Compliance Review Final Report

Grant Number: 0123-KGZ
CRP Request Number: 2011/2
July 2012

Kyrgyz Republic: CAREC Transport Corridor 1
(Bishkek–Torugart Road) Project 1

Asian Development Bank
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### ABBREVIATIONS

<table>
<thead>
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<tr>
<td>CAREC</td>
<td>Central Asia Regional Economic Cooperation Program</td>
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<td>CRP</td>
<td>Compliance Review Panel</td>
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<td>CWRD</td>
<td>Central and West Asia Department</td>
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<td>IEE</td>
<td>initial environmental examination</td>
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<td>IPIG</td>
<td>investment projects implementation group (of the Ministry of Transport and Communications)</td>
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<td>IPSA</td>
<td>initial poverty and social assessment</td>
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<td>km</td>
<td>kilometer</td>
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<td>KYRM</td>
<td>Kyrgyz Republic Resident Mission</td>
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<td>LARP</td>
<td>land acquisition and resettlement plan</td>
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<td>m</td>
<td>meter</td>
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<td>MOTC</td>
<td>Ministry of Transport and Communications</td>
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<td>NGO</td>
<td>nongovernment organization</td>
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<td>OM</td>
<td>operations manual</td>
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<td>OSPF</td>
<td>Office of the Special Project Facilitator</td>
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<td>PID</td>
<td>project information document</td>
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<td>PIU</td>
<td>project implementation unit</td>
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<td>ROW</td>
<td>right-of-way</td>
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<td>RRP</td>
<td>report and recommendation of the President</td>
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<td>RSDD</td>
<td>Regional and Sustainable Development Department</td>
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<td>SPRSS</td>
<td>summary poverty reduction and social strategy</td>
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<td>SSTA</td>
<td>small-scale technical assistance</td>
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<td>TOR</td>
<td>terms of reference</td>
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### NOTE

In this report, "$" refers to US dollars.

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.
EXECUTIVE SUMMARY

This compliance review was requested by people affected by the Asian Development Bank (ADB)–financed section of the 504-kilometer (km) Bishkek–Torugart Road (Project 1). This road is part of the Central Asia Regional Economic Cooperation (CAREC) Corridor 1 and links the Kyrgyz Republic with the People’s Republic of China and with other Central Asian countries. Project 1 will improve the road from Km 400 to Km 439 with the help of a grant of $20 million approved on 14 November 2008. The project was originally classified under category C (no involuntary resettlement effects foreseen). Construction started in April 2010.

The request for compliance review was submitted to the Secretary of the Compliance Review Panel (CRP) on 23 May 2011 by five individuals through a nongovernment organization as their designated representative. The requesters alleged that ADB did not implement its operating policies and procedures for involuntary resettlement and public communications, and sought compensation for shops demolished by the improvements on the road. The complainants were from the villages of Kara Suu and Kara Bulun, which were bisected by the road. The first three complaints received by ADB in August 2010 pertained to the demolition of two shops operating in converted bus stops and the removal of trees and fences. The claims were denied by the government because the shopkeepers had breached their leasing agreements with the local government and because the trees were located in the right-of-way (ROW) of the road. On receiving the complaints, ADB requested the government to compensate the shopkeepers consistent with the requirements of its Involuntary Resettlement Policy (1995). However, rather than insisting on compliance with the policy, ADB accepted the Ministry of Transport and Communications (MOTC) compensation agreement in the form of construction materials for the two shop owners and assistance in moving the fences outside the ROW. No compensation was to be provided to the owners of the trees.

Subsequently, in December 2010, the complainants filed a request with the Office of the Special Project Facilitator (OSPF), which mediated the preparation of an action plan, including a survey of all affected properties, the preparation of a land acquisition and resettlement plan (LARP), and the drafting of an implementation schedule that would ensure the completion of all required actions by 31 March 2011, the beginning of the construction season. The resettlement plan developed by the MOTC and approved by ADB in July 2011 responded to the removal of 3 shops, the relocation of 1,750 meters (m) of fences, and the cutting of 211 trees. The plan was implemented from July to September 2011 and affected 45 households and 1 public health center.

On 20 July 2011, the Board authorized a compliance review, and on 18 November 2011, the Kyrgyz Republic granted the CRP’s request for a site visit, which took place in February 2012. The compliance review involved a desk review, interviews with ADB staff at headquarters and in the resident mission, and a field visit, during which the CRP met with the requesters, the government, the supervising consultant, the contractor, and other stakeholders.

Conclusions. In conducting the review, the CRP considered the ADB policies and procedures on Involuntary Resettlement, Public Communications (2005), and the Incorporation of Social Dimensions into ADB Operations (2007) and concluded that:

(i) ADB did not comply with the requirements of the Involuntary Resettlement Policy regarding screening and due diligence on potential resettlement impact, and erred in classifying the road project as a category C project for involuntary resettlement. The classification was made despite findings from the sociological
survey that unauthorized small businesses were common in the ROW and despite original design specifications that included the construction of sidewalks and the reconstruction or repair of bus stops, including those occupied by the shop owners. Moreover, the Policy on the Incorporation of Social Dimensions into ADB Operations (2007) was contravened, since the summary poverty reduction and social strategy neither identified nor addressed potential involuntary resettlement.

(ii) ADB failed to adequately supervise project implementation, as it was unaware of the change in the design of the road that, according to ADB, caused the demolition of roadside shops, the removal of trees, and the relocation of fences. ADB did not ensure compliance with the borrower’s contractual obligation to inform ADB of these design changes and seek approval for the changes, to advise ADB of any unanticipated resettlement issues, to prepare a resettlement plan in accordance with ADB policy, and to finalize the implementation of the plan before going forward with construction. As a result, the Involuntary Resettlement Policy, particularly its provision on unanticipated resettlement impact, was not complied with.

(iii) In August 2010, upon receipt of the original complaints about the forced demolition of shops, the removal of trees and the relocation of fences, Management requested MOTC to comply with the ADB Policy on Involuntary Resettlement. However, in October 2010, ADB accepted MOTC’s compensation agreement with construction materials that the affected persons did not find useful and that were worth much less than the assets lost. Furthermore, the compensation proposal did not consider loss of income and other assets, such as trees. This response did not comply with the Involuntary Resettlement Policy requirement for a resettlement plan that included a comprehensive survey of all affected assets, valuation at replacement cost, compensation for lost income, consultation, and grievance redress.

(iv) Once OSPF received the complaint in September 2010, ADB undertook the appropriate actions and worked diligently with the government to ensure that the Land Acquisition and Resettlement Plan (LARP) was prepared and implemented in accordance with ADB policies. In the CRP’s assessment, in general, the plan and its implementation were satisfactory and complied with the Involuntary Resettlement Policy (1995) and the Public Communications Policy (2005).

(v) Non-compliant with its Public Communications Policy, ADB failed to respond in a timely and appropriate manner to requests for key project documents from civil society organizations, and to ensure that project-affected people received timely information on construction schedules and impact. However, once ADB recognized that an LARP was required, it complied with the Public Communications Policy regarding consultations during project preparation and on the draft resettlement plan.

Recommendations. On the basis of its findings, the CRP recommends the following:

(i) While supervising this project, ADB should continue to monitor any involuntary resettlement impact and ensure that the grievance redress mechanism addresses any further issues in accordance with the July 2011 resettlement plan.

(ii) During the preparation, implementation, and monitoring of projects covering additional sections of the CAREC Transport Corridor 1, ADB should ensure that its Involuntary Resettlement and Public Communications policies are upheld. The national legal framework adopted for this project to comply with both ADB policy
and Kyrgyz national standards should serve as the basis for compliance of future ADB-financed projects with ADB policy.

(iii) As road projects that traverse rural communities even in remote areas frequently encounter unanticipated or project-induced settlement in the ROW that could be an Involuntary Resettlement Policy trigger, ADB should carefully consider classification criteria and requirements for such projects. Including a resettlement specialist on the project team during the early stages of design and due diligence may help to identify potential land acquisition or resettlement issues.
I. INTRODUCTION

1. This report was prepared by the Compliance Review Panel (CRP) in response to a request for compliance review of the Central Asia Regional Economic Cooperation (CAREC) Transport Corridor 1 Project 1 (Grant 0123-KGZ). The purpose of the compliance review phase of the Asian Development Bank (ADB) Accountability Mechanism is to investigate alleged non-compliance of ADB policies and procedures that directly, materially, and adversely affect local people during the formulation, processing, or implementation of an ADB-financed project. The focus is on the conduct of ADB and not of the borrowing country, the borrower, the executing agency, or the project sponsor. As a forum for affected persons, the review provides an opportunity to voice complaints and is also a means for ADB to increase its accountability and to strengthen project performance. As an independent body, the CRP reports to the ADB Board of Directors, which provides it with the authority to conduct compliance reviews. The Board does not approve the findings or conclusions of the CRP but does approve its recommendations.

2. The CRP has established procedures for carrying out compliance reviews and for preparing reports in line with the steps and time frames prescribed in the Accountability Mechanism (paras. 55–64). In accordance with step 6, the CRP is issuing this draft report to ADB Management and to the requesters to give them the opportunity to provide their comments within 30 days. The CRP will then issue a final report to the Board of Directors with its findings and recommendations; the comments of Management and the requesters will be attached and will be disclosed to the public. It should be noted that the 2003 Accountability Mechanism was followed in the compliance review, as the revised version became effective only on 24 May 2012, after the review was completed.

