

ADB

Capacity Building for
Resettlement Risk Management

Final Report

November 2007

Asian Development Bank



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Regional and Sustainable Development Department

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CAPACITY BUILDING FOR RESETTLEMENT RISK MANAGEMENT SERIES

This publication was prepared in conjunction with an Asian Development Bank (ADB) regional technical assistance (RETA) project on Capacity Building for Resettlement Risk Management, covering three developing member countries in the region, namely, Cambodia, People's Republic of China (PRC), and India.

The RETA aimed to generate specific knowledge based on country studies to identify risks and improve the capabilities of ADB and developing member countries to address impoverishment risks associated with involuntary resettlement.

The series comprises the following outputs of the RETA:

1. Capacity Building for Resettlement Risk Management: Final Report by Sam Pillai
2. Capacity Building for Resettlement Risk Management: Cambodia Country Report by Chea Sarin
3. Capacity Building for Resettlement Risk Management: India Country Report by Parthophriya Ghosh
4. Capacity Building for Resettlement Risk Management: People's Republic of China Country Report by the China Land Surveying and Planning Institute
5. Capacity Building for Resettlement Risk Management: People's Republic of China Thematic Reports by the China Land Surveying and Planning Institute
 - Thematic Report No. 1: The Scope of Land Expropriation Rights
 - Thematic Report No. 2: Asset Valuation in Land Acquisition and Compensation
 - Thematic Report No. 3: Improving Resettlement Policies and Practices to Manage Impoverishment Risks
 - Thematic Report No. 4: Reforming the Legal and Policy Framework for Land Acquisition to Manage Impoverishment Risks
6. Handbook on Resettlement for Transport Projects in Cambodia by Chea Sarin
7. Handbook on Resettlement for Highway Projects in India by Parthophriya Ghosh
8. Risk Analysis and the Risks and Reconstruction Model in Population Resettlement: Training Course by Professor Michael Cernea
9. Compensation and Valuation in Resettlement: Cambodia, People's Republic of China, and India by Rural Development Institute
10. The Impoverishment Risks and Reconstruction Model: Resettlement and Benefit-Sharing by Professor Michael Cernea

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Abbreviations

ADB	Asian Development Bank
AP	affected person
CPR	common property resource
DMC	developing member country
EA	executing agency
IRC	Inter-ministerial Resettlement Committee
LAA	Land Acquisition Act
Lao PDR	Lao People's Democratic Republic
NGO	nongovernment organization
NHAI	National Highways Authority of India
NPRR	National Policy on Resettlement and Rehabilitation
PRC	People's Republic of China
RETA	regional technical assistance
RP	resettlement plan
RRM	risks and reconstruction model
STDP	Southern Transport Development Project

Definitions of Risks and Reconstruction Model's (RRM) Terms

Landlessness

Unless productive land is given as replacement for acquired land or viable sustainable livelihoods are provided, affected people are impoverished.

Joblessness

When development projects deprive people of employment and no reliable alternative employment and training are provided, they end up in poverty.

Homelessness

Where compensation is not paid for acquired homes, or building plots are not given, or compensation is insufficient to replace structures, affected families can suffer loss of a basic human right—shelter.

Food Insecurity

Sudden drop in food production due to land acquisition can lead to malnutrition and a propensity to disease.

Marginalization

Displaced people are often unable to use their traditional skills in their new locations causing a decline in their social status and confidence.

Increased Morbidity and Mortality

Relocation to areas that expose affected people to parasitic and water-borne diseases and where basic facilities, such as safe drinking water and sanitation are inadequate, leads to higher incidence of disease and even death, especially among infants and the elderly.

Loss of Access to Common Property

Failure to provide alternative solutions to restore benefits that poor and landless people derive from common property like forests, water bodies, and grazing land can cause poverty.

Social Disarticulation

When affected people are dispersed during resettlement, existing social structures and links are broken leading to a loss of vital informal supportive networks.

Executive Summary

Regional technical assistance (RETA) 6091: Capacity Building for Resettlement Risk Management is a continuation of the Asian Development Bank's (ADB) efforts to improve involuntary resettlement in the developing member countries (DMCs). The RETA is designed to improve understanding resettlement risks specifically related to implementation and country-specific resettlement issues, asset valuation, and capacity development. The RETA raises key issues with regard to addressing potential impoverishment risks through, asset valuation to pay replacement value, better definition of impacts especially on vulnerable groups, and more effective income restoration approaches.

