LESSONS LEARNED FROM COMPLIANCE REVIEWS AT THE ASIAN DEVELOPMENT BANK (2004–2020)

Republic of Indonesia: Integrated Citarum Water Resources Management Investment Program—Project 1
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The Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) series endeavors to provide lessons and institutional knowledge to strengthen the development effectiveness of ADB. The lessons shared through this series provide opportunities to improve project design and implementation, and to strengthen the compliance review function. In case of discrepancies between this document and ADB’s operational policies and Accountability Mechanism Policies 2003 and 2012, the respective policies will prevail.

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Notes:
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Cover design by Noelito Francisco E. Trivino, Jr.

Cover page: Many steps, one process. The cover highlights the different steps involved in the compliance review of a project—the field visits, consultations, and discussions that compose ADB’s Accountability Mechanism (symbolized by the gear) and work toward a unified goal.
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACKNOWLEDGMENTS</td>
<td>4</td>
</tr>
<tr>
<td>ABBREVIATIONS</td>
<td>4</td>
</tr>
<tr>
<td>1. KEY LESSONS</td>
<td>6</td>
</tr>
<tr>
<td>2. BACKGROUND</td>
<td>7</td>
</tr>
<tr>
<td>3. KEY SUCCESSES AND CHALLENGES</td>
<td>10</td>
</tr>
<tr>
<td>4. LESSONS LEARNED AND RECOMMENDATIONS</td>
<td>11</td>
</tr>
<tr>
<td>REFERENCES</td>
<td>17</td>
</tr>
</tbody>
</table>
ACKNOWLEDGMENTS

The Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) series was developed by the ADB Office of the Compliance Review Panel (OCRP), under the leadership of the Compliance Review Panel (CRP) Chair and OCRP Head Elisea Gozun, and with the support of the following OCRP team members: Advisor Irum Ahsan, Senior Compliance Review Officer Josefina Miranda, and Associate Compliance Review Coordinator Julie Anne B. Mapilisan-Villanueva. The OCRP prepared this publication with inputs from CRP Members Halina Ward and Ajay Deshpande. This report was made possible by the generous sharing of insights from ADB Management, current and former ADB staff, and project consultants, as well as from government officials, complainants’ representatives, previous CRP members, and OCRP staff who were involved in the Integrated Citarum Water Resources Management Investment Program–Project 1.

ABBREVIATIONS

ADB – Asian Development Bank
AMP – Accountability Mechanism Policy
BAPPENAS – Badan Perencanaan dan Pembangunan Nasional (National Development Planning Agency)
BBWSC – Balai Besar Wilayah Sungai Citarum (Citarum River Basin Organization), DGWR
CRP – Compliance Review Panel
DED – detailed engineering design
DGWR – Directorate General of Water Resources
ICWRMIP – Integrated Citarum Water Resources Management Investment Program
MFF – multitranche financing facility
OCRP – Office of the Compliance Review Panel
SPS – Safeguard Policy Statement
TA – technical assistance
The Republic of Indonesia: Integrated Citarum Water Resources Management Investment Program–Project 1 (ICWRMIP–Project 1) was a project supported by the Asian Development Bank (ADB) that underwent compliance review under the 2003 Accountability Mechanism Policy. The policy called for investigations into allegations of noncompliance by ADB with its operational policies and procedures that could have directly, materially, and adversely affected complainants during the formulation, processing, or implementation of an ADB-assisted project.

This publication is the sixth in the Lessons Learned from Compliance Reviews series prepared by ADB’s Office of the Compliance Review Panel (OCRP). The series examines the completed compliance reviews of eight ADB-assisted projects that were the subject of complaints filed with the OCRP in 2004–2020. Challenges, gaps, and good practices identified in each project during the compliance review are explored. Though prepared by the OCRP, publications in the Lessons Learned series do not reflect the OCRP’s opinion unless expressly stated.

This report presents insights obtained following a thorough review of documents and an analysis of the results of a survey done among current and former ADB staff, including a former member of the Compliance Review Panel.

The insights offer practical guidance to development practitioners, safeguard specialists, nongovernment and civil society organizations, government personnel, project beneficiaries, and ADB Management and staff seeking to learn more about project design and implementation, and the compliance review process. The intent is to contribute to capacity development in project management and good institutional governance.

