definition of the road map and the WTC project objectives, to ensure the support and active participation of the communities in project implementation. However, no such dialogue took place during the preparation of the resettlement plan for the WTC.

<sup>66</sup> The Involuntary Resettlement Policy states further: "Where adversely affected people are particularly vulnerable, resettlement planning decisions will be preceded by a social preparation phase to enhance their participation in negotiation, planning, and implementation." (OM F2/BP para. 4[v])

mode of compensation. They had been told only that they would receive compensation at replacement cost, before the start of construction. The requesters expressed dissatisfaction with the timing and content of the PIB. According to them, it was too hard to understand. After reviewing the brochure, the CRP also found the PIB unsuitable for the education level of most affected households.

69. According to the 2008 resettlement plan, before the inventory of losses in 2006, 2007, and 2008, public meetings were held to brief stakeholders on the project and on the survey process and the resettlement options (footnote 17 above, paras. 45, 82, and S10, and Appendix 5). From the list of consultation meetings included in the appendix to the 2008 resettlement plan, by the CRP's count 15 "consultation meetings" were held in Bekasi district between 2 October 2006 and 12 June 2008.<sup>67</sup> Further information provided by Management after the CRP had issued its draft report provided more details about these consultation meetings but did not include any significant new information. The CRP therefore finds that potentially affected people were insufficiently consulted and that the consultations that were held did not generate meaningful input for the resettlement plan.

**70. The CRP finds that ADB did not ensure that the affected households received timely, adequate, and regular information throughout project preparation, as well as opportunities for meaningful consultation and feedback. The CRP concludes that the policy provisions in this regard were not complied with.**

## IX. PROJECT APPROVAL

71. In assessing ADB's role during the negotiation and approval of the resettlement plan, the CRP took into account the following ADB requirement under ADB's Involuntary Resettlement Policy:

...loan agreements must include specific involuntary resettlement covenants that describe the measures agreed for involuntary resettlement management, making direct reference, wherever necessary, to the requirement for implementing resettlement plans...in accordance with ADB's involuntary resettlement policy. (OM F2/OP, para. 31)

72. A full resettlement plan, which is required for a category A project, must include a full description and analysis of issues outlined in the Involuntary Resettlement Policy (para. 31 above). The policy requires the submission of the draft of the full resettlement plan to ADB and its disclosure to the public before the appraisal mission. The full resettlement plan submitted to the Board must be comprehensive. It must describe and assess the resettlement impact fully, and contain information about the expected impact and the measures intended to address the impact, so that after project approval, only the details will need updating once the detailed engineering designs become available.<sup>68</sup> The resettlement plan must also reflect the

<sup>67</sup> The 2008 resettlement plan reported seven meetings in Bekasi district that included, in addition to project and government officials, locally affected people: one public consultation in 2006, in which 40 affected households participated; and six focus group meetings in 2007 on public infrastructure in the project area. All other meetings in Bekasi district were limited to members of the resettlement working group, which included officials of the local government and PJT II, the WTC operator. The additional information Management shared with the CRP after it had submitted its draft report for comments comprised the following: minutes of meetings for resettlement plan preparation, including the inventory of losses resulting from the West Tarum rehabilitation in 2006; and ADB. 2008. *Integrated Citarum Water Resource Management Program (ICWRMP), Phase 4, Part A: Report of the Social Safeguards Specialist*. Annexes 2–4. September.

<sup>68</sup> Detailed information that may require updating includes the final census, the asset inventory and valuation, and the final budget, among others.

agreements with the borrower regarding the updating and implementation of the resettlement plan to guarantee compliance with the provisions of the ADB policy.

73. The 2004 PPTA report (footnote 11 above), as mentioned earlier, had already noted the potential incompatibility of Indonesian laws with ADB policy regarding eligibility and compensation. Early drafts of the resettlement plan submitted to ADB for review acknowledged these differences but did not offer a satisfactory solution.<sup>69</sup> In October 2007 (2.5 years after the start of the PPTA), ADB pressed for the improvement of the resettlement plan.<sup>70</sup> So as not to delay project approval further, after several missions in March, April, June, and July 2008,<sup>71</sup> a compromise solution was reached by mutual agreement:<sup>72</sup> “a fixed handout based on an existing regulation covering a lump-sum displacement handout (*uang kerohiman*) plus any gap with ADB policy to be supplemented under a livelihood restoration program....”<sup>73</sup>

74. The agreed cash payment for evictions from the WTC right-of-way was based on a decree<sup>74</sup> issued in April 2007 by the Bekasi district government. In June 2008, the Bekasi government sent a letter to the executing agency confirming the applicability of the decree to affected households under the ADB-funded project. The households, according to the letter, were eligible for cash compensation in the amounts stated in the decree, as well as in-kind compensation equivalent to \$200 to cover transition costs. Details of the payments in kind were to be defined later.

75. However, the wording of the resettlement plan (and also the RRP) allowed for the possibility that the local regulations could change. The resettlement plan contained this provision: “Affected households in Bekasi district will be entitled to compensation using the *uang kerohiman* scheme as stipulated in the existing local government regulation, *or any updated local government regulation*” (emphasis added). The cash handouts could therefore be modified or suspended at any time. In fact, the government discontinued the *uang kerohiman* system after the project was approved and paid no compensation to households affected by the evictions of 2009 and 2010.

76. ADB staff and the government later acknowledged the contradictions in the compensation mechanism: “The main misunderstanding is [a result of the] wording of the [resettlement framework] and the [resettlement plan] that says that resettlement will be in

<sup>69</sup> See paras. 36, 38, 39, 42, 43, and 62 above for staff assessments of the unsatisfactory nature of the resettlement plan drafts.

<sup>70</sup> ADB. 2007. Minutes of the Management Review Meeting. Manila (2 October); ADB. 2007. Internal Communications among ADB Staff. 12–21 November.

<sup>71</sup> By March 2008, the resettlement plan was still incomplete and could not be disclosed. Appraisal was therefore delayed further. By the end of April, the executing agency was still not ready to approve the entitlement and compensation matrix.

<sup>72</sup> The details of the agreement would be worked out with the support of an additional consultant financed with resources from phase 4 of the PPTA (footnote 11 above) (ADB. 2008. *Back-to-Office Report on the Consultation Mission: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila [11 March]).

<sup>73</sup> ADB. 2008. *Back-to-Office Report on the Review Mission: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (18 July); ADB. 2008. Draft Minutes of Meeting. Jakarta (8 July; attended by representatives of the ICWRMIP–BAPPENAS team, the ICWRMIP–BBWSC team, the Ministry of Public Works, representatives from the three local jurisdictions in the project area including Bekasi district, the ICWRMIP consultants, and the ADB mission team).

<sup>74</sup> In April 2007, the Bekasi district government issued Bupati Decree No. 300/Kep.71-POD.I/2007 providing for a lump-sum cash allowance to non-titled occupants who had lost their structures because of a road construction project in the WTC right-of-way. The decree defined the level of assistance on the basis of the type of structure (permanent, semipermanent, ordinary) and was valid only for the project mentioned.

accordance with both the ADB policy and local regulations, which is contradictory in some instances.”<sup>75</sup> After project approval, the government also raised the issue during discussions with ADB on the updating of the resettlement plan: “Ambiguities in interpreting some important paragraphs of the [resettlement plan] should be clarified.”<sup>76</sup>

**77. In the view of the CRP, the agreement on compensation reached between the government and ADB was not firm enough and did not provide assurances that the compensation requirements of ADB’s Involuntary Resettlement Policy would be complied with.**

## **X. PROJECT IMPLEMENTATION**

78. Further delays during the early stages of project implementation held up the updating of the resettlement plan and on-site monitoring of resettlement-related issues, and may explain ADB’s lack of awareness of the evictions in the project area. The CRP review focused on ADB’s ability to sustain an institutional presence and respond to complaints during the early stages of project implementation.

79. After significant delays in project preparation, the project was approved by the Board in December 2008. Soon after, the consultants were expected to start the DED, followed by the updating of the resettlement plan. As part of its review, the CRP assessed the extent to which ADB’s actions and omissions were responsible for the delays and for the uncertainty and confusion they caused among the affected households. The Involuntary Resettlement Policy requires the following:

Resettlement is reviewed *throughout...project implementation*, with reviews being *planned from the outset* to allow...for necessary adjustments to *address the involuntary resettlement policy principles* during implementation. (OM F2/BP, para. 6; emphasis added)

For projects classified as category A for...involuntary resettlement,...the operations department conducts supervision missions, with detailed review by ADB’s safeguard specialists, officers and/or consultants. The frequency of supervision missions is *proportionate to the nature and potential impacts and risks*. (OM F2/OP, para. 46; emphasis added)

Moreover, the formulation of contract packages must be *consistent with the resettlement plan*. (OM F2/OP, para. 31; emphasis added)

80. To speed up project implementation, the process of recruiting consultants and contracting construction works had started in November 2007.<sup>77</sup> However, several setbacks delayed the start-up of the DED and resettlement-related activities. The plan called for the hiring of resettlement consultants under the DED contract. However, the TOR in the original DED

<sup>75</sup> ADB Indonesia Resident Mission. 2010. *Note to File on Project Risks: Integrated Citarum Water Resources Management Investment Program, Project 1*. Jakarta (para. 5).

<sup>76</sup> ADB. 2010. Internal Communications among ADB Staff. 12 August; ADB. 2010. *Back-to-Office Report on the Special Administration Mission: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Jakarta (18 August).

<sup>77</sup> ADB. 2010. *Memorandum of Understanding: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (15 April; para. 11).

bidding documents contract did not include<sup>78</sup> consulting services for the resettlement component (footnote 76, para. 4[iv]). After ADB became aware of this omission in December 2009,<sup>79</sup> the consulting services contract had to be amended, further delaying the implementation of the project.<sup>80</sup> A second contractual amendment later became necessary because ADB had underestimated the consulting services required for resettlement.<sup>81</sup> It was only in February and March 2011,<sup>82</sup> more than 2.5 years after project approval, and more than a year after the first complaint was filed with the OSPF, that two national resettlement consultants<sup>83</sup> were hired under the DED contract to update the resettlement plan. An NGO and surveyors were subsequently contracted to update the inventory of losses, and an external monitoring agency for resettlement was hired. The absence of government counterpart staff assigned to resolve resettlement issues further complicated the start-up of resettlement activities. During this period, there was no mechanism in place for following up the affected communities and making sure that they were kept informed about the status of the project.

81. Furthermore, during the first year of project implementation, ADB did not give the necessary priority to the follow-up of resettlement issues. The inception mission and subsequent review missions did not include a resettlement expert,<sup>84</sup> despite the high visibility<sup>85</sup> and complex nature of the resettlement components. However, in the process of delegating the management of the project to its resident mission in Jakarta, ADB became more proactive and assigned staff resources to follow up on resettlement issues.

**82. The CRP finds that inadequate attention to resettlement during the early stages of project implementation significantly delayed the hiring of resettlement experts to update and implement the resettlement plan. Therefore, the CRP concludes that the policy regarding the monitoring of resettlement aspects was not complied with.**

## XI. RESPONSE TO COMPLAINTS

83. While not in itself an issue of compliance with policy, ADB's response to the complaints had to be considered as it provided insights into the origin of the problems and the way in which those problems might have been avoided.

<sup>78</sup> ADB Indonesia Resident Mission. 2010. *Memorandum of Understanding: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Jakarta (17 Aug; para. 5).

<sup>79</sup> ADB. 2010. *Memorandum of Understanding: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (25 June); ADB Indonesia Resident Mission. 2010. Back-to-Office Report on the Special Administration Mission. Jakarta (18 August).

<sup>80</sup> Procurement problems beyond the control of ADB and the government required a second round of public bidding for the DED and caused significant delays in the mobilization of the consultants (footnote 78 above).

<sup>81</sup> ADB realized that 6 months' national and 1 month's international consulting services were inadequate for the updating and implementation of the resettlement plan.

<sup>82</sup> ADB. 2012. *Back-to-Office Report: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (11 July, para. 7).

<sup>83</sup> The resettlement consultants, with support from ADB staff, would also handle a relatively minor resettlement issue in the first subproject (Bekasi Syphon) that involved the relocation of two affected households in advance of the updated resettlement plan. This resettlement issue at Bekasi Syphon was handled adequately.

<sup>84</sup> The mobilization of the resettlement expert from headquarters to accompany the inception and subsequent review missions was requested several times, but did not materialize until August 2010 (ADB. 2010. *Back-to-Office Report of Special Administration Mission: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (18 August).