II. BACKGROUND

3. The project is the first ADB-financed section of the 504-kilometer (km) Bishkek–Torugart Road (Project 1) linking the Kyrgyz Republic with the People’s Republic of China and with other Central Asian countries. Project 1 will improve the road from Km 400 to Km 439. In addition, it will (i) modernize customs infrastructure at the border crossing at Torugart, (ii) provide a transport master plan for 2010–2025, and (iii) establish a Bishkek–Torugart Road Corridor Management Department. The ADB grant of $20 million from Special Funds was approved on 14 November 2008, signed on 24 November 2008, and became effective on 6 January 2009. The closing date is 30 September 2012, and as of 21 February 2012, $10.1 million had been disbursed. Roadwork started in April 2010 and was originally scheduled to be completed in March 2012.

4. The project executing agency is the Ministry of Transport and Communications (MOTC). MOTC has several project implementation units (PIUs) for various donor projects that were centralized in 2007 under the ministry’s investment projects implementation group (IPIG). IPIG is the implementing agency for road improvements, while the existing PIU under the State Customs Committee implements customs modernization.

5. The Transport and Communications Division of ADB’s Central and West Asia Department (CWRD) oversees the project, and is jointly responsible for project implementation.

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1 ADB. 2008. Report and Recommendation of the President to the Board of Directors: Proposed Asian Development Fund Grant to the Kyrgyz Republic for the CAREC Transport Corridor 1 (Bishkek–Torugart Road) Project. Manila.
with the Kyrgyz Republic Resident Mission. The chief compliance officer of the Regional and Sustainable Development Department (RSDD) approves the safeguard classification recommended by the department’s Environment and Safeguards Division, which also supports CWRD in preparing and implementing safeguards.

6. ADB first received three complaints in August 2010 about the demolition of two shops operating in converted bus stops and about the removal of trees and fences. The claims were denied by the government because the shopkeepers had breached their leasing agreements with the local government and because the trees were located in the right-of-way (ROW) of the road. The requesters and other affected people from the village of Kara Suu, one of the two villages on the 39 km stretch of road to be improved, then filed a complaint with ADB’s Office of the Special Project Facilitator (OSPF) on 20 September 2010; it was declared eligible under the consultation phase of the Accountability Mechanism on 12 November 2010. They asked for fair compensation for two shops, for land, for trees that were felled, and for loss of income. The OSPF concluded that the complaint could be resolved and, starting in December 2010, mediated a course of action that included preparing a land acquisition and resettlement plan (LARP), providing compensation and assistance to the complainants and other affected people, and establishing a mechanism for grievance redress. The implementation of the action plan was scheduled to be completed by 31 March 2011.

7. After the complaint was filed with OSPF, ADB found that an unanticipated design change had caused the resettlement and therefore reclassified the project from category C (no involuntary resettlement effects foreseen) to category B (involuntary resettlement impact not deemed significant). The resettlement plan developed by MOTC and approved by ADB in July 2011 involved the removal of 3 shops, the relocation of about 1,750 meters of fences, and the cutting of 211 trees in the two villages. The plan was implemented from July to September 2011 and affected 45 households and 1 public health center. Resettlement payments were made to 43 of the 46 parties from 12 August to 30 September 2011; compensation for the remaining 3 was to be held in escrow until after their titles were cleared to avoid multiple claims. The OSPF closed the complaint in October 2011.

III. REQUEST FOR COMPLIANCE REVIEW

8. The request for compliance review was submitted to the Secretary of the CRP on 23 May 2011 by five individuals, who designated as their representative the Central Asia and Caucasus Coordinator of the ADB NGO Forum (Appendix 1). The requesters sought to keep their identities confidential, as provided in para. 44 of the Accountability Mechanism policy. The request for compliance review was made during the consultation phase, in accordance with the policy.

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9. The CRP registered the request on 10 June 2011 and submitted its report on eligibility\(^9\) to the Board of Directors, recommending a compliance review on 29 June 2011.

10. The requesters alleged non-compliance by ADB of the Involuntary Resettlement (1995) and Public Communications (2005) policies. They requested (i) cash compensation for the stores; (ii) assistance in securing business permits for new shops and repayment of registration costs supported by receipts, checks, and orders; and (iii) the inclusion of one of the requesters in a loan repayment program.

IV. ELIGIBILITY OF THE REQUEST

11. The CRP assessed the eligibility of the request by reviewing project documents, ADB policies and procedures, and the review and assessment report provided by the OSPF, and determined that the request did not fall within any of the exclusions under the Accountability Mechanism for compliance review. It also met the requirements for eligibility stated in para. 45 of the Operations Manual Section L1/OP. The CRP consulted the Executive Director for the Kyrgyz Republic; the Vice-President, Operations 1; the directors general of CWRD and RSDD; and the General Counsel.

12. On 20 June 2011, the CRP determined that the request was eligible and recommended that the Board authorize a compliance review, which it did on 20 July 2011. The CRP cleared its terms of reference (TOR) and the time frame for compliance review with the Board Compliance Review Committee on 22 August 2011 (Appendix 2), and provided the TOR to the Board and on the CRP website on 24 August 2011. On 14 October, the CRP requested the Government of the Kyrgyz Republic to authorize a site visit, and the request was granted on 18 November.

V. SCOPE AND CONDUCT OF THE COMPLIANCE REVIEW

13. The CRP determines whether the direct and material harm alleged by the requesters is caused by ADB’s failure to follow its operating policies and procedures. If ADB is found to be noncompliant, the CRP makes recommendations to the Board to ensure project compliance, including changes in scope or implementation. The CRP monitors the implementation of its recommendations and remedial actions annually and prepares a report.

14. The conduct of parties other than ADB, including the government, the borrower, and the executing agency, is not the subject of the investigation unless it is directly relevant to assessing compliance with ADB operating policies and procedures. The compliance review is not intended to provide legal remedies, such as injunctions or monetary damage, and the CRP findings and recommendations are not adjudicative (footnote 2 above; para. 61).

15. The CRP investigation consisted of (i) a desk-based document review; (ii) interviews with ADB Management and staff at headquarters in Manila; (iii) meetings in Bishkek with ADB staff at the resident mission, MOTC and IPIG officials, the consultants supervising construction, and the civil works contractor; and (iv) a site visit to the requesters’ houses and new shop in Kara Bulun in the presence of their authorized representative. In Naryn, the CRP also met with the representative of the local nongovernment organization (NGO) Bugu Mural, who was the complainants’ representative under the consultation phase. The list of persons contacted by the CRP during the compliance review is in Appendix 3.

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16. CRP member Anne Deruyttere was the lead reviewer. She was supported by CRP Chair Rusdian Lubis and Antonio La Viña, the third member of the panel. The team included two national consultants—a compliance review researcher and a document examiner.

VI. RELEVANT ADB POLICIES

17. In conducting the review, the CRP considered the ADB policies and procedures listed below.

   (i) Involuntary Resettlement Policy (1995) (OM F2; October 2003), particularly the provisions related to the identification of the potential impact of involuntary resettlement and the classification of projects, resettlement planning, eligibility and compensation criteria, and consultations and public disclosure;

   (ii) Public Communications Policy (2005) (OM L3; September 2005), particularly public disclosure of information and requirements for project consultations; and

   (iii) Policy on the Incorporation of Social Dimensions into ADB Operations (OM C3; April 2007), particularly the provisions pertaining to identifying and addressing potential social impact.

18. The CRP based the review on the policies in effect when the project was prepared and approved (14 November 2008). Although the Safeguard Policy Statement (2009) had superseded the Involuntary Resettlement Policy (in January 2010) by the time the LARP for this project was prepared and approved (July 2011), the CRP followed the 2006 policy in preparing the LARP.

VII. FINDINGS AND CONCLUSIONS

A. Project Design and Classification

19. Review of project design. During project preparation, ADB maintained that all project-related works would be carried out in the ROW or on public land and that no resettlement impact was therefore expected. However, in preparing the project ADB did not consider the following:

   (i) Even if the works were limited to the ROW, any displacement within the ROW, whether legal or illegal, had to follow the requirements of the Involuntary Resettlement Policy, including compensation for lost assets.

   (ii) The potential for resettlement impact would increase considerably as the original design specifications for the reconstruction of the road included the expansion of the original alignment width from the previous average of 14 m to 21 m in Kara Suu and Kara Bulun (within the existing ROW of 26 m). Therefore, any structure or trees previously located 7–10.5 m from the centerline of the road would be affected by the project.

   (iii) The original design of the rehabilitated road included the repair of existing enclosed bus stops and the construction of sidewalks in the villages; therefore, the occupants of the bus stops would inevitably have been displaced.

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10 Kyrgyz law allows the legal occupation of the ROW under certain conditions (see footnote 37 below).
12 The resettlement plan mentions the widening of the road from 14 m to 21 m. The Design Review Report (footnote 11; paras. 64–71) gives the specifications and measurements of the road reconstruction.
20. While ADB attributed the unexpected resettlement and compensation issues to the unauthorized change in design to accommodate the sidewalks (paras. 25–27), close inspection of the detailed engineering designs for the sidewalks revealed that the inclusion of a sidewalk could be largely accommodated by the existing embankment. The prototypes for the design of sidewalks in Kara Suu and Kara Bulun showed that widening the shoulders by an average of only 0.5 m would accommodate the new sidewalks. This finding confirmed that the increase in road width from the pre-project average of 14 m to 21 m under the project was a major cause of the unanticipated resettlement impact. Therefore, even if the unauthorized widening of the road embankment had not occurred, resettlement would still have been a likely issue.