SNAPSHOT

Project

Project Title:
Republic of Indonesia: Integrated Citarum Water Resources Management Investment Program–Project 1

Country of Implementation:
Indonesia

ADB Financing:
Loan 2500-INO: $20 million
Loan 2501-INO: $30 million

Approval Date
4 December 2008

Actual Loan Closing Date
7 September 2017

Project Impact Categorization
B for Environment
A for Involuntary Resettlement
No impact on Indigenous People

Complaint

Date of Compliance Review Request
30 January 2012

Complaint Status
The complaint was closed after the Compliance Review Panel submitted its second and final Annual Monitoring Report to the ADB Board of Directors on 7 December 2015.

Link to Complaint Documents

Country of Implementation:
Indonesia

* For the first periodic funding request under the $503.8 million multitranche financing facility (MFF) to support the Integrated Citarum Water Resources Management Investment Program (ICWRMIP)–Project 1 in Indonesia.
KEY LESSONS

The compliance review of Asian Development Bank (ADB) actions regarding the Integrated Citarum Water Resources Management Investment Program–Project 1 (ICWRMIP–Project 1) brought out several important lessons. It also highlighted various challenges as well as opportunities to improve project management and compliance review processes. The significant lessons learned from the compliance review are discussed below.

1.1 Due diligence should be timely and should include a comprehensive assessment of (i) the borrower’s institutional framework, (ii) the implementation capacity of all local partners, and (iii) the capacity and responsibility of ADB project staff.

Projects with several components and various project partners require comprehensive project preparation and due diligence. Adequate due diligence calls for an evaluation of the institutional capacity of the implementing partner in the country, not only from the technical standpoint, but also from the viewpoint of effectiveness in implementing ADB’s safeguard policies. Once the capacity of the implementing partner is assessed and gaps in the institutional framework are identified, ADB should promptly assign capable ADB staff (the resettlement specialist in this case) with clear responsibilities for responding to the identified risks and needs, especially if significant resettlement issues are involved. ADB should also ensure that capacity development programs are designed and implemented under separate technical assistance (TA) projects or with the help of other available tools. More information can be found in section 4.1.

1.2 Regular and close on-site project monitoring is essential to avoid noncompliance.

The absence of regular on-site monitoring caused ADB to overlook the evictions that took place in some project locations while it was busy designing the updated resettlement plan and drafting the resettlement framework. On-site monitoring would not only have minimized the people’s misperception that the evictions were part of the project, but would also have enabled ADB to (i) do the necessary follow-up with government to ensure that the updated resettlement plan and resettlement framework were in alignment with the detailed engineering design, (ii) facilitate the timely and appropriate fulfillment of the required public communications and meaningful consultations with the project-affected people, and (iii) reinforce commitments to comply with ADB’s safeguard policies, thus ensuring a timely and adequate response to the significant involuntary resettlement. More information can be found in section 4.2.

1.3 Timely identification of gaps between ADB policies and the national legal framework is essential in implementing ADB’s safeguard policy requirements.

ADB must make a comprehensive assessment of the borrower’s legal framework early in the project design phase, to understand the national as well as the local context, compare it with relevant ADB policies, and identify inconsistencies or gaps. In this project, gap analysis would have helped in identifying measures that had to be included in the resettlement framework and plans for these to be aligned not only with Indonesian laws and regulations, but also with ADB’s policies. As ADB coordinated solely with national agencies, it had no way of determining the specific legal and regulatory requirements that project implementation would encounter at the local level. ADB must communicate continuously with implementing agencies and explain clearly to them the crucial role of its safeguard policies in its lending operations. A better appreciation of ADB’s safeguard policies among project partners and implementers at all levels can help projects avoid noncompliance and, at the same time, help strengthen ADB’s framework for development. More information can be found in section 4.3.

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2 BACKGROUND

2.1 Brief Description of the Project

The Integrated Citarum Water Resources Management Investment Program–Project 1 (ICWRMIP–Project 1) in Indonesia was originally the first tranche of a multitranche financing facility (MFF) supporting the ICWRMIP. This MFF was not only Indonesia’s first MFF, but also the first ADB MFF for integrated water resources management (ADB 2011). As approved, the ICWRMIP had eight components and was to be implemented over 15 years. It boasted several innovative features, including (i) an integrated water resources management approach; (ii) community-driven and participatory approaches, promoting inclusiveness; (iii) the potential for private sector partnerships through links with corporate social responsibility initiatives; (iv) provision for environmental improvement compensation; (v) river basin performance benchmarking; and (vi) climate change adaptation and mitigation features (ADB 2009).

