

Chapter 4

RESETTLEMENT POLICY DEVELOPMENT IN SOUTHEAST ASIA

This chapter reports on the ways in which resettlement policy development is being undertaken in countries of Asia, particularly Southeast Asia. Section I sets out very briefly some of the policy development experiences referred to in the course of the two workshops.

Section II of the chapter is a country case study from the Philippines. This was presented by Encarnacion N. Raralio at the Manila workshop. It was a report of the work done by her firm, SEA Consultants Inc., on behalf of the National Economic Development Agency (NEDA) with technical assistance funding from ADB.

Experience in Asian Countries

As was pointed out in Chapter 2, the kinds of resettlement policies favored by the development banks have become a basis for the implementation of specific projects in many parts of the world. This rather broad application of one set of policies has been followed in spite of the extraordinarily wide range of institutions and ideologies encountered as one moves from country to country. In particular, the range of institutional arrangements applying to land is very broad.

A few examples of the different land systems encountered in ADB's own region include the following:

- In the People's Republic of China (PRC) there is a system of collectivized land use where the State and the economic collectives, not individuals, own the land. In August 1998, the PRC enacted a new land law that upholds the tradition of non-transferable use rights to land. Nevertheless, clear provision is made for land acquisition compensation, and resettlement fees to facilitate development.
- In Viet Nam, a rather different approach is emerging. Here there is a move away from collectivism towards a system that emphasizes fully transferable land use rights. Within this framework, the resettlement policies required by the banks are being applied to a range of projects. In addition, Viet Nam has now strengthened its basic directive on compensation for lost rights and lost incomes. See also the summary of current legislative arrangements in Box 4.1.
- Indonesia has a much wider range of land use rights—both traditional and formal, registered, titles. Unregistered and nonformal titles co-exist alongside private property and state ownership. Indonesia is able to recognize the validity of these nonformal and unregistered claims to land and its use in the process of acquisition and compensation. As a rule, compensation levels for nonformally titled land is lower than for fully registered titles. In the case of bank-assisted projects, the nature of this compensation is open to negotiation. The legislative arrangements applying in Indonesia are further set out in Box 4.2.

- South Asian countries inherited longstanding laws on land and its acquisition, but these are interpreted differently between countries and between provinces and sectors in the same country.

In all these cases, the basic approach seems to be workable although the details need to be negotiated with some care, having regard for the differing political and social institutions of each country. And it seems probable that the same will prove true in the Pacific where customary landownership imposes another set of disciplines on the process of land use transfers. Pacific nations have a great diversity of land and water rights despite there being relatively small populations.

Some of the characteristics that will help determine how bank resettlement policies will be applied in the Pacific include geographic isolation; wide dispersion of people among many scattered islands; critically different terrain including lagoons and beaches; and relatively low levels of agricultural technology among those still, in part at least, dependent on small-scale, subsistence-like, cultivation. Overlying all of this is the tenurial system and the dominance of customary ownership. (See also Chapters 5 and 8.) Experience suggests that, despite seemingly large differences in land use systems from country to country, with some local adaptation, the guidelines used by the World Bank and ADB are broadly applicable to situations of involuntary resettlement under almost all political and social settings.

Box 4.1

Indonesia: The Legal Foundation for Resettlement Activities

KEPPRES 55/93 (Presidential Decree) is the basis for resettlement. It makes provision for just compensation of land resumed for public purposes. However, it has no provision for compensation in relation to tenancies, squatting, or other permissive forms of access to land. With regard to assets other than land, the decree states that they are to be treated in accordance with the regulations of the responsible government agency.

Government agencies that act as corporate entities and are engaged in resettlement with external funding have adopted their own regulations that conform with World Bank and ADB resettlement guidelines.

At the provincial level, if resettlement is taking place with external assistance, governors have issued their own decrees which generally endorse the basic premises of resettlement as adopted by agencies such as the World Bank and ADB. In addition, for each project, a set of implementation instructions will be issued by the governor. This has led to greater emphasis on transparency in the compensation process.