Kara Bulun (2010): Location of Affected Bus Stop and Trees in Relation to the New Road Embankment. Note: Even if the embankment had not been widened by an average of 0.5 m to accommodate the sidewalk, the bus stop would still have had to be demolished and trees felled. Source: Photo provided by ADB staff

21. **Due diligence and fact finding.** During the fact-finding mission in May 2008, the identification of potential social safeguard issues was delegated to the environmental safeguard specialist on the team.  

and before the start-up of construction works in April 2010, ADB fielded at least four more missions\textsuperscript{15}; that included site visits, none of those reported the presence of retail outlets in close proximity to the road. Despite the design specifications and the frequent road inspections, ADB did not find out that bus stops to be reconstructed were occupied by retail businesses, which would have to be relocated and compensated in accordance with ADB policy.

22. **Findings of the sociological survey.** The initial poverty and social assessment (IPSA)\textsuperscript{16} report indicated that all project activities would be confined to the existing ROW or carried out on public land, and that no land acquisition or resettlement was therefore expected. Nevertheless, under the technical assistance grant,\textsuperscript{17} the TOR for due-diligence studies on social and environmental safeguards included a review of potential involuntary resettlement. The sociological survey\textsuperscript{18} described the socioeconomic conditions in the project area and reported the existence of “roadside sales outlets established spontaneously without any official authorization-based documents” (para. 128). Despite this finding, the report did not mention any resettlement issues. On the basis of this report, the summary poverty reduction and social strategy (SPRSS) confirmed that no resettlement or land acquisition was expected. ADB saw no inconsistency between these findings. In the CRP’s view, inadequate reporting and acting on the findings of the sociological survey in the SPRSS constituted noncompliance with the requirements of the Involuntary Resettlement Policy (para. 24) and the Policy on the Incorporation of Social Dimensions into ADB Operations (paras. 6–9).

23. **Project category.** From the first ADB fact-finding mission in May 2008 until the receipt of the first complaint in August 2010, all project documents indicated that no resettlement or land acquisition was expected. On this basis, the project was classified under category C for involuntary resettlement. Notwithstanding this classification, as a precautionary measure the report and recommendation of the President (RRP) and the loan contract did state that any required land acquisition and resettlement should be carried out “efficiently and promptly following a resettlement plan agreed [to] by the Bank in line with applicable laws and regulations and ADB’s Policy on Involuntary Resettlement (1995) and that all land and ROW required for project implementation [should be] made available in a timely manner.”\textsuperscript{19} ADB did not comply with requirements regarding screening for resettlement impact early in the project cycle and with the stipulation “in case of doubt in the early stages of project preparation, a resettlement planning document must be prepared” (Involuntary Resettlement Policy, paras. 3 and 22). Rather than relying on this general contractual condition, ADB could have prepared a short

\textsuperscript{15} Before receiving the complaint, ADB had fielded at least six missions: a loan fact-finding mission (May 2008), a project appraisal mission (August 2008), an inception mission (February–March 2009), and several review missions (July 2009, October 2009, and July 2010). The review mission in July 2010 did not include a site visit because political unrest had prompted safety concerns.

\textsuperscript{16} The IPSA was included in ADB. 2008. *Request for Approval for Short-Term Technical Assistance for Preparing the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project, Kyrgyz Republic*. Appendix 4. Manila. February. The Policy on the Incorporation of Social Dimensions into Bank Operations (2007) requires the conduct of an IPSA to identify key social issues during project preparation and implementation (para. 6). The summary poverty reduction and social strategy (SPRSS) prepared during the final stages of project preparation and attached to the report and recommendation of the President (RRP; see footnote 1 above) did mention the sociological survey but did not mention the survey’s finding on road-side occupation.

\textsuperscript{17} ADB. 2008. *Preparatory Technical Assistance for the CAREC Transport Corridor 1 (Bishkek–Torugart Road) Project, Kyrgyz Republic*. Manila. February.


resettlement instrument and monitored its implementation as part of the regular supervision of the project.

24. **Conclusion.** ADB did not comply with the requirements of the Involuntary Resettlement Policy regarding screening and due diligence on potential resettlement impact. It also erred in assigning this project to category C (Involuntary Resettlement Policy, para. 22) in the face of findings from the sociological survey that small businesses were common in the ROW and despite the original design specifications for the reconstruction or repair of bus stops, including those occupied by the shop owners. Moreover, the IPSA and SPRSS did not identify or address potential involuntary resettlement issues, contrary to the Policy on the Incorporation of Social Dimensions into ADB Operations (paras. 6–9) and the Involuntary Resettlement Policy (para. 23).

B. **Supervision during Implementation**

25. **Design change.** During project supervision, ADB failed to identify the unanticipated road design change, which it later found to be the reason for the demolition of shops, the cutting down of trees, and the removal of fences. In a letter dated 19 July 2010, the supervising consultant ordered the contractor to redesign the sidewalks in Kara Suu and Kara Bulun "for the safety and convenience of the pedestrians" and approved the new designs on 7 and 8 August 2010. However, ADB did not know about this unanticipated and unauthorized design change until almost a year later (20 June 2011), during its review of the complaints. The CRP found that ADB had not taken note of the references to the design revision in the supervising consultant’s July report submitted to ADB on 25 August 2010. In addition, during the time the design change was discussed, ADB conducted a review mission (15–17 July 2010) but did not perceive a potential problem. Furthermore, at a consultation meeting on 10 August in Kara Bulun, local residents inquired "whether the five shops that were told to move out of the ROW would be compensated," but the inquiry escaped ADB’s notice. The meeting, held to discuss the environmental impact assessment for Project 3, was attended by MOTC and the supervision consultant.

26. While ADB ascribed the unexpected resettlement and compensation issues to the unauthorized change in design to accommodate the sidewalks, close inspection of the detailed engineering designs for the sidewalks showed that the existing embankment could largely accommodate the inclusion of a sidewalk. According to the prototypes for the design of sidewalks in Kara Suu and Kara Bulun, the addition of a sidewalk would increase the width of the shoulder by only 0.5 m. This finding confirms that the increase from the pre-project average road width of 14 meters to 21 meters in the original design of the reconstructed road, and not the addition or change in the location of the sidewalks, was the major cause of the resettlement impact. Therefore, in the CRP’s analysis, the fact that ADB overlooked the resettlement issue during due diligence and project preparation was the main cause of the unexpected

20 According to the Project Administration Manual (footnote 19 above), the supervising consultant advises MOTC and supervises project activities but does not make independent decisions on changes in project design.

21 ADB. 2010. *Supervising Consultant’s Report: CAREC Transport Corridor 1 (Bishkek–Torugart Road) Project*. Bishkek. Report no. 13, July. The report mentions the ADB site visit on 15–17 July, as well as the incoming letter from the contractor regarding the sidewalks in Kara Suu and Kara Bulun on 27 June and the supervising consultant’s response on 19 July instructing the contractor to make the design changes. Attached to the report are the minutes of the meeting on 31 June between the consultant and the contractor on the changes.


23 Drawings of cross-sections of carriageway and embankment with and without sidewalks, included with the engineering designs provided to CRP by the supervising consultant on 7 February 2012.
resettlement impact. ADB’s failure to spot the supervising consultant’s error in making unauthorized design changes compounded the mishandling.

27. **Contractual obligations.** While the CWRD and the OSPF were reviewing the complaints and working with the government on a LARP, on the supervising consultant informed ADB that it had instructed the contractor, to make the design change beyond the scope of its mandate and without informing or seeking authorization from MOTC or ADB as required in its contract. This requirement applies even if changes have no budgetary impact. In a letter of apology to ADB on 12 September 2011, the supervising consultant admitted to “negligence under contract.” Therefore, ADB failed to ensure compliance with (i) the borrower’s contractual obligation to inform and seek approval for any design change, and (ii) the borrower’s contractual obligation to advise ADB of any unanticipated resettlement issue, to prepare a resettlement plan in accordance with ADB policy, and to finalize the implementation of the plan before going forward with construction.

28. **Conclusion.** ADB failed to adequately supervise project implementation, as it was unaware until a year later of a change in the design of the road that, according to ADB, had caused the demolition of roadside shops, the cutting of trees, and the relocation of fences. ADB did not ensure compliance with the borrower’s contractual obligation to inform and seek approval for these design changes, to advise ADB of any unanticipated resettlement issues, to prepare a resettlement plan in accordance with ADB policy, and to finalize the plan’s implementation before going forward with construction. As a result, there was noncompliance with the Involuntary Resettlement Policy, particularly with its provision on unanticipated resettlement impact (para. 53).

C. **Response to Complaints**

29. On 24 August 2010, MOTC and ADB Management received three complaints from people directly affected by the project and represented by the local NGO Bugu Maral. A similar letter from the Central Asia and Caucasus Coordinator of the ADB NGO Forum followed. The complainants alleged that they had been told on short notice that their shops would have to be demolished, trees cut down, and fences moved, and that they would not receive any compensation. On 7 September 2010, MOTC informed Bugu Maral and ADB that the occupants of the bus stops were not entitled to compensation because they had violated their leasing agreements with the local authorities and that the owner of the trees had illegally occupied the ROW. On the same day, ADB requested MOTC to provide a solution consistent with the Involuntary Resettlement Policy.