Michael Cernea's risks and reconstruction model (RRM) identifies eight risks in involuntary resettlement that, when identified early in the project cycle, can help plan appropriate risk reduction strategies. These risks are: landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property resources, and social disarticulation.

Three countries participated in the RETA: Cambodia, the People's Republic of China (PRC), and India. The outputs from the RETA include three country reports, four thematic papers on selected topics from the PRC, two handbooks on resettlement for the highway/road sector (Cambodia and India), a paper discussing asset valuation, a set of training modules on RRM, and a paper on impoverishment risk by Dr. Michael Cernea. Case studies and field research provided inputs for the country reports.

National workshops were held in each participating country to promote deeper understanding among stakeholders of issues involving involuntary resettlement, to validate the findings of the country studies, and to learn from project implementation experience.

The three RETA countries participated in a regional workshop held in Manila in December 2005, attended by 60 participants. The keynote speaker,

Dr. Walter Kalin, Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, called for a rights-based approach to resettlement. Cambodia's presentation pointed out that involuntary resettlement experience is quite recent and the necessary legal and policy frameworks are being developed. In India, land acquisition and compensation are based on two key pieces of legislation, the Land Acquisition Act (LAA) and the National Highways Act (applicable to the national highway sector). The National Policy on Resettlement and Rehabilitation (NPRR) has, for the first time, formally recognized the need to assist people affected by involuntary resettlement. In the PRC, serious efforts have been made over the last 7 years to study land acquisition and land management, with a view to strengthening the Land Administration Law, to provide greater support to affected people. Decree 28, approved in 2004, improves procedures for transparency. Public consultation and measures for providing adequate compensation to ensure affected people are able to restore their livelihoods. Professor Cernea suggested that resettlement practice should shift from mitigation to reestablishing the economic resource base of affected persons (APs). He called for a development approach to resettlement, with adequate funding for essential investments needed to address potential risks to affected people. Presenting the asset valuation study, Dr. Ping Li pointed out that there were structural problems with the approach to compensation and valuation methods in all three countries. He presented several options for valuing assets to ensure that APs receive replacement value. The main basis of his proposal is the willingness to accept principle where APs have the option of a negotiated settlement agreeable to both parties.

Cambodia's country report has proposed that the Government adopt the draft national resettlement policy. Until that is done, the Resettlement Handbook prepared under this RETA can be used to guide resettlement in the road sector. The roles and responsibilities of

government bodies involved in projects with involuntary resettlement must be clarified. Appropriate training in resettlement should be given to the personnel in these agencies. External monitoring agencies must be free from pressures from Government. Project authorities should be more transparent in handling resettlement and should provide adequate information to APs about the project and their rights under the resettlement policy. Grievance redress mechanisms must be organized at the grassroots level, with the participation of nongovernment organizations and APs.

In **India**, compensation at replacement value is more likely to be paid in projects which are financed or co-financed by financial institutions that have policy requirements for involuntary resettlement. The difference between compensation and replacement value is possibly about 2.5 times. No laws clearly define the methodology to arrive at compensation and replacement value. “Replacement value” should be substituted for “market value” in the LAA. Rules should be prepared under the LAA to clearly set out the valuation procedure to determine replacement value. Recently land has been acquired through direct negotiation with APs in a road sector project in Uttar Pradesh. The process took only 5 months. National Highways Authority of India has started using this method for its Allahabad Bypass project. Weak planning and inadequate funding are responsible for poor outcomes in income restoration. To improve planning, socioeconomic surveys have to be more comprehensive to generate specific data on the social and economic status of project-affected people. APs should be involved in this process. Gender dimensions of displacement have to be carefully assessed to formulate appropriate responses. The positive elements of NPRR should be integrated with the LAA. Risk analysis should be included in resettlement planning since the case studies clearly show that the risk of not restoring the livelihoods of affected people is real in highway projects.