A practical problem encountered in Indonesia is that land markets, particularly in rural areas, are either inefficient or nonexistent. To establish compensation values under these circumstances resort is made to tax-based or local government administrative prices. The tax-based values would be accurate if up to date, but they rarely are. The local government valuations usually understate real values and not all types of land are covered by this system.

Source: Presentation at the Port Vila workshop by Gordon Appleby, EDI, World Bank.

Resettlement Policy Development in the Philippines

In a presentation by NEDA of the Philippines and their consultant on resettlement, the institutional approach to setting national guidelines and the guidelines themselves were presented. The need for guidelines arose from the frequency with which projects include some sort of resettlement component. This was compounded by the fact that different funding agencies put differing emphases on particular aspects of such social issues. A national approach seemed desirable.

NEDA began the process with a workshop with representatives of project authorities, local and provincial government, and nongovernment agencies. Following this consultation, consultants were retained to write guidelines that reflected all the divergent interests. The draft guidelines were then debated and revised by NEDA in consultation with other national arms of government. The final guidelines were made public through a further meeting. It was this point that had been reached at the time of the workshop presentation.

The Summary Guidelines

The elements of the guidelines and the topics addressed under each element are set out in Table 4.1. Some of the key elements have been selected for fuller treatment, particularly where there is scope for comparison with the practices followed in other countries of the region.

Policy, Legal, and Institutional Framework

The rationale behind this element of the guidelines is twofold:

- Existing laws on resettlement are applicable only to slum-improvement programs and, even then, compensation and resettlement provisions vary between projects administered directly by government and those administered by government corporations; and
- Resettlement requires the coordination of several government agencies, utility companies and people's organizations (NGOs).

The scope of this element of the guidelines extends to cover the constitutional powers of eminent domain, the rights to compensation, legal and administrative laws, including for appeals, and existing laws and regulations relating to land acquisition, valuation, compensation, consolidation, environmental protection, water use, social welfare, and resettlement.

The problems identified under this element include overlapping responsibilities of government agencies, discontinuity of policy between administrations, poor communications at every level, retention of incompetent contractors, and a general lack of understanding of the social dimensions of resettlement. Most of these problems are expected to be ameliorated in future through greater standardization of policies and procedures, embodied into new laws and regulations, and insistence on regular consultative processes within government and between government and the private sector, including NGOs. To help in understanding the linkages between each of the required policy, legal or institutional components, and the preparation and implementation of a resettlement project, SEA Consultants prepared a flow-chart which is reproduced as the Attachment to this chapter.

Table 4.2
Philippines: Resettlement Guideline Elements and their Scope

Guideline Elements	Scope of Each Element
<ul style="list-style-type: none"> • Policy, Legal and Institutional Framework * • Compensation Schemes * • Resettlement Planning and Management* • Community Organization and Participation* • Baseline Surveys for Resettlement • Site Selection • Shelter, Infrastructure, and Social Services • Access to Employment, Training, and Credit • Environmental Management • Financing and Budgeting* • Program Implementation • Participatory Monitoring and Evaluation* 	<ul style="list-style-type: none"> A. Rationale B. Legal Framework C. Scope of the Activity/Component D. Goals and Objectives E. Success Indicators F. Systems or Operating Guidelines, etc. G. Resource Requirements H. Problems/Issues and Recommendations
<p>* This chapter deals specifically with the elements marked with an asterisk.</p>	

Organizational alternatives for ensuring that these complex interactions are handled adequately include:

- Establishment of a resettlement task force as a specialist unit within the project entity;
- Contract with an external group or NGO to undertake the resettlement component;
- or
- Have the project coordinate resettlement aspects directly with the National Housing Authority.

Whatever the organization, an important part of its function is information gathering and dissemination as well as inter-agency coordination. A project resettlement task force, in particular, should:

- have multi-sectoral representation;
- be constituted with a legally binding mandate;
- be governed by its own bylaws including on how to break decision deadlocks;
- hold regular meetings and manage a continuous dialogue both internally and with constituents; and
- follow a prescribed reporting system.

