Asian Development Bank Accountability Mechanism
Compliance Review Panel

Final Report to the Board of Directors
on the Compliance Review Process

for

Request No. 2009/1
Regarding the Fuzhou Environmental Improvement Project
(Asian Development Bank Loan No. 2176–PRC)

24 September 2010
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About the Compliance Review Panel

The Compliance Review Panel (CRP) is a three-member, independent body appointed by the Board of Directors of the Asian Development Bank (ADB). The CRP carries out the compliance review phase of the ADB Accountability Mechanism. People who are directly harmed by an ADB-assisted project in its formulation, processing, or implementation may file a request for compliance review with the CRP after going through the consultation phase of the mechanism. The CRP investigates whether the harm suffered by affected persons was caused by noncompliance with ADB operational policies and procedures and recommends remedial actions to the Board. It also monitors the implementation of Board-approved remedial actions and provides annual monitoring reports to the Board for a period of 5 years unless otherwise specified. The CRP reports directly to the Board on all its activities except for clearing the terms of reference for a compliance review and reviewing draft monitoring reports which are reported to the Board Compliance Review Committee (BCRC). The BCRC is a standing Board committee of six members. The CRP is currently composed of Rusdian Lubis as chair and Antonio La Viña and Anne Deruyttere as part-time members.

Rusdian Lubis is an Indonesian national who has more than 30 years of experience in environmental management. He has worked with government, university, and private firms in Indonesia and with the World Bank as a senior executive. He has also been Chairman of the Board for Dana Mitra Lingkungan (Environmental Funds) since 2008 and was the founder of Yayasan Waetasi, a nongovernment organization for coastal conservation in Sulawesi, Indonesia in 1986. He has a Bachelor of Science in Agricultural Engineering and a Master of Science in Natural Resource Management and Environmental Sciences, both from Bogor Agricultural University, and a Doctor of Philosophy in Agricultural and Resource Economics from Oregon State University in the United States (US).

Antonio La Viña is a Philippine national. He is presently Dean of the Ateneo School of Government in the Philippines. Prior to this, he was a senior fellow and program director at the World Resources Institute in the US, the Undersecretary for Legal and Legislative Affairs and Attached Agencies at the Department of Environment and Natural Resources in the Philippines, and a law professor at the University of the Philippines. He was also a cofounder, trustee, researcher, and policy director for the Legal Rights and Natural Resources Center/Kasama sa Kalikasan (Friends of the Earth) in the Philippines.

Anne Deruyttere is a citizen of Belgium with over 30 years of experience with social safeguard issues, community participation, and culture and development. Until 2007, she was Chief of the Indigenous Peoples and Community Development Unit at the Inter-American Development Bank and coordinated the preparation and public consultation of the bank’s policies on involuntary resettlement and on indigenous issues. She holds graduate degrees in economics from the University of Louvain (Belgium) and in anthropology from Edinburgh University (United Kingdom). She is currently a consultant at the World Bank.

For more information on the CRP, visit www.compliance.adb.org.
Acknowledgements

The Compliance Review Panel (CRP) acknowledges all those who have contributed to the preparation of this report. The CRP wishes to thank the ADB Board of Directors, in particular the members of the Board Compliance Review Committee. The CRP is grateful to ADB Management and staff, including the Office of the Special Project Facilitator, for providing information and support. The CRP also recognizes the requesting parties for the trust they reposed in the CRP throughout the process.
Abbreviations

ADB – Asian Development Bank
CRP – Compliance Review Panel
EARD – East Asia Department
EASS – Urban and Social Sectors Division of EARD
IRP – Involuntary Resettlement Policy
OCRP – Office of the Compliance Review Panel
OSPFR – Office of the Special Project Facilitator
PRC – People’s Republic of China
RAR – review and assessment report
SPF – Special Project Facilitator
TOR – terms of reference

Currency

$ United States dollar
Executive Summary

1. This report by the Compliance Review Panel (CRP) responds to the June 2009 request by Mr. Wang Jie Quan and Mr. Xu Qi Long (requesting parties) for a compliance review on Loan 2176–PRC: Fuzhou Environmental Improvement Project in the People’s Republic of China (PRC). The requesting parties filed a compliance review request with the CRP which is independent from Management after requesting the Special Project Facilitator to terminate the consultation phase of the Accountability Mechanism. The CRP considered that the request was eligible and that it raised compliance issues regarding the Involuntary Resettlement Policy (IRP) of the Asian Development Bank (ADB) and therefore merited investigation. Subsequently, the ADB Board of Directors authorized a compliance review based on the eligibility requirements in the Accountability Mechanism.

2. The purpose of the compliance review phase is to determine independently whether requesting parties suffered or might suffer direct and material harm caused by an ADB-assisted project and if so, whether this harm was caused or might be caused because ADB did not comply with its operational policies and procedures. The CRP examined the three issues related to the IRP that were raised by the requesting parties and were applicable to the project at the time of approval: (i) insufficient compensation to replace lost housing for residents without legal title; (ii) the absence of rehabilitation measures to offset a loss of income; and (iii) inadequate information dissemination and consultation. In addition, the CRP also examined issues related to ADB responses to grievances.

3. The CRP began with a desk review of project documents provided by ADB operations departments, interviews with ADB staff, and telephone calls with the requesting parties. In addition, the CRP formed the view that a site visit was indispensable and necessary to corroborate the claims made by the requesting parties and to give them, as a matter of fairness and objectivity, the same opportunity as ADB to interact directly with the CRP and to present their best evidence to support their claims.

4. To complete its review and as stipulated in the Accountability Mechanism, the CRP sought the consent of the PRC to conduct a visit to the project site. The terms of reference (TOR) for the compliance review cleared by the Board Compliance Review Committee specifically included the necessity for such a visit. Under the policy, consent could be routinely expected as part of the compliance review process. The PRC, however, did not consent to this request stating that the change in project design, as approved by ADB, avoided resettling the requesting parties and made a site visit unnecessary.

5. The CRP acknowledges the decision of the PRC to change the project design; however, the change was made after the compliance review request had been filed. As part of the eligibility process, the CRP therefore stated that the change in project design would not obviate the need to investigate whether ADB had previously failed to comply with its operational policies and procedures and, as such, did not have any bearing on its decision on the eligibility of the case. Moreover, in a further telephone call with the requesting parties, they provided information alleging that the change had not overcome the direct and material harm caused by noncompliance with the IRP. This situation further dictated that a site visit was indispensable.

6. The CRP formally expressed its concerns and made representations to the Executive Director representing the PRC on the Board regarding the decision not to allow a site visit, but the decision was not changed.
7. According to the Accountability Mechanism, the mandate of the CRP is to determine whether there has been noncompliance by ADB with its operational policies and procedures and to establish whether any direct and material harm to requesting parties has been or might be caused by that noncompliance. Without a site visit, the CRP could not verify that harm had occurred or might occur and therefore could not establish the required causal link between harm and any noncompliance.

8. In the absence of a site visit, the CRP is unable to complete this compliance review and discharge its mandate in the TOR. The CRP therefore declines to present findings on compliance or noncompliance and is not in a position to make recommendations on remedial actions that might have been required if ADB had been found to be noncompliant.

9. The CRP considers that as a rule, site visits are essential to ensure fairness and transparency in any compliance review to (i) provide both the requesting parties and the ADB with a fair hearing; (ii) verify requesting parties’ claims of actual or potential harm; (iii) validate CRP findings from desk reviews and interviews with ADB staff; (iv) verify ADB compliance using sound methodology and the best evidence available; and (v) ensure ADB accountability to all stakeholders, especially those directly affected by ADB projects and for whom the CRP is the last recourse.

