

Talking Points on Involuntary Resettlement (IR)

Based on preliminary analysis of the IR components of the SPS Consultation Draft¹

Joanna Levitt, International Accountability Project
November 2007

General

Overall assessment:

While the SPS Consultation Draft represents some improvements and has incorporated some of our recommendations, there **remain significant weaknesses** in the language that raise concern.

Lack of human rights approach

- While there is occasional mention of rights, overall, the language throughout the SPS **fails to reflect a human rights- centered approach**, as would be consistent with international best practice:

The ground-breaking decision-making framework based on ‘recognition of rights’ and ‘assessment of risks’ (particularly rights at risk) proposed by the World Commission on Dam (WCD) is widely considered to represent best international practice for development decision-making. We strongly urge the ADB—particularly given the ADB’s status as a former Financial Contributor and Forum member of the WCD—to ensure that all updated safeguard policies adhere to this framework.

Country Systems and Involuntary Resettlement

Involuntary resettlement is an area of particular concern in terms of shifting to country systems. In the Asia Pacific region, very few countries, if any, have adequate frameworks and capacity to effectively guarantee protection of the rights and development interests of people who might be affected by involuntary resettlement. We agree with the OED Study on Involuntary Resettlement in its assessment that:

[d]espite the progress that has been made by some DMCs [Developing Member Countries], continued reliance on ADB’s IR policy remains necessary in many countries, since the convergence with domestic law and policy is compromised by continuing lack of capacity and ingrained bureaucratic attitudes, including lack of filtering down of new guidelines to government officials at subnational levels (p. 40).

¹ The principles of ADB’s policy are compared to those of the World Bank (WB); the International Finance Corporation (IFC); the Inter-American Development Bank (IDB); as well as the guidelines prepared on development-induced displacement by the Organization for Economic Cooperation and Development (OECD); the conclusions of the World Commission on Dams (WCD); the *Comprehensive Human Rights Guidelines On Development-Based Displacement*, adopted by the UN Expert Seminar on the Practice of Forced Evictions (UN Guidelines); and the Guidelines on Forced Evictions developed by the UN Special Rapporteur on the Right to Adequate Housing (“Kothari Guidelines”).

The OED Study notes that even in countries such as Sri Lanka, China and India—which the OED assesses to have comparatively strong IR frameworks—significant gaps remain. Given these vast gaps that persist between country systems and ADB standards in the area of involuntary resettlement, and given the grave impoverishment risks associated with resettlement, we urge the ADB to proceed with extreme caution in relation to shifting to country systems, and to defer doing so until a reliable system is in place to ensure that *all* affected people, regardless of the country in which they live, will be guaranteed equal protections. To allow otherwise would discriminate unjustly against affected persons in countries with less developed frameworks and capacity for resettlement.

Objectives

We are pleased to see that *avoidance of resettlement* and *improvement of affected people’s livelihoods* are core objectives, in *Objectives, Scope and Policy Principles on the Involuntary Resettlement Safeguards* (p. 15). However, these statements need to be strengthened in the following ways:

1. The current statement on avoidance is inadequate. It states: “Avoid involuntary resettlement wherever feasible, and minimize involuntary resettlement through assessing project alternatives and alternative project designs.” It needs to be revised and enhanced to include additional language on the following key points:

Involuntary resettlement involves enormous risks of impoverishment and human rights violations, and must be avoided. If avoidance proves to be unfeasible, minimize resettlement through assessing project alternatives and alternative project designs. **In every case, the alternative to refrain from carrying out the project (the "non-action" alternative) should be seriously considered, particularly if negative impacts on affected people will be severe.”**

2. The current statement on “enhancing or at least restoring” livelihoods needs to be strengthened by including language on:

All projects involving involuntary resettlement must provide sufficient investment resources and opportunities for resettlers to **share in project benefits**.