Compensation

Under the Constitution of the Republic of the Philippines, “no person shall be deprived of property except by competent authority and for public use and always upon payment of just compensation.” This natural justice foundation for compensation in relation to the exercise of eminent domain has been tested in various cases before the Supreme Court. In the case of involuntary resettlement, just compensation should be in regard to the loss of assets, livelihood, and income. In addition, assistance should be provided for the physical relocation with properly equipped sites, transportation, dismantling and erection costs, and financial compensation for the intangible losses of disturbance. The outcome should be as good as, or better than, that which applied without the project.

Some of the problems encountered and recommendations for handling them include:

- Land valuations at the prevailing “fair market” level do not reflect the fact that those displaced are not “willing sellers”; a premium needs to be added as an inducement.
- Nontitled tenure can be valued for compensation at a multiple of annual earnings; but an alternative is to provide options for upgrading the kind of tenure so as to be a more secure source of income.
- The supply of resettlement land is limited by existing land use classifications and by the pre-emptive power of private developers; land use conversion procedures need to be streamlined and the true full cost of suitable land needs to be made a part of the project budget.

Resettlement Planning and Management

In addition to all the usual project planning and management problems associated with incomplete information and rather narrowly focused implementing agencies, the situation in the Philippines is also subjected to great uncertainty arising from the need for many kinds of government clearances. These result in uncontrollable delays. In the case of land use conversions to allow residential occupation, these can be anything from six months to five years. Suggestions for solving these very costly delays in the longer term include:

- Urging government to finalize the National Physical Development Framework Plan; and
- The adoption of comprehensive land use plans by local government units so as to provide a more adequate basis for land acquisition activities.

Community Organization and Participation

It is both the greatest strength and, at the same time, the largest potential weakness of resettlement projects that they impact on the very fabric of the local society. The weaknesses or problems arising from social disruption are clearly identified under each element of the guidelines developed for the Philippines. That such a degree of social disturbance can be a strength is less obvious. Some of the ways in which this happens are set out as follows:

- There are more losers than gainers from the act of land acquisition; the resettlement process thus requires intense consultation and the building of consensus. This process can result in more cohesive and collaborative communities.

- Information communication requires the establishment of new channels; if activated correctly, these can also be channels for the reflection back to planners of community information and attitudes that may not otherwise be known.
- This strong social interaction requires the use of special skills not commonly found in government departments; some existing NGOs are able to provide such skills and their involvement widens community understanding of the important roles they are able to play. These roles are not just as implementing agencies, but also as advocates for the attainment of better living conditions and for the protection of civil liberties.

The ultimate goal of the participative process is to make the community self-reliant. To the extent that this was not the case prior to the project, it would be another project benefit. The indicators of success adopted for this goal are:

- Degree of awareness among affected people and project staff of all phases of the project;
- Strength of leadership and of community organization;
- Breadth of community participation;
- Visibility of physical improvements;
- Extent of qualitative improvements in daily life;
- Degree of sustainability of self-help and participatory projects.

In short, these measures will provide some guidance as to the extent to which the strategies adopted for the project will have brought about greater empowerment of the affected communities.

Financing and Budgeting

The statutory requirements for establishing a project budget in the Philippines are set out in the General Appropriations Act and in the Public Works Act. In particular, these statutes require the preparation of a work and financial plan. This contains the budget estimates and links them to the precise activities to be undertaken. Without a well developed plan, there will be no hope of obtaining adequate funding. Inadequate funding is a sure way to have the project fail. Having those funds available in a timely manner is critical to success. Budgets provide one basis for monitoring the advance of the project. The budget cost per person resettled is a measure of the cost effectiveness of the project. All government funds are subjected to specific expenditure reporting and audit requirements. Funds borrowed from an agency like ADB are also government funds and are similarly accountable.

Participatory Monitoring and Evaluation

The parameters to be monitored in a resettlement project should encompass efficiency, effectiveness, impacts, and effects. Efficiency measurement involves the extent to which the project is able to translate inputs (training, funding and management) into outputs (such as affected people assisted, homes reconstructed, new income sources established). It includes an assessment of how well the project was implemented, taking account of technical, administrative, and financial constraints.