<sup>85</sup> On 15 April 2009, ARUM sent a letter to the ADB President requesting ADB to stop the project, for reasons that included resettlement. The project also received attention in the national and international press.



84. The evictions of November 2009,<sup>86</sup> a year after the project was approved, appear to have taken ADB by surprise.<sup>87</sup> The first complaint, received by the OSPF on 8 December 2009, was found ineligible for processing on the grounds that it had not first been raised with the operations department. On 2 December 2009, soon after learning of the evictions, ADB fielded a consultant to visit the Bekasi district authorities. They confirmed that at least six evictions along the canal “unrelated to the ADB project” had occurred.<sup>88</sup> ADB verified the evictions by inspecting the project area. On 15 December 2009, ADB met with BAPPENAS, which considered the displacement “a local government issue,” adding that “the national government should respect local policies and therefore not interfere.” ADB maintained dialogue with concerned NGOs during this time and also facilitated dialogue between the NGOs and government.

85. Despite its immediate response, ADB took the initial position that the evictions were not related to the ICRWMP and that resettlement was a responsibility of the government.<sup>89</sup> While continuing to try to sustain dialogue between the NGOs KRUHA and ARUM and the government, ADB sought internal clarification of its position,<sup>90</sup> in view of the fact that the complainants were households that had been declared eligible for compensation under the 2008 resettlement plan.<sup>91</sup>

86. After ADB received information on the evictions, internal discussions led it to change its initial position and accept the view that the evictions were “not unrelated” to the ADB-financed project and that evicted households included in the 2008 resettlement plan were still covered by the plan, even though many of these persons had moved outside the area covered under the 2008 resettlement plan. In a letter dated 7 June 2010, ADB urged the executing agency “(i) to consider the persons who were evicted by the local government and would be affected by the ADB project [as eligible for compensation] based on the agreed [resettlement plan]; (ii) to identify the evicted persons to be included in the updated [resettlement plan]; [and] (iii) [to]...update the [resettlement plan], [and to start the] detailed design...immediately.” A difficult and long negotiation process resulted in an agreement to conduct a tracer study of eligible affected households who had been evicted and had moved to other areas, so that they could be located and included in the updated resettlement plan.

87. As the CRP could not review the contents of the updated resettlement plan, it based its findings on the detailed records maintained by the resident mission<sup>92</sup> and on interviews with government officials and consultants, as well as ADB staff and Management. The CRP

<sup>86</sup> ADB first learned about these complaints during an outreach event of the Accountability Mechanism in Jakarta on 24 November 2009. KRUHA, one of several NGOs that participated in the event, introduced two affected persons who said that they had been evicted and should have been compensated since they were included in the list of eligible affected households under the 2008 resettlement plan.

<sup>87</sup> ADB. 2010. *Note to File: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (February; according to ADB staff interviewed).

<sup>88</sup> ADB. 2009. *Note to File: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (15 December).

<sup>89</sup> On 25 February 2010 ADB sent a formal response to an NGO inquiry letter regarding the evictions, stating that the resettlement was not caused by ICWRMIP activities and that the WTC work was not scheduled to start before the following year. In the letter ADB reiterated its position that resettlement was a government responsibility.

<sup>90</sup> ADB. 2010. *Internal Memos: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Manila (31 March and 26 April).

<sup>91</sup> ADB Indonesia Resident Mission. 2010. *Back-to-Office Report on the Special Administration Mission: Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1*. Jakarta (18 August; paras. 8 and 11).

<sup>92</sup> ADB Indonesia Resident Mission. 2012. *Integrated Citarum Water Resources Management Investment Program (ICWRMIP), Project 1: Project Chronology (2010–2012)*. Jakarta.

recognizes the significant efforts ADB has been making to ensure the continued eligibility for compensation of affected households that were included in the 2008 resettlement plan and to bridge the gap between ADB policy and national and local laws and regulations.

88. Among the positive actions taken by ADB was the assignment of a full-time national resettlement specialist and a part-time international resettlement specialist to support the resident mission. ADB appears to be closely monitoring the updating of the resettlement plan by directly participating in the regular meetings of the resettlement working groups in the three districts in the project area and by providing technical advice<sup>93</sup> to the executing agency and the consulting firm in charge of updating the resettlement plan.<sup>94</sup> During the CRP mission in May 2012, the Bekasi district government continued to express concern regarding the precedent of compensating some households affected by the ADB project and not others that are similarly poor and vulnerable and are located nearby. However, the CRP was informed that a final agreement was close, and it observed the government's commitment and confidence in the successful updating and implementation of the resettlement plan.

89. The CRP also notes that as part of a regional initiative on the use of country systems (TA 6425-REG) in February 2012, ADB approved a technical assistance program to strengthen the capacity of the Indonesian government, through BAPPENAS, to implement environmental and social safeguards.<sup>95</sup> As noted in footnote 31, ADB also supported the legal framework for land acquisition and compensation. Furthermore, ADB, in cooperation with other donors, has organized workshops and training on environmental and social safeguards. ADB staff, in May 2012, said that the Citarum project would be one of the case studies to be developed for training purposes.

**90. The CRP finds that ADB's decision to uphold the eligibility of the evicted affected households previously covered by the resettlement plan was appropriate. Until the time the CRP finalized its investigation, ADB was responding diligently and proactively in addressing resettlement issues, supporting the updating of the resettlement plan, and working with government to strengthen the country's capacity to address resettlement issues.**

## **XII. CONCLUSIONS AND LESSONS**

### **A. Conclusions**

91. The CRP based its compliance review on the basic principles and relevant requirements of the Involuntary Resettlement Policy (2006). The CRP also considered the applicable sections of the operating policies on Public Communications (2005), Incorporation of Social Dimensions into ADB Operations (2007), Loan Covenants (2003), and Processing Loan Proposals (2003). This report focuses on (i) the actions of ADB during project preparation, approval, and

<sup>93</sup> Technical support has included, among others, technical advice on the methodology of the tracer study to identify and survey evicted affected households eligible under the 2008 resettlement plan, the assessment of a feasible alternative mechanism as the conduit for compensation, and the preparation of the TOR for the implementation of the resettlement plan.

<sup>94</sup> The tracer study was conducted by the NGO KRUHA, the legal representative of those who filed the request for compliance review.

<sup>95</sup> ADB. 2011. *Technical Assistance for the Strengthening and Use of Country Safeguard Systems*. Manila (TA 7566-REG); ADB. 2012. *Technical Assistance for the Strengthening and Use of Country Safeguard Systems: Capacity Development for Social Safeguard Preparation and Implementation in Water Resource Management and Energy in Indonesia*. Manila (a subproject proposal; February).

implementation; (ii) the contents of the resettlement plan; and (iii) ADB's response to the complaints.

92. **Alleged harm.** The CRP concludes that claims of harm suffered by the requesting parties were justified. The claims were verified during interviews with the requesters and their designated representative, government officials, resettlement consultants, and ADB staff, and a review of internal ADB documents. The CRP confirmed that the requesters were included in the 2008 resettlement plan. Their families suffered significant harm because of the evictions, which caused them to lose their homes and jobs and to suffer other hardships. The CRP also confirmed that they had not received adequate and timely information about the project and the resettlement plan.

93. **Legal and institutional conditions.** The CRP concludes that ADB did not make an adequate and timely assessment of the complexity of the legal and institutional framework regarding land acquisition and compensation and the related risks (paras. 33–40). In addition, local governments were not involved as implementing agencies in project design, even though they were to play a major role in designing and implementing the resettlement plan. The resettlement plan did not assess the institutional capacity of the local governments and their land acquisition record, including evictions (paras. 37–39). Furthermore, ADB did not sufficiently engage with the government and the consultants from an early stage in the project preparation to ensure that the resettlement plan was designed and implemented on the basis of well-defined institutional roles and responsibilities for all participating entities, effective coordination, and commitment to ensure compliance with ADB policy (paras. 41–44).

94. **Compensation and livelihood restoration.** ADB approved a resettlement plan that did not meet the requirements of its Involuntary Resettlement Policy and did not resolve the basic contradictions between local regulations and ADB policy on compensation for lost assets (paras. 52–55) and on livelihood rehabilitation (paras. 58–59). Furthermore, the resettlement plan did not provide adequate guarantees that the provisions of the resettlement policy would be complied with. In fact, after project approval, the local regulation on cash handouts (*uang kerohiman*), a key component of the agreement with the government, was suspended.

95. **Analysis of alternatives.** The resettlement plan did not consider alternatives for compensation and livelihood restoration that would be compatible with both ADB policy and national legislation. The CRP concludes that alternatives such as those suggested by ADB staff and government should have been explored (paras. 62–65).

96. **Information and communication.** The CRP concludes that information dissemination to affected households was not sufficient and adequate. Also, affected households were not given opportunities for meaningful consultation (paras. 68–69).

97. **Assignment of staff resources.** The CRP concludes that the preparation and negotiation of the resettlement plan suffered because of the insufficiency of staff resources to provide continuity during project design and to ensure ongoing dialogue with government on resettlement issues. By not assigning the necessary staff support (paras. 46–48) to the project teams in charge of preparing and monitoring this complex and ambitious program, ADB could not provide the necessary technical support to government and to the project design consultants in charge of preparing the resettlement plan. Not enough attention to involuntary resettlement, which had been identified as a risk at an early stage of project preparation, contributed to the difficulties and delays in the preparation of the resettlement plan and the project in general.

98. **Project implementation.** Initially, after project approval, ADB was not aware that the preparation and implementation of the updated resettlement plan had not been addressed in the TOR of the DED for the construction works as originally planned. This lack of awareness further delayed the implementation design (paras. 80–81). Further, ADB was not diligent enough in ensuring that the institutional responsibilities were clear and that the technical capacity was in place to provide continuity in dealing with resettlement issues during the interval between loan effectiveness and the updating of the resettlement plan. Also, ADB did not ensure that affected households were told about the status of the project and the resettlement plan and that their concerns and grievances were addressed through adequate channels of communication. The CRP concludes that because of inadequate follow-up during the early stages of project implementation, ADB was unaware of the evictions that were happening in the project area (paras. 84–85) and, therefore, could not have responded appropriately.

99. **Response to complaints.** The CRP concludes that while ADB was delayed in identifying its appropriate response to the complaints, ADB complied with its policy by declaring that the evictions by the local government were “not unrelated” to the ADB-financed project and by determining the continued eligibility of affected households previously included in the resettlement plan. This decision and the eventual agreement with government may have been arrived at after a considerable length of time and did not prevent further evictions from happening, but ADB proactively engaged with the different levels of government, assigned staff resources, monitored developments on-site, and ensured that the affected persons were kept informed of developments (paras. 86–87).

## **B. Lessons**

100. **Timely and adequate response to significant involuntary resettlement.** During the compliance review, the CRP identified issues ADB may want to consider in the future. The CRP notes that if significant involuntary resettlement is not addressed in a timely and adequate manner, the project can have major adverse social impact, suffer delays, and incur higher transaction costs for government and ADB and significant risk to ADB’s reputation. The potential gaps between ADB policies and the national regulations must be analyzed early to help identify compensation options that are realistic and comply with ADB policy. To overcome the potential for inefficiencies in a large and complex program involving many actors, the design of the institutional framework must define clear roles and responsibilities at all levels of government, efficient coordination mechanisms, and firm agreements to ensure the commitment of all stakeholders.

101. **Exploration of options that satisfy both ADB policy and local regulations.** ADB has many financial and technical tools for the successful design and implementation of land acquisition and involuntary resettlement programs, including outreach, training, technical support, and capacity building at the project, policy, and regulatory levels, from an early stage in the project cycle. Instead of relying on counterpart funding alone, ADB can take full advantage of provisions of the Involuntary Resettlement Policy that can facilitate the design and implementation of resettlement plans, such as the direct use of ADB funding, including grants, for all allowable expenses (paras. 63–65). To overcome institutional or regulatory obstacles, options that satisfy both ADB policy and local regulations could be explored, such as the inclusion of the affected households as beneficiaries in a parallel community-based development project.

102. **Timely and continuous assignment of ADB staff and clear communication.** This and previous compliance reviews show that the key to success in government-led resettlement

preparation and implementation is the timely and continuous assignment of the necessary ADB staff to the project team throughout the project cycle to conduct early due diligence and engage proactively with government, consultants, and other stakeholders. Besides providing technical and financial resources, ADB can facilitate clear communication between the parties to prevent misunderstandings from deteriorating into obstacles to the smooth and timely preparation and implementation of complex social safeguards such as involuntary resettlement. Consistent with its consultation and Public Communications policies, ADB can also fill the critical role of ensuring that affected persons are informed and consulted in a timely and appropriate manner so they can participate meaningfully in the planning and implementation of their relocation, compensation, and livelihood restoration. Therefore, in the CRP's view, it is in the urgent interest of ADB to increase its in-house staff and resources to adequately address involuntary resettlement and other complex social safeguard issues.