The right of those who are directly impacted by a project to share in its benefits is a central concept of current best practices.² **Ensuring equitable benefit-sharing systems,**

² The final report of the World Commission on Dams makes the following strong statement on this issue:

Impoverishment of affected people is increasingly seen as unacceptable but it is also unnecessary since there are a wide range of opportunities available for making not only resettlers, but all affected people, project beneficiaries. This is in the interests of all stakeholders since, as beneficiaries, affected people add to the stream of project benefits, while reducing costs. The problem of making them beneficiaries lies not with the affected people, who time and again have shown the capacity to respond to opportunities that are available, but with the inadequate laws, policies, plans, financing capacity and political will of governments and project authorities.

developed in close consultation with affected people, should thus be included as a policy objective, rather than simply as a possibility among the policy principles, as it is currently framed in the draft SPS.

There are a growing number of cases of innovative benefit-sharing schemes, which can inform project planners and policy makers. A recent article by resettlement specialist Michael Cernea highlights some pioneering examples in different regions of the world.³

3. A third objective needs to be added that states: **Ensure that affected people are able to actively participate in and shape the projects that affect them, the associated resettlement activities and benefit-sharing schemes.**

The issues of meaningful participation and consultation must be seen as inherent to planning for involuntary resettlement. If projects are going to displace people—to force affected people to make this great sacrifice—these projects absolutely must respond to genuine and significant development needs of the region, as identified by local people themselves. **Achieving meaningful participation must be included as a core objective.**

Scope

Reduced scope to a focus on land acquisition: New problematic overlap between Involuntary Resettlement vs. Environmental Assessment; Lack of due process for affected people who fall outside new limited scope of IR

The following paragraph raises significant concerns (para. 9 from p. 14 of *Attachment B: Safeguard Requirements for Borrowers/Clients: Involuntary Resettlement*):

In the event of potential adverse economic, social or environmental impacts from project activities other than land acquisition (e.g., loss of access to assets or resources or restrictions on land use), these impacts will be avoided, minimized, mitigated or compensated for **through the environmental assessment process**. If these impacts are found significantly adverse at any stage of the project, the borrower/client will consider applying the policy principles and safeguard requirements on involuntary resettlement, even where no initial land acquisition was involved.

This paragraph raises concerns for a number of reasons:

- It will create confusion among ADB staff, implementing agencies and affected people as to which policy should be triggered.
- International best practice, including policies of ADB's peer institutions, recognizes that involuntary resettlement covers a much broader range of activities beyond land acquisition.

(World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000, pp. 108-109. www.dams.org/report/)

³ Cernea, Michael, *Financing for Development: Benefit-Sharing Mechanisms in Population Resettlement*, ECONOMIC AND POLITICAL WEEKLY, March 24, 2007.

- By allowing the borrower/client to decide whether or not to apply involuntary resettlement policy principles and requirement, this creates a dangerous reliance on the arbitrary discretion of the borrower/client—who may have a direct conflict of interest in applying the involuntary resettlement policy, if it’s going to be more expensive. This thus puts affected people at risk of “falling through the cracks” and not being covered by any of the policies.
- **Most importantly, for non-indigenous project-affected people who lose access to natural resources, lands and waterways caused by project activities other than direct land acquisition, they are now left without strong provisions to ensure due process, participation, compensation or full entitlements.** The new scope limited to land acquisition will **unfairly exclude a vast proportion of economically and physically displaced people from entitlements under the IR policy.** The above paragraph says they will be covered by the Environment section of the draft SPS, but that will not be of much worth to these affected peoples, because the Environment policy principles have been drastically weakened, and lack robust provisions for management, mitigation and compensation of **social** impacts. The Indigenous Peoples section has some strong provisions on participation and rights protection, but these will not be triggered for non-indigenous affected groups. **This irresponsible and unjust reduction in scope must be corrected.**

Must include “change in land use”

To ensure that the all impacts and losses are accounted for, a fourth cause of displacement should be added to the section on Scope: **(iv) change in the use of land.** This is a critical additional category to complement the currently-listed causes of “involuntary acquisition of land” and “involuntary restriction on land use.” Change in land use can cause physical and economic displacement impacts. It was included in the old policy, and we strongly recommend its reincorporation into the new SPS.