The **PRC** studies covered the following topics: (i) the implementation of land acquisition with particular reference to the application of “public interests” and proposing three reform plans for land acquisition, and providing guidelines for the compilation of land acquisition literature; (ii) valuation methods for land acquisition compensation, recommending some fundamental principles on compensation in light of the PRC’s land ownership system, socioeconomic development; and taking into consideration factors such as the land market, land supply, and demand and

location when calculating compensation, based on investigations and pilot work; and (iii) resettlement policies and risk management of poverty. Through analysis of existing policy measures, the government’s role has been clarified in the resettlement of displaced farmers, especially in the improvement of APs’ housing conditions, job training, preferential employment policies, and relevant social security coverage. The risks facing displaced farmers have been analyzed; recommendations on risk management of displaced farmers have been made.

The studies on asset valuation in resettlement have identified that:

- (i) Implementation of land acquisition and resettlement in all three countries fails to prevent impoverishment.
- (ii) Significant legislative changes as well as improvements in practice are required to prevent adverse impacts on affected people.
- (iii) This has to be achieved through frank dialogue among governments, international agencies, civil society, and affected people.

Specific recommendations have been made for each RETA country to improve its asset valuation methodology for compensation in resettlement projects.

The studies have shown that two additional categories of risks associated with involuntary resettlement need to be addressed:

- (i) Legal and Policy Risks
 - Absent or weak political commitment, absent or inadequate legislative framework (incompatible with donor policies), absent or weak official commitment to address involuntary resettlement.
- (ii) Organizational and Management Risks
 - Insufficient resources (financial and human);
 - Weak capacity of executing agencies (EAs);
 - Poor resettlement planning; and
 - Poor implementation, monitoring, and evaluation with no mechanisms for follow through.

ADB experience with RRM risks has been identified and the adequacy of ADB policy and planning guidelines has been assessed. ADB's current position in relation to the additional resettlement risks identified above has also been analyzed. Commitment at the highest level, appropriate legislation, committed EAs supported by adequate financial and human resources are considered essential requirements to ensure that involuntary resettlement is successfully planned and implemented. There are gaps between ADB's resettlement policy and the legislative provisions for land acquisition and compensation in all three countries, and this is a major challenge for project planning and implementation. The weaknesses in resource allocation, staff deployment, resettlement planning, and implementation have to be addressed by DMC governments through greater commitment and appropriate policies.

This RETA suggests that ADB should review its involuntary resettlement policy, including all related guidelines and operating procedures to ensure that: (i) compensation standards more closely reflect market realities by requiring that replacement values be paid; (ii) income restoration for APs is improved;

(iii) resettlement planning is done more comprehensively especially by improving the analysis of the socio-economic conditions of affected people; (iv) monitoring and evaluation procedures are enforced more strictly, and (v) grievance redress processes are made more effective. Another significant inference from the RETA is that ADB staff should review resettlement implementation at more frequent intervals, especially in countries that do not have the expertise to plan and implement involuntary resettlement. There are significant deficiencies in two areas in all three RETA countries: (i) inappropriate legislative and policy frameworks, and (ii) weak organizational and management capacity. Loan covenants' provisions on ADB resettlement policy are not being met. To address this fundamental challenge requires commitment at the highest levels of government, so that it can lead to action in the form of better legislation, greater involvement of senior officials, increased human and material resources for resettlement, and finally to sound resettlement planning and implementation.

The countries for their part should seriously address the issues identified in this RETA to improve involuntary resettlement.

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I. Introduction

A. Background and Objectives

The Asian Development Bank's (ADB) 1995 Policy on Involuntary Resettlement requires that people involuntarily affected by development projects should not only be able to restore their income levels but, where they are poor and/or vulnerable, they should be provided with special assistance to improve their living standards. This is in conformity with ADB's focus on poverty reduction.

Infrastructure development is essential for economic growth in the developing member countries (DMCs). However, population growth and land scarcity lead to involuntary resettlement whenever large projects are undertaken. When this happens, affected people face varying degrees of risk, depending on the scale of displacement. ADB's own studies have shown that while its policy had significantly improved compensation for lost assets and helped in income restoration and enhanced institutional capacity in executing agencies (EAs), about a third of those affected by projects in Bangladesh, Indonesia, and the Philippines did not have their incomes restored after resettlement.¹ These studies showed that social investigation during project preparation was weak and potential impoverishment risks were not fully identified, resulting in inadequate income restoration. This led to recommendations to improve asset valuation methods to pay replacement value to affected persons (APs) and to better definition of impacts especially on vulnerable groups. Greater attention to income restoration measures was also proposed.