### **XIII. RECOMMENDATIONS**

103. On the basis of its findings and conclusions and in order to ensure compliance with ADB policy and avoid harm to affected persons in future projects under the MFF, the CRP presents the following recommendations for the consideration of the Board:

- (i) ADB should ensure that due diligence and dialogue with government and other stakeholders are conducted early in the development of resettlement plans for future tranches of the MFF. ADB should also ensure that the design of resettlement plans for future tranches of the MFF is based on firm commitments, clear and effective institutional coordination mechanisms, and timely and transparent information and communication.
- (ii) The resettlement framework (which provides guidance for the resettlement plans for future tranches of the MFF) should be rewritten. The revised framework should ensure that, besides the institutional arrangements, the analysis of alternatives for resettlement, compensation at replacement cost, livelihood restoration, and information, communication and grievance redress receive priority. The revised resettlement framework must (a) focus on preventing the impoverishment of project-affected persons and provide such persons, especially the most vulnerable, with opportunities to improve their livelihood; (b) be developed with ample consultation and participation of affected people; and (c) include specific monitoring and evaluation mechanisms to ensure the accountability of all parties involved.
- (iii) ADB should assign the necessary staff resources to address resettlement issues early in the project cycle and continuously to provide support to the government as needed and to ensure the implementation of resettlement plans consistent with the time frame of construction work.

**/S/ Rusdian Lubis**

Chair, Compliance Review Panel

18 February 2013

## APPENDIX 1: REQUEST FOR COMPLIANCE REVIEW

### Confidentiality

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

### KRUHA

**koalisi rakyat unyuk hak atas air**  
*people's coalition for the rights to water*  
 Jl. Mampang Prapatan VIII R-13, Jakarta Selatan-12790  
[www.kruha.org](http://www.kruha.org). Email: [kruha@kruha.org](mailto:kruha@kruha.org)  
**Phone: (62-21) 7992945 (62-21) 7996160**

Jakarta, 24 January 2012

To:

**The Secretary, Compliance Review Panel**  
**Asian Development Bank**  
**6 ADB Avenue**  
**Mandaluyong City 1550**  
**Philippines**  
**Tel: +632 632 4149**  
**Fax: +632 636 2088**  
**Email: [crp@adb.org](mailto:crp@adb.org)**

To The Honorable Secretary:

Thru this letter, we, at ARUM (Aliansi Rakyat untuk Citarum-People's Alliance for Citarum), a civil society group which is interested to see a sustainable and fair management of the Citarum river (majority of us are stakeholders from the Citarum river) are representing three (3) affected people, namely:

1. **Name:** [REDACTED]  
**Address:** [REDACTED]  
 Remarks: This person was evicted from his place of residence and lost his source of livelihood-included in the *Resettlement Plan Loan* INO 37049.
2. **Name:** [REDACTED]  
**Address:** [REDACTED]  
 Remarks: This person was evicted from his place of residence and lost his source of livelihood-included in the *Resettlement Plan Loan* INO 37049.
3. **Name:** [REDACTED]  
**Address:** [REDACTED]  
 Remarks: This person was evicted from his place of residence and lost his source of livelihood-included in the *Resettlement Plan Loan* INO 37049.

We have attached the Power of Attorney of the people named above. We request that their names be **KEPT CONFIDENTIAL**, to protect them from threats and intimidations, as well as pressures that have arisen and probably will arise from this project.

**Confidentiality**

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

We request the Compliance Review Panel (CRP) to help us investigate whether ADB followed the operational policy and procedure of the Integrated Citarum Water Resources Management Project (ICWRMIP) –INO Loan 37049. We believe that ADB failed to follow the operational policy and procedure, especially with regards to the Resettlement, Public Communication and Environmental Policies.

Due to ADB's failure to follow said operational policy and procedure, the victims suffered losses and damages, described as follows:

- **Affected Person (AP) I**

■ has lived in the ■ since 1987, cultivating a piece of land measuring ■ sq. meters, with a ■ sq.meters semi-permanent structure. ■ was evicted three (3) times, in October 2009, in March 2010 and in December 2010. He incurred material losses due to the eviction, such as a house with its electrical connection and several of his important documents. Today, ■ still remains on his land by building an emergency ■ sq.meters house that was demolished in 2009 and received the ICWRMIP stamp. Every day, ■ works as a ■. As a result of the eviction, ■ cannot cultivate his landlord's land. At present, he is jobless because the land he used to cultivate is now being tilled by another person and he does not have a place to stay.

- **Affected Person (AP) II**

■ has lived on a piece of land measuring ■ sq. meters in the ■ since 1998. On this land, ■ built a semi-permanent house measuring ■ sq.meters. He was evicted three (3) times, in October 2009, in March 2010 and in December 2010. As a result, ■ lost his house, his electrical connection and he is now staying in the house of a friend in the ■. He also lost his job from the start as a ■.

- **Affected Person (AP) III**

■ lives in a piece of land he cultivates, measuring ■ sq. meters with a ■ sq. meter structure. He was evicted three (3) times, in October 2009. On this structure, he also had a livestock stable measuring ■ sq. meters. He was evicted in December 2010 and before this, he was also evicted in March 2010 and October 2009. As a result of this evictions, he lost his house, electrical connection, and livestock stable, and some crops he planted in the remaining portion of the land. He lost his job as a ■. At present, he does not have a place to stay as a result of the last eviction.

We have to inform you also that previously, the victims asked for help from the OSPF-ADB, but in the end, they decided to discontinue the process together with OPSF because it is taking very long and the end of it is not evident. Below are some of the complaints of the victims:

1. The complainants' questions as complainants have never been answered by the OSPF. OPSF often invites the complainants to a meeting (since January 2011), but the questions of the complainants have never been answered.
2. The complainants were requested by Mr. Frank- one of the facilitators- to process their KK ( Family IDs) and KTP (Personal IDs) again, when as a matter of fact, the complainants have their KTP already even before the eviction. The complainants thought that because of this reapplication, the compensation process will soon begin. However, after obtaining the KK and the KTP, there was nothing said about the purpose of these KK and KTP.



**Confidentiality**

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

3. At one time, the complainants requested for a clean water supply facility (well) but instead were given Hand Phones, although initially, the complainants refused. Since Mr. Anton repeatedly and continuously visited the victims, offering the Hand Phones (and being hospitable), the victims hesitated to refuse the offer. Finally, the victims reluctantly accepted the Hands Phones and Mr. Anton requested them to sign a contract, even if the victims do not clearly understand what the Hand Phone is for.
4. Oftentimes, the victims are asked to meet with OPSF directly or with the facilitator, causing discomfort to the complainants because of rumors going around the victims' neighborhood. They look at the complainants with contempt, as if the complainants have already received a big amount of money from the compensation process.
5. At the time the complainants were given the HPs, OPSF promised them a phone load amounting to Rp50,000 per month. The truth is, the complainants got said load for the first 2 months only and were never informed when the load will stop. One of the complainants, at one time, requested for such load from one of the facilitators, and he was told by this facilitator to request from Mr. Hamong.
6. The process, said the complainants was long and protracted for them, for each time they have to meet with the OPSF, they have to leave their work. When they meet with OPSF, they are forced to listen to the OPSF side only. OPSF does not want to hear their side. The complainants asked for process clarification and assurance but OPSF always gives this answer- "it is not us who decide". Such that the complainants felt there was no need any more to meet with OPSF.
7. Several times, OPSF held meetings with the parties concerned, with the IRM ADB, with BBWS, but up to now there is no adequate solution and method yet to rectify the existing faults and failure. Now, management is regathering data, however, not one officer has given any information to the affected people (at least, the victims that we represent).

Other than these, several of the victims' requests have not been granted by OPSF, namely:

1. Provide a guarantee regarding the just compensation in accordance with ADB policy on resettlement and job opportunities for the evicted persons.
2. Provide funds to OTD for their relocation.
3. Provide guarantee for a definite location where the victims can live decently.
4. Provide capital to the victims to start their businesses again, which were affected by the arbitrary eviction.
5. Ensure that the impact is mitigated and that compensation is given and that all processes related to the ICWRMIP are followed, specifically the information process, consultation process and the eviction planning process in the entire project area, for accountability purposes.

Thus we send you this letter and once again we ask the Compliance Review Panel to help us investigate this matter.

Respectfully,

**(Sgd) Hamong Santono**  
**Koalisi Rakyat untuk Hak Atas Air- Kruha**  
**(People's Coalition for the Rights to Water)**  
**Anggota ARUM (Aliansi Rakyat untuk Citarum)**



**Confidentiality**

In accordance with ADB's policy on the Accountability Mechanism, the Compliance Review Panel will conduct the compliance review as transparently as possible, and in line with ADB's public communications policy, including those provisions aimed at ensuring confidential business information is not disclosed. In the present case, a number of requesting parties have exercised their right under the policy on the Accountability Mechanism to request that their identities should remain confidential. Therefore, the Compliance Review Panel will not disclose the names of those parties, nor any material or information supplied on a confidential basis, without the consent of those requesting parties or the party that submitted the material or information.

**Member (People's Alliance for Citarum)**

## POWER OF ATTORNEY

The undersigned:

1. **Name** : [REDACTED]  
 KTP No. : [REDACTED]  
 Address : [REDACTED]  
 Occupation : [REDACTED]
2. **Name** : [REDACTED]  
 KTP No. : [REDACTED]  
 Address : [REDACTED]  
 Occupation : [REDACTED]
3. **Name** : [REDACTED]  
 KTP No. : [REDACTED]  
 Address : [REDACTED]  
 Occupation : [REDACTED]

Herein referred to as Authorizing Parties, authorize:

ARUM (Aliansi Rakyat untuk Citarum-People's Alliance for Citarum) as the recipient of this authority, to act on behalf of the Authorizing Parties to resolve the Authorizing Parties' eviction case against the parties concerned. In this case, the Authorizing Parties chose the Parties' address as domicile to carry out the functions including but not limited to:

1. Taking lawful action to settle the dispute.
2. Accept payment and sign documents pertinent to the eviction case.
3. Taking steps and exerting efforts to protect the interest of the Authorizing Parties.

24 January 2012

Authorized Party:

Authorizing Parties:

1. (Sgd) [REDACTED]
2. (Sgd) [REDACTED]
3. (Sgd) [REDACTED]

(Sgd) Hamong Santono

## APPENDIX 2: TERMS OF REFERENCE OF THE COMPLIANCE REVIEW PANEL



### CRP Request No. 2012/1 – Request for Compliance Review on the Indonesia Integrated Citarum Water Resources Management Investment Program-Project 1 (Asian Development Bank Loan Nos. 2500 and 2501)

#### TERMS OF REFERENCE FOR COMPLIANCE REVIEW

##### I. Introduction

1. These Terms of Reference (TOR) have been prepared by the Compliance Review Panel (CRP) for undertaking a compliance review of the Indonesia Integrated Citarum Water Resources Management Investment Program (ICWRMIP)–Project 1 following a request for compliance review (the Request) (Appendix) received on 30 January 2012 and registered on 14 February 2012.
2. On 29 February 2012, the CRP determined the Request eligible and recommended to the ADB Board of Directors (Board) that they authorize a compliance review. The Board authorized the compliance review with an effective date of 21 March 2012.
3. Under paragraph 122 of the Accountability Mechanism policy<sup>1</sup> and paragraph 37 of the CRP Operating Procedures<sup>2</sup>, these TOR, which cover the scope of review, methodology and timeframe, are submitted for clearance to the Board Compliance Review Committee (BCRC). Following clearance by BCRC, the CRP will provide the TOR to the Board and all stakeholders, and post them on the CRP website within 14 days from the receipt of Board authorization of the compliance review.

##### II. The Request for Compliance Review

4. Brief particulars of the Request and the Project are summarized below:

<b>Project Name</b>	Integrated Citarum Water Resources Management Investment Program–Project 1
<b>Country</b>	Indonesia
<b>Borrower</b>	Republic of Indonesia
<b>Requesting parties</b>	The three requesters, who requested that their identities be confidential, authorized Mr. Hamong Santono of Aliansi Rakyat untuk Citarum (ARUM) or People's Alliance for Citarum, to file a request for compliance review on their behalf.
<b>Allegations</b>	Noncompliance with ADB operational policies and procedures on Involuntary Resettlement and Public Communications.

<sup>1</sup> ADB. 2003. *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*. Manila.