10. The CRP recommends that the Board should examine the Accountability Mechanism policy, as it applies to site visits, to determine whether the policy in that regard could be clarified or modified in order to avoid the uncertainty and negative implications that have arisen under the current approach. In the opinion of the CRP, the inability to conduct site visits adversely affects and undermines the effectiveness and credibility of the Accountability Mechanism and confidence in the commitment of ADB to transparency and policy compliance.
I. Introduction

1. This report was prepared by the Compliance Review Panel (CRP) in response to a request for compliance review on Loan 2176–PRC: Fuzhou Environmental Improvement Project in the People’s Republic of China (PRC). In their 28 April 2009 request for compliance review, the requesting parties alleged direct and material harm had been caused by the failure of the Asian Development Bank (ADB) to comply with its Involuntary Resettlement Policy (IRP). Specifically they claimed that they had suffered impoverishment because the project did not meet IRP requirements for fair compensation for the loss of housing, regardless of legal title, and for rehabilitation for loss of income. In addition, they claimed that ADB had failed to comply with the disclosure and consultation provisions in the IRP and complained about the lack of timely responses to their grievances (Appendix 1).

2. According to the ADB Accountability Mechanism, the purpose of a compliance review is to investigate alleged noncompliance by ADB with its operational policies and procedures that directly and materially harms or might harm people during the formulation, processing, or implementation of a project, and if ADB has not complied, whether any harm suffered or likely to be suffered was, in fact, the result of that noncompliance. The CRP does not investigate the borrower or the executing or implementing agencies.

II. Background

3. The Fuzhou Environmental Improvement Project is part of a key urban infrastructure initiative of the Fuzhou Municipal Government to improve the environmental quality and living conditions in the project areas by reducing water pollution and protecting water resources. The project has four components: (A) the Yangli phase 2 sewer networks; (B) the Lianban sewer networks, (C) Nantai Island creek rehabilitation; and (D) capacity building. To increase the flow of the rivers, component C supports a planned urban development program for Nantai Island that includes (i) rehabilitating 12 interconnected inland creeks, (ii) dredging and excavating 3.63 million tons of earth; (iii) constructing varying widths of stone-lined channels and a rubber dam; and (iv) rehabilitating 4 existing flood gates.

4. The $55.8 million loan (for a total project cost of $185.51 million) was approved by ADB on 29 July 2005 and became effective on 14 September 2006. The project completion date was originally 30 June 2010 but has been revised to 30 June 2012. As of 30 May 2010, the cumulative contract award was 95% ($53.003 million) though cumulative disbursement was only 33% ($18.152 million).

5. The Fuzhou Municipal Government is the executing agency for the project supported by several municipal agencies including the Fuzhou Urban Visual Construction and Development Company which is responsible for implementing the inland creek rehabilitation component. The Diyuan Relocation Company has been contracted for resettlement.

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6. The 2004 resettlement plan\(^4\) included as a supplementary appendix to the report and recommendation of the President to the ADB Board of Directors stated the principles and general provisions for resettlement and provided preliminary information on the people who would be displaced. The 2004 plan also included the framework for developing specific resettlement plans in conjunction with the detailed design for infrastructure. The 2008 resettlement plan\(^5\) was the first of five specific plans for component C and covered the Longjin and Yuejin rehabilitation works. It listed 1,725 persons (607 households) that would be displaced from land acquired for the project. This included 440 persons who were not registered as permanent residents; the requesting parties were in that group.

III. Request for Compliance Review

7. The 28 April request for compliance review by Mr. Wang Jie Quan and Mr. Xu Qi Long\(^6\) of Fuzhou City was registered by the Office of the Compliance Review Panel (OCRP) on 5 June 2009.\(^7\) They represented two households that would be affected by the housing demolition required for the rehabilitation of the Longjin and Yuejin rivers. A request for compliance review dated 25 November 2008 had been submitted to the OCRP on behalf of seven households (Appendix 2) and was forwarded to the Special Project Facilitator (SPF)\(^8\) to comply with the Accountability Mechanism requirement for a consultation phase. In that phase, five households reached agreement with the government on compensation, but two households, namely the requesting parties, did not. On 3 June 2009, the requesting parties asked that the consultation phase be terminated and requested a compliance review (Appendix 3).

8. According to the request and information provided by the Office of the Special Project Facilitator (OSPF), the requesting parties were long-term residents in the project area who had migrated from their home villages where they were still members of the rural collective economic organizations and still held registration titles (hukou). They were not legally registered in the project area and therefore did not have legal titles to the land on which they resided.

9. In their request for compliance review,\(^9\) the parties claimed that the specific terms for land acquisition and property compensation and for livelihood (income) restoration did not comply with the IRP and with the provisions of the 2004 resettlement plan. They claimed that

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\(^6\) Paragraph 106 of the Accountability Mechanism specifically provides requesting parties the option to keep their identities confidential; however, on 12 May 2009, the requesting parties informed the CRP that they did not seek confidentiality.

\(^7\) The letter of request for compliance was dated 28 April 2009; however, the requesting parties officially submitted the request for compliance on 3 June 2009 after withdrawing from the consultation phase.

\(^8\) At http://www.adb.org/SPF/fuzhou-proj-complaint-registry.asp.

\(^9\) In their November 2008 request, the requesting parties specifically referred to the 2004 resettlement plan and claimed that the terms for land acquisition and compensation referred to as "Implementation Details for the Demolition Component and Resettlement" published by the government on 25 March 2008 were not consistent with the plan and did not comply with the 1995 IRP. At the time of the November 2008 request, the 2008 resettlement plan was not available to the public even though "enforcement regulations for removing and relocating for the inland river regulation project" had been issued. These specific procedures and the entitlement matrix were included in the 2008 plan.
their “loss of housing and livelihood” represented the failure of the 2008 plan to comply with the basic principles of the IRP to ensure that affected persons would, “...at least maintain or improve their living standards compared to the situation before the implementation of the project,” and to ensure that, “…displaced people receive assistance, preferably under the project, so that they would be at least as well off as they would have been in the absence of the project.”

10. Furthermore, the requesting parties claimed that they were not informed or consulted during the preparation of the 2008 plan and were thus not aware that significant changes in their entitlements had been made with respect to the provisions of the 2004 plan. In addition, they complained about the lack of response by ADB to their repeated requests for redress for their grievances.

IV. Eligibility of the Request

11. In assessing the eligibility of the request, the CRP reviewed project documents, ADB policies and procedures, and the review and assessment report (RAR) provided by the OSPF. The CRP consulted the Executive Director representing the PRC on the Board, the Director General of the East Asia Department (EARD), the Director of the Urban and Social Sectors Division (EASS) of EARD, and the General Counsel.

12. On 24 June 2009, the CRP determined that the request was eligible and recommended that the Board authorize a compliance review based on the eligibility requirements in the Accountability Mechanism, the requesting parties' letter, information provided by the OSPF, and other available information. Following the Board’s authorization on 15 July 2009, the Board Compliance Review Committee cleared the terms of reference (TOR) for the review (Appendix 4).

V. Methodology of the Review

13. The CRP focused its investigation on three issues: (i) insufficient compensation to replace lost housing for residents without legal titles; (ii) the absence of rehabilitation measures to offset the loss of income; and (iii) inadequate information and consultation. In addition, the CRP also reviewed the lack of timely responses to grievances.

14. According to the Accountability Mechanism, the CRP must determine whether ADB complied with its operational policies and procedures and, therefore, must (i) identify the applicable operational policy and procedural issues; (ii) corroborate that the requesting parties suffered or may suffer direct and material harm; and (iii) determine a causal link between the harm suffered or likely to be suffered and noncompliance with ADB operational policies and procedures.

14 Footnote 3, paras 99 and 107.
15. Consistent with the Accountability Mechanism and with CRP operating procedures,\(^{15}\) the TOR included (i) a review of all project files and documents; (ii) site visits with prior approval from the Government of the PRC; (iii) consultations with all stakeholders including interviews with ADB staff and consultants, the OSPF, the requesting parties and other affected persons, government officials including those from the executing agency, and the PRC Executive Director on the Board; and any (iv) other methods that the CRP considered appropriate.

VI. Conduct of the Review

16. The CRP requested from the Vice-President (Operations 2) and the Vice-President for Knowledge Management and Sustainable Development the project documents and files and a list of ADB staff involved in project preparation and implementation. The CRP also determined that the operational policies and procedures in question could be found in the 1995 Policy on Involuntary Resettlement and Section F2 on involuntary resettlement in the Operations Manual (29 October 2003).