The Risks and Reconstruction Model (RRM) is considered a useful approach to identify and manage resettlement risks.² The model suggests eight risks associated with involuntary resettlement that, when identi-

fied early in the project cycle, can help plan appropriate risk reduction strategies. These risks are: landlessness, joblessness, homelessness, marginalization, increased morbidity and mortality, food insecurity, loss of access to common property resources (CPRs), and social disarticulation.

This regional technical assistance (RETA) was designed to generate instruments needed to address resettlement risk management, asset valuation, and livelihood restoration. Three countries participated: Cambodia, the People's Republic of China (PRC), and India. The outputs from the RETA include three country reports, four thematic papers on selected topics from the PRC, two handbooks on resettlement for the highway/road sector (Cambodia and India), a paper on asset valuation in involuntary resettlement, a set of training modules on RRM, and a paper on impoverishment risk by Dr. Michael Cernea. Case studies and field research provided inputs for the country reports.

B. Scope of Work

The following activities were carried out in each participating country:

- (i) Identified key stakeholders;
- (ii) Reviewed data on involuntary resettlement as applied to risk management;
- (iii) Identified gaps, risks, and options for research in sector/project data;
- (iv) Identified causes and people at risk;
- (v) Identified resource, policy, gender specific constraints;
- (vi) Proposed possible solutions;
- (vii) Planned and conducted research in each country;
- (viii) Prepared reports incorporating the findings; and
- (ix) Planned and conducted national workshops.

¹ Asian Development Bank. 2000. *Special Evaluation Study on the Policy Impact of Involuntary Resettlement*. Manila. Available: www.adb.org/Evaluation/reports/ses-resettlement.asp

² Cernea, Michael M. 1997. The Risks and Reconstruction Model for Resettling Displaced Populations. In *World Development*. 25 (10).

C. RETA Countries

Information on the focal agencies, contact persons, and local consultants in each country that participated in the RETA is given below:

1. Cambodia

Focal Agency: Ministry of Economy and Finance

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2. India

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India

3. People's Republic of China

Focal Agency: Ministry of Land and Resources

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II. Workshops

A. National Workshops

National workshops were held in each participating country to promote deeper understanding among stakeholders of issues involving involuntary resettlement, to validate the findings of the country studies, and to learn from project implementation experience.

1. Cambodia

The workshop was held in Phnom Penh on 30 August 2005. Participants included government officials, donor agency representatives, APs, nongovernment organization (NGO) representatives, and journalists. Two case studies were presented and issues relating to resettlement planning, implementation, monitoring, and evaluation were discussed. International consultants presented a paper on asset valuation outlining approaches that other countries adopted, to pay fair compensation for acquired land. At the end of the workshop, the following observations were made:

- (i) Involuntary resettlement is a new experience in Cambodia and the Highway 1 Project is the first project that required adoption of ADB's involuntary resettlement policy.
- (ii) Cambodia does not have the necessary human resources to plan and implement resettlement.
- (iii) Cambodia does not have a legal framework for land acquisition and resettlement and the recent draft resettlement policy prepared with ADB technical assistance should be reviewed and adopted. The Royal Government of Cambodia is committed to developing a resettlement policy and looks forward to continued ADB support for this effort.
- (iv) The current institutional structure for resettlement where the Inter-ministerial Resettlement Committee (IRC) deals with all aspects of resettlement needs to be changed to assign planning and implementation responsibilities to EAs.

2. India

The national workshop was held in New Delhi on 26 August 2005 and was designed to promote better understanding among stakeholders—planners of resettlement, implementing agencies, and APs—of involuntary resettlement issues, particularly resettlement implementation issues and how to make resettlement experience of project-affected persons a development opportunity for them. The findings of the country study, including the case studies, were discussed in this context together with the lessons learned. The draft of the Resettlement Handbook was also presented and discussed. The workshop's main focus was on land acquisition, compensation, income restoration, and assistance to non-titleholders. It was concluded that:

- (i) land acquisition plans should be better prepared to avoid subsequent additional acquisitions during highway construction,
- (ii) compensation for assets should be paid at replacement value,
- (iii) non-titleholders should be given special assistance to restore their livelihoods, and
- (iv) income restoration should be improved through better planning and allocation of adequate resources.