<sup>2</sup> *Operating Procedures of the Compliance Review Panel dated 5 June 2004*.

<b>ADB operations department responsible</b>	South East Asia Department (SERD)
<b>Project categorization</b>	Category A for resettlement impact
<b>Project Description</b>	<p>The Integrated Citarum Water Resources Management Investment Program (the Investment Program) funds a range of interventions across the water sector that relate to water and land management necessary to pursue the introduction of integrated water resources management (IWRM) in the Citarum River basin. A road map (or strategic investment plan) has been developed that sets out the agreed interventions that will address IWRM key issues under the Investment Program. ADB is using the Multitranche Financing Facility to finance these agreed interventions up to 2023.</p> <p>Project 1 is the first of the four project tranches included in the Investment Program and its estimated total cost is \$103.4 million. Of this amount, ADB provided financing of \$20.0 million from its ordinary capital resources (Loan 2500) and \$30.0 million from the Special Funds resources [Loan 2501(SF)]. In addition, ADB arranged a GEF grant financing of \$3.75 million (Grant 0216) in May 2008, which it administers. Project 1 will rehabilitate the 54 km. Curug-Bekasi stretch of the West Tarum canal.</p>
<b>Project Status</b>	ADB loans 2500 and 2501 were approved on 22 December 2008, became effective on 3 June 2009, and scheduled to close on 30 June 2014. As of 23 March 2012, approximately 4% and 30% of Loans 2500 and 2501 respectively have been disbursed.
<b>Project Implementation Arrangement</b>	The executing agency is the Directorate General of Water Resources (DGWR) of the Ministry of Public Works.
<b>CRP</b>	Mr. Rusdian Lubis, CRP Chair is taking primary responsibility for the compliance review and Mr. Antonio La Viña, CRP part-time member has been appointed by the CRP Chair as the Lead Reviewer, with assistance from Ms. Anne M. Deruyttere, CRP part-time member. The CRP will be supported by the Office of the Compliance Review Panel (OCRCP).
<b>Contact person:</b>	Mr. Rusdian Lubis, Chair, CRP Mr. Geoffrey R. Crooks, Officer-in-Charge, OCRCP Email: crp@adb.org Tel: (+63 2) 632 4149

### III. Purpose and Scope of Compliance Review

5. The purpose of the CRP is to investigate alleged violations by ADB of its operational policies and procedures in the Project that directly, materially and adversely harm project-affected people in the course of the formulation, processing, or implementation of the Project. The purpose of the compliance review is to focus on ADB's accountability in determining whether ADB has or has not complied with its operational policies and procedures in connection with the Project, and not to investigate the borrower or the executing agency. The conduct of these other parties will be considered only to the extent directly relevant to an assessment of

ADB's compliance with its operational policies and procedures. After carrying out a compliance review, the CRP will issue to the Board its findings and recommendations.

#### IV. Allegations of Noncompliance with ADB Policies

6. The Requesters claim that ADB failed to follow its operational policies and procedures on Involuntary Resettlement, Public Communications, and the consultation process in the Environment Policy.

7. Based on the allegations by the requesters of noncompliance with specific ADB policies, and the CRP's findings in its eligibility review of the Request, the CRP will consider ADB's operational policies and procedures that were in effect at the time of Board approval with respect to project formulation and processing. It will also consider those that were in effect when ADB's alleged act or omission took place during project implementation. The policies are:

- (i) Involuntary Resettlement Policy, 1995;
- (ii) Public Communications Policy, 2005;
- (iii) Safeguard Policy Statement, 2009;
- (iv) Operations Manual F2, Involuntary Resettlement, 25 September 2006;
- (v) Operations Manual L3, Public Communications, 19 December 2008;
- (vi) Operations Manual F1, Safeguard Policy Statement, 4 March 2010; and
- (vii) Operations Manual C3, Incorporation of Social Dimensions into ADB Operations, 25 April 2007 and 6 December 2010.

#### V. Conduct of Compliance Review and Methodology

8. The CRP will carry out its work expeditiously, transparently and in a manner to ensure that there is engagement with Management and staff, the requesters, project-affected people, the Government of Indonesia, executing and implementing agencies, and the Board Member representing Indonesia.

9. The compliance review will include the following:

- (i) a review of ADB project files and other documents related to the Project;
- (ii) the conduct of site visits with prior consent of Government of Indonesia;
- (iii) consultation with all concerned stakeholders, including interviews with:
  - ADB Management, staff and consultants,
  - staff from the Office of the Special Project facilitator (OSPF) on its engagement at the consultation phase of the Accountability Mechanism,
  - requesters and project-affected people,
  - officials from executing and implementing agencies,
  - officials from the Government of Indonesia,
  - the ADB Board Member representing Indonesia;
- (iv) the engagement of consultants or technical experts, as appropriate, to assist the CRP in carrying out its work; and
- (v) using any other review or investigatory methods that the CRP considers appropriate in carrying out its work.

10. The CRP will exercise discretion and maintain a low profile in conducting the compliance review. The CRP will not give any media interviews at any stage of the compliance review. CRP

4

members and OCRP staff will be subject to ADB's confidentiality and disclosure of information policy. Any material or information submitted to any CRP members or OCRP staff on a confidential basis from any party will not be released to any other parties without the consent of the party that submitted it. Compliance review is not intended to provide judicial-type remedies and the CRP's findings and recommendations are not adjudicative. The Chair and members of the CRP will be subject to the CRP's protocol on conflicts of interest that mandates disclosure of all potential conflicts of interest so that the Chair (or CRP members if the Chair has a potential conflict of interest) can decide the appropriate course of action.

11. After conducting its compliance review, the CRP will issue a draft report of its findings and recommendations to the Management and the Requesters for comment. Both the Management and Requesters will have 30 days to comment on the draft report. Within 14 days from receipt of Management and Requesters comments, the CRP will consider their comments and finalize the report then issue its Final Report to the Board with its findings and recommendations. If appropriate, the recommendations may include any remedial actions for ADB Management to implement in order to bring the Project back into compliance with ADB policies and procedures. The CRP notes that the Requesters have identified a number of desired outcomes or remedies in their request letter; these will be considered by CRP, if warranted, during compliance review.

#### VI. Timeframe

12. The CRP will carry out the compliance review in accordance with the procedural steps and timeframe indicated in the Accountability Mechanism policy, the corresponding Operations Manual Section L1 and the CRP Operating Procedures.

Step	Event	Timeframe
6	<b>CRP Draft report.</b> CRP will issue its draft report with findings and recommendations to the Management and the Requesters for comments.	<b>Not time-bound</b>
7	<b>Management's and Requesters' responses to CRP draft report.</b>	<b>30 days</b> from receipt of CRP draft report
8	<b>CRP Final Report.</b> After considering the Management's and Requesters' comments, CRP finalizes its report and submits a Final Report to ADB Board of Directors, including the Management's and Requesters' comments.	<b>14 days</b> from receipt of Management's and Requesters' comments
9	<b>Board Decision:</b> Board consideration of the CRP's Final Report with recommendations.	<b>21 days</b> from receipt of CRP Final Report by the Board
	Release and disclosure of the Board Decision and CRP Final Report	Within <b>7 days</b> from Board's decision

13. This timeline does not take into account any additional time required for translation and requested extensions for filing of responses. If the CRP deems it necessary to alter the above timeframe, the CRP will first seek BCRC's clearance of the revised timeframe.

/S/ Rusdian Lubis  
Chair, Compliance Review Panel  
27 March 2012

### **APPENDIX 3: PERSONS CONTACTED DURING THE COMPLIANCE REVIEW**

The Compliance Review Panel (CRP) contacted the following persons within and outside the Asian Development Bank (ADB) in carrying out its investigation of the request for compliance review under the project. This list is not exhaustive as it does not include persons who requested their identities to be kept confidential.

#### **ADB Staff**

(including those present in various CRP/OCRP meetings at headquarters, staff interviewed, and Indonesia Resident Mission [IRM] staff)

1. Maurin Sitorus, Executive Director
2. Bindu Lohani, Vice President, Knowledge Management and Sustainable Development
3. Stephen Groff, Vice President, Operations 2
4. Kunio Senga, Director General, Southeast Asia Department (SERD)
5. James Nugent, Deputy Director General, SERD
6. Jon Lindborg, Country Director, Indonesia Resident Mission (IRM)
7. Nessim Ahmad, Director, Environment and Safeguards Division, Regional and Sustainable Development Department (RSDD)
8. Javed Hussain Mir, Director, Environment, Natural Resources and Agriculture Division (SEER), SERD
9. Ki Hee Ryu, Unit Head, Project Administration, SEER, SERD
10. Mio Oka, Senior Advisor, Office of the President
11. Thomas Panella, Principal Water Resources Specialist, IRM
12. Christopher Morris, Principal Social Development Specialist, NGO Center
13. Indira Simbolon, Principal Social Development Specialist (Safeguards), Environment and Safeguards Division, RSDD
14. Karin Oswald, Principal Project Facilitation Specialist, Office of the Special Project Facilitator
15. Mailene Buendia, Senior Safeguards Specialist (Resettlement), Transport and Communications Division, SERD
16. Syarifah Aman-Wooster, Senior Social Development Specialist (Safeguards), SEER, SERD
17. Elaine Thomas, Social Development Specialist (Civil Society and Participation), SERD
18. Nasimul Islam, Water Resources Specialist, SEER, SERD
19. Ayun Sundari, Communications Specialist (Information Disclosure), Department of External Relations
20. Helena Lawira, Project Officer (Water Sector), IRM
21. Naning Mardiniah, Safeguards Officer (Resettlement), IRM

#### **ADB Consultants**

1. Eric Quinciue, Water Resources/Project Management Specialist, ADB TA 7189-INO
2. Chung In-Young, Team Leader, Korea Rural Community Corporation (KRC)
3. Dwi Apriyanti, Resettlement Specialist, KRC
4. Rimun Wibowo, Resettlement Specialist, KRC
5. Christine Seta, Consultant, OSPF

#### **Affected Persons and Representatives**

Hamong Santono, Aliansi Rakyat untuk Citarum (ARUM)  
Requesters (identities kept confidential at their request)

**Ministry of Public Works (Indonesia)**

1. Mohammad Amron, Director General of Water Resources
2. Iman Agus Nugroho, Director of Water Resources and Irrigation
3. A. Hendra, Staff, Balai Besar Wilayah Sungai (BBWS) Citarum
4. Dani Hamdan, Staff, BBWS Citarum
5. H. Marsum, PCMU contractor
6. Ari Setyorini, Dit. Bina Program
7. Irwam Agural, Dit. IRRA
8. Ismi Farion, Dit. Bina Program
9. A. Ariani, Staff, BBWS Citarum

**BAPPENAS (National Planning and Development Agency)**

Donny Azdan, Director of Water Resources and Irrigation

**BAPPEDA (Regional Planning and Development Agency)**

1. Slamet Supriadi, Secretary
2. Taufik (Spatial Planning)
3. Rama, Head, SatPol

**BBWSC (Citarum River basin organization, *Balai Besar Wilayah Sungai Citarum*)**

A. Hasanudin, Head

**Nongovernment Organization**

1. Diana Goeltom, ARUM
2. Arimbi Heroepoetri, ARUM
3. Dadang, ARUM

## APPENDIX 4: COMMENTS OF MANAGEMENT ON THE DRAFT CRP REPORT



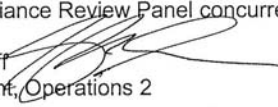
Asian Development Bank

### Memorandum

Office of the Vice-President  
Operations 2

5 February 2013

To: Rusdian Lubis  
Chair, Compliance Review Panel concurrently Head, OCRP

From: Stephen Groff   
Vice President, Operations 2

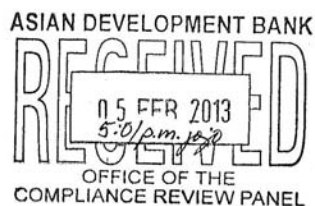
Subject: **Compliance Review of Loans 2500 and 2501 (SF)-INO Integrated Citarum  
Water Resources Management Investment Program—Project 1  
—Management Response**

---

As requested in your memo dated 7 January 2013, submitted herewith is Management's response to the Compliance Review Panel Draft Report on Integrated Citarum Water Resources Management Investment Program—Project 1.