17. The CRP reviewed the project documents and files provided by EASS and requested additional material. The review focused on the preparation and processing of the 2004 resettlement plan and then, particularly, on the 2008 plan and its implementation and supervision. In addition to the 2004 and 2008 plans, the most relevant documents were (i) the memorandum of understanding and the back-to-office reports for the midterm and review missions on the Longjin and Yuejin rivers in November 2006 and August 2009; (ii) progress reports submitted by the implementing agencies and project consultants; (iii) the independent resettlement monitoring reports by the Center for Involuntary Resettlement of Wuhan University, particularly volume 6 (July 2008); and (iv) official letters, memoranda, and e-mails.

18. The CRP also reviewed the documents forwarded by the OSPF including (i) the eligibility mission report (17 February 2009), (ii) the RAR which included government comments (March 2009); (iii) comments on the RAR from EASS (31 March 2009); and (iv) the SPF memorandum to the CRP on the status of the complaint (4 June 2009).

19. Based on the staff list provided by Management, the CRP interviewed ADB staff currently or previously involved in the project, including those in the EARD, particularly staff in the Office of the Director General of EARD and EASS; and staff in the Regional Sustainable Development Department, particularly its Environment and Safeguards Division, as well as staff in the PRC Resident Mission and the Office of the General Counsel (Appendix 5).

20. While the CRP acknowledges the cooperation and extensive information provided by ADB, the CRP considers that, as a matter of fairness, objectivity and impartiality, the requesting parties must be given the same opportunity to interact directly with the CRP and to present their best evidence to support their claims. By mandate, the CRP must conduct its review and form its judgment independently, therefore it cannot rely only on the information provided by Management, including the SPF, who reports to the President. The CRP came to the view (and still considers) that a site visit was indispensable to assess independently the physical conditions in the project site, including the claims of actual and potential harm, and directly interact with the requesting parties over and above the obvious limitations imposed by translated communications conducted through long-distance telephone calls. After the CRP’s direct interaction with both the requesting parties and ADB and first hand observation in the field, it may have become necessary and appropriate, for the purpose of verification and validation, to

\(^{15}\) Footnote 3, paras 102 and 122 and CRP Operating Procedures, para 37.
communicate with other stakeholders, including local government agencies, project staff and consultants, and the external monitor. Without the evidence that only a site visit could provide, CRP concluded that it could not corroborate the claim of alleged actual or potential harm and therefore that, in case it found that the claims of harm were well-founded, it could not make a judgment whether this harm was caused because ADB failed to comply with its operational policies and procedures.

VII. Request for a Site Visit

21. On 1 October 2009, the CRP sought the assistance of the PRC Executive Director on the Board to obtain consent for a visit to the project area. On 4 November 2009, the PRC Executive Director advised that the government had responded as follows: "After deliberation, we view the proposed site visit as no longer necessary given the fact that the project has been redesigned and a rerouting of a certain section of the river in the project area has taken place, and as a result, the project no longer involves the resettlement in discussion." This issue was raised at the time of Board’s consideration of the CRP’s eligibility report, and the CRP responded by stating that the redesign of the project could not affect the need to investigate ADB’s alleged non-compliance. The Board subsequently approved the eligibility report and the recommendation for the compliance review without objection.

22. On 13 November 2009 the CRP held a telephone call with the requesting parties in an effort to clarify their concerns and to verify the validity of their claims. Through an interpreter, the requesting parties claimed that the realignment of the river, instead of improving their situation, had caused more harm. They alleged that safety and accessibility conditions in the project area had forced them to abandon their houses and rent housing far away from the project site and that in the absence of income or compensation they were suffering further harm. These claims of continued harm after the realignment of the river further convinced the CRP that a site visit was essential.

23. On 17 November 2009, the CRP expressed in writing its concern over the government’s refusal of CRP’s request for a site visit and made further representations about the decision and its potential implications to the PRC Executive Director.

24. Through the PRC Executive Director, the PRC authorities advanced the following reasons for refusing the site visit: (i) the resettlement plan was in accordance with both PRC and ADB relevant policies; (ii) the rerouting of the river had made the compliance review request obsolete; (iii) a senior government official who visited the project site confirmed that the requesting parties no longer lived in the area; and finally (iv) previous project site visits by the OSPF should provide the CRP with sufficient information for its compliance review. In the government’s view, the proposed site visit was therefore no longer necessary.

25. During subsequent meetings with the PRC Executive Director, the CRP sought to clarify that (i) its mandate was only to assess ADB’s compliance with its operational policies and procedures and not to assess government policy or actions; (ii) the rerouting of the river did not obviate the CRP mandate to investigate alleged ADB noncompliance; (iii) the rerouting of the river did not render the requesting parties’ claim invalid as the alleged actual or potential harm may still have been caused by ADB’s prior act or omission amounting to noncompliance; and

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16 Footnote 3, para 127.
17 Memorandum of 4 November 2009 from the PRC Executive Director to the CRP chair on Loan 2176–PRC: Fuzhou Environmental Improvement Project compliance review site visit.
(iv) in addition to any information provided by the SPF, the CRP must still independently verify claims by the requesting parties and ADB in its compliance review report to the Board.18

26. The CRP therefore still insisted that a visit was necessary to observe directly the conditions at the project site and to meet with the requesting parties and other stakeholders (i) to verify the requesting parties’ allegation of noncompliance; (ii) to verify their claims of actual and potential harm caused by the alleged noncompliance; and (iii) to ensure a fair, objective, and transparent review. Nevertheless, the original decision to refuse the visit was not changed.

VIII. Recommendation

27. In light of the PRC decision to deny the request for a site visit, the CRP considered how best to proceed with the compliance review and after careful deliberation unanimously agreed that without a site visit, it was not fair to either party (requesting parties and ADB) to attempt to complete the review as contemplated by the Accountability Mechanism. In particular, the CRP decided that it was not possible to draw conclusions because it could not corroborate the claims of actual or potential direct, material harm made by the requesting parties on the basis of a fair and complete investigation, and to establish the link with possible ADB noncompliance with its policies and procedures.

28. As the CRP is unable to complete this compliance review and discharge its mandate in accordance with the TOR which specifically included the possibility of a site visit, the CRP is unable to present findings and is not in a position to make recommendations for any remedial actions that might have been required if ADB had been found to be noncompliant.

29. The CRP strongly believes that as a rule, site visits are essential to (i) provide all requesting parties and ADB a fair hearing; (ii) verify requesting parties’ claims; (iii) validate CRP findings from desk reviews of ADB documents and interviews with ADB staff; (iv) examine ADB compliance using sound methodology and the best evidence available and (v) ensure ADB accountability to all its stakeholders, especially those directly affected by ADB projects and for whom the CRP is the last recourse. The CRP also strongly believes that the inability to conduct a site visit adversely affects and undermines the effectiveness and credibility of the Accountability Mechanism and reduces confidence in the commitment of ADB to transparency and policy compliance.

30. In light of the inability of the CRP to reach any conclusions in the request for review before it, due to the inability to conduct a site visit to complete that review, the CRP recommends that the Board re-consider this issue in the Accountability Mechanism policy and determine whether an alternative approach to site visits may be adopted in order to avoid the uncertainty and potential negative implications of the current policy on this issue.