Effectiveness, on the other hand, is judged in broader terms. It represents a concern for whether the original design of the project and the ways in which that design was modified over the project life represented the best that could have been done to resettle those affected.

Box 4.3

Some Budgetary Considerations for Resettlement in the Philippines

Budgetary items are likely to include costs for the following:

Shelter	Infrastructure	Social Services	Site Works
Engineering	Design Services	Building Materials	Advisory Services
Land Surveys	Land Acquisition	Income Foregone	Other Allowances

Personnel, Operating, and Capital Items for the Project Task Force and Baseline Survey

Budgetary procedures normally include:

- Putting the Resettlement Work and Financial Plan through the regular budgetary process of government.
- Both government counterpart and loan proceeds require appropriation cover if contracted by the implementing agency (IA) or re-lent to government corporations.
- Budget releases are subject to submission of budget requests by the IA and to the framework of the cash release program of the national government.
- Cash disbursements are then authorized by the head of the IA but are subject to accountability criteria established by the Commission on Audit.
- Budget preparation should begin during project preparation and for this reason the project must be prepared in full detail.
- Budgets should be flexible enough in the way items are grouped to allow adjustment to unforeseen circumstances.
- In addition to all normal controls, foreign financed projects need endorsement from the Infrastructures Coordination Council.
- Budget preparation and approval require at least 18 months lead-time.

Looking at effectiveness means re-examining the project goals for their appropriateness under the circumstances.

In between Efficiency and Effectiveness are Impacts and Effects. They are usually expressed in terms of the degree of attainment of project goals. Some effects are entirely unintended and may have implications for the welfare of people other than the target group. The effects can be positive or negative and it is rarely possible to subject them to a simple calculus such as money value. In a monitoring or evaluation exercise, these effects are usually presented in a descriptive fashion.

The various types of monitoring systems are set out in these guidelines as Administrative, Socio-Economic, and Impact Evaluation. The basis for all such analysis is the original work and finance plan, usually called a resettlement action plan, and the weekly, monthly, quarterly, and annual cycle of monitoring reports. It is therefore critical that the means for undertaking project monitoring be established right from the start. It is also usually necessary for monitoring to continue for some years after completion of resettlement if the main longer term impacts are to be known. Monitoring and Evaluation approaches are also dealt with separately in Chapter 11 of this publication.