Attachment: a/s

cc: The President  
Vice President, Knowledge Management and Sustainable Development  
Principal Compliance Coordination Specialist, OCRP





**MANAGEMENT'S RESPONSE  
DRAFT REPORT ON COMPLIANCE REVIEW PANEL REQUEST NO 2012RL001  
OF LOANS 2500 AND 2501 (SF)-INO: INTEGRATED CITARUM WATER RESOURCES  
MANAGEMENT INVESTMENT PROGRAM - PROJECT 1**

**I. INTRODUCTION**

1. On 7 January 2013, the Compliance Review Panel (CRP) requested comments on its draft report on the Integrated Citarum Water Resources Management Investment Program Project 1 in the Republic of Indonesia.
2. Pursuant to paragraph 125 of the Accountability Mechanism Policy (R79-03), Management provides comments on the draft report, consisting of:
  - (a) Management's general comments in the Citarum case and CRP's draft report set out in Section II;
  - (b) Management's specific responses to the CRP's eight conclusions and 11 associated findings in Section III; and
  - (c) Management's responses to the CRP's three recommendations in Section IV.

**II. MANAGEMENT'S GENERAL COMMENTS IN THE CITARUM CASE AND CRP'S DRAFT REPORT**

3. The Integrated Citarum Water Resources Management Investment Program - Project 1 (the Project) site overlaps with an area where evictions of people living along the West Tarum Canal (WTC) occurred in 2009 and 2010 that resulted in (i) an eligible complaint to the Office of the Special Project Facilitator (OSPF) in 2011 and (ii) a subsequent request in 2012 for compliance review under ADB's Accountability Mechanism on behalf of three evicted persons.
4. Management considers that the Project did not cause the evictions leading to the request for compliance review, nor did any associated harm from the evictions result directly from ADB's failure to follow its operational policies and procedures. To date, the civil works and the implementation of the updated resettlement plan have not started under the project. It was the Bekasi District Government<sup>1</sup> that evicted persons within and outside the ADB-assisted Project area.<sup>2</sup> The evicted persons who requested compliance review were already on the list of affected people of the Project's resettlement plan dated 11 August 2008 ("resettlement plan 2008"), which was prepared in accordance with ADB's Involuntary Resettlement Policy (1995) (IR Policy).
5. After the evictions by the Bekasi District Government, ADB decided that the persons who were evicted by the Bekasi District Government and who would eventually be affected by the Project should receive compensation according to the updated resettlement plan to reflect this decision.<sup>3</sup>

<sup>1</sup> This is one of three local governments in the Project area. The Bekasi District Government is not an implementing agency for the Project but is involved in preparing and implementing the resettlement plan as a part of the resettlement working groups.

<sup>2</sup> The reasons were to enforce its own regulations regarding (i) cleanliness, (ii) building permission, and (iii) spatial planning.

<sup>3</sup> It is anticipated that the updated resettlement plan will be finalized and submitted by the government to ADB for approval in Q1 2013.

6. Management wishes to emphasize that the resettlement plan 2008 was prepared in accordance with the IR Policy and applicable ADB's business processes.<sup>4</sup> In accordance with the IR Policy, the plan was intended to be updated with additional information after detailed engineering design and further study to determine the full scope of impacts as well as to confirm implementation arrangements prior to execution of civil works. ADB has led dialogue and worked with the government to update the resettlement plan 2008 in consultation with the affected people. The updated resettlement plan includes households evicted by the Bekasi District Government who were in the resettlement plan 2008 and traced during the updating process. It also includes an enhanced entitlement matrix with cash compensation that provides full replacement cost and other transitional and livelihood allowances throughout the Project area in line with the IR Policy.

### III. MANAGEMENT'S SPECIFIC RESPONSES TO THE CONCLUSIONS AND ASSOCIATED FINDINGS OF THE CRP REPORT

7. The following presents Management's specific responses to the eight conclusions (restated in bold) and 11 findings (restated in italics) from the draft CRP report. The draft CRP report's conclusions and their associated findings are grouped together and Management's response follows.

8. **CRP Conclusion 1 – Alleged harm. Paragraph 91. The CRP concludes that claims of harm suffered by the requesting parties were justified. The claims were verified during interviews with the requesters and their designated representative, government officials, resettlement consultants, and ADB staff, and a review of internal ADB documents. The CRP confirmed that the requesters were included in the 2008 resettlement plan. Their families suffered significant harm because of the evictions, which caused them to lose their homes and jobs and to suffer other hardships. The CRP also confirmed that they had not received adequate and timely information about the project and the resettlement plan.**

*CRP Finding 1. Paragraph 30. The CRP finds that the claims of harm suffered by the requesters were justified based on the verification of facts during the interviews with the requesters and their representative, government representatives, resettlement consultants, and ADB staff, as well as on the reports issued by the SPF and the list of affected households appended to the resettlement plan.*

9. Management agrees that the requesters for compliance review have suffered harm from the evictions as evidenced by the hardships described in the draft CRP report. However, Management considers that the Project did not cause the evictions leading to the request for compliance review, nor did any associated harm from the evictions result directly from ADB's failure to follow its operational policies and procedures. To date, the civil works and the implementation of the updated resettlement plan have not started under the Project. The Bekasi District Government carried out the evictions to enforce its local regulations as confirmed in its eviction notice to concerned households and businesses dated 5 November 2009.<sup>5</sup>

<sup>4</sup> This includes the provision that resettlement plans are required to be updated on the basis of detailed engineering design and any other further planning action specified in the resettlement plan (OMF2 paras. 30 and 50).

<sup>5</sup> The relevant regulations include the following: (i) Local Regulation of Bekasi District No. 4 Year 1988 on Orderliness, Cleanliness, and Beauty; (ii) Local Regulation of Bekasi District No. 7 Year 1996 on Building Permission; and (iii) Local Regulation of Bekasi District No. 4 Year 2003 on Spatial Planning of Bekasi District year

10. Paragraph 29 of the Draft CRP Report states,

"During the CRP's meeting on 24 May, 2012 with the local government of Bekasi district, which included the district head of the Regional Body for Planning and Development (BAPPEDA) and representatives of the Administrative Police, the district government confirmed that it had carried out a total of 10 evictions since 1997. These evictions, the local authorities clarified, were done to regulate 'building permits, spatial planning and cleanliness' and were part of a city beautification project that would qualify the district for a coveted national award. **They affirmed the full authority of the local government to perform the evictions, which, the local authorities added, were unrelated to the ADB-financed project.**" [emphasis added]

11. ADB learned of the evictions in late November 2009, and ADB acted promptly to investigate and facilitate meetings among the Bekasi District Government, the Executing Agency (EA),<sup>6</sup> the National Development Planning Agency, and related NGOs to address the situation (draft CRP report paragraph 84).<sup>7</sup> Following these initial responses, ADB decided that the persons who were evicted and whose names were on the resettlement plan 2008 and would be affected by the Project should receive compensation according to the updated resettlement plan. ADB discussed its approach with the EA and formalized it in a letter (7 June 2010) which also requested the EA to locate and identify the persons evicted by Bekasi District Government who were on the resettlement plan 2008 and include them in the updated resettlement plan for compensation.<sup>8</sup>

12. In December 2009, an NGO filed a complaint with OSPF on behalf of persons evicted by the Bekasi District Government.<sup>9</sup> The NGO claimed that ADB had not followed its IR Policy since the evicted persons were listed in the resettlement plan 2008 and did not receive compensation. OSPF did not find this complaint eligible since the NGO had not first tried to resolve the complaint with the operational department. In January 2010, a different NGO filed a similar complaint on behalf of three evicted persons that OSPF found eligible.<sup>10</sup>

13. For the second complaint, "OSPF concluded that there was a high probability that the problems could be resolved through the updating and implementation of the Resettlement Plan in accordance with the ADB's Resettlement Policy."<sup>11</sup> The Southeast Asia Regional Department (SERD) worked in coordination with OSPF throughout 2011 to address the complaint that eventually led to the current request for compliance review. SERD and OSPF (i) secured the EA's agreement to locate and compensate those persons evicted by Bekasi District Government who were in the resettlement plan 2008 and (ii) developed an action plan to address both the complaint and the updating of the resettlement plan 2008. Representatives of

2003 – 2013 as amended by the Local Regulation No. 4 Year 2007 on the Amendment of Local Regulation of Bekasi District No. 4 Year 2003.

<sup>6</sup> The EA is the Directorate General of Water Resources, Ministry of Public Works.

<sup>7</sup> ADB first learned of the evictions from two persons who attended a workshop sponsored by the Office of Compliance Review in Jakarta on 24 November 2009. They claimed they had been evicted by Bekasi District Government and believed that they were entitled to compensation under the Project since they were included in the resettlement plan 2008 (IRM 2009 NGO briefing paper).

<sup>8</sup> ADB correspondence with the EA.

<sup>9</sup> OSPF complaint received by OSPF on 9 December 2009. (OSPF website).

<sup>10</sup> OSPF complaint submitted by KRUHA received by OSPF on 4 January 2011. (OSPF website).

<sup>11</sup> For the second complaint, the Bekasi District Government had conducted additional evictions to enforce its local regulations even though ADB had facilitated meetings among the NGO, KRUHA, the EA and local government to resolve the issue. Final Report of the Special Project Facilitator, Loans 2500/01 Integrated Citarum Water Resources Management Investment Program, February 2012 (Complaint Received: 4 January 2011).

the complainant NGOs participated with ADB and the EA to develop the strategy to compensate the evictees through mainstreaming them into resettlement activities under the Project.<sup>12</sup> In spite of these accomplishments and government's agreement to provide compensation, the second NGO disengaged from the OSPF process on behalf of the complainants in October 2011 and subsequently requested compliance review.<sup>13</sup> It should be noted, however, that the Project's updated resettlement plan now includes 223 households that were evicted by the Bekasi District Government and listed in the resettlement plan 2008.<sup>14</sup>

14. CRP Conclusion 2 – Legal and institutional conditions. Paragraph 93. The CRP concludes that ADB did not make an adequate and timely assessment of the complexity of the legal and institutional framework regarding land acquisition and compensation and the related risks (paras. 34-36). In addition, local governments were not involved as implementing agencies in project design, even though they were to play a major role in designing and implementing the resettlement plan. The resettlement plan did not assess the institutional capacity of the local governments and their land acquisition record, including evictions (paras. 37-39). Furthermore, ADB did not sufficiently engage with the government and the consultants from an early stage in the project preparation process to ensure that the resettlement plan was designed and implemented on the basis of well-defined institutional roles and responsibilities for all participating entities, effective coordination, and commitment to ensure compliance with ADB policy (paras. 41-44).

*CRP Finding 2. Paragraph 40. The CRP finds that ADB's review of the institutional and legal framework missed key elements of the resettlement component of this project, including information about past institutional experience (i.e. previous evictions). In the CRP's opinion, this incomplete analysis did not comply with ADB's Involuntary Resettlement Policy.*

15. Management would like to clarify that ADB did assess and understand the complexity of the legal and institutional framework regarding land acquisition and compensation and the related risks.<sup>15</sup> The resettlement plan 2008 included assessment of the (i) relevant presidential decrees governing resettlement; (ii) statutes governing the devolution of responsibility to district and city governments to administer land acquisition and to determine compensation for public development projects; and (iii) the local regulations, in particular of the Bekasi District Government, with regard to resettlement compensation, including that of non-titled persons.<sup>16</sup>

<sup>12</sup> Resettlement updating activities also advanced markedly during 2011 including (i) mobilization of the resettlement consultants, (ii) reestablishment of the RWGs, (iii) detailed engineering design for the Project, and (iv) field activities to engage affected people.

<sup>13</sup> The Final Report of the Special Project Facilitator, Loans 2500/01(SF) Indonesia: Integrated Citarum Water Resources Management Investment Program, February 2012 (Complaint Received 4 January 2012).

<sup>14</sup> The three persons who were the OSPF complainants and moved to request compliance review were confirmed by OSPF to be among the 223 households in the updated resettlement plan although their identities were not revealed to Management.

<sup>15</sup> At the time of Project preparation, SERD was aware of previous evictions due to an unrelated road project carried out by the Bekasi District Government in 2007. The project area of the road project did not fall within the approved Project Area. The evictions leading to the request for compliance review were not related to the previous road project or to the WTC Project.

<sup>16</sup> Paragraph 34 and footnote 31 of the draft CRP report notes the resettlement plan 2008 did not provide a review of certain laws, namely (i) Law No. 21/1961 on land revocation, (ii) Law No. 38/2004 on roads, and (iii) Law No. 31/2009 on electricity, that recognize entitlement of compensation to people using state land. In this regard, it should be noted that (i) these laws do not apply to water resources, (ii) the provisions on land acquisition under Law No. 38/2004 do not provide substantive guidance, and (iii) Law No. 30/2009 was not promulgated at the time the resettlement plan 2008 was prepared. These laws, however, have been added to the institutional analysis in the updated resettlement plan.