Rusdian Lubis
Chair, Compliance Review Panel
24 September 2010

18 As defined in the Accountability Mechanism policy, the role of SPF at the consultation phase of the Accountability Mechanism directly under the President is to facilitate conflict resolution which may involve the requesting parties, the executing agency/ies, any implementing agency/ies, other interested parties, and ADB. The CRP has a different role at the compliance review phase of the Accountability Mechanism: its mandate is to investigate whether ADB has complied with operational policies and procedures, and reports independent from Management, directly to the Board.
Request Letter (in English and Chinese)

ENGLISH VERSION OF THE REQUEST
Request for Performing Compliance Inspection

Dear Secretary:

Greetings! We are farmers permanently living at Qiao Nan of Gao Hu Village in Gai Shan County, Cang Shan District, Fu Zhou City, Fu Jian Province. We have nonlocal resident registrations (nonlocal farmers). Wang Jie Quan and Xu Qi Long are the representatives of our two families. We hereby request the Asian Development ADB (ADB) to inspect again the Fu Zhou Environment Improvement Project (Loan number: 2176–PRC). Please inspect the actual situation regarding how government offices comply with relevant business policies and procedures. Those business policies and procedures are found in policies on involuntary resettlement due to ADB engineering projects and in the “resettlement plan” made by the government that was also approved by ADB.

Name of the Project: China Fu Zhou City Nan Tai Dao Inner River Improvement Project.

Project Location: Cang Shan District, Fu Zhou City, Fu Jian Province

We believe that during the implementation of this project, the party in charge of implementation and the relevant department at ADB did not sincerely abide with ADB business policies and procedures. This is mainly reflected in unjust compensation for involuntary resettlement and the fact that the relevant monitoring office did not fulfill its responsibilities. The actions and behavior of the relevant departments has severely endangered our normal daily lives. It forced our small workshop to stop operations which removed the only source of our income. At the same time, the deterioration of the surrounding environment forced us to leave our former house, and we had to migrate to a very remote area to continue our lives. Our good living conditions had already been seriously affected by this project, then on top of all that, in a related report the government office even mentioned applying force to evict us from our house (government comments of 22 April 2009). This made us wonder about the practical effects of this ADB project that is supposed to improve the living standards of the people in poverty-stricken areas.

Allow us to offer some detailed descriptions. Wang Jie Quang’s family has six members. Two sons are studying at university right now. Both he and his wife lost their jobs. There are also two elderly persons in the family who need to be taken care of. They don’t have any fixed, reliable source of income, and life is extremely hard. Xu Qi Long’s family also has six members. Two children are studying at university right now, one daughter is disabled, and two children are Hepatitis B carriers who need to take medication regularly. Xu Qi Long also has high blood pressure. Before, he did outsource processing for a living, but due to the inner river improvement project that work has stopped. The family’s only source of income has thus been removed which could greatly affect the educational stability of the children at university. Because of a lack of financial resources, they might be forced to stop their educations. The family’s living condition is also very poor.

All family members moved here from Ping Yang County in Zhe Jiang Province 15 years ago. Their former house has already collapsed due to a lack of maintenance. Right now, this is the only house left. According to the current compensation plan of the government, we were to buy public housing but would still have to pay all price differentials. This would be a burden too heavy to bear. At recent market prices, public housing costs 3,000 yuan per square meter (first
floors cost around 2,800 yuan per square meter and any upper floor would cost more), so to buy a three-story 180 square meter house would cost 540,000 yuan. Subtract the resettlement compensation of a little more than 180,000 and we would still have to pay a difference of around 360,000 yuan. This money can be obtained from an ADB loan, but at the current lowest ADB interest rate, we would have to take out a 20-year mortgage with payments of 3,000 yuan per month. At the moment we have no income whatsoever, so this is unthinkable. We don’t have jobs now, life is already very difficult, and we will not be able to pay the mortgage which means the new house will be confiscated by ADB and we will lose everything and not even have a place to live.

We wish ADB to help with our problem through the following means.

1. Thoroughly inspect the reason for the change in the location of the watercourse during the implementation of this ADB project. Determine if the operations of the internal and external monitoring organization were carried out properly. Determine if all the people affected have been treated equally during the implementation of this project because the project implementing agency had no right to force our eviction before negotiations were concluded. This is a serious violation of the business policies and procedures of ADB.

2. We reported this unfair treatment imposed on us due to this project to the Beijing office of ADB in May 2008, but in August 2008, the government published a new involuntary resettlement plan for this project. Why did they amend the resettlement plan after we made the complaint? The amended plan is even more unfair to us. We don’t understand the reasons behind it.

3. Please urge the project implementing agency to strictly follow the involuntary resettlement manual for ADB engineering projects and the resettlement plan for this project. Please ask them to implement the plan according to the requirements in these documents and to give us reasonable compensation and resettlement. As for detailed proposals, first compute compensation for resettlement at 30 square meters per person and don’t make us pay any price differentials. This is the same as the compensation plan for the Lan Zhou loan project of ADB. Second, in accordance with relevant articles of the resettlement plan, provide us occupations after the completion of the project. This would help us improve our living standards and would also comply with the updated articles of the resettlement plan published by the government in August 2008. It stated that the aim is to at least maintain or to improve living standards compared with the situation before the implementation of the project.

We did report these problems to the staff of ADB and to the special facilitator for the project, hoping that these problems could be solved. What happened can be described as follows. From February 11 to 13, 2009, representatives from Office of the Special Project Facilitator (OSPF) came to Fu Zhou to confirm if these complaints satisfied the standard requirements for initiating discussions under the ADB Accountability Mechanism. These representatives held numerous meetings with us including one group meeting with all of us and then meetings with the seven complaining families one by one. The representatives verified the exclusion criteria under the Accountability Mechanism, checked all the requirements needed in the negotiation stage, and assessed the possibility of resolving the problem by negotiation. Then on February 12, 2009, the OSPF confirmed that this complaint satisfied all requirements for opening a negotiation and notified the complainants, the East Asia Department, and the Fu Zhou Project Management Office. On March 27, 2009, representatives from the OSPF (including the facilitator from Hong Kong, China) came to Fu Zhou in order to discuss the issue with us. At the meeting on March 28, the Special Project Facilitator helped us to negotiate with the government, but the
government gave the proposal of only a lump sum compensation of 185,640 yuan with a house of 180 square meters as an example and a quota for purchasing public housing. On April 28, 2009, the OSPF and staff from the East Asia Department called us on the phone and discussed this problem, but the compensation plan decided by the government office did not change at all.

The reason we filed this complaint with the Compliance Review Panel is because in the previous negotiations, the government showed no sincerity which is very unacceptable to us. This was mainly evident in the following.

1. The lump sum compensation of 185,640 yuan for an entire family can purchase only 66 square meters of public housing with property rights. This is the largest affordable area without considering the differences between stories. Taking those into account and the shared areas in public buildings, the actual living area would be only around 50 square meters; therefore, each of the six members of our families would have an average living area of less than 10 square meters. The government never considered poor people like us who do not have any social insurance, and they never considered helping us pay for insurance or providing us with permanent occupations to sustain life. They never really considered improving our standards of living.

2. The government’s understanding of related concepts is distorted; this is the major problem facing us in obtaining reasonable compensation. During numerous meetings with the government, the government office did mention multiple times that our house is an illegal building, but the actual situation is not what the government office says it is. To give a short description, the location of our house was in a centrally planned area of the village. During the transfer of the residential land area, we paid all related costs to Gao Hu Village. After the transfer had been approved by Gao Hu Village, we built our house in 1994 and have lived there until now. The building has three stories, and the total area is 180 square meters. Our house could have had property rights, but we didn’t pursue them. This point can be proved by showing you that our adjacent neighbors have property rights. Even without property rights, according to ADB regulations houses with property rights and those without property rights shall be treated equally. The local government did not, therefore, comply with the ADB business policies and procedures and treated us differently when providing compensation for involuntary resettlement. In addition, the staff of the East Asia Department of ADB also did not completely understand the difficult situation our families are in which caused them to be biased regarding our compensation.

Aside from the above information, the following are some documents that might help you to understand our situation. Sources are indicated.