3. People's Republic of China

The national workshop was held in Beijing on 16 and 17 August 2005 and was attended by officials of government ministries and departments, ADB officers and representatives, and international and national professionals. The following conclusions were reached at the workshop:

- (i) With the rapid growth of the PRC economy, the social security of APs becomes a development issue as important as urbanization and industrialization.
- (ii) The outputs of the RETA will be used for policy development, and to examine risks in

- resettlement. Possible risks in different areas and sectors must be investigated; important tools to control these risks are also required.
- (iii) Different groups face different risks. Thus, appropriate resettlement modes should be adapted to these varying conditions.
 - (iv) In resettlement, there is no demand analysis and no tracking of resettlement strategies, such as training and employment, to ensure that the trained people can be employed continuously. Therefore, analyzing in more detail the social and economic status of different groups and finding sustainable ways for resettlement are necessary.
 - (v) The current compensation standard is very low and insufficient. It is necessary to determine how to pay compensation for land, and calculate the value of lost properties in a proper way.
 - (vi) How to define “public purpose” is also an important topic for discussion.
 - (vii) Farmers face very high risks in land acquisition. Vulnerable groups are often affected. The issue needs rethinking to make appropriate suggestions that are suited to the current situation in the PRC.

B. Regional Workshop

The regional workshop under the RETA was held at the ADB headquarters in Manila on 8 and 9 December 2005. There were more than 60 participants from Cambodia, the PRC, and India as well as various bilateral, multilateral institutions, and NGOs. These participants were representatives of participating national agencies, national consultants, NGOs, bilateral and multilateral donors agencies with interest and expertise on managing involuntary resettlement risks in development projects. In addition were specialist international consultants in resettlement risk management and asset valuation. In his keynote address, Dr. Walter Kalin, Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, called for a rights-based approach to resettlement to ensure that people’s basic needs are met. He pointed out that the main guiding principle should be that justifiable and compelling reasons exist for displacement for public purpose (Appendix).

Country papers were presented from the three RETA countries. In Cambodia, involuntary resettlement

experience is quite recent and the legal and policy frameworks are being developed. In India, land acquisition and compensation are based on two key pieces of legislation, the Land Acquisition Act (LAA) and the National Highways Act (applicable to the national highway sector). In 2003, the government announced the National Policy on Resettlement and Rehabilitation (NPRR),³ which for the first time formally recognized the need to assist people affected by involuntary resettlement. However, there is a need to reconcile the provisions of NPRR with those of the LAA. Two key findings on highway projects in India were that: (i) Income restoration strategies need improvements in both planning and implementation. Adequate resources should also be provided for this purpose. (ii) Gender aspects do not receive adequate attention. The PRC exerted serious efforts over the last 7 years to study land acquisition and land management, with a view to strengthening the Land Administration Law, to provide greater support to affected people. A notable recent initiative has been Decree 28, approved in 2004, which improves procedures for transparency, public consultation and measures for providing adequate compensation to ensure that affected people are able to restore their livelihoods. The main challenges in the PRC were identified as: (i) rationalizing development needs to protect farmlands and livelihoods, (ii) clearly defining “public purpose” and limiting the current practice of using “eminent domain” to acquire land for private development, (iii) ensuring that compensation is sufficient to restore livelihoods, and (iv) improving transparency and strengthening people’s participation in planning and implementing resettlement.

Professor Michael Cernea suggested that resettlement practice should shift from mitigation to reestablishing the economic resource base of APs. He called for a development approach to resettlement, with adequate funding for essential investments needed to address potential risks to affected people.

Dr. Ping Li pointed out that there were structural problems with the approach to compensation and valuation methods in all three RETA countries. He presented several options for valuing assets so that APs receive replacement value. The main basis of his proposal is the “willingness to accept” principle where APs have the option of a negotiated settlement agreeable to both parties.

³ The National Policy on Resettlement and Rehabilitation for Project-Affected Families, 2003, was superseded by the National Policy on Rehabilitation and Resettlement issued by the Union Cabinet in 2007.

III. Country Studies

This section summarizes the key findings and recommendations of the three country reports prepared under this RETA.

A. Cambodia

Two ADB-assisted infrastructure projects that had involuntary resettlement provided the case studies for the country report. The resettlement audit of the Phnom Penh to Ho Chi Minh City Highway Improvement Project (Loan 1659-CAM) served as the main case study. The initial findings of the ongoing community needs assessment in the two adjoining relocation sites in Kab Srov (Loan 1824-CAM: Emergency Flood Rehabilitation Project, Kab Srov Dike Subproject) augment the insights and lessons learned from the resettlement audit of Loan 1659-CAM.