30. However, despite ADB’s request, on 1 October 2011, during a meeting at the project site with MOTC, local officials, and affected parties, ADB accepted an MOTC compensation agreement that was noncompliant with ADB’s Involuntary Resettlement Policy: the two shop owners would be compensated with construction materials to be provided by the contractor, and

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24 Project Administration Manual (footnote 19 above), TORs for the Supervising Consultant.
25 Project Administration Manual (footnote 19 above), Section 7(iii): The recipient and the executing agency must implement the project covenants on time, monitor compliance, and update ADB through regular progress reports. ADB will review the compliance through review of the project progress reports and project review missions according to Project Administration Instructions (PAI) 5.03. In case of noncompliance, ADB may suspend the grant disbursements until such time that the recipient and the executing agency have complied fully with the covenant in question.
26 Project Administration Manual (footnote 19 above), Social and Environmental Safeguard Covenants, section 9.3(c), (d), and (e) on land acquisition and resettlement.
27 E-mail from ADB Staff to MOTC. 7 September 2010.
the owner of the trees would receive assistance in relocating his fences. Letters of agreement had been signed with the individual shop owners and with Bugu Maral in which the complainants accepted the proposed compensation and agreed to demolish their shops within 10 and 20 days. However, in its complaint letter to the OSPF, Bugu Maral claimed that the requesters had been pressured into signing the agreement (otherwise they would not have received any compensation at all), that the construction materials were not needed, and that the value of the materials was only a fraction of the replacement cost of the shops. Until early December 2010, or almost 4 months after the initial complaints were received, ADB continued to pursue the completion of this ad hoc compensation process rather than requiring the preparation of a resettlement plan, which was eventually agreed to during the OSPF-facilitated mediation process (2–7 December 2010).

31. **Conclusion.** From August 2010, when it first received the complaints about the forced demolition of shops, the removal of trees, and the relocation of fences, until December 2010, ADB did not require a resettlement plan covering all affected persons in the project area and ensuring due consultation and compensation. Instead, ADB accepted an MOTC compensation agreement involving compensation in construction materials that the affected persons did not find useful and that were worth considerably less than the assets lost. Furthermore, this proposal did not consider loss of income and other assets, such as trees. This response to the complaint did not comply with the Involuntary Resettlement Policy requirements on unanticipated resettlement impact (para. 53), including the requirement to prepare a resettlement plan that includes a comprehensive survey of all affected assets, valuation at replacement cost (para. 4 [iii]), compensation for lost income (para. 13[iii]), consultation and grievance redress, and resettlement planning documents (para. 6).

D. **Public Disclosure and Consultation**

32. **Public disclosure of project documents.** Under the Public Communications Policy (2005), some basic project information was made available in English (on ADB’s website. However, some of the documents that were to be disclosed upon their completion (IPSA, the design review report, the sociological survey, and the initial environmental examination [IEE]) had been finalized by August 2008 but were made public only in January 2010, after Bugu Maral had requested them in November 2009. While ADB did ask the PIU to translate all pertinent documents into Russian, only the project information document (PID) and eventually also the resettlement plan and resettlement brochures were disclosed in Kyrgyz and in Russian. This inadequate response to the request by affected people for relevant and timely information was noncompliant with the Public Communications Policy (para. 5) as was the late disclosure and quarterly updating of the PID (para. 12). In fact, as of May 2012, the date of the latest PID uploaded onto the ADB website was January 2010.

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29 These findings are based on a detailed review of internal ADB communications and with the government in August–December 2010.

30 The project information document (PID) was first disclosed on 10 June 2008, the draft design and monitoring framework on 1 August 2008, the RRP on 18 November 2008, and the Project Administration Manual on 18 March 2009.

31 The CRP noted an inconsistency in the Public Communications Policy between para. 77 and para. 89. Para. 77 follows the Environment Policy (2002) and does not require disclosure of the IEE (except upon request). However, para. 89 requires disclosure upon completion of all the reports generated under the small-scale technical assistance, which in this case included the IEE.
33. **Consultation during project preparation.** A project classified as category C for involuntary resettlement does not require public consultation. Likewise, according to the Policy on Incorporating Social Dimensions into ADB Operations, no communication plan is required when social impact is negligible. Nevertheless, projects of environmental category B like this one require public consultation.\(^{32}\) which was conducted according to policy requirements and in general indicated broad support for the project\(^{33}\) From the consultation records, the CRP takes the view that, strictly speaking, ADB consultation requirements in the Public Communications Policy (para. 20) were complied with during project preparation.

34. Nevertheless, in many consultation meetings, including those held on the environmental impact assessment for Project 3 (footnote 22 above), and in the resettlement implementation report, the lack of systematic, regular reports on the progress of the project and its impact was a recurring complaint. Appropriate information dissemination would have prevented uncertainty and unfounded concerns regarding the scope, timing, and direct impact of this Project, as affected persons noted during consultations on Project 3 of the CAREC 1 corridor in Kara Suu and Kara Bulun.

35. **Consultation on the draft resettlement plan.** Despite some shortcomings noted during the CRP’s meetings with stakeholders and their representatives and in the implementation review report,\(^{34}\) the CRP finds that, in general, ADB complied with policy requirements on consultation, including the dissemination of information in the appropriate manner (brochures) and languages (Kyrgyz and Russian), and that the feedback on the consultations was considered in the final plan.\(^{35}\)

36. **Conclusion.** The CRP finds that ADB did not comply with its Public Communications Policy (2003) (para. 5) by not providing key project documents in a timely and appropriate manner, at the request of civil society organizations. The failure to ensure that project-affected people received timely information on construction schedules and impact, in disregard of the Involuntary Resettlement Policy, heightened the problem. However, once ADB recognized that an LARP was required, it complied with the Public Communications Policy regarding consultations during project preparation and on the draft resettlement plan.

**E. Preparation and Implementation of the Resettlement Plan**

37. **Preparation of the resettlement plan.** After receiving the complaint from the local NGO Bugu Maral in August 2010 and finding the request eligible, OSPF, from December 2010 onward, facilitated the preparation of an action plan that included a survey of all affected properties in the two villages, a resettlement plan consistent with ADB policy and Kyrgyz law, and a timetable to ensure the implementation of the plan before the start of the construction

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\(^{34}\) The time frame for information dissemination and consultation was very short: Information brochures in Kyrgyz and Russian were distributed in the villages on 3 July and on the web on 4 July. Public consultations on the draft resettlement plan were held on 7 July in the villages and an updated brochure was distributed on July 2011 (Compliance Report, footnote 8 above; Table 1). The designated representative of the affected persons wrote to ADB complaining that the time for consultation was too short and that she had not been able to attend the meeting or to submit comments on time.

\(^{35}\) As of May 2012, the following documents in Russian were available on the ADB website: the 2011 Compliance Report (footnote 8 above), and the PID as of January 2010. The latter report is also available in Kyrgyz. None of the other project documents are available in Kyrgyz or Russian.
season in April 2011 (footnote 28).36 A due-diligence survey was conducted on all other sections of the 39 km trace to identify any other potentially affected assets, but none were found (IPIG report; footnote 13 above).37 In January 2011, ADB reclassified the project under category B.

38. To ensure that all affected properties in Kara Bulun and Kara Suu were included in the resettlement plan, the government formed an interagency commission38 to prepare an inventory of properties in the ROW and hired an independent evaluator to determine compensation.39 The final plan covered 45 households with 227 individuals, and 1 public health center. Although the time frame was very short, the information dissemination and consultation requirements were complied with: an information brochure in Kyrgyz and Russian was distributed and public consultations were held. After that, some changes were made and a final version of the brochure was disseminated. Compensation was awarded for the demolition of 3 shops and for 3 months of lost income, for the removal and reconstruction of 1,750 m of fencing, and for the cutting of 211 trees.40 The plan also provided for an external monitoring agency and included the establishment of a mechanism for addressing grievances that received only two (ineligible) complaints. ADB staff members were diligent in working with the government to draft the LARP (June 2011) and finalize it (July 2011), to overcome the differences between Kyrgyz law and ADB policy. The final plan was approved by ministerial decree and by ADB Management on 27 July 2011. In accordance with its Involuntary Resettlement Policy, ADB, on 31 March 2011, approved an extension of the period of no construction on the road segments affected by the LARP to allow time for the compensation payments to all affected persons to be finalized.

39. **Implementation.** The resettlement plan was implemented from July to September 2011 and compensation payments to 43 of the 46 parties were made from 12 August to 30 September 2011. For the remaining three affected persons, the compensation was held in escrow until after the titles were cleared, to avoid multiple claims. On 26 July 2011, as the final LARP was completed, the project was reclassified from category C to category B. The cost of compensation itself was approximately $17,200 and was covered by the ADB grant. The independent implementation report (footnote 8 above) issued in November 2011 found the overall implementation of the plan satisfactory and most of the affected persons satisfied with the compensation,41 public consultations, and information disclosure. Concerns noted were the complexity of the method for valuing property and the poorly organized process of compensation because of logistic and time constraints. The CRP’s review of the information available and interviews with requesters, ADB staff, and other stakeholders found both the content and the implementation of the plan to be in accordance with ADB policy. When all compensation was paid, ADB authorized the continuation of the roadwork in Kara Bulun and Kara Suu.

40. **Conclusion.** ADB eventually undertook the appropriate actions and diligently worked with the government to ensure that the LARP was prepared and implemented in accordance

36 OSPF, Review and Assessment Report, December 2011 and Final Report, November 2011
38 Government Decree of 24 February 2011.
39 The Kyrgyz Civil Code (October 2009) and the Land Code (May 2009) allow full compensation at market value for property lost or damaged, including income lost, as a result of state appropriation of public lands. The law also allows the rent of publicly owned assets in the ROW of roads, with the proper permit and for a maximum of 5 years. Two of the three shops had rental agreements, but of these two, one had an expired agreement and the other was remiss in paying rentals. Unpaid rent was deducted from the final compensation amounts.
40 Requesters claimed that trees were compensated as firewood and not on the basis of their productive value.
41 During the CRP’s field visit, the requesters, while in general satisfied with the compensation package, told the CRP that one of their main concerns was the process of registering their new shops. The requesters feared retaliation from other community members.
with ADB policies. In the CRP’s assessment, the plan and its implementation were satisfactory and complied with the Involuntary Resettlement Policy (1995) and the Public Communications Policy (2005).