1. ADB Loan Project *Fu Zhou City Nan Tai Dao Inner River Improvement Project* Resettlement Plan (Published by: http://www.adb.org)

2. Inner River Improvement Project (Yue Jin River, Long Jin River) Relocation Compensation Settlement Implementation Rules (Published by: Fu Zhou Land Source Demolition and Relocation Agency)

3. ADB Accountability Mechanism (published by: http://www.compliance.adb.org)

4. “EASS Position” 21 April 2009 CHN (published by: East Asia Department of ADB)
5. “Government Comments” 22 April 2009 (published by government office)

6. “Summary of Current Status” 21 April 2009 (published by OSPF)

Requested by: Wang Jie Quan and Xu Qi Long
April 28, 2009

Our contact details:

**Xu Qi Long**: Contact details: +8613991302982 e-mail: xuQi Long2009@yahoo.cn
Family Address: no. 71 Gao Hu Village, Gai Shan County, Cang Shan District, Fu Zhou City, Fu Jian Province

**Wang Jie Quan**: Contact details: 13509384648/059183462702 e-mail: wangi jiequ an@yahoo.cn
Family Address: no. 66 Gao Hu Village, Gai Shan County, Cang Shan District, Fu Zhou City, Fu Jian Province
Mailing Address: no. 112 Gao Hu San Zuo, Gai Shan County, Cang Shan District, Fu Zhou City, Fu Jian Province (Postal code: 350007)
合规检查申请

尊敬的秘书：

您好！我们是常住在福建省福州市仓山区盖山镇高湖村桥南的外地户口（非当地农经户）农民，王接泉和徐其龙是我们这两户家庭的代表。请求合规检查小组帮助我们对亚洲开发银行福州环境改善项目（贷款编号：2176-PRC）在有关亚行制定的工程性移民政策和政府起草公布亚行审核通过的移民安置计划中政府部门遵守有关业务政策和程序的情况进行检查。

该项目名称：中国福州市南台岛内河整治工程。

项目地点：福建省福州市仓山区。

我们认为在项目执行过程中，本项目实施方和亚行有关部门未严格遵守亚洲开发银行有关业务政策和程序，尤其在移民安置补偿不合理和有关监督机构未完全履行职责方面，有关部门的做法和行为，已经严重危害我们正常的生活，造成了我们小工作坊被迫停止，唯一生活来源被迫中断，同时由于周围居住环境的恶化导致我们不得不离开原来的居所，到其他偏远地区居住生活，原本良好的生活环境受本项目影响现已极度恶化；更严重的是政府部门在有关的报告中还谈及强制拆迁我们房屋（Government-comments22April2009），令我们十分担心亚行此项目对改善贫困地区人民生活水平所起的真正实际意义，对此我们进行详细描述：王接泉，家中共有6口人，2个儿子上大学，夫妻双双下岗，家中仍有二老需要赡养，无固定经济收入，生活极度贫困；徐其龙，家中共有6口人，2个子女上大学，一个女儿残疾，且2个子女是乙肝携带者，需要不间断地吃药，本人还患有高血压，原本靠来料加工度日，如今因为内河改造，来料加工被迫停止，唯一生活来源被迫中断，这将极大影响两子女上学的稳定性，由于缺少经费子女学业有可能随时被迫中断，生活极度困难，其家庭成员由浙江省平阳县迁来此地居住已经长达15年之久，原居住地房屋因为年久失修早已倒塌，如今仅剩这一住所。如果按照政府现有赔偿方案，让购买经济适用房，还得补差价，那么对我们而言将不堪重负。因为经济适用房就以每平方米3000元来计算（2800元的价格是第一层房子的价格，以上还要加价），购买180平方米的房子需要54万元，减去补偿款18万多元，那我需补差价近36万元。虽然这笔钱可以贷款，但按银行现在最低利息来计算，贷20年的话我们一个月得向银行还款近3000元，对我们这种目前零收入家庭而言，可想而知会有怎么样的结果。更严重的是我们目前都无工作，生活过的十分
艰难，根本无力还款，那么我们房子将被银行收回抵债，结果还是一无所有，流落街头。

我们希望亚洲开发银行能够从以下几个方面着手为我们解决困难：

1、彻底检查亚行本项目在执行过程中，有关部门是出于何种原因要更改河道走向；有关内、外部监督机构工作开展是否到位；本项目在实施过程中是否同等对待所有受影响人；项目实施方有什么权利在协商未果的情况下可以强制拆迁我们房屋，这严重违反亚行有关业务政策和程序。

2、我们于 2008 年 5 月向亚行设在中国北京的办事处反映了我们由于本项目受到不公平的对待。然而在 2008 年 8 月针对本项目，政府部门却公布了新的移民安置计划。为什么在我们投诉后才去修改移民安置计划内容，且是越改越对我们不公平，我们不明白这其中到底是出于何种原因。

3、督促项目实施方严格按照亚行工程性移民手册和针对本项目的移民安置计划，执行相关内容和要求，对我们进行合理补偿安置。具体方案：第一种方案，以人均 30 平方米补偿安置，不补差价。另外，根据移民安置计划中相关内容，在项目完成后，为我们提供工作岗位，帮助我们提高生活水平，这符合政府部门 2008 年 8 月更新过的移民安置计划内容的最初宗旨——至少维持或改善项目实施前的生活水平。第二种方案，按亚行兰州贷款项目赔偿方案进行。即人均 30 平方米安置，不补差价。

我们以前曾经向亚行工作人员和项目特别协调人提出过我们所关心的问题，希望能够得到解决。事情的大致经过是：2009 年 2 月 11 日至 13 日，项目特别协调人办公室代表团到福州以确定该投诉是否达到问责机制下磋商阶段所需条件的标准。代表团与我们举行了几会面，包括我们作为一个团体的第一次会议，之后与七个投诉家庭一一单独面谈。在审核了问责机制政策下的各种排除性情况，审核了磋商阶段所需的资质要求，并评估了通过协助谈判来解决问题的可能性之后，在 2009 年 2 月 12 日，项目特别协调人办公室确定了此投诉是否符合磋商条件的并通知了投诉人、东亚事务署和福州项目经理部；2009 年 3 月 27 日，项目特别协调人办公室代表团（包含来自中国香港的调解人）来到福州与我们协商，经过项目特别协调人在 3 月 28 日调解会上的努力，政府仅提出了以 180 平方米的房子为例，总额为 185,640 元的一揽子补偿价格加上购买经济适用房的指标的赔偿方案。2009 年 4 月 28 日项目特别协调人办公室和东亚事务署工作人员与我们通了电话，为我们解释了我们关心的问题，但是政府部门确定的赔偿方案没有任何变化。

我们之所以决定向合规检查小组投诉，是因为以前的协商结果，政府部门太没有诚意，太不能让我们接受，主要表现在：
1、户均总额为 185,640 元的补偿仅仅能购买不到 66 平方米的有产权的经济适用房，这是在未计层间差价的前提下，我们能购买的最大面积，如果考虑层间差价及扣除建筑公摊面积，真正实际居住面积仅有 50 平方米左右，对于我们有 6 个人口的家庭人均不到 10 平方米，而且政府从未考虑我们这些没有任何保障的困难群体，也从未考虑过为我们交纳任何保险金或提供固定工作岗位以维持生计，更不要提改善我们的生活水平。

2、政府对有关概念歪曲理解，这造成对我们合理赔偿最大的障碍。政府部门在多次和我们协商的过程中多次提到我们的房子是非法的，然而实际情况却不是政府部门所提及的那样，简要的说我们所建房屋宅基地是本村规划统建项目地块，宅基地在转让的过程中我们向高湖村交纳了相关配套费用，转让过程经过高湖村确认同意后，我们住宅于 1994 年建造完工并入住至今，楼房为三层，户均总建筑面积 180 平方米，我们的房屋是属于可办产权但未办产权的房屋，这点有紧挨我们房屋的有产权房子可以提供佐证。就算退一步来说，根据亚行规定，有产权和无产权的房屋应该是同等对待，然而由于当地政府没有遵守亚行业务政策和程序，导致政府部门区别对待我们补偿安置。此外，亚行东亚事务署有关工作人员对我们的现实困难认识不清，导致对我们的赔偿情况有所偏见。