This assessment facilitated development of the institutional role sharing and coordination between local government and the EA in the resettlement plan 2008.<sup>17</sup> Importantly, the assessment of the legal and institutional framework regarding resettlement in the resettlement plan 2008 included development of the resettlement working groups (RWGs). The RWGs coordinated preparation of the resettlement plan 2008, and also facilitated updating of the resettlement plan 2008 including addressing the entitlement of the non-titled persons. They will lead implementation of the resettlement activities.

16. Management would also like to clarify that local governments do not normally assume the role of implementing agencies for national projects under the Ministry of Public Works. Therefore, the Project did not formally designate local governments as project implementing agencies. However, with regard to resettlement activities, local governments are given the responsibility to facilitate land acquisition and the resettlement process to support public projects.<sup>18</sup> The Project's design recognizes this and the local governments in the Project area are given this responsibility even though they are not formally assigned as Project implementing agencies. Local governments actively participated during Project preparation to help define these responsibilities within the Project's context.

17. To improve the implementation effectiveness for Project resettlement activities, the updated resettlement plan now includes a capacity assessment of the government agencies to implement resettlement activities. ADB will be providing capacity building for resettlement implementation through the RWGs.

*CRP Finding 3. Paragraph 45. Despite its early recognition of the importance of the resettlement issue in the project, the CRP finds that ADB did not provide enough support to the government and the resettlement consultants in the preparation of the resettlement plan. Therefore, the CRP concludes that ADB did not comply with its policy requirements.*

18. Management acknowledges the importance of early and sustained support to the government and resettlement consultants throughout preparation of resettlement activities. Management's view is that ADB provided necessary support to the government and the resettlement consultants from the early stages of the Project preparation process, including during preparation of the resettlement plan 2008. Between March 2006 and August 2008 ADB fielded nine processing missions for the Project. Throughout this period, the Project team provided sustained engagement with the government on resettlement issues. Resettlement specialists, both staff and staff consultants, from headquarters and IRM were engaged throughout preparation of the resettlement plan 2008.<sup>19</sup>

19. **CRP Conclusion 3 – Compensation and Livelihood Restoration. Paragraph 94.** ADB approved a resettlement plan that did not meet the requirements of its Involuntary Resettlement Policy and did not resolve the basic contradictions between local regulations and ADB policy on compensation for lost assets (paras. 52-55) and on livelihood rehabilitation (paras. 58-59). Furthermore, the resettlement plan did not provide adequate guarantees that the provisions of the resettlement policy would be

<sup>17</sup> The analysis also led to development of the "special program" to address the gap between existing regulations and full replacement cost in Bekasi District.

<sup>18</sup> The national government is responsible for financing resettlement under the Project.

<sup>19</sup> As noted in the draft CRP report (paragraph 47), ADB provided seven staff members or staff consultants from headquarters to provide support for resettlement throughout the process.

complied with. In fact, after project approval, the local regulation on cash handouts, a key component of the agreement with the government, was suspended.

*CRP Finding 5. Paragraph 56. The CRP concludes that the measures defined in the resettlement plan for the compensation of affected households fell short of the requirement under ADB's Involuntary Resettlement Policy. The policy requires that compensation for lost assets be at replacement cost so that the economic and social conditions of affected households would at least be restored to their pre-project level.*

20. Management would like to clarify that the resettlement plan 2008 was prepared in accordance with the principle of full replacement cost for lost assets in line with the IR Policy, and that it also presented a strategy to address the gaps between local regulations and the ADB policy on compensation for lost assets.<sup>20</sup> The entitlement matrix (Table 5.1) of the resettlement plan 2008 included cash compensation at full replacement cost for assets for non-titled persons in Karawang District and Bekasi City. However, Bekasi District Government had a lump sum cash compensation policy (*uang kerohiman*) for non-titled, displaced persons. The resettlement plan 2008 recognized that the amount paid to displaced persons under the *uang kerohiman* was not sufficient to meet the principle of full replacement cost. Therefore, the resettlement plan 2008 included a "special program" for Bekasi District to close the gap between the full replacement cost for lost assets and the amount that would be provided under *uang kerohiman*.<sup>21</sup> This approach to supplementing local compensation standards in situations where national and/or local laws and regulations do not meet ADB's replacement cost requirement is consistent with the IR Policy and often used in ADB projects.<sup>22</sup>

21. The *uang kerohiman* was discontinued by Bekasi District in 2009. At the time of Project approval, ADB was not aware that this policy change would take place. However, it should be noted that the special program for Bekasi District was designed to fill the financing gap for replacement of assets not only for the *uang kerohiman* but for "any updated local government regulation" to achieve full replacement cost" (paragraph 57 g of resettlement plan 2008).

22. Management notes that the entitlement matrix in the updated resettlement plan has been revised and now applies to all local governments in the Project area including Bekasi District. It emphasizes that cash compensation for lost assets will be at full replacement cost, including for non-titled persons. The updated resettlement plan has a detailed cost estimate, and the EA has budgeted funds for resettlement activities.<sup>23</sup>

<sup>20</sup> Lost assets refer to non-land assets such as structures, trees and crops.

<sup>21</sup> In paragraph 56, the resettlement plan 2008 stated, "Where there is a gap on the local government legal background for compensation to informal settlers or users of land, the Project will cover the difference under the "special program" of the LRP."

<sup>22</sup> At the stage of preparation of the resettlement plan 2008, the specific gap filling measures to achieve replacement cost for each affected household under the special program were not yet defined. In order to confirm that the full replacement costs would be met, the resettlement plan 2008 included provisions for a replacement cost survey to be carried out during the updating process along with detailed engineering design when all affected persons and impacts could be ascertained.

<sup>23</sup> At the time of submission of the Management response, 5 February 2013, the unit rates for the compensation were being confirmed by an independent appraiser to support issuance of a decree from the provincial Government of West Java. The decree will authorize the unit rates as well as confirm the affected households in the updated resettlement plan to allow official submission of the updated resettlement plan to ADB for approval and subsequent implementation by the government.



*CRP Finding 6. Paragraph 60. The CRP finds that without clearly stated objectives, needs assessment, and defined livelihood restoration activities and temporary transition measures, the resettlement plan did not assure affected households that they could regain their livelihood after relocation. Therefore, the CRP concludes that ADB did not comply with the livelihood restoration requirement of the Involuntary Resettlement Policy.*

23. Management considers that the provisions of the Livelihood Restoration Program presented in the resettlement plan 2008 did address the restoration of livelihoods of the affected households at a time when the full scope of resettlement impacts could not yet be determined. The resettlement plan 2008 (i) identifies the target groups and their livelihood preferences; (ii) stipulates provisional program measures (training, employment, micro-credit, transition allowance); (iii) defines the institutional responsibilities of the project implementation unit, local government and the implementing NGO, with detailed terms of reference (TORs) for the latter; and (iv) provides an implementation schedule. The updated resettlement plan further elaborates these livelihood restoration provisions, including the training program, provision of community water supply and sanitation facilities and employment opportunities in the Project civil works. In addition, the entitlement matrix of the updated resettlement plan includes (i) a three month cash transition allowance for affected persons, (ii) a cash transfer allowance for the permanent transfer of dwellings and businesses, and (iii) cash compensation for business losses.

24. **CRP Conclusion 4 – Analysis of Alternatives. Paragraph 95. The resettlement plan did not consider alternatives for compensation and livelihood restoration that would be compatible with both ADB policy and national legislation. The CRP concludes that alternatives such as those suggested by ADB staff and government should have been explored (paras. 63-65).**

*CRP Finding 7. Paragraph 66. The CRP finds that an analysis of alternatives was not included in the resettlement plan, which is non compliant with ADB policy.*

25. Management considers that the resettlement plan 2008 was prepared in line with the provisions of OM F2/OP and presented an analysis of alternatives. The draft CRP report refers to OM F2/OP, paragraph 3 as a basis for concluding that an analysis of alternatives for compensation and livelihood restoration should have been included in the resettlement plan 2008. However, paragraph 3 of OM F2/OP states the following:

"Involuntary resettlement is addressed early in the project cycle to screen for involuntary resettlement effects, to avoid or minimize such effects, and to conduct due diligence. Wherever screening procedures identify likely involuntary resettlement, the policy requires efforts to avoid or minimize such effects through **review of feasible alternative project design and location options**. The reviews allow evaluation of risks, alternatives, and tradeoffs, and open the way for development opportunities with early stakeholder involvement, including affected people and their representatives, local government, civil society groups, and others." [emphasis added]

26. The review of alternatives in OM F2/OP paragraph 3 refers to "...feasible alternative project design and location options." in order to avoid or minimize resettlement impacts, and it does not refer to an analysis of alternative relocation and livelihood options for compensation. The resettlement plan 2008 (paragraphs 12 through 16) complied with the requirements, and it contained a section entitled "Measures to Minimize Impacts" that included provisions such as minimizing the area of the construction corridor to limit resettlement impacts.

**27. CRP Conclusion 5 – Information and communication. Paragraph 96. The CRP concludes that information dissemination to affected households was not sufficient and adequate. Also, affected households were not given an opportunity for meaningful consultation (paras. 69-70).**

*CRP Finding 8. Paragraph 70. The CRP finds that ADB did not ensure that the affected households received timely, meaningful, and regular information throughout project preparation and were given an opportunity for consultation and feedback. The CRP concludes that the policy provisions in this regard were not complied with.*

28. Management acknowledges that the resettlement plan 2008 does not provide an extensive record of meetings of consultations with affected people. However, the consultation with the affected people that took place during the preparation and disclosure of the resettlement plan 2008 was more extensive than what was described in the resettlement plan 2008.<sup>24</sup> In 2006, 252 affected persons attended seven consultation meetings during the preparation of the resettlement plan 2008.<sup>25</sup> In 2008, 12 meetings attended by more than 350 affected persons, were held to disclose and discuss the resettlement plan 2008.<sup>26</sup> Management also acknowledges that meaningful and regular consultation could have been strengthened, and the updating process to finalize the updated resettlement plan has further intensified consultation and information dissemination with affected households.<sup>27</sup> Additional consultation and disclosure will take place with affected households regarding entitlements and the unit rates, and an updated public information brochure (PIB) will be distributed. Consultation and disclosure activities from the updating process are being documented including minutes of meetings, photos, and attendance sheets.

29. The PIB is the primary means of communicating information with affected people for resettlement. Following the initial distribution of the PIB in August 2008, ADB made a further effort to improve the quality and frequency of communication by requesting EA to update and

<sup>24</sup> Based on further discussion with the Project consultants during resettlement preparation, it is now confirmed that additional consultation and disclosure activities took place but were not reflected in the resettlement plan 2008. The Asian Development Bank TA – 4381 (INO) Integrated Water Resources Management Program (ICWRMP) phase 4 Part A, Report of the Social Safeguard Specialist. September, 2008, is the document that contains these records and minutes of meetings. This document is being shared with CRP for review.

<sup>25</sup> Some of these 2006 meetings are reflected in Appendix 5 of the resettlement plan 2008, however, the contents of the discussion is not accurately portrayed in the resettlement plan 2008. The minutes of meeting confirm the discussion included preparation of the resettlement plan 2008 and not simply project benefits as reflected in Appendix 5 of the resettlement plan 2008. This information is contained in Annex – IV, List of Meeting for Resettlement Plan Preparation Including Inventory Lost of Impact of West Tarum Canal (WTC) Rehabilitation during 2006. The information is contained in, Asian Development Bank TA – 4381 (INO) Integrated Water Resources Management Program (ICWRMP) phase 4 Part A, Report of the Social Safeguard Specialist. September, 2008.

<sup>26</sup> These meetings are not reflected in the resettlement plan 2008. Annex II: Disclosure Report of Resettlement Plan (RP) of West Tarum Canal Rehabilitation. The information is contained in, Asian Development Bank TA – 4381 (INO) Integrated Water Resources Management Program (ICWRMP) phase 4 Part A, Report of the Social Safeguard Specialist. September, 2008.

<sup>27</sup> In November 2011, six consultation meetings for stakeholders were held throughout the Project area to discuss finalization of the resettlement plan 2008 with half the participants (127) affected persons. During the detailed measurement survey between November 2011 and March 2012, all households and businesses in the Project area were given an updated resettlement public information brochure (PIB) in Bahasa Indonesia and invited to a focus group discussion. In February and March 2012, 28 focus group discussions were attended by over half (682) of the 1,320 affected households. These consultations solicited feedback regarding (i) ADB's IR Policy, (ii) entitlements, (iii) needs for the livelihood restoration program; and (iv) grievance redress.



disclose the PIB. The EA repeatedly refused ADB's requests, indicating that the detailed measurement survey (DMS) as a part of the updating process should start prior to the PIB's distribution.<sup>28</sup> The EA only approved and submitted the updated PIB to ADB for release on 21 October 2011. It then appeared on the ADB website on 3 November 2011 and was distributed during the DMS starting in November 2011.