The rehabilitation of the West Tarum Canal, which was the subject of the complaint, was just one element (subcomponent 2.1) of the eight components of ICWRMIP–Project 1 (ADB 2018). Five government ministries were involved in the implementation of ICWRMIP–Project 1. For subcomponent 2.1, the implementing agency was the Ministry of Public Works, through the Directorate General of Water Resources (DGWR) and the Citarum River Basin Organization (Balai Besar Wilayah Sungai Citarum, or BBWSC) as the implementing unit (ADB 2009).

Subcomponent 2.1 spanned 54.4 kilometers of the West Tarum Canal, passing through 12 subdistricts and 34 villages in Karawang and Bekasi districts, and Bekasi City. As part of its inclusive and participatory approach, the project also called for the establishment of a resettlement working group in each affected district and city, to facilitate resettlement planning and implementation (DGWR 2013). ICWRMIP–Project 1 was classified as category A for involuntary resettlement, and a resettlement framework was prepared under the MFF. The draft resettlement plan presented to the ADB Board of Directors together with the report and recommendation of the President in 2008 covered around 872 project-affected households along the right-of-way of the canal (the number of households was based on a 2006 survey) (DGWR 2008b). The full resettlement plan was to be finalized on the basis of the detailed engineering design, and implemented before the start of the canal rehabilitation works.

But unexpected delays in the recruitment of the detailed engineering design consultant and in the issuance of a decree by the government for the compensation of affected people also delayed the finalization and implementation of the resettlement plan for subcomponent 2.1. Meanwhile, between December 2008, when the project was approved, and December 2013, when the resettlement plan was finalized, the Bekasi district government carried out several evictions in the project area as part of an unrelated beautification project. Many of the households evicted were eligible for compensation under the 2008 draft resettlement plan (ADB 2013).

2.2 Summary of the Complaint

On 30 January 2012, barely 3 years after project approval, the Compliance Review Panel (CRP) received a request for a compliance review of ICWRMIP–Project 1. It was filed by three requesters represented by Hamong Santono of the People’s
Alliance for Citarum (ARUM), a nongovernment organization. The request letter bore the letterhead of the People’s Coalition for the Right to Water (KRuHA), a member of ARUM. The complainants requested that their identities be kept confidential and signed a power of attorney authorizing Hamong Santono to act on their behalf.8

In their request letter, the complainants asserted that their properties were among those surveyed in 2006 when the resettlement plan was prepared. They said that their names had been included in the list of affected households that were eligible for compensation.

2.3 Compliance Review Process and Results

Following a 3-day mission to Indonesia, during which the CRP met separately with the complainants’ representative, Hamong Santono, and with the DGWR and other government entities, the CRP concluded that the request was eligible for compliance review and submitted its eligibility report to the ADB Board on 29 February 2012, recommending that the Board authorize the review. The Board gave its authorization on 12 March 2012, and the Board Compliance Review Committee granted clearance for the terms of reference for the compliance review on 3 April 2012.9

The CRP carried out the following activities during its compliance review:

(i) a desk-based document review;
(ii) interviews with ADB Management and staff at ADB headquarters;
(iii) meetings in Jakarta with ADB staff at the resident mission, as well as with officials of the DWGR, BBWSC, and Badan Perencanaan dan Pembangunan Nasional (BAPPENAS, the National Development Planning Agency) and with the project consultants;
(iv) meetings in Bandung and Bekasi districts with local officials and consultants of BAPPENAS, DWGR, the Administrative Police, and other agencies;
(v) a meeting in Bekasi district with the complainants and their authorized representative; and
(vi) an investigation mission from 21 to 25 May 2012, which included a site visit to the area where the evictions had occurred.

The CRP investigation focused on the West Tarum Canal resettlement issue, particularly in relation to Bekasi district, where the complainants lived (ADB 2013).10

In its final compliance review report, submitted on 18 February 2013 (ADB 2013),11 the CRP declared that ADB had not complied with applicable policies and procedures in several respects (ADB 2013):12

(i) ADB, according to the CRP, could have made a more comprehensive and timely assessment of the complexity of the legal and institutional framework and the consequential risks.
(ii) The draft resettlement plan, which was available during loan approval, did not ensure firm commitment to the cash compensation mechanism in Bekasi district.
(iii) Similarly, the draft resettlement plan in 2008 did not guarantee compensation for lost assets at replacement cost. It also did not include appropriate livelihood restoration measures that could help keep the affected people out of poverty.
(iv) ADB did not assign the necessary staff resources for the preparation of a resettlement plan and later cleared an inadequate resettlement plan for Board approval.
(v) ADB lacked continuity of dialogue and necessary follow-up with the government.
(vi) Not enough information about the project, particularly about the resettlement plan, was shared on time with the complainants. ADB did not ensure adequate information sharing and meaningful consultation with affected households.