The country report draws a number of lessons revolving around Cernea's "decapitalization", risks that may be applicable to future infrastructure projects. Moreover, the audit of Highway 1 Project has made it possible to formulate a list of recommendations for adoption by Government to address outstanding resettlement issues.

Highlights of the results of the case study of Highway 1 Project are (i) the October 1999 Cambodia Resettlement Implementation Plan, was insufficient to meet policy requirements, (ii) resettlement work and civil works were separated, with IRC assuming the responsibility for planning, implementing, and monitoring resettlement, confining the road project's EA to civil works; (iii) the provisions of the Cambodia Resettlement Implementation Plan were not consistently followed, depreciation and the value of salvaged materials were deducted from the compensation given for affected structures, affected trees and crops in the right of way were not paid for; income loss arising from business disruption during resettlement was insufficiently addressed; landless APs losing residential and/or productive land were not provided replacement

lots; grievance redress mechanisms were not set up; and (iv) with IRC in possession and control of all data and records on resettlement in Highway 1, it was not possible to assess the actual magnitude of social displacement.

The following recommendations are made based on the case studies:

- (i) Government must adopt the proposed National Resettlement Policy, to be codified later into a subdecree;
- (ii) Since the passage of the resettlement subdecree is expected to take time (at the earliest in 2008), Government should apply in the interim the proposed Resettlement Handbook prepared under this RETA;
- (iii) The roles and responsibilities of government bodies involved in various capacities in projects with involuntary resettlement should be clarified. Appropriate training in resettlement should be given to the personnel in these agencies;
- (iv) The external monitoring agency (EMA) should be free from pressures from Government, specifically from IRC. EMA should be contracted out of project funds and by the donor agency;
- (v) Project authorities should be more transparent in handling resettlement and should provide adequate information to the APs about the project and their rights under the resettlement policy; and
- (vi) Grievance redress mechanisms must be organized at the grassroots level, with the participation of NGOs and APs.

In addition to the country report, the Cambodia RETA team also prepared a handbook on resettlement for the road sector, a list of resettlement resources, and a case study report on Highway 1.

B. India

Currently in India, compensation at replacement value is more likely to be paid in projects which are financed or co-financed by financial institutions that have policy requirements for involuntary resettlement. Since “compensation at market value” is always less than the replacement value, the difference is paid by the National Highways Authority of India (NHAI) as resettlement assistance. Survey results show that the difference between compensation and replacement values possibly is about 2.5 times. Recently, land has been acquired through direct negotiation with APs in a road sector project in Uttar Pradesh. The process took only 5 months. NHAI has started using this method for its Allahabad Bypass project.

Compensation and other additional payments to APs in the highway sector are being made separately, and a big time lapse exists between these payments. Procedural requirements to prepare micro plans are the main cause of this delay. Micro plans are procedures adopted by NHAI and not a requirement of ADB.

Income restoration (IR) measures must be based on productive income-generating activities. Weak planning and inadequate funding are responsible for poor outcomes in income restoration in the case study projects. The current procedure for socioeconomic surveys has to be improved to generate more specific data on the social and economic status of project-affected people, so that better planning can be done. APs should be involved in this process. Training of APs for new jobs has to be better planned to ensure that they secure sustainable employment. A majority of APs in the case studies were dissatisfied with the training they received. Some useful lessons have been learned in relation to income restoration: Direct employment, rehabilitation grants, and support self-employment have been adopted in other sectors with varying degrees of success and there is recognition of the need to assist affected people to reestablish themselves. The basis on which the various allowances and other payments are decided on these projects is not very clear, and in most instances does not appear to have much relationship to the actual needs of the APs. Focused efforts to assist affected women have also proved effective. State government policies to reserve employment for APs are commendable. Providing cash grants to APs could have adverse impacts if no professional assistance to help them set up viable enterprises is available. If the productive potential of the project is used for

income generation through group-based activity, the sustainability of the program will be better.

At headquarters, NHAI’s environmental and social aspects are handled by the Environment and Social Development Unit (ESDU) headed by the General Manager (Environment) which is responsible for preparing and implementing resettlement plans (RPs) along with obtaining environmental clearances, and preparing and implementing management plans. There are only three officials for this work. Given the skeleton staff, NHAI outsources the preparation and implementation of RPs, but coordinates the activities.