[This section requires further analysis. Additional changes will be recommend as well...]

Entitlements for non-titled affected people

The draft SPS currently discriminates against affected people without legally recognizable title to land. While it affords such groups a number of important entitlements—including provision of adequate housing with security of tenure, and compensation for the loss of assets other than land, such as dwellings and other improvements to the land, at full replacement cost—it **fails to require that such people are compensated for loss of land**, or provided with replacement land. (As described in the *Safeguard Requirements for Borrowers/Clients: Involuntary Resettlement* section, in Attachment B).

The SPS should be revised to reflect international standards on this issue, which recognize that provision of secure replacement land is essential to prevent further impoverishment of these vulnerable populations, and to ensure policy objectives are

achieved. For example, the Involuntary Resettlement Policy of the African Development Bank, while broadly adhering to the same compensation framework, specifies that, for non-titled affected people, the **resettlement assistance** that they receive in lieu of compensation for land **must contain at minimum “land, housing and infrastructure”** (AfDB, p. 12, III.3.4.3)

Why is it so important that affected people without recognizable legal title to land are entitled to replacement land—or, at minimum, compensation for lost land?

- The policy already states that **particular attention must be paid to vulnerable groups**, including “the landless” and “persons without legal entitlements.” The policy objectives state that poor and vulnerable groups must have their standard of living **improved**. Study after study shows that secure tenure to land—particularly for rural groups and those with land-based livelihoods—is a necessary condition for preventing impoverishment, improving livelihoods for the long-term, and enabling sustainable development.
- **Economic compensation alone is totally inadequate** to improve—or even to restore—affected people’s livelihoods. Provision of essential non-monetary assets—particularly land—ensures families have the vital long-term assets they need to achieve stability, self-sufficiency, and long-term improvement of their living conditions. [***For more notes on economic compensation, see section below.*]
- By denying full entitlements to affected people without legalizable title to land, **the policy discriminates against those who are already most vulnerable to the impoverishment risks of resettlement**. As a development institution with a mandate to improve the standard of living of the poor, the ADB should instead support its member countries to use resettlement—in those cases where it is unavoidable—to **provide genuine development opportunities based on providing land and security of tenure** to those populations most in need of these critical assets.

****Pursuant to this principle, the language of point (4) in the Policy Principles must be amended to say:**

The absence of formal legal title to land by an affected person is not a bar to compensation, **replacement assets and land, or other policy entitlements**.

Policy Principles:

On Consultation:

- In general, the **language on consultation should be strengthened**—both in the Objectives (as mentioned above) and well as in the Policy Principles under point (2). Specifically, we call for two changes:

1. Strengthen the statement that currently reads: “Inform all affected people of their rights and options” by adding on the phrase “**and ensure their consent to compensation and resettlement entitlements.**”

****The July 2007 version of the draft SPS included this phrase, and we STRONGLY recommend its reincorporation into the draft.** An institutional commitment to uphold affected communities’ right to give or withhold consent reflects basic principles of international best practice around participation in development decision-making, as well as respect for the fundamental human right to participate in decisions that will directly impact your life and livelihood.

2. Insert a commitment to ensuring **broad community support (BCS)**, and to reaching **agreements through negotiated settlements**. Both these concepts are basic pillars of contemporary best practice on development decision-making. It is unacceptable that the draft SPS Policy Principles on Involuntary Resettlement do not include strong requirements around both these principles. The ADB should look to policies of its peer institutions for examples on stronger language in this arena:

- The IFC *Policy on Social and Environmental Sustainability*, which outlines the principles that should guide implementation of all the Performance Standards, contains **an explicit requirement that project sponsors obtain broad community support**: “In addition, through its own investigation, IFC assures itself that the client’s community engagement is one that involves free, prior, and informed consultation and enables the informed participation of the affected communities, **leading to broad community support for the project** within the affected communities, before presenting the project for approval by IFC’s Board of Directors. **Broad community support is a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project**” (IFC Sustainability Policy, para. 20).