8 The request for compliance review and the power of attorney can be found at https://lnadbg4.adb.org/dir0035p.nsf/attachments/INO%20Citarum%20Complaint%20in%20English-Names%20Removed-corrected%2027Feb12.pdf/$FILE/INO%20Citarum%20Complaint%20in%20English-Names%20Removed-corrected%2027Feb12.pdf.
10 Footnote 7, para. 16.
11 Footnote 7.
12 Footnote 7, p. iv.
On the other hand, the CRP’s final compliance review report also mentioned appropriate ADB actions in various respects, including, among others, (i) taking into consideration evictions made under a separate project by the local government of Bekasi; and (ii) working proactively with the government to update the resettlement plan (ADB 2013). In the absence of an updated plan at the time of the compliance review investigation, the CRP based its findings on the 2008 draft resettlement plan. The updated resettlement plan was approved and posted on the project website in December 2013 (ADB 2018).

The CRP made three recommendations, two of which addressed future tranches under the same MFF (see Table 1). However, these two recommendations later became unenforceable after the government requested that succeeding tranches of the ICWRMIP be dropped on account of the high transaction costs and the limited scope of work (ADB 2013). In December 2015, the CRP ended its monitoring of the implementation of remedial actions.

### Table 1: Compliance Status and Compliance Review Panel Recommendations at the End of the Monitoring Period

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Compliance Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADB should ensure the conduct of due diligence and dialogue with government and</td>
<td>Partially complied with</td>
</tr>
<tr>
<td>other stakeholders early in the development of resettlement plans for future</td>
<td></td>
</tr>
<tr>
<td>tranches of the MFF.</td>
<td></td>
</tr>
<tr>
<td>The resettlement framework should be revised to provide suitable resettlement</td>
<td>Partially complied with</td>
</tr>
<tr>
<td>planning guidance for future MFF tranches. In the amended framework, priority</td>
<td></td>
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<tr>
<td>should be given not only to institutional arrangements, but also to the</td>
<td></td>
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<tr>
<td>identification and analysis of alternatives to resettlement, as well as to</td>
<td></td>
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<tr>
<td>the provision of compensation at replacement cost, livelihood restoration,</td>
<td></td>
</tr>
<tr>
<td>information and communication strategies, and grievance redress mechanisms.</td>
<td>Complied with</td>
</tr>
<tr>
<td>ADB should assign the necessary staff resources to address resettlement issues</td>
<td></td>
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<tr>
<td>early in the project cycle, provide continuous support to the government where</td>
<td></td>
</tr>
<tr>
<td>needed, and ensure the implementation of resettlement plans consistent with the</td>
<td></td>
</tr>
<tr>
<td>construction time frame.</td>
<td></td>
</tr>
</tbody>
</table>

ADB = Asian Development Bank, MFF = multitranche financing facility


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Footnote 13
Footnote 14
Footnote 3, p. 33
Footnote 7, para. 4.
### TABLE 2: Overview of Positive Outcomes of Gaps and Challenges Identified during the Compliance Review of the Integrated Citarum Water Resources Management and Investment Program–Project 1

The CRP’s recommendation triggered a gap analysis comparing ADB’s Safeguard Policy Statement (SPS) with the Indonesian Law No. 2 of 2012 on land acquisition, Presidential Regulation No. 71 of 2012 on land procurement for development in the public interest, and other relevant domestic legal provisions, to identify measures that must be implemented when designing resettlement plans consistent with Indonesian laws and regulations and with the SPS. More information can be found in section 4.3.

- Lack of assessment of the institutional arrangements in the country or area where the project will be implemented. More information can be found in section 4.1.1.
- Inadequate assessment of the capacity of implementing partners during project preparation. More information can be found in section 4.1.1.
- Inadequate allocation of responsibilities within ADB, in accordance with the required expertise. More information can be found in section 4.1.2.
- Lack of regular on-site project monitoring. More information can be found in section 4.2.
- Incomplete and non-comprehensive capture of differences between government laws and ADB policies in the ADB-approved 2008 resettlement plan. More information can be found in section 4.3.

Sources: CRP compliance review report, Republic of Indonesia: Integrated Citarum Water Resources Management Investment Program Project 1; project documents; and interview and survey responses collated for this Lessons Learned report.
LESSONS LEARNED AND RECOMMENDATIONS

The steps in the compliance review process under ADB’s Accountability Mechanism Policy fall into the following categories: (i) eligibility determination,\(^{16}\) (ii) compliance review,\(^{17}\) (iii) remedial action plan/management action plan preparation,\(^{18}\) and (iv) monitoring.\(^{19}\) This section identifies lessons obtained from the compliance review of the ICWRMIP–Project 1,\(^{20}\) and highlights their implications for ADB project design and implementation, and for future compliance reviews.