除了上述提及的信息外，还有许多文件或许能够帮助你们了解我们的情况，兹附上文件/报告名录，在文件后注明了文件/报告出处：
1、《亚洲开发银行贷款项目——福州市南台岛内河整治工程——移民安置计划》（出处：http://www.adb.org）
2、《内河整治工程（跃进河、龙津河）拆迁补偿安置实施细则》（出处：福州地源拆迁工程处）
3、《亚洲开发银行问责机制》（出处：http://www.compliance.adb.org）
4、《EASS position-21April-2009-CHN》（出处：亚行东亚事务署）
5、《Government-comments22April2009》（出处：政府相关部门）
6、《Summary of Current Status-Chinese_21April09》（出处：OSPF）

申请人：王接泉 徐其龙
2009 年 4 月 28 日

我们的联系方式：
徐其龙：联系方式：+8613991302982 Email: xuQi Long2009@yahoo.cn

家庭住址：福建省福州市仓山区盖山镇高湖村 71 号
王接泉：联系方式：13509384648/059183462702 Email: wangjiequan@yahoo.cn
家庭住址：福建省福州市仓山区盖山镇高湖村66号
通讯地址：福建省福州市仓山区盖山镇高湖三座112号（邮编：350007）
25 November 2008 Letter from Complainants/Requesters (in English)

It is vital to our living please strictly examine compliance with the ADB rules

Respected Secretary:

We are peasant residents (not Fuzhou municipal registered residents) living in Gaohu Village (south to bridge), Gaishan Town, Cangshan District, Fuzhou city, Fujian province. The curtilage where our houses are located is part of the integrated plan for building sites by this village. Our houses were built and put into use in 1994, composed of three floors with an average building area of 180 square meters. Due to the Project of Inland river regulation in Fuzhou Nantai Island financed by ADB, we are going to lose our houses and have nothing to live on. Currently, most buildings have been removed and agreements on removal and reimbursement are going to be signed soon.

**The project name:** Project of Inland river regulation in Fuzhou Nantai Island  
**Project location:** Cangshan District, Fuzhou city, Fujian province

This is a big project of great influence. During the process of regulating Yuejin River and Longjin river in 2008, the removal company, the former Fuzhou Diyuan Removal office, which in charge of that two sub-projects, didn’t comply with relative rules in “The difference of removal policies between China laws and ADB” of “Plan of Removal and re-locating — Project of Inland river regulation in Fuzhou Nantai Island –financed by ADB”, clause 3.3, page 30, issued in Sep 2004; especially with section 3.3.2 “non-equal rights” which says for this project, all affected people, no matter legally or illegally, having property or no property, including floating population, should be protected. But the removal company ignored these stipulations; instead they use “Enforcement regulations of Removal and Re-locating for Inland river regulation project (Yuejin River and Longjin River)”( hereinafter “Enforcement regulations”) as standard. The policies from Enforcement regulations only cover those registered residents that belong to collective economy organization of that village. Because we are not members of that economy organization, those policies couldn’t be applied on us. Furthermore Enforcement regulations discriminate against non-proprietary houses. They offer to reimburse us only rmb350 or nothing for non-proprietary houses, and don’t re-locate for us at all. We think these regulations have violated ADB relevant rules on re-locating. If these regulations are going to be enforced, our lives will be totally ruined. We are peasants in fifties and can hardly work for living now; We have our own parents and young kids to support. We have been working Fuzhou for so many years, having nothing valuable but our houses.

We rely on the authoritative, fairness, openness and responsibility of ADB organization and hope ADB to supervise and require the removal company to abide by the rules stipulated by ADB itself and show fairness to our vulnerable population. As you know the manditory removal of our houses will leave us totally homeless.
We started to complain to related departments and ask them to resolve this problem for us right after we learned about the Enforcement regulations but nobody agreed to abide by the ADB rules.

Here are the main efforts we made to resolve this problem: (1) Between Feb 1st and Apr 30th, we went to the removal office for Yuejin and Longjin river in Gaohu Village committee building many times trying to learn more information and let them know our concerns. The person in charge of this issue only answered “we only work based on the Enforcement regulations”. And he didn’t report our complaints to senior departments. The above office is located on 3rd floor of Gaohu village committee building.

(2) Mar 5th, 2008, we complained to Cangshan district government about the violation by the removal company and their discrimination against non-proprietary houses. No answer is available yet. Cangshan district email box: fzcangshan@sina.com

(3) Mar 14th and 19th, we complained to Fuzhou municipality on this violation again and were replied that “The removal company’s execution according to the enforcement regulations doesn’t violate anything; non-proprietary houses can only be reimbursed at RMB350 or nothing”. Fuzhou Municipality totally ignored the relative ADB rules on this project. So no progress has been made yet. Fuzhou Munidpality web: http://www.fz12345.gov.cn

(4) Mar 24th, 2008, we appealed to Fujian Provincial government and were replied that “The removal company’s execution according to the enforcement regulations doesn’t violate anything; non-proprietary houses can only be reimbursed at RMB350 or nothing”. Fujian provincial government ignored the ADB rules as well. Fujian provincial government web: http://218.85.73.168/

(5) Apr 30th, 2008, we complained to Fuzhou ADB-Loaned project office and they replied that they didn’t know ADB rules related to this project thus they couldn’t resolve this problem for us. The office number: +86 591 83367591.

(6) June 16th, 2008, we complained to ADB Special Office of Project Coordination, no answer received yet.

(7) Jul 17th, ADB designated Professor Zhong Shuiling, chief of engineering study center of Wuhan University to talk to us. No further information available yet.

(8) Nov 17th, four people from ADB side including Prof Zhong came to Fuzhou but no progress made, our problem is still here. So we beg ADB to initiate compliance review now.

It has been 8 months since Mar 31st, 2008, the deadline stated in Enforcement regulations but no department attached any importance to what we complained. All of them ignore the ADB rules on removal and re-locating and leave us helpless.
For the good of our rights to live and reside, we hope work force from your office can investigate the violation by removal company and urge them to abide by ADB rules on reimbursements.

Besides materials referred to above, there are other materials that can help you understand our situation. Here we attach them and their origins as following: (1) Removal and re-locating plan—Project of Inland river regulation in Fuzhou Nantai Island—financed by ADB; from ADB web: http://www.adb.org; (2) Enforcement regulations of Removal and Re-locating for Inland river regulation project—Yuelin River and Longlin River, by Fuzhou Dilyuan Removal office; and (3) ADB Accountability Mechanism from http://www.compliance.adb.org.
Milestones in the Request for Compliance Review

5 May  Mr. Wang Jie Quan and Mr. Xu Qi Long sent a letter (in Chinese dated 28 April 2009) to the Secretary of the Compliance Review Panel (CRP) via the CRP mailbox requesting an investigation of alleged noncompliance by ADB with its policies and procedures on resettlement and compensation.

3 June  The CRP received a cc e-mail from the requesting parties to the Special Project Facilitator that they had decided to discontinue the consultation process and would like to request compliance review.

5 June  The Office of the Compliance Review Panel registered the request and sent the notice of registration and an acknowledgement letter to the requesting parties.

8 June  The press advisory on registering the request for compliance review was published on the CRP website.

24 June  The CRP found the request for compliance review eligible, and its eligibility report was circulated to the ADB Board of Directors on a no-objection basis.

15 July  The Board authorized the compliance review.

28 July  The Board Compliance Review Committee chair confirmed the clearance and approval of the terms of reference and timeframe for compliance review.

14-18 September  The CRP conducted interviews with ADB staff who were directly involved in the project.

1 October  The CRP chair sent a memo to the People’s Republic of China (PRC) Executive Director seeking assistance in obtaining government clearance for a possible visit to the project area.

4 November  The PRC Executive Director advised that PRC authorities were of the view that a site visit was not necessary because the project would no longer involve the resettlement in question after the rerouting of the river in the project area.

17 November  The CRP chair sent a memo to the PRC Executive Director expressing concern about the government's rejection of the proposed site visit.
CRP REQUEST NO. 2009/1 – REQUEST ON THE FUZHOU ENVIRONMENTAL IMPROVEMENT PROJECT (LOAN NO. 2176–PRC)

Terms of Reference for Compliance Review

Introduction

1. These Terms of Reference (TOR) were prepared by the Compliance Review Panel (CRP) to undertake the compliance review in respect of the Fuzhou Environmental Improvement Project (Project)\(^1\) pursuant to a request for compliance review (the Request) (Appendixes 1 and 2).