**30. CRP Conclusion 6 – Assignment of staff resources. Paragraph 97.** The CRP concludes that the preparation and negotiation of the resettlement plan suffered because of the insufficiency of staff resources to provide continuity during project design and to ensure ongoing dialogue with government on resettlement issues. By not assigning the necessary staff support (paras. 46-48) to the project teams in charge of preparing and monitoring this complex and ambitious program, ADB could not provide the necessary technical support to government and to the project design consultants in charge of preparing the resettlement plan. Not enough attention to involuntary resettlement, which had been identified as a risk at an early stage of project preparation, contributed to the difficulties and delays in the resettlement plan and the project in general.

*CRP Finding 4. Paragraph 49. The CRP finds that the high turnover of resettlement staff as members of or advisors to the project team affected the quality of the resettlement plan and led to difficulties in resolving differences between ADB policy and local regulations. Therefore, in the CRP's opinion, the ADB policy was not complied with.*

**31.** Management acknowledges that different resettlement specialists were involved during preparation of the resettlement plan 2008. Management's view is that ADB provided necessary resettlement staff resources throughout Project preparation to engage the government on resettlement issues and resolve differences between ADB policy and local regulations. As the draft CRP report noted in its paragraph 48, ADB resettlement specialists and other staff members were engaged to cover resettlement issues at critical junctures during the Project's preparation and during negotiations with the government. ADB's preparation of the resettlement plan 2008 was also guided by the IR Policy and approved business processes, which provide internal review and quality control measures irrespective of staff changes. Throughout preparation of the resettlement plan 2008 there was ongoing communication among the various resettlement staff which provided continuity throughout the preparation process.

**32. CRP Conclusion 7 – Project implementation. Paragraph 98.** Initially, after project approval ADB was not aware that the preparation and implementation of the updated resettlement plan had not been addressed in the terms of reference of the detailed engineering design for the construction works as originally planned, and this lack of awareness further delayed the implementation design (paras. 80-81). Further, ADB was not diligent enough in ensuring that the institutional responsibilities were clear and that the technical capacity was in place to provide continuity in dealing with resettlement issues during the interval between loan effectiveness and the updating of the resettlement plan. Also, ADB did not ensure that affected households were told about the status of the project and the resettlement plan and that their concerns and grievances were addressed through adequate channels of communication. The CRP concludes that

<sup>28</sup> ADB's requests for the government to update and distribute the PIB were included in Project mission MOUs in June 2009, November 2009, August 2010, October 2010, and July 2011 and at a high level government safeguards meeting in December 2010. Especially following the second OSPF complaint, ADB discussed the PIB disclosure with the government at meetings on 25 February 2011, 18 April 2011, 11 May 2011, 1 June 2011, and 15 September 2011.

because of inadequate follow-up during the early stages of project implementation, ADB was unaware of the evictions that were happening in the project area (paras. 84-85) and, therefore, could not have responded appropriately.

*CRP Finding 10. Paragraph 82. The CRP finds that inadequate attention to resettlement during the early stages of project implementation significantly delayed the hiring of resettlement experts to update and implement the resettlement plan. Therefore, the CRP concludes that the policy regarding monitoring of resettlement aspects was not complied with.*

33. Management's view is that ADB followed-up and paid due attention to resettlement activities during the early stages of Project implementation. Delay in preparation of the updated resettlement plan stemmed from the delay in recruitment of the detailed engineering design (DED) consultants, and not from inadequate attention from ADB. The DED consultants were to prepare the updated resettlement plan since detailed design was required to update the resettlement plan 2008, and they were assigned this responsibility.<sup>29</sup> Recruitment of DED consultants for the Project started on 11 September 2007 but was delayed for over two years due to procurement issues, and the contract was eventually awarded on 12 August 2010.<sup>30</sup> Management acknowledges that the TORs for resettlement specialists were not included in the original DED consultant's package although the role and outline terms of reference (TORs) for various resettlement consultants were included in the resettlement plan 2008. In order to address this, ADB requested the EA to amend the pending DED contract to include resettlement TORs during the first Project review mission in June 2009.<sup>31</sup>

34. Management would like to clarify that ADB was taking various actions throughout the early stages of the Project to clarify institutional responsibilities and put capacity in place to address resettlement issues. In addition to requesting the DED contract amendment for resettlement, the first review mission requested the government to (i) issue the revised PIB, (ii) recruit a consultant for independent monitoring, (iii) prepare a work program for 2009 and 2010 resettlement activities, and (iv) reestablish the RWGs. The first review mission included a resettlement/social development specialist and provided briefings on the resettlement framework to the various project implementation units involved with the Project.<sup>32</sup> The MOU of the second review mission in November 2009 reiterated the same resettlement concerns as the previous mission.<sup>33</sup> An IRM national staff consultant (resettlement specialist) provided ongoing Project support throughout this period.<sup>34</sup>

35. Due to the delay in the DED contract, there was no detailed design, civil works or Project-related resettlement implementation to be monitored by ADB during the early stages of the Project. Therefore, in Management's view, there was no circumstance for ADB to have monitored and been aware of the evictions being undertaken by Bekasi District Government. Upon learning of the evictions that were within the legal right of Bekasi District Government in November 2009, ADB responded promptly to find a solution through dialogue with the EA and

<sup>29</sup> This is common practice for civil works projects.

<sup>30</sup> Estimated from the ADB Consultant Recruitment Activity Monitoring sheet for the contract. The delay stemmed from the EA's inability to reach agreement with the first ranked firm. ADB tried to mediate and provided its opinion, however, it was an internal government issue that needed to be resolved between the EA and government auditors.

<sup>31</sup> Memorandum of Understanding from the first review mission, signed 25 June 2009. The draft CRP report incorrectly indicates that this was December 2009.

<sup>32</sup> Memorandum of Understanding from the first review mission, signed 25 June 2009.

<sup>33</sup> Memorandum of Understanding from the second review mission, 4 December 2009.

<sup>34</sup> Communication with IRM staff.

other government agencies. Also following the evictions, ADB further intensified its engagement with the government to address resettlement issues. As noted in paragraph 29, ADB did engage the EA continuously to update and distribute the PIB to provide information regarding the resettlement plan 2008 and facilitate communication.

**36. CRP Conclusion 8 – Response to complaints. Paragraph 99.** The CRP concludes that while ADB was delayed in identifying its appropriate response to the complaints, ADB complied with its policy by declaring that the evictions by the local government were “not unrelated” to the ADB-financed project and by determining the continued eligibility of affected households previously included in the resettlement plan. This decision and the eventual agreement with government may have been arrived at after a considerable length of time and did not prevent further evictions from happening, but ADB proactively engaged with the different levels of government, assigned staff resources, monitored developments on-site, and ensured that the affected persons were kept informed of developments (paras. 86-87).

*CRP Finding 11. Paragraph 90. The CRP finds that ADB’s decision to uphold the eligibility of the evicted affected households previously covered by the resettlement plan was appropriate. Until the time the CRP finalized its investigation, ADB was responding diligently and proactively in addressing resettlement issues, supporting the updating of the resettlement plan, and working with government on strengthening the country’s capacity to address resettlement issues.*

37. Management considers that in this particular case, taking the additional measure to provide compensation to the persons evicted but who were included in the resettlement plan 2008 was appropriate. The draft CRP report indicated that ADB position was that the evictions by local government were “not unrelated” to the ADB-financed Project. Management’s view is the evictions are only related to the ADB-financed Project because the evicted persons were included in the resettlement plan 2008. Management maintains that neither the ADB-financed Project nor its resettlement plan 2008 caused the evictions leading to the request for compliance review. Nor did any associated harm from the evictions result directly from ADB’s failure to follow its operational policies and procedures.

38. Management appreciates the CRP’s positive conclusion regarding ADB’s proactive engagement to address resettlement following the evictions.

**39. CRP Finding 9 – Loan covenant.** The CRP finding presented below is not associated with any of the conclusions found in the draft CRP report. Management’s response is below.

**CRP Finding 9. Paragraph 77.** In the view of the CRP, the agreement on compensation reached between the government and ADB and reflected in the loan covenant, for the above reasons was not in accordance with ADB’s Involuntary Resettlement Policy.

40. With regards to ADB’s role in negotiating and approving the resettlement plan 2008, the CRP report made reference to OM F2/OP, paragraph 31. The paragraph states the following:

*“Loan agreements must include specific involuntary resettlement covenants that describe the measures agreed for involuntary resettlement management, making direct reference,*

whenever necessary, to the requirement for implementing resettlement plans...in accordance with ADB's involuntary resettlement policy. (OM F2/para. 31)"

41. The relevant covenant in the Project's loan agreement requires (i) the Project to be implemented in accordance with the applicable laws and regulations of the borrower, ADB's involuntary resettlement policy and the resettlement plan 2008; and (ii) the resettlement plan 2008 to be disclosed to the affected people, updated and submitted by the government, approved by ADB and monitored internally by the government and externally.<sup>35</sup> Management would like to seek clarification on whether the draft CRP report implies that the loan agreement should address the potential contradiction between the applicable laws and regulations of the borrower and ADB's IR Policy. If such is the case, Management would like to confirm that the appropriate document to clarify such ambiguity is the resettlement plan and not the loan agreement. The covenant in the loan agreement with regard to involuntary resettlement is consistent with the requirement of ADB's policies and procedures including OM F2/OP, paragraph 31.

#### IV. MANAGEMENT'S SPECIFIC RESPONSES TO THE THREE RECOMMENDATIONS OF THE CRP

42. Management notes that in accordance with paragraph 99 of the Accountability Mechanism Policy (R79-03) and paragraph 5 of OM L1/BP (ADB Accountability Mechanism) and the CRP's terms of reference, the CRP makes recommendations to ensure project compliance, including those, if appropriate, for any remedial changes in the scope or implementation of the project. However, CRP Recommendations 1 and 3 concern ADB's institutional approaches to implementing relevant operational policies more generally rather than project-specific issues.

**43. CRP Recommendation 1. Paragraph 103 (i). ADB should ensure that due diligence and dialogue with government and other stakeholders are conducted early in the development of any new project. ADB should also ensure that the design of resettlement plans is based on firm commitments, clear and effective institutional coordination mechanisms, and timely and transparent information and communication.**

44. Management agrees with the recommendation, and ADB has undertaken measures so that due diligence and dialogue take place early in the development of new projects and that resettlement plans are effectively prepared and implemented based on firm commitments, institutional arrangements, and information and communication. In 2009, ADB adopted its Safeguard Policy Statement (SPS) which contains strengthened provisions for effective resettlement planning and implementation, and clearly articulates the safeguard policy principles and requirements to be embedded in all resettlement plans. Where ADB's safeguard requirements differ from those of the borrower, the SPS requires an explicit gap-filling strategy to be reflected in the resettlement plan along with institutional arrangements. To ensure clarity, the SPS delineates the roles of ADB and borrowers/clients, including the safeguard commitments that borrowers/clients need to fulfill, enhanced provisions for monitoring and reporting by the borrower/client on its commitments, and strict requirements for supervision on the part of ADB. The SPS also elaborates requirements for borrowers/clients to engage with people affected by proposed projects through ongoing information disclosure, consultation and informed participation beginning at the earliest stages of the project cycle. The disclosure

<sup>35</sup> The external monitoring consultants were mobilized in April 2012. Their inception report that reviews the updating process has been posted on the web in January 2013.

requirements set out in the SPS are further strengthened in the Public Communication Policy (2011).

45. On 4 March 2010, ADB adopted the new OM section F1 on *ADB Safeguard Review Procedures*, which describes a comprehensive internal compliance review process, as well as allocation of responsibilities within ADB for due diligence, safeguard review and project supervision to seek to ensure that borrowers/clients comply with the SPS. ADB has also increased its overall staffing on safeguards significantly since 2009, especially in the operations departments including resident missions, and extended ADB-wide training programs to relevant staff. In line with SPS, ADB has been working to strengthen country safeguard systems in order to build capacity among DMCs and achieve convergence between their systems and international best practice.