4.1 Due diligence should be timely and should include a comprehensive assessment of (i) the borrower’s institutional framework, (ii) the implementation capacity of all local partners, and (iii) the capacity and responsibilities of ADB project staff.

This project had several components, and involved various ministries and implementing agencies. Communities took part in water resource planning and management in the Citarum River Basin. The multiplicity of components and implementation partners presented challenges for project implementation, especially with respect to ADB’s safeguard policies.

The project brought out the importance of a comprehensive and diligent assessment of the implementation capacity of all partners, including ADB staff, throughout the project cycle, especially to ensure compliance with ADB’s safeguard policies in project design and implementation. Discussed below are some lessons learned about shortcomings in capacity assessment at different stages of the project that contributed to the complainants’ resettlement-related grievances.

4.1.1 Project Preparation

Adequate due diligence required an assessment of (i) the country’s institutional arrangements, (ii) the capacity of project implementation partners, and (iii) the capacity and responsibility of ADB project staff.

The executing agency for the project was the DGWR. BAPPENAS (the National Development Planning Agency) and several other national government agencies were also involved in project implementation. The DGWR established the Citarum River Basin Organization (BBWSC) to manage and coordinate activities under the project. Perusahaan Umum Jasa Tirta II, a state-owned company, operated and maintained the West Tarum Canal and managed public land along its banks (ADB 2018).\(^{21}\) Some local government units with jurisdiction over planned resettlement areas, including the Bekasi district government, were part of the project as well. Although not among the project implementing agencies, these local government units had an important role in the preparation and implementation of the involuntary resettlement plan under ICWRMIP–Project 1 (ADB 2013).\(^{22}\)

A comprehensive assessment at the project preparation stage could have identified better the institutional arrangements in the country and drawn attention to the risks of assigning project implementation to national and local government units of varying capacity.

Implementing a project involving 9 executing and implementing agencies, 16 components, and 13 proposed consulting contracts, and relying on varying institutional arrangements, demands a clear understanding of ADB’s safeguard policy requirements and capacity to meet these requirements. In this project, it was critical that the borrower and all its relevant agencies understood clearly that they were

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\(^{16}\) Steps 1–3 of the compliance review process under the 2012 Accountability Mechanism Policy: issuance of request for Management’s response, determination of eligibility, and Board authorization of compliance review.

\(^{17}\) Or fact finding—steps 4–7 of the compliance review process under the 2012 Accountability Mechanism Policy: conduct of the compliance review, preparation of the draft compliance report of the Compliance Review Panel (CRP), preparation of the CRP’s final compliance review report, and Board consideration of the CRP report.

\(^{18}\) Steps 8–9 of the compliance review process under the 2012 Accountability Mechanism Policy: development of a remedial action plan and issuance of Board decision approving or rejecting the plan.

\(^{19}\) Monitoring was not among the compliance review steps under the 2003 Accountability Mechanism Policy, but was considered a separate stage. Compliance review under the 2012 Accountability Mechanism Policy, on the other hand, includes monitoring as one of the 10 steps.

\(^{20}\) Consistent with the 2003 Accountability Mechanism Policy, monitoring was not among the steps in this compliance review process, but was done separately. But monitoring is an integral part of the process under the 2012 Accountability Mechanism Policy.

\(^{21}\) Footnote 3, para. 6.

\(^{22}\) Footnote 7, para. 6.
expected to follow ADB's policies and procedures, especially those relating to compensation at full replacement cost, and compensation for affected people, with or without legal ownership of the land.

Capacity-building needs could have been identified and complementary TA or other related financial and technical tools available to ADB could have been provided to answer these needs. Such tools could have helped in managing, if not mitigating, project implementation risks. The need for complementary TA for capacity development was also among the lessons highlighted in the CRP’s final compliance review report on ICWRMIP–Project 1. As recommended by the CRP, ADB Management included a TA project involving the training of government staff in ADB social safeguards and Indonesia’s Land Acquisition Law (Law No. 2 of 2012) in its remedial action plan (ADB 2015a).24 Highlighting the critical impact of additional TA work in supporting institutional and legal frameworks during the early stages of project implementation, a survey respondent from ADB Management said that “this kind of TA should be used to design appropriate measures in advance, during project processing, to ensure readiness and commitment on the part of the government agencies.”