To capture the gender dimensions of displacement realities and carry out gender-sensitive planning and implementation, the livelihood, risk, and vulnerability analyses need to be carried out with a gender perspective.

Land acquisition under the National Highways Act, 1956, has not proceeded at a fast enough pace as originally envisaged. The need to acquire additional land and the complexities of disbursement procedures are delaying payment of compensation to titleholders.

No laws clearly define the methodology to arrive at compensation and replacement value. The productivity method should be used instead of the current system.

The positive elements of NPRR should be integrated with the LAA. Replacement value should be substituted for market value in the LAA. Rules should be prepared under the LAA to clearly set out the valuation procedure to determine replacement value.

Risk analysis should be included in resettlement planning since the case studies clearly show that the risk of not restoring the livelihoods of affected people is real in highway projects.

The Indian RETA team also prepared a resettlement handbook for the highway sector.

C. People’s Republic of China

The country report was prepared based on existing research, pilot project experience, and an examination of other countries’ progressive concepts and practices in the management of impoverishment resulting from displacement and involuntary resettlement. The authors of the report conducted detailed studies on (i) the extent and scope of land expropriation in the PRC, (ii) national and international resettlement policies and procedures, (iii) and the risk management of poverty. Several recommendations have been made on the risk management of land acquisition and resettlement,

which can serve as the foundation for legislation, including the revision of the Land Administration Law and the drafting of Land Acquisition Regulations. The report covers the following:

- (i) Studies on the implementation of land acquisition, giving the theoretical definition of “public interests” compared with other countries’ definition of the concept, offering three reform plans for implementing land acquisition and relevant policies, and providing references for the compilation of land acquisition literature;
- (ii) Studies on the valuation methods for land acquisition compensation, putting forward some fundamental principles on land acquisition compensation in light of the PRC’s land ownership system, land-property relationship, socioeconomic development; and taking into consideration factors such as land market, land supply and demand, and land location when calculating compensation based on investigations and analyses on the compensation scheme in cities; testing and comparing four kinds of valuation methods;
- (iii) Studies on the resettlement policies and risk management of poverty: Through analysis of existing policy measures, the Government’s role has been clarified in the resettlement of displaced farmers, especially in the improvement of their housing conditions, job training, preferential employment policies, and relevant social security coverage; the various risks facing displaced farmers have been systematically analyzed; recommendations on the risk management

of displaced farmers have been made for the reference of national legislation in light of the relevant experience of ADB and the World Bank as well as specific studies.

Extensive land acquisition for public and private purposes has enabled rapid urbanization and industrialization in the PRC but has in turn required the involuntary resettlement of hundreds of thousands of people over the past decade. Involuntary resettlement, for many of those displaced, has exposed them to the risk of impoverishment due to the loss of land and other assets that adversely affects their ability to achieve secure livelihoods and alternative employment.

The present land acquisition system was created during the planned economy era, and thus cannot meet the demands of the current market economy. Three major problems have emerged: first, the right to acquire land has been exercised on a wide scale and in ways that often disregard genuine public interests; second, inappropriate valuation methodologies and other problems have resulted in low levels of compensation to those who lose assets as a result of land acquisition; and finally, resettlement policies have failed to guarantee farmers and other affected people the necessary long-term livelihood assistance. As a consequence, flawed land acquisition policy and resettlement practice have not only proved inefficient but have also exposed farmers whose land has been expropriated to the risk of impoverishment. Therefore, the Government should adopt rational and effective measures to resettle, compensate, and assist displaced farmers in a way that ensures they are protected from impoverishment risks and they have the necessary assets and resources to build sustainable livelihoods.

IV. Special Studies

A. Risk and Reconstruction Model: Training Course

Prof. Michael Cernea first proposed RRM as an analytical tool to be used to assess risks that can arise during involuntary resettlement in development projects. Eight specific risks were identified based on evidence from projects in a number of countries, notably in Brazil and the PRC.

The use of this model early in the project cycle—during project preparation—would help assess each of these risks and their intensities, so that appropriate measures could be designed for successful restoration of incomes and livelihoods of affected people. The key to achieving this objective is to refine the social assessment of involuntary resettlement to prevent, reduce, and mitigate risks. Four basic functions of this model are: (i) predictive role—to help identify what is likely to happen, (ii) diagnostic—to assess the nature and intensity of the risks, (iii) problem resolution—to address the risks, and (iv) research—to obtain information and further refine the model.