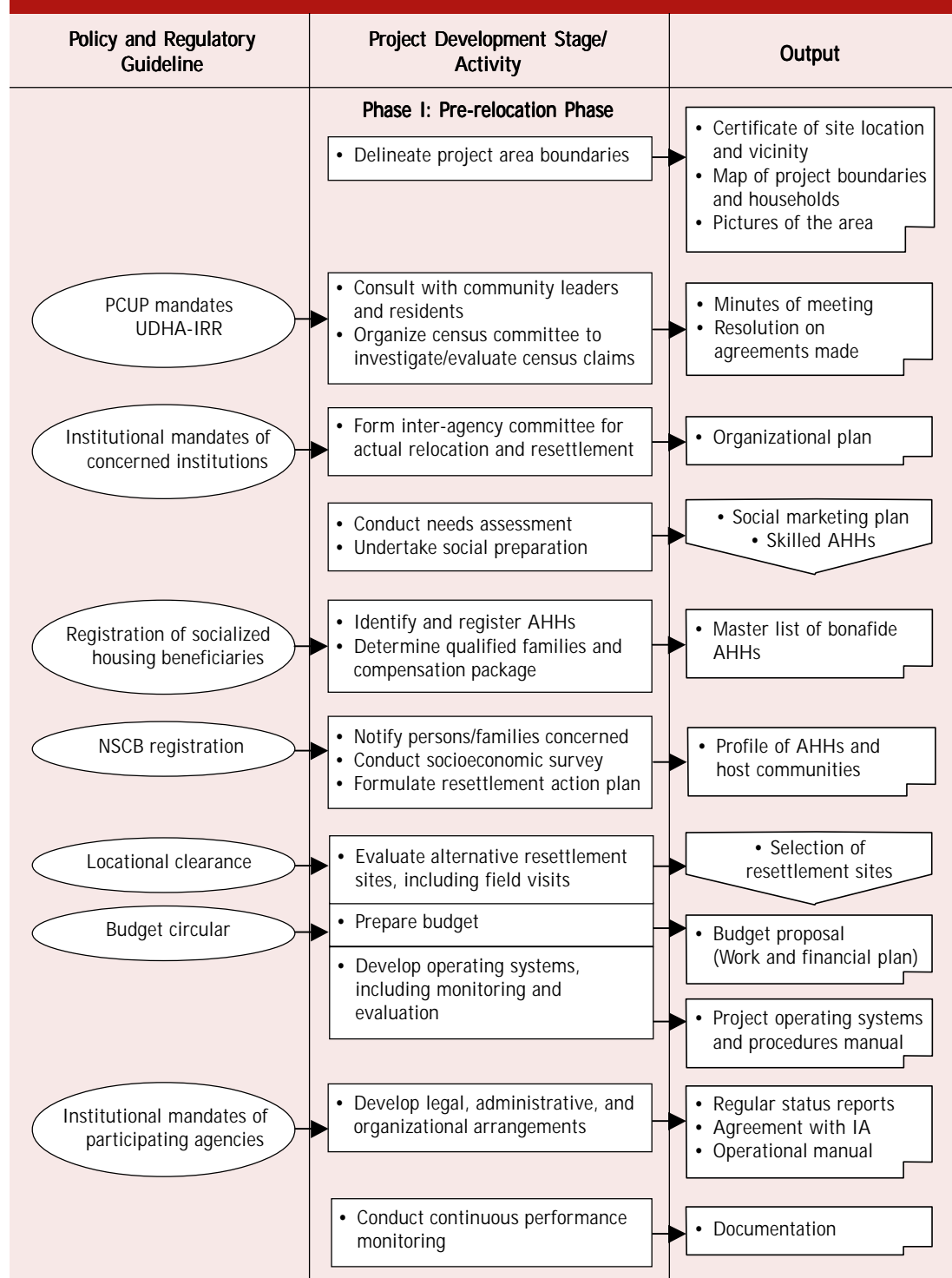
Workshop Discussion and Conclusion

The next step is for the guidelines to be made a part of government policy through official promulgation under law or regulation. An interesting question that arose in discussion was whether NEDA saw a need for a special organization designated as the custodian and monitor of implementation of the guidelines once they are promulgated. It was pointed out that the existing oversight organizations concerned with urban and housing issues did not have a sufficiently wide mandate to perform this role for all cases of resettlement. As a result a new body has been proposed. Other issues that the workshop raised and on which further study might be warranted, included:

- Are uniform approaches better than sectoral or project level ones?
- Should there be any form of cost recovery when resettlement is of an involuntary nature?
- What form of organization should be charged with oversight and monitoring responsibilities for the policy?
- The resources (personnel and finance) available to support such resettlement need to be kept under review.