2. On 24 June 2009, the Compliance Review Panel (CRP) determined the Request was eligible, and recommended to the ADB Board of Directors (Board) to authorize a compliance review. On 15 July 2009, the Board authorized the compliance review.

3. Under paragraph 122 of the Accountability Mechanism policy\(^2\) and paragraph 37 of the CRP Operating Procedures, these TOR, which cover the scope of review, methodology, and time frame are submitted to the Board Compliance Review Committee (BCRC) for its clearance. After clearance by BCRC, the CRP will provide the TOR to the Board and to all stakeholders, and post it 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>Fuzhou Environmental Improvement Project (Loan No. 2176-PRC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td>People's Republic of China</td>
</tr>
<tr>
<td>Borrower</td>
<td>The Government of the People's Republic of China</td>
</tr>
<tr>
<td>Requesting Parties</td>
<td>Mr. Wang Jie Quan and Mr. Xu Qi Long of Fujian Province. They informed the CRP that they do not request that their names be kept confidential.</td>
</tr>
<tr>
<td>Allegations</td>
<td>Noncompliance with ADB Policy on Involuntary Resettlement(^3)</td>
</tr>
<tr>
<td>ADB operations department responsible</td>
<td>East Asia Regional Department</td>
</tr>
<tr>
<td>Project categorization</td>
<td>Category A for involuntary resettlement</td>
</tr>
<tr>
<td>Project description</td>
<td>Improve the environmental quality and living conditions in the project areas by reducing water pollution and protecting water resources. The Project has three infrastructure components: (i) expansion of the Yangli sewer networks serving the eastern part of Fuzhou; (ii) construction of the Lianban sewer network on Nantai Island in the southern part of Fuzhou; and (iii) rehabilitation of inland creeks for</td>
</tr>
</tbody>
</table>

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\(^1\) Loan No. 2176 (PRC): Fuzhou Environmental Improvement Project.


<table>
<thead>
<tr>
<th>Appendix 4</th>
<th>pollution control and flood protection in Nantai Island. The Project also has a capacity building component for the institutions involved in project execution.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project status</strong></td>
<td>The ADB loan for the Project was approved by the Board on 29 July 2005; became effective on 14 September 2006 and is scheduled to be closed on 30 June 2010. As of 30 June 2009, the physical progress of the Project was at 60%, and the disbursement of the ADB loan was at 22%.</td>
</tr>
</tbody>
</table>
| **Project implementation arrangement** | The Executing Agency (EA) is the Fuzhou Municipal Government, and the Implementing Agencies (IAs) are:  
(i) The Fuzhou Water Environmental Construction and Development Company for the sewer network component, and  
(ii) The Fuzhou Urban Visual Construction and Development Company for the inland creek rehabilitation component |
| **CRP** | Mr. Rusdian Lubis, CRP Chair is taking primary responsibility for the compliance review, and Ms. Anne Deruyttere, part time member of the CRP, has been appointed by the CRP Chair as the Lead Reviewer, with assistance from Mr. Antonio La Viña, part time member and the Chair. The CRP will be supported by the Office of the Compliance Review Panel (OCRP). |
| **Contact person** | Mr. Rusdian Lubis, Chair, CRP  
Mr. Bruce Purdue, Secretary, CRP  
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 scope of the compliance review is to focus on determining whether ADB has or has not complied with its operational policies and procedures in connection with the Project. The review is to investigate neither the borrower nor the executing and implementing agencies. 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, 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 Noncompliance with ADB Policies**

6. The Requesting Parties claim that the provisions for land acquisition and compensation included in the “Revised Resettlement Plan of August 2008” were not consistent with the “Resettlement Plan of September 2004” which they claim was approved in accordance with the ADB Policy on Involuntary Resettlement of 1995. The specific complaints relate to (i) compensation at below replacement cost for illegal residents; (ii) impoverishment resulting from the loss of income sources; and (iii) the lack of timely and appropriate information and consultation.

7. Based on the allegations by the Requesting Parties of noncompliance 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, including but not limited to ADB’s Involuntary Resettlement Policy of 1995, and its Operations Manual (OM), particularly OM Section F2/BP and OM Section F2/OP both issued on 29 October 2003, and any staff instructions relating to the formulation, processing, or implementation 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 Requesting Parties, project affected people, the Government of the PRC, the Municipality of Fuzhou and its implementing agencies, and the Board, including the Executive Director representing the PRC.

9. The compliance review will include the following:

(i) review of all ADB files and other documents related to the Project;

(ii) conduct of site visits with the prior consent of the Government of the PRC;

(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
- Requesting Parties, project-affected people,
- officials from the Government of the PRC, including those from the EA and IAs, and
- the Board, including the Executive Director representing the PRC,

all of whom will be given an opportunity to record their views, as necessary;

(iv) use of consultants, translators, and interpreters 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. CRP will exercise discretion and maintain a low profile in the PRC. 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.

11. After conducting its compliance review, CRP will issue a draft report of its findings and recommendations to the Management and the Requesting Parties for comments. Both the

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Management and the Requesting Parties will have 30 days to comment on the draft report. Within 14 days from receipt of the comments on the draft report, 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 phase 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>
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<tbody>
<tr>
<td>6</td>
<td><strong>CRP Draft Report.</strong> CRP will issue its draft report of its findings and recommendations to the Management and the Requesting Parties for comments.</td>
<td>12 weeks from the date of clearance of the final TOR for the compliance review by the BCRC</td>
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<tr>
<td>7</td>
<td>Management’s and Requesting Parties” to CRP draft report.</td>
<td>30 days from submission of the draft report</td>
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<tr>
<td>8</td>
<td><strong>CRP’s Final Report.</strong> CRP finalizes its Report, based on comments received, and issues CRP’s final Report to the Board, with responses from Management and the Requesting Parties as attachments.</td>
<td>14 days from receipt by CRP of comments from the Management and the Requesting Parties</td>
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<tr>
<td>9</td>
<td><strong>Board Decision:</strong> Board consideration of the CRP’s Final Report.</td>
<td>21 days from submission of CRP Final Report</td>
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<td></td>
<td>Release of the Board Decision and CRP’s Final Report</td>
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13. This timeframe does not take into account the time needed for (i) obtaining a mission clearance for CRP to visit the project area, (ii) translations and (iii) extensions requested for filing responses, where additional time may be required. If the CRP should experience problems in adhering to the timeframe, the CRP will seek BCRC’s clearance of any proposed revised time schedule.

/S/ Rusdian Lubis  
Chair, Compliance Review Panel  
29 July 2009

Appendixes

1. Request for Compliance Review (in English)  
List of Persons Contacted During the Compliance Review Phase¹

Asian Development Bank

1. C. Lawrence Greenwood
   Vice-President (Operations 2)
2. Ursula Schaefer-Preuss
   Vice-President (Knowledge Management and Sustainable Development)
3. Klaus Gerhaeusser
   Director General, East Asia Department (EARD)
4. Xianbin Yao
   Director General, Regional and Sustainable Development Department (RSDD) and
   Chief Compliance Officer
5. H. Satish Rao
   Director General, Independent Evaluation Department
6. Scott Ferguson
   Principal Social Development Specialist (Safeguards), EARD
7. Amy Leung
   Director, Urban and Social Sectors Division (EASS), EARD
8. Nessim J. Ahmad
   Director, Environment and Safeguards Division, RSDD
9. Robert Wihtol
   Country Director, PRC Resident Mission
10. Edgar Cua
    Advisor, Office of the Director General, EARD
11. Ruwani Jayewardene
    Principal Social Development Specialist, Pakistan Resident Mission
12. Jeremy Hovland
    General Counsel
13. Kala Mulqueeny
    Senior Counsel, Office of the General Counsel
14. Christophe Gautrot
    Senior Counsel, Office of the General Counsel
15. Nao Ikemoto
    Natural Resources Management Specialist, Cambodia Resident Mission
16. Ma. Theresa Villarel
    Senior Urban Development Specialist, EASS, EARD
17. Madhumita Gupta
    Senior Social Development Specialist (Resettlement), EASS, EARD
18. Debnath Biswanath
    Social Development Specialist (Safeguards), RSDD
19. Asela Maria Arago
    Assistant Project Analyst, EASS, EARD

