

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 policy¹ and paragraph 37 of the CRP Operating Procedures², 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:

Project Name	Integrated Citarum Water Resources Management Investment Program–Project 1
Country	Indonesia
Borrower	Republic of Indonesia
Requesting parties	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 arequest for compliance review on their behalf.
Allegations	Noncompliance with ADB operational policies and procedures on Involuntary Resettlement and Public Communications.

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

² *Operating Procedures of the Compliance Review Panel dated 5 June 2004*.

ADB operations department responsible	South East Asia Department (SERD)
Project categorization	Category A for resettlement impact
Project Description	<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>
Project Status	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.
Project Implementation Arrangement	The executing agency is the Directorate General of Water Resources (DGWR) of the Ministry of Public Works.
CRP	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 (OCRP).
Contact person:	Mr. Rusdian Lubis, Chair, CRP Mr. Geoffrey R. Crooks, Officer-in-Charge, OCRP 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

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	CRP Draft report. CRP will issue its draft report with findings and recommendations to the Management and the Requesters for comments.	Not time-bound
7	Management's and Requesters' responses to CRP draft report.	30 days from receipt of CRP draft report
8	CRP Final Report. 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.	14 days from receipt of Management's and Requesters' comments
9	Board Decision: Board consideration of the CRP's Final Report with recommendations. Release and disclosure of the Board Decision and CRP Final Report	21 days from receipt of CRP Final Report by the Board Within 7 days 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: 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
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Jakarta, 24 January 2012

To:
The Secretary, Compliance Review Panel
Asian Development Bank
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Mandaluyong City 1550
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Tel: +632 632 4149
Fax: +632 636 2088
Email: 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.

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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.

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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)

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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:

(Sgd) Hamong Santono

Authorizing Parties:

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