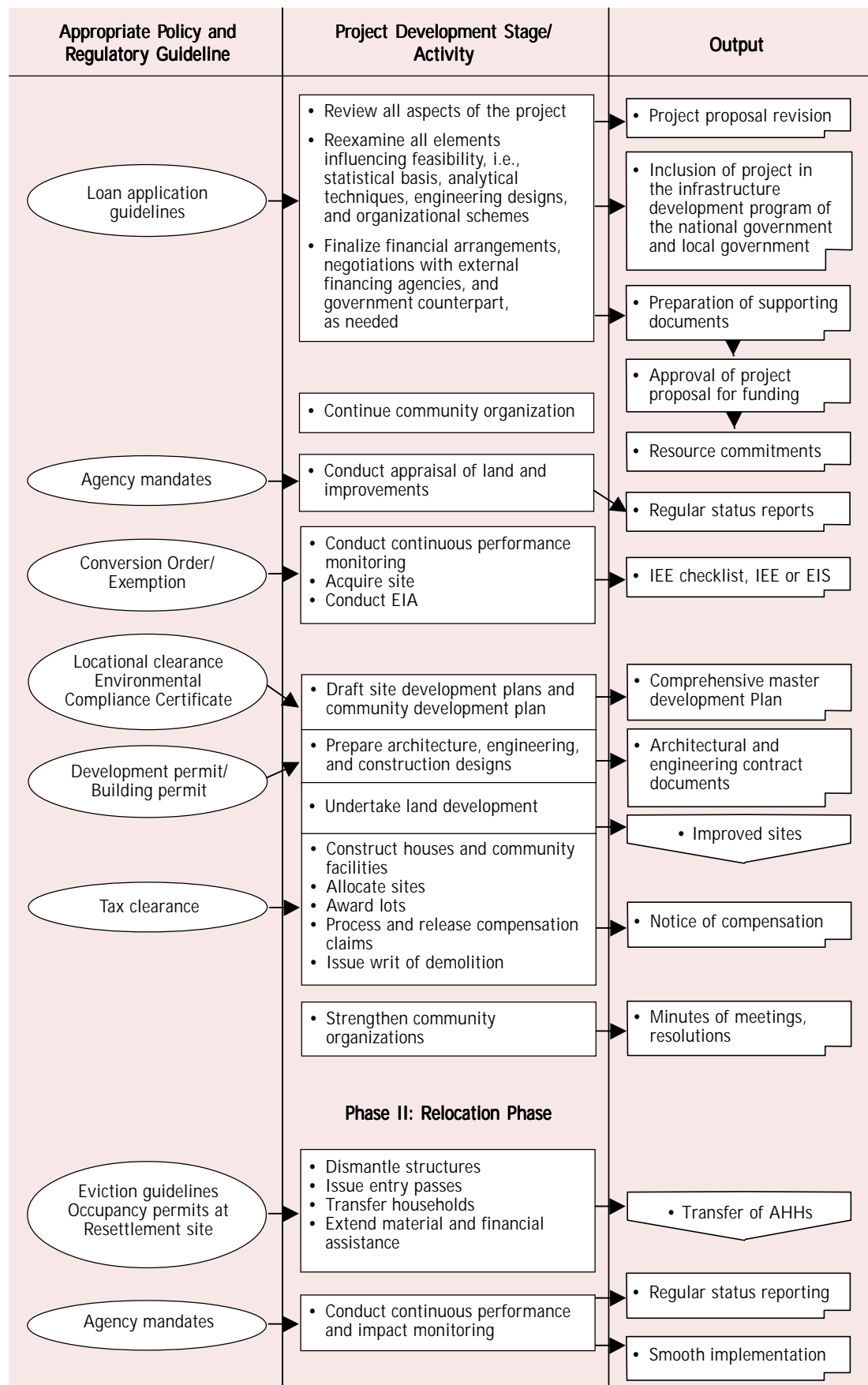
The guidelines developed by the consultants have been carried through to a highly operational level through the inclusion of likely criteria for success in each phase or element. The documentation developed by NEDA provides a model that could be helpful to others contemplating the preparation of national guidelines. They are being developed taking into account the approaches followed by ADB and the World Bank.