At ADB, the project was prepared and implemented through the Environment, Natural Resources, and Agriculture Division of the Southeast Asia Department (SERD) (ADB 2013).25 From July 2010, oversight of project implementation was delegated to ADB’s Indonesia Resident Mission of SERD. In this internal allocation of responsibilities, factors such as staff resourcing, capacity for assessment and monitoring, and external and internal communications presented the possibility of misalignment in the implementation of ADB’s policy requirements.

Similarly, the recruitment of consultants to prepare the detailed engineering design reportedly took longer than expected (ADB 2018).26 Two national resettlement consultants were hired 2 and a half years after project approval. A survey respondent from ADB’s SERD recalled that the delay in the detailed engineering design was the main cause of the problems faced later.

The CRP’s final compliance review report also referred to significant delays in project approval and implementation linked to delays in the preparation of the resettlement plan (ADB 2013).27 ADB and the borrower had to negotiate the provision of compensation to affected households, as stipulated in the resettlement framework, and it took about 24 months for the government to issue a decree formalizing the provision (ADB 2018).28

These delays underscored the importance of a comprehensive ADB assessment of the capacity of the borrower, its agencies, and ADB staff to design and implement a project according to ADB's safeguard policy requirements. Detailed due diligence based on this assessment leads to more effective communication and collaboration with the various implementing agencies and local government partners, and ultimately enables ADB to (i) comply with its safeguard policies, through the identification of possible policy and institutional gaps, implementation capacity, understanding of the country context, and project readiness, before project approval; and (ii) closely identify and mitigate potential institutional risks in the context of Indonesia’s decentralized system of government.

Recognition of this governance context, and of the need for ADB’s operational policies and procedures to be cascaded down to the local government units that would be the implementing agencies for the project, should have triggered a move toward closer collaboration between ADB and the executing agency. The effective cascading of communication could have helped in (i) identifying gaps in policy and in the implementation of ADB’s safeguard policy requirements, such as those for resettlement compensation, at an early stage; and (ii) securing the commitment of the government and all its units to the implementation of the applicable ADB safeguard policy requirements. Down-the-line policy communication and capacity building have a significant impact on ensuring compliance with ADB’s operational policies and procedures in resettlement planning, project planning, and implementation.

25 Footnote 7, para. 7.
26 Footnote 3, para. 13.
27 Footnote 7, para. 8.
28 Footnote 3, para. 13
4.1.2 Project Implementation

The CRP’s compliance review report discussed challenges arising from the insufficient allocation of resources for the technical staffing of project preparation and implementation teams. These challenges were echoed in the survey responses gathered for this report, which pointed out that it took 2 and a half years after project approval for the two national resettlement consultants to be hired. “Despite the high visibility and complex nature of the resettlement components” of this project, the CRP’s final compliance review report added, no resettlement expert joined the inception and review missions (ADB 2013).29

Staffing insights are also relevant to ADB’s own systems. Greater attention to staffing responsibilities at ADB would have supported a more seamless and effective transition from project processing at ADB headquarters to project implementation by the resident mission. An ADB project officer, one of the survey respondents, expressed the view that the transition from project design to implementation must be regulated in detail internally, with regard to staff roles and responsibilities. This project officer emphasized the importance of involving national staff in project processing, for a smoother transition from project preparation to implementation.

The CRP’s compliance review report stressed the value of timeliness and continuity in the assignment of staff resources. For resettlement plans to be implemented on time, in consonance with the time frame of construction work, the staff resources needed to perform due diligence, deal with resettlement issues, and engage proactively with the government, consultants, and other stakeholders must be assigned early in the project cycle and continuous support must be provided to the government where needed (ADB 2013).30 Timely and continuous assignment of ADB staff, the report said, was “the key to success in government-led resettlement preparation and implementation” (ADB 2013).31

4.2 Regular and close on-site project monitoring is essential to avoid noncompliance.

In ICWRMIP–Project 1, in the absence of regular on-site monitoring, ADB took scant note of some evictions that occurred even as ADB Management was busy with the design of the updated resettlement plan and the drafting of the resettlement framework. These evictions in the project right-of-way were part of an unrelated local government beautification project on the banks of the canal (ADB 2013).32 Some components of the beautification project overlapped with the area covered by the 2008 resettlement plan for ICWRMIP–Project 1. According to the CRP’s final compliance review report, “further delays during the early stages of project implementation held up the updating of the resettlement plan and on-site monitoring of resettlement-related issues and may explain ADB’s lack of awareness of the evictions in the project area” (ADB 2013).33