41. **Lessons.** ADB’s noncompliance with its policies had many direct and indirect negative impacts including significant project delays and additional cost to the government and ADB. The CRP nonetheless acknowledges that the lessons learned from the difficulties and mistakes have inspired greater resolve in ADB to strengthen its policy dialogue, capacity building, and technical support to help government and other stakeholders adopt sound land acquisition and involuntary resettlement policies and practices, consistent with international standards. The CRP notes that ADB is assuming leadership among donors developing the CAREC regional transportation network, providing significant technical assistance resources to increase the capacity of the government and other stakeholders to deal with the associated land acquisition and resettlement issues.

**VIII. RECOMMENDATIONS**

42. On the basis of its findings, the CRP recommends the following:

(i) While supervising this project, ADB should continue to monitor any involuntary resettlement impact and ensure that the grievance redress mechanism addresses any further issues in accordance with the July 2011 resettlement plan.

(ii) During the preparation, implementation, and monitoring of projects covering additional sections of the CAREC Transport Corridor 1, ADB should ensure that its Involuntary Resettlement and Public Communications policies are upheld. The national legal framework adopted for this project to comply with both ADB policy and Kyrgyz national standards should serve as the basis for compliance of future ADB-financed projects with ADB policy.

(iii) As road projects that traverse rural communities even in remote areas frequently encounter unanticipated or project-induced settlement in the ROW that could serve as Involuntary Resettlement Policy trigger, ADB should carefully consider classification criteria and requirements for such projects. Including a resettlement specialist on the project team during the early stages of design and due diligence may help in identifying potential land acquisition or resettlement issues.

/S/ Rusdian Lubis
Chair, Compliance Review Panel
2 July 2012

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42 ADB. 2009. Technical Assistance for Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region. Manila. November (TA 7433-REG, amounting to $5 million, approved in November 2009). This technical assistance is financing country-specific assessments of land acquisition and resettlement practice, alignment of policy, and improvement of administrative procedures and technical instruments.
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 these 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.

Date: 17 May 2011
Compliance Review Panel Secretary,
Asian Development Bank,
6 ADB Avenue,
Mandaluyong City 1550
Philippines
Tel: 632 6324149
Fax: 632 6362068
Email: crp@adb.org

Honorable Secretary,

We are the one who signed this letter, and we live in Kyrgyz Republic, [region], At- [district], [villages], [villages], that are affected by the said ADB Bishkek-Torugat Project (Loan 9639-KGZ: CAREC Transport Corridor I (Bishkek-Torugat Road) Project 2), further called “Project”. Note: Should be Grant 0123-KGZ, Project 1 as advised later by the requesters’ representative.

We are requesting that Compliance Review Panel (CRP) would assist us by conducting investigation whether ADB did implement its operational policies and procedures in regards the Project. We understand that CRP should first determine if our request is legally qualified.

We consider that ADB did not implement its operational policy and procedures, in particular relating to Involuntary Resettlement Policy and Public Communications Policy, and Executing Agency as well, represented by Ministry of Transport did not fulfill obligations given to ADB under the said Project.

As a result of these operational policy and procedure lack of implementation by ADB we encountered damages and losses, described below:

1. Purchased the store for [Som] from my relative from [City], without Purchasing Contract. In order to purchase the store I got a loan from [Funds], [Funds], [Funds], and [Funds], which I am repaying until now. Due to store demolition I would lose [Som] due to loan repayment conditions.

My Loan Repayment Schedule is as follows:
- From [Funds] Fund – [Som];
- From [Funds] Fund – [Som];
- From [Funds] Fund – [Som].

Total amounts to [Som].
Considering interest rate I should repay

As Som. Repayment amount totals to

Therefore I still have to repay loans from the two remaining Funds.

I, [redacted], was informed by [redacted], Naryn oblast Road Directorate personnel, that [redacted], with total area of [redacted], is subject to demolition without compensation. In summer of 2010 we have built a new store at the back of existing one that was to be demolished. Demolished store cost we are estimating at [redacted] Som plus [redacted] Som for the labor.

We would like that ADB will cover the losses as follows:

First, by paying the cash compensation for store demolition.

Second, by providing assistance in preparing registration of new store permits and by paying the costs in relation to registration of a new store in accordance with receipts, checks and orders.

Third, by including the name of [redacted] in favorable loan repayment program scheme under the said Project.

Earlier we have raised our issues to ADB staff and Special ADB Intermediary under the Project. Further below is the report on past activities:

CRPP confirmed that our complaint was received on 22 September, in November 2010 representatives of CRPP visited project site and on 12 November complaint was accepted as legitimate. CRPP conducted multilateral meeting and initially prepared Agreement on 6 December 2010, but Agreement was not signed. Analysis and Assessment Report from December 2010 included proposed schedule for complaint resolution that also was not implemented. Now it is May already and soon there will be years since we submitted complain, but it is not clear when we would start operating our stores.

Now we are requesting CRP to conduct investigation whether ADB is implementing its operational policy and procedures, since until today we are not satisfied with the results of complaint review procedure due to abovementioned reasons.

Besides abovementioned information there are also other documents that can help CRP while assessing our request on conducting compliance review.

Our names, addresses and information are listed below.

[Signature] [Indicate address of each person, and if any telephones, faxes and email addresses]

1. [redacted]
2. [redacted]
3. [redacted]
4. 

5. 

We, ADB NGO Forum represent abovementioned persons that have submitted request. Please, connect us through Maya Zamirovna Yeralieva, Central Asia and Caucasus coordinator, ADB NGO Forum.
Email: maya@forum-adb.org
Additional contact information: 00996-555-680523
To whom it may concern

By this letter I would like to confirm that complainants under complaint CAREC Transport Corridor I (Bishkek-Torugart Road) registered by CRP http://compliance.adb.org/dir0035p.nsf/alldocs/RDIA-RHF7NJ3OpenDocument refers to project Project 1 financed by ADB under Grant 0123-KGZ.

Affected people live in Kara-Suu and Kara-Bulung villages located at km 409+060 to 411+915 and km 417+0060 to 418+915 of the Bishkek - Naryn - Torugart road.

Maya Eraliyeva
Representative of the complainants

28 July 2011.
TERMS OF REFERENCE OF THE COMPLIANCE REVIEW PANEL

CRP REQUEST NO. 2011/2 – REQUEST ON THE CAREC TRANSPORT CORRIDOR I (BISHKEK-TORUGART ROAD) PROJECT 1 IN THE KYRGYZ REPUBLIC (ASIAN DEVELOPMENT BANK GRANT NO. 0123-KGZ)

Introduction

1. These Terms of Reference (TOR) have been prepared by the Compliance Review Panel (CRP) for undertaking a compliance review of the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 1 pursuant to a request for compliance review (the Request) (Appendix 1).

2. On 29 June 2011, the CRP determined the Request eligible, and recommended to the ADB Board of Directors (Board) to authorize a compliance review. On 20 July 2011, the Board authorized the compliance review. Subsequently, the affected persons clarified the identity of the project affecting them. A revision to the eligibility report was circulated to the Board on 8 August 2011 to reflect a change.

3. Under paragraph 122 of the Accountability Mechanism policy¹ and paragraph 37 of the CRP Operating Procedures, 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 receipt of Board authorization of a compliance review.

The Request for Compliance Review

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

<table>
<thead>
<tr>
<th>Project Name</th>
<th>CAREC Transport Corridor I (Bishkek-Torugart Road) Project 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td>Kyrgyz Republic</td>
</tr>
<tr>
<td>Borrower</td>
<td>The Government of Kyrgyz Republic</td>
</tr>
<tr>
<td>Requesters</td>
<td>The five requesters authorized Ms. Maya Yeralieva, Central Asia and Caucasus Coordinator of the ADB NGO Forum, to file the complaint on their behalf.</td>
</tr>
<tr>
<td>Allegations</td>
<td>Non-compliance with operational policy and procedures, in particular, relating to Involuntary Resettlement Policy and Public Communications Policy</td>
</tr>
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<table>
<thead>
<tr>
<th><strong>ADB operations department responsible</strong></th>
<th>Central and West Asia Department</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project categorization</strong></td>
<td>Category B for resettlement impact</td>
</tr>
<tr>
<td><strong>Project Description</strong></td>
<td>The Project concerns a portion of the Bishkek-Torugart road, part of a key transport corridor connecting Bishkek, the capital of the Kyrgyz Republic, to Kashi in the People’s Republic of China. ADB is providing financing, in several portions, for rehabilitating this transport corridor.</td>
</tr>
<tr>
<td><strong>Project Status</strong></td>
<td>The ADB grant for the Project was approved by the Board on 14 November 2008; became effective on 6 January 2009. Original loan closing date is on 30 September 2012. Approximately 28% of the ADB grant has been disbursed.</td>
</tr>
<tr>
<td><strong>Project Implementation Arrangement</strong></td>
<td>The executing agency is the Ministry of Transport and Communications, Kyrgyz Republic.</td>
</tr>
<tr>
<td><strong>CRP</strong></td>
<td>Mr. Rusdian Lubis, CRP Chair is taking primary responsibility for the compliance review. The CRP will be supported by the Office of the Compliance Review Panel.</td>
</tr>
</tbody>
</table>
| **Contact person:**                       | Mr. Rusdian Lubis, Chair, CRP  
Mr. Geoffrey R. Crooks, Officer-in-Charge, OCRP  
Email: crp@adb.org  
Tel: +632 632 4149 |

**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 and materially 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, including recommendations, if appropriate, for any remedial changes to be implemented by Management in the scope or implementation of the Project.