**46. CRP Recommendation 2. Paragraph 103 (ii). The current 2008 resettlement framework (which provides guidance for the resettlement plans for future tranches of the MFF) should be rewritten. The new framework should ensure that besides the institutional arrangements, the analysis of alternatives for resettlement, compensation at replacement cost, livelihood restoration, and information, communication and grievance redress receive priority. The new resettlement framework must focus on preventing the impoverishment of project-affected persons and provide such persons, especially the most vulnerable, with opportunities to improve their livelihood.**

47. Management agrees with the recommendation, and ADB will work with the government to revise the resettlement framework which will guide the preparation of the draft resettlement plan for Project 2 of the Integrated Citarum Water Resources Management Investment Program.<sup>36</sup> ADB will also give due attention to the concerns raised in the draft CRP report, in particular preventing the impoverishment of project-affected persons and providing opportunities to improve their livelihood in line with SPS 2009. ADB will actively engage the government during revision of the resettlement framework to ensure its participation, ownership and commitment, which will also be essential to preparing the draft resettlement plan for Project 2.

**48. CRP Recommendation 3. Paragraph 103 (iii) ADB should assign the necessary staff resources to address resettlement issues early in the project cycle and continuously to provide support to the government as needed and to ensure the implementation of resettlement plans consistent with the time frame of construction work.**

49. Management agrees with the recommendation. Since approval of the Project in December 2008 and in fulfillment of the SPS mandate to increase its safeguards capacity, ADB has significantly increased staff resources for social safeguards, including in resident missions. In addition, ADB has carried out both (i) comprehensive in-house training programs on safeguards, including involuntary resettlement; and (ii) in-country briefing workshops on the SPS, as well as training on involuntary resettlement in our developing member countries.

50. ADB has also provided a number of TAs to strengthen social safeguards at country, sector and/or project level across ADB developing member countries. In Indonesia, ADB is

<sup>36</sup> The current resettlement framework needs to be revised to take into account the (i) change from ADB's IR Policy of 1995 to the SPS 2009, and (ii) the Government of Indonesia's approved Law No 2/2012 on Land Acquisition for Development Related to Public Interest, which became effective on 14 Jan 2012. The consultants to prepare Project 2 mobilized on 21 January 2013.

supporting the government to review and strengthen its policy framework and develop capacity for safeguards.<sup>37</sup> ADB is supporting the establishment of a social safeguards unit within the Project EA and using the Project as a resettlement case study. ADB is also providing support to the government to strengthen its legal framework related to land, including the preparation of the initial draft of the Land Acquisition Law (14 Jan 2012).<sup>38</sup> ADB has also carried out training programs for government officials and other stakeholders in Indonesia to increase their awareness of ADB's resettlements requirements.<sup>39</sup>

---

<sup>37</sup> ADB. 2010. *Technical Assistance for Strengthening Country Safeguard Systems*. Manila (TA 7566-REG, \$5,000,000, approved 26 July).

<sup>38</sup> ADB. 2007. *Technical Assistance for Indonesia for Enhancing the Legal and Administrative Framework for Land*. Manila. (TA 7038, \$500,000 approved 19 December).

<sup>39</sup> ADB. 2007. *Technical Assistance for Capacity Development on Involuntary Resettlement*. Manila (TA 6435-REG, \$800,000, 10 December).



## APPENDIX 5: COMMENTS OF REQUESTERS ON THE DRAFT CRP REPORT (IN BAHASA INDONESIA)

From: Hamong Santono [among075@yahoo.co.id]  
Sent: 02/07/2013 07:05 PM ZE8  
To: Rusdian Lubis  
Cc: "arimbi\_heroepoetri@yahoo.com" <arimbi\_heroepoetri@yahoo.com>; debtWATCH Indonesia <debtwatch@yahoo.com>; "uwa\_dadang@yahoo.co.id" <uwa\_dadang@yahoo.co.id>; "kruha@kruha.org" [kruha@kruha.org](mailto:kruha@kruha.org)  
Subject: Tanggapan terhadap Draft Laporan OCRP

Kepada yang terhormat:  
Bp. Rusdian Lubis  
Ketua Compliance Review Panel Asian Development Bank

Secara umum, kami menghormati temuan-temuan yang dituliskan OCRP dalam dokumen "Draft Report on Compliance Review Panel Request No. 2012/1 on Integrated Citarum Water Resources Management Investment Program Project 1 in the Republic of Indonesia [Asian Development Bank Loans 2500 and 2501 (SF) – INO]. Namun, kami merasa bahwa proses due diligence seharusnya diterapkan sejak sebelum proyek ini disetujui. Terlebih lagi dengan mengingat, proyek ini menggunakan skema keuangan yang sama sekali baru- Multitranché Financing Facility.

Kami juga merasa rekomendasi yang dituliskan seharusnya memuat poin-poin tindak lanjut dari fakta-fakta kesalahan ADB sejak tahap awal proyek ini. Akan tetapi, kami melihat bahwa CRP belum secara tegas menyebutkan bahwa pelanggaran-pelanggaran tersebut sebagai pelanggaran terhadap kebijakan-kebijakan ADB sendiri.

Dari poin-poin rekomendasi yang dibuat, ada beberapa hal yang ingin kami sampaikan dan klarifikasi:

1. Kami melihat bahwa CRP sudah dengan sangat baik melihat fakta kesalahan dari proyek ICWRMIP ini. Hal ini adalah fakta-fakta yang menggambarkan bahwa proyek ini melanggar kebijakan ADB sendiri. Akan tetapi kami tidak melihat ketiga poin ini memberikan rekomendasi khusus terhadap masyarakat yang telah terkena dampak dari kesalahan proses proyek ini akibat pengabaian kebijakan ADB sendiri.
2. Rekomendasi ini juga sebaiknya memasukkan tanggung jawab institusional ADB terhadap pelanggaran dan pengabaian kebijakan ADB yang dilakukan oleh pelaksana proyek. Hal ini penting untuk memastikan bahwa pelajaran dari kasus ICWRMIP ini betul-betul diambil sebagai pelajaran terhadap pengabaian kebijakan ADB dilihat sebagai persoalan institusional-bukan hanya kesalahan administrasi. Selain itu, tanggung jawab seperti ini juga dilihat sebagai usaha untuk memastikan bahwa kesalahan semacam ini tidak akan terulang lagi dimasa depan, terutama dalam proses penulisan ulang kerangka pemukiman kembali.
3. "ADB harus memastikan uji tuntas dan dialog dengan pemerintah dan pemangku kepentingan lain dilakukan pada tahap awal setiap proyek baru". Kami melihat bahwa rekomendasi ini adalah hasil pembelajaran umum dari kesalahan yang terjadi di proyek ICWRMIP. Atau dengan kata lain, proses persiapan proyek ICWRMIP lemah. Akan tetapi, kami

tidak melihat rekomendasi ini adalah tahapan yang harus dilakukan oleh ADB dan pemerintah terkait ICWRMIP. Selanjutnya, kami melihat dalam rekomendasi kedua bahwa Kerangka kerja pemukiman kembali harus ditulis ulang. Apakah penulisan ulang kerangka tersebut adalah bagian dari uji tuntas seperti yang direkomendasikan pada poin pertama? Jika ini benar, maka seharusnya proyek ICWRMIP harus dihentikan terlebih dahulu hingga uji tuntas selesai. Hal ini mengerucut pada fakta bahwa harus ada pertanggungjawaban dari ADB dan Pemerintah atas aktivitas di masa lalu yang berdampak buruk pada masyarakat. Termasuk didalamnya, pertanggungjawaban tahap pertama proyek ini. Karena sangat tidak masuk akal bagi kami apabila alokasi tranche pertama digunakan untuk mendesain proyek yang penuh kesalahan dan pengabaian kebijakan ADB saja.

4. Terkait dengan proses penulisan ulang, harus dipastikan ada proses yang partisipatif dan akuntabel yang dapat memastikan semua orang yang terkena dampak dalam proyek ICWRMIP ini terlibat. Hal ini adalah konsekuensi logis dari rekomendasi kedua yang diberikan oleh OCRP terkait pernyataan “Kerangka pemukiman kembali yang baru harus berfokus pada pencegahan pemiskinan orang-orang terdampak proyek dan menyediakan bagi mereka, khususnya yang paling rentan, peluang untuk memperbaiki penghidupan mereka”. Kami meminta OCRP juga keluar dengan rekomendasi proses yang harus dilakukan dalam penyusunan kerangka pemukiman kembali. Hal ini harus dipastikan agar hasilnya terukur, dapat dipantau, dan tetap akuntabel.

Kami memahami posisi CRP yang hanya dapat memberikan rekomendasi kepada Dewan Direktur ADB. Maka, kami menginginkan agar rekomendasi yang diberikan CRP dapat lebih kuat, untuk selanjutnya dapat dilaksanakan dan dipantau penuh oleh Dewan Direktur yang akan memberikan keputusan akhir terhadap proyek ini. Melalui surat ini, kami juga meminta agar Dewan Direktur ADB memberikan kepastian supaya masyarakat yang telah terkena dampak memperoleh hak-haknya, serta memberikan kepastian agar proyek ini tidak menjadi pelegalan pengabaian terhadap kebijakan ADB sendiri.

Terima kasih.

Salam,  
 Hamong Santono  
 Perwakilan masyarakat terkena dampak  
 KRuHa (Koalisi Rakyat untuk Hak Atas Air)- ARUM (Aliansi Rakyat untuk Citarum)



## **APPENDIX 6: COMMENTS OF REQUESTERS ON THE DRAFT CRP REPORT (ENGLISH TRANSLATION)**

Subject: Response to OCRP Draft Report

To:

Mr. Rusdian Lubis

Chair of Compliance Review Panel Asian Development Bank

In general we respect the findings written by OCRP in document "Draft Report on Compliance Review Panel Request No. 2012/1 on Integrated Citarum Water Resources Management Investment Program Project 1 in the Republic of Indonesia [Asian Development Bank Loans 2500 and 2501 (SF) – INO]. However, we feel that the due diligence process should be implemented prior to the approval of this project. This is also more important considering that this project uses a totally new financial scheme - Multitranches Financing Facility.

We also feel that the recommendation written should include points to follow up on the mistakes of ADB from the start of this project. However, we see that CRP has not firmly stated those violations as violation of ADB's policies.

From the recommendations made, there are several issues we would like to convey and clarify:

1. We see that CRP has captured the facts on the mistakes in the ICWRMIP project really well. These were facts describing how this project violated ADB policy. However, we do not see that these three points gave special recommendation for the people affected by the mistakes made in the process of the project from neglecting ADB policies.

2. These recommendations should also include ADB institutional responsibility on the violations and neglect of ADB project conducted by project implementer. This is important to ensure that the ICWRMIP case is really used as lesson learned on how neglecting ADB policies should be seen as institutional problem, not merely administrative problem. In addition to that, this kind of responsibility will be seen as a measure to ensure that the same mistake will not be repeated in the future, especially in the process of re-writing the resettlement plan framework.

3. "ADB has to ensure due diligence and dialog with the government and other stakeholders are conducted at preliminary stage of each new project." We see that this recommendation is a general learning from the mistakes happening in ICWRMIP project. Or into other words, the preparation process of ICWRMIP project was weak. However, we do not see that this recommendation is a stage that has to be conducted by ADB and the Government in relation to ICWRMIP. Also, we see in the second recommendation that the resettlement plan framework has to be re-written. Does the re-writing of the framework is part of the due diligence as recommended in the first point? If it is true, then the ICRRMIP project should be halted until the due diligence is finished. This is based on the fact that there should be accountability from ADB and the Government on past activities that had negative impact on the community. This is including accountability for the first phase of this project. It does not make any sense for us if the first tranche allocation is used to design a project full of mistakes and neglect of ADB policies.

4. In regards to re-writing process, it has to be ensured that there is participatory and accountable process that can ensure that all people affected in the ICWRMIP project are involved. This is a logical consequences of the second recommendation given by OCRP in

relation to the following statement "The new resettlement framework must focus on preventing impoverishment of project affected people and provide them, especially the most vulnerable, opportunities to better their livelihood". We request that OCRP also give recommendation on the process that should be taken in the reformulation of resettlement framework. This has to be ensured so that the result is measurable, can be monitored and stay accountable.

We understand that CRP position can only give recommendation of ADB Board of Director. Therefore, we want that the recommendations given by CRP to be stronger subsequently can be implemented and fully monitored by the Board of Director who will give their final decision on this project. Through this letter, we also request the ADB Board of Director gives certainty, so that the affected people can obtain their rights, as well as gives certainty so that this project will not legalize neglecting ADB policies themselves.

Thank you very much.

Sincerely,  
Hamong Santono  
Representative of the affected people  
KRuHa (Koalisi Rakyat untuk Hak Atas Air)- ARUM (Aliansi Rakyat untuk Citarum)