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29 Footnote 7, para. 81.
30 Footnote 7, para. 103.
31 Footnote 7, para. 102.
32 Footnote 7, para. 29.
33 Footnote 7, para. 78.
Moreover, although the Bekasi district government was not a direct project implementer, it had removed structures from the project site and was responsible for providing appropriate compensation, according to the resettlement plan. Regular on-site monitoring would have enabled ADB to do the necessary follow-up with government, ensuring accountability and commitment to the required safeguard policies, the CRP’s final compliance review report said (ADB 2013).\(^{34}\) ADB staff processing the loans at headquarters could also have benefited from consulting resident mission staff and engaging more closely with the borrower to gain a better appreciation of the actual situation. Such lapses in monitoring, in the CRP’s view, were noncompliant with ADB’s requirements.

Through monitoring, ADB could have been better able to (i) tell the national or local government how ADB’s Involuntary Resettlement Policy might apply to the evictions, especially as some of the sites where they occurred overlapped with areas covered by the draft resettlement plan; and (ii) require the implementing agency to provide the affected people with enough opportunities for informed consultation, feedback, and meaningful participation, in compliance with ADB’s Public Communications and Involuntary Resettlement policies.

Timely and regular outreach through the implementing agency could have (i) informed the project-affected households that the earlier evictions, while located on the project site in some instances, were unrelated to the ADB-financed project and were part of the local government’s separate beautification project; and (ii) kept the public aware of the updating of the resettlement plan, including the negotiation with the government of financial compensation packages for households adversely affected by the ADB project.

Regular and close on-site monitoring also makes it possible to deal promptly and adequately with safeguard or involuntary resettlement issues that may arise before or during project implementation. Doing so would reduce the transaction costs for the project and mitigate reputational risk for both ADB and the government.

4.3 Timely identification of gaps between ADB policies and the national legal framework of the borrower is essential in implementing ADB’s safeguard policy requirements.

The 2008 resettlement plan for this project included a review of the gaps between Indonesian laws and ADB policies. However, the CRP, in its final compliance review report, found this analysis inadequate because it (i) addressed only some of the differences between local government regulations and the ADB policy on compensation entitlements; (ii) did not ensure a firm commitment to the cash compensation mechanism in Bekasi district; and (iii) did not include a thorough analysis of viable alternatives that would be consistent with ADB policy and with national and local legislation (ADB 2013).\(^{35}\)

A comprehensive assessment of the borrower’s legal framework helps in

(i) identifying gaps between national and local laws and ADB policies;
(ii) identifying risks that could be encountered in later stages of project implementation, and preparing appropriate mitigation measures;
(iii) obtaining the government’s commitment to addressing these gaps and risks;
(iv) assessing the capacity of the local project partners to implement ADB’s safeguard policies;
(v) allocating adequate government resources to finance resettlement-related costs and other programs; and
(vi) allocating adequate ADB resources to develop the capacity of all implementation partners to comply with ADB’s safeguard policy requirements.

Discussed below are lessons learned regarding the impact of gap analysis on project implementation—the adverse effects on the project of failure to perform an adequate gap analysis, and the benefits that could have been derived from such an analysis.

4.3.1 The lack of an adequate gap analysis adversely affected project implementation.

The adverse impact of a lack of an adequate gap analysis was made evident when the Bekasi district local government, which had full authority over evictions in the area, gave evicted households uang kerohiman (a small

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\(^{34}\) Footnote 7, p. v.

\(^{35}\) Footnote 7, p. iv.
amount of goodwill money)—a provision in a local decree of 2007 and also a common practice in the country. The decree was suspended in 2009 to discourage informal settlers from returning to eviction sites and to forestall tensions between neighbors (ADB 2013).36

In its final compliance review report, the CRP stated that in 2007, an ADB resettlement staff member had said that the goodwill money was inadequate. It did not cover the replacement cost of the assets lost by project-affected people and, hence, was not compliant with the requirements under the SPS (ADB 2013).37 ADB and the Bekasi district local government were able to reach agreement on the provision of lump-sum cash compensation and in-kind compensation under the project’s Livelihood Restoration Program (LRP), to make up the difference (ADB 2013).38 In the same report, however, the CRP pointed out that the 2008 resettlement plan did not specify the type and form of the in-kind compensation to be provided under the LRP. (As mentioned above, the compliance review ended before the updated resettlement plan was finalized and approved by ADB in December 2013.) The CRP also noted that during a meeting with the government in May 2012, Bekasi local government representatives had expressed concern about the poverty and vulnerability of some evicted households and indicated that the local government might be willing to consider alternative forms of support, including establishing a community development program for affected households as well as other poverty-stricken families (ADB 2013).39

The late identification of unaddressed gaps delayed the project and affected the updating of the resettlement plan. The communication of safeguard policies with implementing agencies must be designed to enable discrepancies between ADB’s policies and both national and local legislation to be carefully flagged, assessed, and resolved.