**Allegations of Non-compliance with ADB Policies**

6. The requesters claim that ADB did not implement its operational policies and procedures, in particular in regard to the ADB involuntary resettlement policy and public communications policy.

7. Based on the allegations by the requesters of non-compliance with specific provisions of ADB policies, and 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, and any staff instructions relating to the formulation, processing, or management of the Project.

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 the Kyrgyz Republic, and the Board, including the Executive Director representing the Kyrgyz Republic.

9. The compliance review will include the following all of whom will be given an opportunity to record their views, as necessary:

(i) review of ADB files and other documents related to the Project;
(ii) conduct of site visits with the prior consent of the Government of Kyrgyz Republic;
(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, project-affected people,
- officials from the Government of the Kyrgyz Republic,
- the Board, including the Executive Director representing the Kyrgyz Republic;
(iv) use of consultants as appropriate, to assist the CRP in carrying out its work; and
(v) apply any other review methods that the CRP considers appropriate in complying with its mandate.

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 will be subject to ADB’s confidentiality and disclosure of information policy, including those provisions aimed at ensuring that confidential business information is not disclosed. Any material or information submitted to any CRP members or the OCRP 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 comments. Both the Management and the requesters will have 30 days to comment on the draft report. Within 14 days from receipt of the comments on the draft report, the CRP will consider the comments and finalize the report, and issue its final report to the Board, including 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.
Timeframe

12. The CRP will carry out the compliance review in accordance with the compliance review phases set out in the Policy on the Accountability Mechanism, the corresponding Operations Manual (OM Section L1/BP) and the CRP Operating Procedures.

<table>
<thead>
<tr>
<th>Step</th>
<th>Event</th>
<th>Timeframe</th>
</tr>
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<tbody>
<tr>
<td>6</td>
<td>CRP Draft report. CRP will issue its draft report of its findings and recommendations to the Management and the Requesters for comments.</td>
<td>Not time-bound</td>
</tr>
<tr>
<td>7</td>
<td>Management’s and Requesters’ responses to CRP draft report</td>
<td>30 days from submission of the draft report</td>
</tr>
<tr>
<td>8</td>
<td>CRP’s Final Report. CRP finalizes its Report, based on comments received, and issues CRP’s final Report to the Board, with responses from Management and the Requesters as attachments.</td>
<td>14 days from receipt by CRP of comments from the Bank’s Administration and from the Requesters</td>
</tr>
</tbody>
</table>
| 9    | Board Decision: Board consideration of the CRP’s Final Report  
Release of the Board Decision and CRP’s Final Report | 21 days from submission of CRP final report. |

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

/S/ Rusdian Lubis  
Chair, Compliance Review Panel  
9 August 2011

Appendix:  
Request for Compliance Review
LIST OF 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. It does not include persons who requested that their identities be kept confidential.

ADB Staff
(Including those present at various CRP meetings at ADB headquarters, staff interviewed, and Kyrgyz Republic Resident Mission [KYRM] staff)
Eduard Westreicher, Executive Director, ADB
Maurin Sitorus, Executive Director, ADB
Xiaoyu Zhao, Vice-President, Operations 1
Robert Dawson, Secretary, Office of the Secretary (OSEC)
Xianbin Yao, Director General, Regional and Sustainable Development Department (RSDD)
Juan Miranda, Director General, Central and West Asia Department (CWRD)
Robert May, Special Project Facilitator, Office of the Special Project Facilitator (OSPF)
WooChong Um, Deputy Director General, RSDD
Nessim Ahmad, Director, RSDD
Kala Mulqueeny, Senior Counsel, Office of the General Counsel (OGC)
Sean O’Sullivan, Deputy Director General, Private Sector Operations Department (PSOD)
Hong Wang, Director, Transport and Communications Division (CWTC), CWRD
Sunil Mitra, Senior Transport Specialist, CWTC
Prianka Seneviratne, Principal Transport Specialist, CWTC
Indah Setyawati, Social Development Specialist, CWOD-PRSS
Risa Teng, Advisor and Head, CWOD-PRSS
Hao Zhang, Senior Advisor to the Vice-President, Operations 1
Rie Hiraoka, Country Director, KYRM
Mirdin Eshenalieev, Senior Project Officer, KYRM
Mark Kunzer, Senior Environment Specialist, Environment and Social Safeguards Division (RSES), RSDD
Lanfranco Blanchetti-Revelli, Senior Social Development Specialist, CWOD-PRSS
Ralf Starkloff, Senior Social Development Specialist, RSES
Rustam Ishenaliev, Transport Specialist, Southeast Asia Transport and Communications Division (SETC)
Karin Oswald, Principal Project Facilitation Specialist, OSPF

Affected People and Representatives
Maya Eraliieva, ADB NGO Forum, requesters' representative in the compliance review phase
Requesters (identities kept confidential, at their request)

Implementing Agency: Investment Projects Implementation Group (IPIG), Ministry of Transport and Communications (MOTC)
Kubanychbek Mamaev, Director, IPIG
Sanjar Ibraimov, Deputy Director, IPIG
Svetlana Keldibaeva, Safeguard Specialist, IPIG

Consultants
Iwao Yokokawa, President, Japan Overseas Consultants (construction supervision)
Md. Ahsan Habib, Senior Resident Engineer, Kyrgyz TREC International (construction supervision)
Keldibek Ibraev, Deputy Resident Engineer, Kyrgyz TREC International (construction supervision)
Nurzhan Dzhumabaev, national consultant for TA 7433-REG: Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region.

Other Stakeholders
Li Feng, Chief Engineer, China Road and Bridge (civil works contractor)
M. Z. Alserawan, China Road and Bridge (civil works contractor)
Response from the Requesters

June 18, 2012

Mr. RUDIAN LUBIS
Chair, Compliance Review Panel
Asian Development Bank
Tel (632) 632-4149/4150
Fax (632) 636-2088
crp@adb.org
www.compliance.adb.org

RE: Comments on Draft Report on Compliance Review Panel Request No. 2011/2 on the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 1 in the Kyrgyz Republic

Dear Mr. Lubis:

Greetings from the Secretariat! We appreciate this opportunity to give our comments on the draft CRP report.

We sincerely welcome the Bank’s willingness to translate its documents into the language of its DMC members. However, we would like to bring to your attention the poor quality of the Russian version of the Draft Report on the Compliance Review Panel Request No. 2011/2 on the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 1 (ADB Grant No. 0123-KGZ), dated by 18 May 2012. We found that the report contains several inaccuracies, both in terms of grammar and, alarmingly, in context, given that there were a number of misinterpretations in Russian of sections contained in the English version of the report (for instance, Page 9, last paragraph states that NGO Bugu-Maral pressured affected people not to sign the agreement with MOTC, otherwise they would not receive any compensation at all). That having said, we look forward to receiving better translation of CRP reports in the future.

Apart from the said inaccuracies in the Russian translation, we would also like to make the following comments as well as recommendations:

- **Page IV, Paragraph 3:** It states that the complaint was submitted to OSPF in December 2010. On the contrary, the complaint was submitted in August 2010. The OSPF spent some time before it declared the complaint eligible in November 2010. According to OSPF, they gave time to ADB Management to solve the issue. However, since the Management was not able to address the problem, OSPF declared the complaint eligible in November 2010.
In December 2010, OSPF organized a multi-stakeholder meeting, with the participation of the affected people (AP), the representative NGO of AP, the Ministry of Transportation, IPIG, ADB Resident Mission and ADB HQ representatives. Unfortunately, OSPF underestimated the readiness of the Kyrgyz Government to sign the agreement; hence all parties present failed to come into an agreement.

In January 2011, OSPF prepared its Review and Assessment Report (RAR), which stated that the affected people will receive compensation in March 2011 before the start of civil work for the project. But since this Action Plan was not implemented at all, a new one came out in May 2011.

- Since sociological survey states that unauthorized small businesses are common in the ROW and despite original design specifications that included the construction of sidewalks and the reconstucting of bus stops, including the ones occupied by the shop owners, there was no change in the design of the road. It means that from the beginning the ADB policies were ignored.

- Page 2 Paragraph 6: It states that the Requesters asked for fair compensation for two shops, for land, for trees that were felled and for loss of income. However, they did not ask for compensation for land as it is owned by the government.

- One of the complainants (a shop owner) got two microcredits to run her business. If she had known that her shop would be demolished to give way to the road project, she would not have been able to secure any loans. The government could not provide her with an alternative land for the new shop that she had constructed at the garden of her rent house. Due to several reasons, her business is not running now, yet she still keeps paying for the microcredits.

- CRP recommendations does not include answers to complainants’ requests as follows: (i) assistance in securing business permits for new shops and repayment of registration costs supported by receipts, checks, and orders; and (ii) the inclusion of one of the Requesters in a loan repayment program. In this regard, we are looking for clarifications on these two requests.

We hope that you would take into serious consideration all the issues that we have raised.

Best regards,

Maya Eralieva
NGO Forum on ADB
Response from ADB Management

Memorandum
Office of the Vice President
(Operations Group 1)

18 June 2012

To: Rusdian Lubis
   Chair, Compliance Review Panel

From: Xiaoyu Zhao
   Vice President (Operations I)

Subject: CRP Request No. 2011/2 — Request for Compliance Review of the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project (Grant 0123-KGZ [SF]) — Management Response

As requested in your memo dated 18 May 2012, submitted is Management’s response to the Compliance Review Panel's Draft Report on the compliance review process regarding the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project (Grant 0123-KGZ [SF]).