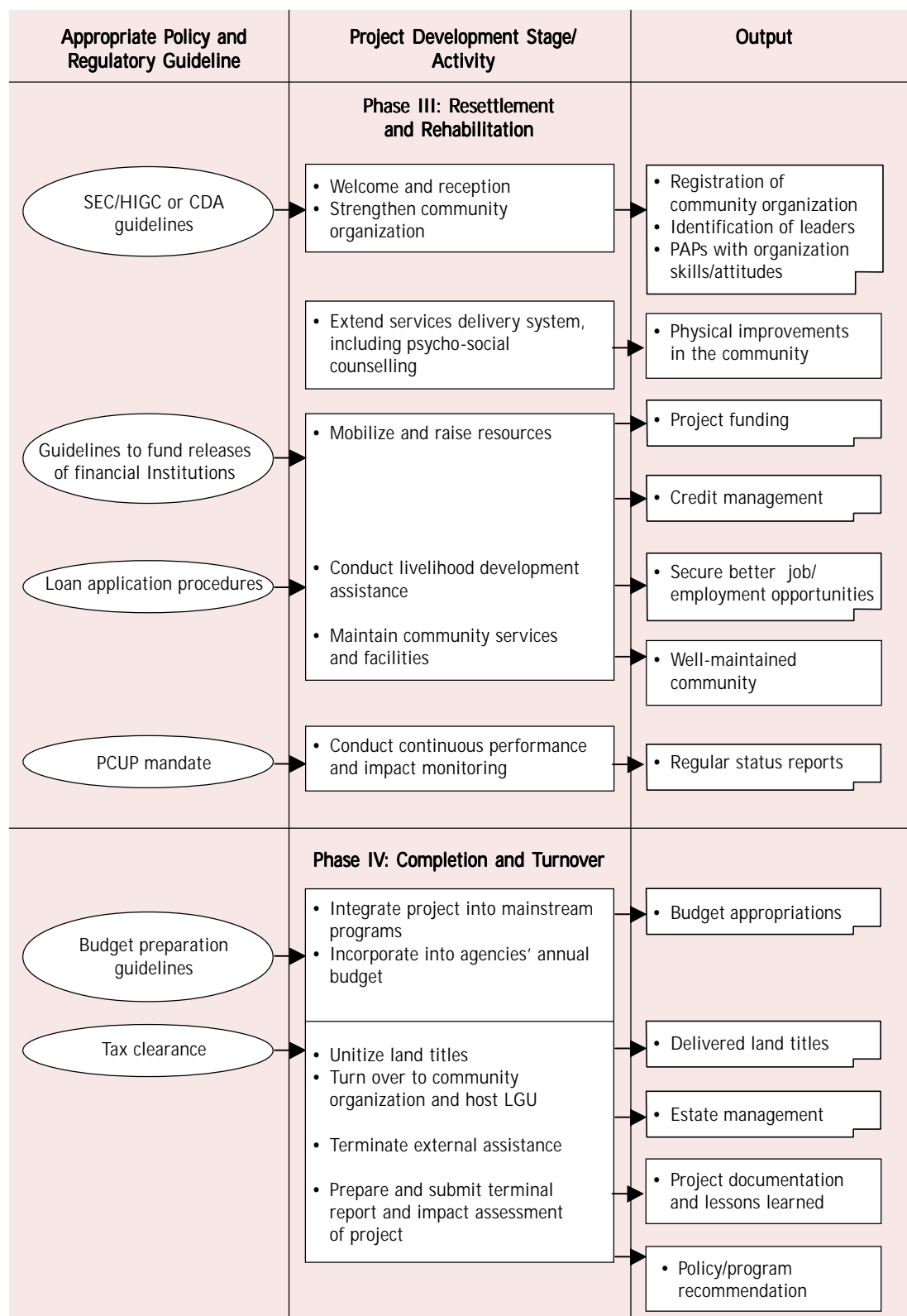
Figure 4
Flowchart of Applicable Policies and Regulatory Systems
vis-à-vis Project Development Stages



Note:  Document  Non Document

Source: National Economic Development Agency, Government of the Republic of the Philippines Resettlement Guidelines Prepared by SEA Consultants Inc., 1998.





AHH = affected households, CDA = Cooperative Development Authority, EIA = Environmental Impact Assessment, EIS = Environmental Impact Statement, HIGC = Housing Insurance Guarantee Corporation, IA = Implementing Agency, IEE = Initial Environmental Examination, IRR = Implementing Rules and Regulations, LGU = local government unit, PAP = project-affected person, PCUP = Presidential Commission on the Urban Poor, SEC = Securities and Exchange Commission, UDHA = Urban Development Housing Act.