The IFC *Performance Standard on Involuntary resettlement and Land Acquisition* also includes the following upfront statement:

Negotiated settlements help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. Clients are encouraged to acquire land rights through negotiated settlements wherever possible, even if they have the legal means to gain access to the land without the seller’s consent.

- The African Development Bank clearly states that “[p]roject planners should work to ensure that affected communities give their **demonstrable acceptance** to the resettlement plan and the development program, and that any necessary displacement is done **in the context of negotiated settlements** with affected communities” (AfDB, p. 10, III.3.3(a))
- The World Commission on Dams (WCD) report concludes that projects are more effective when project sponsors and affected peoples negotiate “project-specific **agreements**, relating, for example, to benefit-sharing, resettlement or compensation.” Furthermore, WCD notes that “**conflicts are exacerbated by the absence of an agreed approach** and process for assessing and negotiating acceptable project outcomes” (*Dams and Development*, p. 7). The WCD report calls for gaining **public acceptance of proposed projects**: “Public acceptance of key decisions is essential for equitable and sustainable development” (*Dams and Development*, p. 34).

The IR Policy Principles must be revised to include an explicit requirement for ensuring broad community support, paired with a requirement for arriving at such agreement through negotiated settlements.

On Compensation:

- The current Policy Principles under point (3) should be prefaced with a statement recognizing the inadequacy of monetary compensation as a stand-alone tool:

Compensation alone is not enough to restore, let alone improve, standards of living and livelihoods after displacement. Compensation should be just one part of a broader package of development assistance measures designed to genuinely rehabilitate affected people and that factor in their development needs and priorities.

Resettlement as a development program in its own right:

- Point (7) of the Policy Principles states that, “Involuntary resettlement should be conceived and executed as part of a development project or program.” **Add to the end of this statement: “...designed and implemented in close consultation with affected people, to reflect the development needs and aspirations they identify.”** Without the addition of this crucial phase, the statement is at risk of being interpreted in ways that are not helpful—and at worst directly harmful—to affected communities.

Sequencing and prior compensation

- In point (7) of the Policy Principles on IR, we are pleased to see the statement: “Pay compensation and provide entitlements before physical or economic displacement.” We see this as a very important requirement, and one that **should be further strengthened:**

Based on experience with problematic resettlement implementation and disturbingly large gaps between the initiation of project activities that will cause displacement and the actual provision of full rehabilitation and resettlement assistance to project-affected people, we recommend that this statement be revised to require that **major milestones for resettlement and rehabilitation must be achieved, evaluated and independently verified before funds are dispersed for key project activities.** Such a requirement would go a long way to creating powerful incentives for designing and implementing prompt resettlement and rehabilitation programs that support affected people to improve their standards of living in real and measurable ways. Furthermore, it would demonstrate that the ADB views achieving positive resettlement outcomes as high priority, and of equal importance as other project-related objectives/milestones.

Project completion reports and conditions for project closure

- Point (9) of the Policy Principles states:

Prepare a project completion report that assesses the outcome of resettlement, its impact on the standards of living of the affected people and if the objectives of the resettlement plan have been achieved, taking into account the baseline conditions and the results of resettlement monitoring.

The following sentence should be added to follow the statement above:

If prior to project closure, livelihood restoration is incomplete, additional measures will be implemented to ensure satisfactory outcomes, as a condition for project closure.

****The July 2007 version of the draft SPS included this phrase, and we STRONGLY recommend its reincorporation into the draft.** Without such a provision, ADB risks losing all leverage to ensure resettlement objectives are achieved. Like the recommendation (above) to require that resettlement and rehabilitation milestones are achieved prior to disbursement of funds for key project activities, a provision requiring achievement of resettlement outcomes as a pre-condition for project closure can be a powerful tool in creating effective incentives to design and implement prompt resettlement and rehabilitation programs that support affected people to improve their standards of living in real and measurable ways. Furthermore, it would demonstrate that the ADB views achieving positive resettlement outcomes as high priority, and of equal importance as other project-related objectives/milestones.