Adequate due diligence, especially during project appraisal, would have highlighted any discrepancy between rights accorded by local resettlement laws and ADB’s SPS on the issue of compensation. As ADB coordinated solely with national-level agencies, it was unable to capture the specific intricacies of project implementation at the local level. Due diligence dictates that preparatory work for projects should also include a rights-based framework for determining the likely effects of implementing the safeguard requirements on stakeholders as well as on project actors—the affected people and the local government unit implementing the policy—and evaluating these effects. This project highlighted the fact that, while the involvement of a large number of actors at the national and local levels might be perceived as a potential project risk (see section 4.1.1), it could be turned into a strength in engaging actual stakeholders, through due diligence. In ICWRMIP–Project 1, this involved having the local government unit (through the implementing agency) ensure that the environmental and social safeguard aspects of the project were evaluated beyond the local legal requirements.

4.3.2 Gap analysis benefits project implementation and CRP monitoring.

To prevent delays in resettlement that was otherwise compliant with ADB’s SPS requirements, and to ensure a proper operational understanding and consistency between ADB’s resettlement policy and domestic resettlement policies, a gap analysis was carried out during the preparation of the Management Remedial Action Plan. This gap analysis, completed in 2014, compared ADB’s SPS with Law No. 2 of 2012 (Land Acquisition in the Public Interest) and its implementing regulations, as well as with Presidential Regulation No. 71 of 2012 and other relevant domestic legal provisions in 2013, to define entitlements (ADB 2015b).40 According to the CRP’s first annual monitoring report on the implementation of remedial actions, this gap analysis would be useful in identifying measures to be implemented to make the government’s resettlement plans consistent with ADB’s SPS.

Where ICWRMIP–Project 1 was concerned, the most remarkable gaps between ADB’s SPS and the Land Acquisition Law were identified as follows (ADB 2015a):41

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36 Footnote 7, para. 29.
37 Footnote 7, para. 44.
38 Footnote 7, para. 52.
39 Footnote 7, para. 29.
41 Footnote 24, para. 16.
(i) the absence of the compensation principle for affected buildings or structures without depreciation, in the Land Acquisition Law;
(ii) the lack of provision in the Land Acquisition Law for livelihood recovery programs for severely affected people and vulnerable groups, to ensure that their lives would not be worse off as a result of the project; and
(iii) the omission of relocation assistance for physically displaced residents, as well as transition allowances, from the Land Acquisition Law.

In its final monitoring report, the CRP stated that the gap analysis, also included proposals for bridging these gaps. The proposals were subsequently reproduced in various documents like the draft resettlement principles for the water sector, the draft resettlement framework for the ICWRMIP, and the draft resettlement plan (ADB 2015a).

The report also indicated that ADB’s Indonesia Resident Mission had informed the CRP that the gap analysis had been updated in 2015 as part of a review of the country’s safeguard system. This ensured that lessons learned from the gap analysis would be reflected in future operations of the resident mission.

The CRP recommendation for the conduct of a gap analysis contributed to the continuing improvement of ADB’s development effectiveness—a positive result of this compliance review.

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**Footnote 41.**

Country safeguard systems comprise the policies, practices, legal frameworks, and institutions set up to prevent, minimize, or reduce environmental and social harm from development activities (https://www.adb.org/site/safeguards/country-safeguard-systems).
REFERENCES


Lessons Learned from Compliance Reviews at the Asian Development Bank (2004–2020)
Republic of Indonesia: Integrated Citarum Water Resources Management Investment Program–Project 1

Lessons Learned from Compliance Reviews of the Asian Development Bank (2004–2020) is a series of publications prepared by ADB’s Office of the Compliance Review Panel (OCRP). The series features compliance reviews of eight ADB-assisted projects that were the subject of formal complaints filed with the OCRP in 2004–2020. In this publication, the sixth in the series, the focus is on the compliance review of the Integrated Citarum Water Resources Management Investment Program–Project 1 in Indonesia, under the 2003 Accountability Mechanism Policy. Underscored here is the importance of developing a clear understanding of the policy context among stakeholders, along with strong and transparent stakeholder engagement, to promote trust and confidence in the compliance review process.

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