Requesting Parties

1. Mr. Wang Jie Quan
2. Mr. Xu Qi Long

¹ Staff titles during the compliance review process.
Response from Requesting Parties

对草稿报告的评论

首先非常感谢合规检查小组为了我们的投诉所付出的努力和汗水，感谢你们不厌其烦地与相关部门及请求方有效的沟通，做了大量复杂而细致的工作，即使在你们的工作遇到困难的情况下，仍旧不遗余力地将工作进行下去，你们的工作态度和方法深得我们的信赖，对你们所做的大量工作深表我们最崇高的敬意。

但是，令人遗憾的是由于合规小组未能完成实地走访，从而导致整个报告没有结果，之前所有付出的努力功亏一篑，所有能够恢复我们原来生活的期待都变成了一场梦。且现实的状况令我们更担忧：a.据我们向现场施工人员（非官方）了解得到情况是本项目依然以早前设计的方案进行施工，并非有关部门所说的方案已经重新设计。就算方案重新设计，那么我们想知道是重新设计的方案到底拆不拆我们房子，这一点在任何一个报告中都未提及，希望合规小组依据现有资料来确认我们的房子是否被拆；b.目前施工已经进行到离我们家不足10米远的地方，我们的房子存在极大安全隐患；c.自从2008年11月开始，我们一直在外租房房子，每月800元的租金及长期的失业，令我们的生活雪上加霜（王接泉近期才找到了一份临时工，徐启龙由于年纪已高一直处于无业状态）。

最后，希望合规检查小组能给我们提供以下材料：a.经亚行批准的被重新设计过的项目方案和图纸；b.第11页17点中提到的四点内容的所有材料；c.能否就第10页13点中提到的内容，分类别地给出结论，如该内容中针对第iii点给出结论，因为此点所提内容根本不需要实地走访就能确认是否违规。d.在第八点“结论”中，应该给出合规小组通过调阅文件、约谈相关工作人员及与请求方电话联系后，目前已经得出的“不成熟”结论，而不成熟的结论中可以提及由于缺乏实地走访而无法验证，从而不能给出亚行违规行为及受害方的补偿方案。

王接泉  徐启龙

2010年9月9日
Response from Requesting Parties

Comment to the Draft Report

First, we would like to thank CRP’s effort for responding to our complaints. We truly appreciate that CRP has patiently conducted effective communication with related departments and requesting parties and has done much complex and detailed work. We are also thankful that CRP still tried its best to continue to work even encountering difficulties. CRP’s working attitude and method won our trust. Hereby, we deeply express our highest respect to all the work CRP has done.

However, we are very disappointed that it was not possible to draw the necessary conclusion(s) because of the lack of a site visit. To us, all the efforts made before have fallen short and all the expectation of the restoration of our living standard has become a dream. We are especially worried about the current situation as follows:

a.) According to the local construction workers (unauthorized persons), the project is still being constructed under the original plan, rather than the revised plan according to some related departments. Even if the plan has been revised, we would like to know whether our houses will be demolished or not, which has been never mentioned in any reports. We hope CRP can clarify this based on available information;

b.) Our houses are facing great safety risks since the construction has been carried out just 10 meters away from our houses and;

c.) We have rented houses to live since Nov, 2008. We are getting worse-off due to rental expenses (800 yuan per month) and long-term unemployment. We note Mr. Wang Jiequan has found a temporary job; Mr. Xu Qilong is still unemployed because of his age.

Finally, we hope CRP can provide the following documents and files:

a.) revised project plan and drawing approved by ADB;

b.) all relevant documents of four items mentioned in VI. Conduct of review, No. 17;

c.) if possible, conclusions drawn separately to the contents of V. Methodology of Review, No. 13, for instance: giving a conclusion to No. (iii), because it is obvious that ADB didn’t comply with its operational policies and procedures even without a site visit and;

d.) in VIII Conclusion, CRP should mention CRP has drawn “preliminary” conclusions currently after reviewing relevant files and documents interviewing ADB staff and making conversations with requesting parties over the phone. In the preliminary conclusions, therefore, CRP could mention CRP was not able to decide ADB’s noncompliance and make recommendations for remedial actions because the information is insufficient without a site visit.

Wang Jiequan, Xu Qilong
Sept 9, 2010
Response from Asian Development Bank Management

Memorandum
Office of the Vice President
(Operations 2)

10 September 2010

To: Rusdian Lubis
Chair, Compliance Review Panel

From: C. Lawrence Greenwood, Jr.
Vice President (Operations 2)

Subject: CRP Request No. 2009/1 – Request on the Fuzhou Environmental Improvement Project (Loan No. 2176 – PRC)

Pursuant to the Accountability Mechanism Policy (paragraph 125), the attachment provides Management’s Response to the Compliance Review Panel’s Draft Report on the Fuzhou Environmental Improvement Project in the People’s Republic of China (PRC).

Attachment: a/s

cc: The President
Vice President (Knowledge Management & Sustainable Development)
Vice President (Finance and Administration)
Vice President (Operations 1)
Vice President (Private Sector and Co-Financing)
Managing Director General
Management's Response

CRP Request No. 2009/1 regarding the Fuzhou Environmental Improvement Project
(Loan No. 2176-PRC)
Draft Report to the Board of Directors on the Compliance Review Process
(Memo CRP2010RL005, dated 13 August 2010)

1. Thank you for sharing the Draft Report on the Compliance Review Process (the draft report) for our consideration and response. We note that the Compliance Review Panel (CRP) declines to present its findings and is therefore not in a position to make recommendations.

2. Management and staff fully supported the CRP in undertaking this Compliance Review. Since there are no findings or recommendations in the draft report to which to respond, we would take this opportunity to provide additional information regarding two points in the draft report:

(i) Staff Responsiveness and Information available to the CRP

3. The draft report's statement that the "responses by ADB" to evidence of claims by the requesting parties of actual or potential direct, material harm were "lacking" could be misread to suggest that staff was not fully responsive to the CRP's requests for information. The relevant offices in ADB provided all documents and information requested by the CRP in a timely manner. These included, inter alia, project documents, memoranda of understanding, office memos, back-to-office reports, e-mails, and video clips. Written documents altogether comprised 41 project-specific files with more than 8,000 pages. In addition, the CRP interviewed 19 ADB staff during the period between 14 September and 7 October 2009; some staff more than once. The information provided related to all three claims under CRP investigation – insufficient compensation, the absence of measures to offset the loss of income, and inadequate consultation.

4. The Office of the Special Project Facilitator (OSPF) conducted three missions to the PRC, including site visits on each occasion, consultations with the People's Republic of China (PRC) Ministry of Finance (MOF), the Fuzhou municipal government, and the project implementing agencies. These consultations resulted in additional extensive information about the project and the background of the complaints.

5. The draft report notes CRP's teleconference calls with the two complainants provided pertinent information regarding the claims. It would be useful for the Board (and Management) to know the results from consultations by telephone, if any, with other stakeholders like the local government, the project management office, the loan supervision consultants, and the external monitor.

(ii) Additional Claim from the Complainants

6. The draft report mentions an additional complaint on 13 November 2009 alleging that the river re-alignment aggravated the situation of the two complainants forcing them from their homes. The concerned departments in ADB, the executing agency, implementing agencies, MOF, and Fuzhou municipal government were not informed or otherwise made aware of the additional claim despite the importance given to this claim by the CRP with regard to a site visit (para. 22 of draft CRP Report).

7. In conclusion, Management acknowledges the CRP's efforts to conduct this Review.