Attachment

cc: The President
   Vice President, Knowledge Management and Sustainable Development
   General Counsel, OGC
   Directors General, CWRD, RSDD
MANAGEMENT'S RESPONSE
DRAFT REPORT ON COMPLIANCE REVIEW PANEL REQUEST NO. 2011/2
ON THE CAREC TRANSPORT CORRIDOR 1 (BISHKEK-TORUGART ROAD) PROJECT
(GRANT 0123-KGZ(SF)) IN THE KYRGYZ REPUBLIC

I. INTRODUCTION

1. On 18 May 2012, the Compliance Review Panel (CRP) requested comments on its draft report on the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project in the Kyrgyz Republic.

2. Pursuant to paragraph 125 of the Accountability Mechanism Policy (R79-03), Management provides comments on the draft report, consisting of:
   (a) Management’s responses to the CRP’s findings and conclusions; and
   (b) Management’s responses to the CRP’s recommendations.

II. MANAGEMENT’S RESPONSES TO THE CRP’S FINDINGS AND CONCLUSIONS

A. CRP Conclusion 1 - Project Design and Classification:

The CRP concluded that: “ADB did not comply with the requirements of the Involuntary Resettlement Policy regarding screening and due diligence on potential resettlement impacts and in assigning this project a category C (F2/OP para. 22). This classification was made despite the findings from the sociological survey that small businesses are common in the ROW and despite original design specifications for reconstructing of bus stops, including the ones occupied by the shop owners. Moreover, the Policy on the Incorporation of Social Dimensions in ADB Operations was not complied with since the IPSA and the SPRSS did not identify or address potential resettlement issues (C3/OP paras. 6-9)/(F2/OP para. 23).

3. Management considers that the project was properly categorized as category C for involuntary resettlement impact during project preparation. The project was reviewed through due process. Management also clarifies that the categorization was supported by detailed design information, which was already available at the project preparation stage. The original detailed design, which covered the road section in question, was prepared by the Ministry of Transport and Communications (MOTC), and verified through the Project Preparatory Technical Assistance (PPTA). Management also provides the following detailed clarifications on the CRP's findings.

A.1 Review of the Project Design - CRP Draft Report Paragraphs 19 to 20

4. The CRP noted that: “during project preparation, ADB maintained that all project related works would be carried out in the ROW or on public land and that therefore no resettlement impact was expected. However, in preparing the project ADB did not consider that:
   (a) even if the works were limited to the ROW, it could have been occupied, either legally or illegally, and that in such cases the involuntary resettlement policy would apply;

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1 Detailed designs are normally prepared in the early stage of project implementation (not in the stage of project preparation). Detailed designs were used in safeguards categorization at project preparation stage for this project.
2

(b) the potential for resettlement impact would increase considerably as the original design specifications for the reconstruction of the road included the expansion of the original alignment road width from the previous average of 14 m to 21 m in Kara Suu and Kara Bulun (within the existing ROW of 26 m). Therefore, any structure previously located between 7 m and 10.5 m from the centerline of the road would be impacted under the reconstruction.

(c) the design of the rehabilitated road included the "repair of existing enclosed bus stops and the construction of sidewalks in the villages."

5. Management clarifies that, in preparing the project and based on detailed design, ADB concluded that there would be no resettlement impact. This is based on the following:

(a) The original detailed design prepared by the Ministry of Transport and Communications (MOTC) in 2007, reviewed by ADB under the PPTA (as set forth in the design review report) and confirmed during the project fact-finding mission showed that there was no involuntary resettlement impact. The detailed cross-section profiles (measured every 20 m along the project road section) from the original detailed design showed no structures (legal or illegal) located within the corridor of impact (COI). Moreover, there was no anticipated expansion, as cross-section widths specified in the original detailed design were required to be applied at specific locations along the project road section. The resettlement impact occurred during project implementation as a result of the design changes described in Section B.1 below.

(b) While paragraph 67 of the design review report does mention the widening of the project road section, such widening referred to the rehabilitation of those parts of the existing project road section where the width was less than the design width. This widening was still within the COI, as confirmed during the project fact-finding.

(c) The original detailed design required repairing the existing bus stops, which did not induce any resettlement impact, as opposed to total demolition and reconstruction.

A.2 Due diligence and Fact-Finding - CRP Draft Report Paragraph 21

6. The CRP noted that an environmental safeguard specialist participated in the fact-finding mission with delegated responsibility for potential social safeguard issues.

7. Management clarifies that based on the original detailed design of the project, no potential for involuntary resettlement impact was anticipated prior to the fact-finding mission. Therefore, social safeguard specialist did not join in the fact-finding mission. However, the environment specialist participated in the fact-finding mission and undertook screening for involuntary resettlement impact. Based on the environment specialist's verification, the resettlement specialist proposed the classification of the project as Category C for involuntary resettlement impact after the fact-finding mission.

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2 COI is defined as the total road embankment width plus an additional space of 1.3m on each side of the roads.
3 Item 8.6.2 of Bill of Quantities No. 8 - Road Furniture referred to "repair of existing enclosed bus-stops".
A.3 Findings of the Sociological Survey - CRP Draft Report Paragraph 22

8. The CRP noted that a sociological survey, conducted as part of the project preparation, had described the socio-economic conditions in the project area and observed the existence of "roadside sales outlets established spontaneously without any official authorization-based documents". The CRP considered that by not adequately reporting this finding in the summary poverty reduction and social strategy (SPRSS), ADB did not comply with the requirements of the Policy on Involuntary Resettlement (1995) and OM C3 on the Incorporation of Social Dimensions in Bank Projects (2007).

9. Management clarifies that based on ADB’s due diligence during project preparation, it was found that none of the existing roadside sales outlets were located within the COI and therefore, no involuntary resettlement impact was anticipated.

A.4 Project Category - CRP Draft Report Paragraph 23

10. The CRP considered that ADB did not comply with requirements regarding screening for resettlement impacts early in the project cycle. It noted that "in case of doubt in the early stages of project preparation, a resettlement planning document must be prepared."

11. Management clarifies that the project was categorized as C in accordance with OMF2 (2009), justified by the absence of resettlement impact in the original detailed design for the project road section as described in Section A.1 above. This was supported by the findings from the PPTA. There was therefore no doubt at that time about the project’s categorization for involuntary resettlement. Hence, there was therefore no policy or procedural requirement, nor any need, to prepare a resettlement plan for the project at that stage.

B. CRP Conclusion 2 - Supervision during Implementation:

The CRP concluded that: "ADB failed to adequately supervise project implementation as it was unaware of a change in the design of the road that, according to ADB, caused the demolition of roadside shops, the removal of trees, and the relocation of fences. ADB did not ensure compliance with the borrower’s contractual obligation to inform and seek approval for these design changes, to advise ADB of any unanticipated resettlement issues, to prepare a resettlement plan in accordance with ADB policy, and to finalize its implementation before going forward with construction. These resulted in non-compliance with the Policy on Involuntary Resettlement particularly with its provision on unanticipated resettlement impacts (F2/OP para. 53)."

12. Management considers that ADB could have been more proactive in communication with the EA, although the non-compliance pertains to MOTC and the supervision consultant. ADB did indeed take action to address unanticipated resettlement impacts in accordance with OMF2/OP paragraph 53. However, lessons can be learnt from this experience to improve communication and supervision during project implementation. Management also provides the following clarifications on the CRP’s findings.

B.1 Design Change - CRP Draft Report Paragraphs 25 to 26

13. The CRP alleges that during project supervision, ADB failed to identify the unanticipated road design change ordered on 19 July 2010 by the supervision consultant, and stressed that it took ADB until 20 June 2011 to identify during its review of the complaints that this unanticipated and unauthorized design change had occurred, and that ADB had not identified
the change when it received the supervising consultant's July 2010 report submitted to ADB on 25 August 2010. The CRP further stipulated that the change in the location of the sidewalks was not the major cause for the resettlement impact, but rather the increase from an average alignment of 14 meters to 21 meters in the original design of the reconstructed road. In the CRP's analysis, ADB's oversight of the resettlement issue during due diligence and project preparation was the main reason for the unexpected resettlement and not the unauthorized design change during project implementation.

14. Management clarifies that the safeguard covenant in the Grant Agreement provides that: "No land acquisition and resettlement activities are expected on the Project Road and the Recipient shall ensure that the implementation of the Project is carried out on state-owned land and within existing rights-of-way and does not trigger application of ADB's Policy on Involuntary Resettlement (1995). If, however, such will be required, the Recipient shall ensure that land acquisition and resettlement are carried out promptly and efficiently following the resettlement plan agreed with ADB, in line with applicable laws and regulations, and ADB's Policy on Involuntary Resettlement (1995)."

15. Management also provides the following clarifications on the sequence of events and actions taken by ADB. The ADB review mission in July 2010 neither observed any design changes nor were they informed of any design changes by MOTC, supervision consultant, and the accompanying NGO.

a) On 25 August 2010, ADB became aware of a possible change in the project detailed design through the July 2010 progress report of the supervision consultant. On 27 August 2010, ADB received a complaint letter from the NGO (English version) on behalf of three affected persons. It is noted that when design changes took place, the supervision consultant should have obtained MOTC's approval and ADB's prior no objection before proceeding. No such objection from ADB was sought nor provided.

b) After becoming aware of the possible changes in project design, ADB took immediate actions to address the potential impacts. On 7 September 2010, KVRM wrote to MOTC stating unequivocally that any issues relating to land acquisition and involuntary resettlement was to be addressed based on the Policy on Involuntary Resettlement (1995). A mission was fielded in September 2010 and subsequently in coordination with OSPF, an action plan was agreed with the MOTC to address the issues in accordance with the Policy on Involuntary Resettlement (1995).

c) The unauthorized design changes during project implementation caused the resettlement impact. This has been admitted in the supervision consultant's letter of 12 September 2011, which was referred to as "a letter of apology to ADB" in paragraph 27 of the CRP's draft report.

B.2 Contractual Obligations - CRP Draft Report Paragraph 27

16. The CRP noted that: "While Management and the OSPF were reviewing the complaints and working with the government on a LARP, the supervising consultant informed ADB that it had instructed the contractor to make the design change beyond the scope of its mandate and without informing or seeking authorization from MOTC or ADB as required in its contract. This requirement applies even if changes do not have any budgetary impact. In a letter of apology to
ADB on 12 September 2011, the supervising consultant admitted to "negligence under contract". In this case, ADB failed to ensure compliance with (i) the borrower's contractual obligation to inform and seek approval for any design change and (ii) the borrower's contractual obligation to advise ADB of any unanticipated resettlement issue, to prepare a resettlement plan in accordance with ADB policy, and to finalize its implementation before going forward with construction."

17. As clarified above in this Section, ADB could have been more proactive in communication with the EA, although the non-compliance pertains to MOTC and the supervision consultant, ADB did indeed take action to address unanticipated resettlement impacts in accordance with OMF2/OP paragraph 63. However, lessons can be learnt from this experience to improve communication and supervision during project implementation.

C. CRP Conclusion 3 - Response to Complaints:

CRP concluded that: "When ADB first received the complaints about the forced demolition of shops, the removal of trees, and the relocation of fences in August 2010, it did not require a resettlement plan covering all affected persons and ensuring due consultation and compensation. Instead, ADB agreed to compensation with construction materials that the affected persons did not find useful and that were worth considerably less than the assets lost. Furthermore, this proposal did not consider loss of income and other assets such as trees. This response to the complainant did not comply with the Involuntary Resettlement Policy requirements on unanticipated resettlement impacts (F2/OP para 53) including the requirement to prepare a resettlement plan that includes a comprehensive survey of all affected assets, valuation at replacement cost (OM F2/BP para. 4[liii]), compensation for lost income (F2/OP para. 13[iii]), consultation, and grievance redress and the need for resettlement planning documents (OM F2/OP para.6)."

18. Management clarifies that ADB in fact did not agree to the proposal to compensate the affected persons with construction materials. To the contrary, ADB wrote to MOTC on 7 September 2010, stating that the proposed solution of using construction materials as compensation was unacceptable to ADB as it would not comply with the Policy on Involuntary Resettlement (1995). ADB further stated that any issue relating to land acquisition and involuntary resettlement should be addressed based on the Policy on Involuntary Resettlement (1995).

D. CRP Conclusion 4 - Public Disclosure and Consultation:

The CRP concluded that: "ADB did not comply with its Policy on Public Communications (2003) (L3/OP para.5) by not providing key project documents in a timely and appropriate manner after requests from civil society organizations. In addition, the failure to inform affected people of imminent construction activities further compounded noncompliance with the resettlement policy. However, the CRP finds that ADB complied with requirements in the Policy on Public Communications regarding consultations during project preparation and on the draft resettlement plan."

19. Management considers that ADB did comply with the Public Communications Policy (PCP) (2005) requirements in providing timely responses to specific requests for key project documents as discussed below. Management agrees that ADB complied with PCP requirements on consultations during project preparation and on the draft resettlement plan. Management provides the following clarifications on the CRP's findings:
D.1 Public Disclosure of Project Documents - CRP Draft Report Paragraph 32

20. The CRP noted that "some of the documents that were to be disclosed upon their completion (IPSA, design review report, sociological survey, and the initial environmental examination), were finalized by August 2008 but only made public in January 2010 after Bugu Moral had requested them in November 2009, more than a year after the public consultations. While ADB did ask the project implementation unit to translate all pertinent documents into Russian, only the project information document and eventually the resettlement plan and resettlement brochures were disclosed in Kyrgyz and in Russian. The inadequate response to the request by affected people for relevant and timely information is noncompliant with the Policy on Public Communications (L3/BP para. 5) as is the late disclosure and quarterly updating of the PID. (L3/OP para. 12). In fact, as of May 2012 the PID currently available on the ADB website is from January 2010."

21. Management clarifies that the PCP (2005) does not require ADB to publicly disclose on its website the initial environmental examination (IEE) nor the summary IEE for projects that are category B for environment. Nevertheless the summary initial environmental examination had been publicly available since November 2008 as a core appendix of the RRP in accordance with the Environment Policy (2002). Management acknowledges that the IPSA, design review report, and sociological survey were not disclosed until January 2010. Notwithstanding, the PCP (para. 77) requires that ADB shall make the full IEE available to interested parties on request. In response to a request on PPTA reports, IEE, IPSA, legal agreement and RRP (with the DMF and the PAM) from Mr. Ulan Naamatbekov (NGO) on 11 January 2010, ADB sent a letter to Mr. Naamatbekov on 14 January 2010 and provided the weblinks to ADB website for these documents, except for IEE and IPSA, which were separately sent via an email on 3 February 2010. Moreover, the project information document (PID) has in fact been updated.

22. With regard to the CRP's conclusion that "the failure to inform affected people of imminent construction activities further compounded noncompliance with the resettlement policy", Management notes that this conclusion relates to complaints arising from actions of MOTC and contractors that took place before ADB became aware of the design changes. As the CRP draft report has noted in para. 40, once the ADB became aware of the anticipated involuntary resettlement impacts, ADB undertook the appropriate actions and diligently worked with the government to ensure compliance with the Policy on Involuntary Resettlement (1995) and with the PCP.

D.2 Consultation during Project Preparation - CRP Draft Report Paragraph 33

23. The CRP states that: “Based on the consultation records, the CRP finds that strictly speaking, ADB consultation requirements in the Policy on Public Communications (L3/OP para. 20) were complied with during project preparation.”

24. Management concurs with the CRP’s findings on this point.

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*Paragraph 157 of the PCP provides that: "ADB shall acknowledge receipt of a request (as described in paragraphs 153 and 154) within 5 working days. ADB shall then notify the requester as soon as a decision has been made, and, in any event, no later than 30 calendar days after receiving the request."*
D.3 Consultation on the Draft Resettlement Plan - CRP Draft Report Paragraph 35

25. The CRP observed that “Despite some shortcomings noted during the CRP's meetings with stakeholders and their representatives and in the implementation review report, the CRP finds that in general, ADB complied with policy requirements on consultation, including the dissemination of information in the appropriate manner (brochures) and languages (Kyrgyz and Russian) and that the feedback on the consultations was considered in the final plan.”

26. Management agrees to the CRP's findings on this point.

E. CRP Conclusion 5 - Preparation and Implementation of the Resettlement Plan:

The CRP concluded that: “Once the OSPF received the complaint in August 2010, ADB undertook the appropriate actions and diligently worked with the government to ensure that the preparation and implementation of the LARP was in accordance with ADB’s policy. In the CRP’s assessment, overall the plan and its implementation were satisfactory and complied with the Policy on Involuntary Resettlement (2006) and with the Policy on Public Communications (2003).”

27. Management appreciates the CRP’s positive conclusion.

III. MANAGEMENT RESPONSE TO CRP'S RECOMMENDATIONS

28. CRP Recommendation 1: "During its supervision activities in this project, ADB should continue to monitor any LARP impacts and to ensure that the grievance redress mechanism addresses any further issues in accordance with the July 2011 resettlement plan."

29. Management clarifies that ADB has been monitoring, and will continue to monitor, MOTC's implementation of the LARP to ensure its compliance with ADB's safeguard policy, including the Grievance Redress Mechanism that is functional in both villages.

30. CRP Recommendation 2: "The government has indicated its commitment to build on lessons learned from this experience, including using the LARP for this project as the basis for similar projects. ADB should continue to strengthen its policy dialogue, capacity building, and technical support to assist government and other stakeholders to adopt sound policies and practices on land acquisition and involuntary and resettlement."

31. CRP Recommendation 3: "ADB is assuming leadership among the donors developing the CAREC regional transportation network and should closely follow up on the implementation of regional technical cooperation to enhance the capacity of the governments to address land acquisition and resettlement issues associated with road projects in accordance with international standards and best practices."

32. CRP Recommendation 4: "As road projects that traverse rural communities often in remote areas frequently encounter unanticipated or project-induced settlement in the ROW that could trigger the involuntary resettlement policy, ADB should carefully consider classification criteria and requirements for them, including a resettlement specialist on the project team during the early stages of design and due diligence may help to identify potential land acquisition or resettlement."

33. 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 2, 3 and 4 above concern ADB’s institutional approaches to implementing relevant operational policies more generally rather than project-specific issues.

34. ADB is committed to providing support to DMCs to strengthen their safeguard systems and develop their capacity to manage social and environmental risks. ADB is assisting the governments and other stakeholders in the Central and West Asia region, including the Kyrgyz Republic, to adopt sound policies and practices on land acquisition and involuntary resettlement through a regional technical assistance (RETA). The RETA outputs includes assessing land acquisition and resettlement (LAR) practice, aligning LAR policy, enhancing LAR administration and procedures, and strengthening technical capacity for LAR in the Kyrgyz Republic. ADB has also programmed a series of training workshops to build the capacity of government officials in the CAREC countries to deal with land acquisition and resettlement issues in the transport sector. The training workshops will be conducted by the Transport Sector Coordinating Committee and the CAREC Institute in 2012–2013.

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5 RETA-7433 (REG): Mainstreaming Land Acquisition and Resettlement Safeguards in the Central and West Asia Region, approved in November 2009 for $5 million.