Four important questions to be answered in social analysis are:

- (i) What is to be done in social analysis?
- (ii) Who will do the social analysis?
- (iii) At what stage is the social analysis to be done?
- (iv) What should be the products of the social analysis?

The traditional approach to resettlement has mainly focused on “impacts” rather than “risks”. The IRR model calls for early identification of potential risks. These risks, as outlined earlier, comprise both social and economic risks. These should be fully described, explained, and carefully predicted. Then the project would be able to make appropriate provisions

to address the economic, social, equity, gender, and institutional aspects of resettlement. The emphasis is on moving risk discovery and analysis upstream in project preparation.

The steps in the IRR process are: (i) description of the project context; (ii) identification of risks; (iii) analysis of specific risks; (iv) planning for prevention/mitigation of risks; and (v) designing actions to address the risks and mobilizing the necessary resources (human, institutional, financial) to implement, monitor, and improve resettlement.

The management of risk is done at four levels:

- (i) Design level—resettlement planners who design project components;
- (ii) Operational level—managing the implementation;
- (iii) Strategic level—the project manager who balances all the components of a project; and
- (iv) Macro level—political decision makers at national level.

Depending on the scope of a project, implementing resettlement as a separate (stand-alone) project has advantages for risk management. In particular, it would allow greater focus on the theme “resettlement with development”. Criteria that may be used to decide this include size, sector, diversity, and intensity of potential risks. The World Bank has funded projects of this type.

Impoverishment in resettlement often results from poor compensation. The policy specification to “restore” livelihoods is vague and is difficult to measure. Another such term is “better-off”, again an imprecise description. These should be defined in measurable terms. Valuation methods need to be improved to ensure that affected people receive replacement value for their assets. However, even at replacement rate, compensation rarely provides adequate resources to improve livelihoods.

Resettlement components of projects should be subject to the same rigorous economic and sensitivity analysis as the main components. This would recognize that resettled people are primary stakeholders in a project who give up their lands and therefore deserve adequate compensation to prevent impoverishment and improve their livelihoods.

Both financial and institutional capacities should be strengthened for better resettlement. There should be adequate budgetary provision and qualified human resources to implement all the work associated with resettlement. Benefits generated by projects can be channeled to project-affected people.

B. Asset Valuation

This section summarizes the recommendations made by the international consultants (Rural Development Institute) for each RETA country.

1. Cambodia

Four main recommendations have been made: (i) introduce legal and policy reforms to protect poor people from being marginalized, (ii) clearly define “fair and just compensation”, (iii) ensure that lack of formal title to land is not a bar to compensation, and (iv) set up an independent adjudication body to address APs’ grievances.

2. India

Six recommendations have been made to improve compensation. They are (i) state governments to do land survey and land settlement in areas earmarked for projects to bring records up to date, (ii) establishing specific time periods for nonformalized occupants of land to be entitled to compensation, (iii) setting up expert tribunals to help establish compensation standards, (iv) requiring all projects to have an accessible third party appeal procedure, (v) compensation and resettlement assistance to be made in the joint names of both spouses, and (vi) providing large enough plots of land where “land for land” compensation is awarded.

For broader policy dialogue with the Government, the following proposals have been made: (i) integrate the progressive principles in NPRR into the LAA; (ii) replace “market value” with “replacement value” in the LAA; (iii) publish rules under the LAA on valuation methods; (iv) clearly define “interested persons” to

ensure unregistered occupiers are not deprived of compensation; (v) do not reduce compensation where land grants have been made to people; (vi) since the solatium is part of the compensation, interest payment should apply to this portion of the compensation as well; (vii) require competent authority to send acquisition notices to the registration authority; (viii) pay damages when acquisition lapses due to time limits; (ix) reduce taxes on land sale transactions; (x) conduct rigorous land valuation every 5 years for land registration purposes; and (xi) amend legislation at the state level to ensure panchayats are consulted in all areas where land acquisition and resettlement take place.

3. People’s Republic of China

The improvements recommended by the study are: (i) paying compensation for urban land use rights, (ii) taking back the power for expropriating urban land from developers and contractors, (iii) paying compensation to untitled/undocumented APs, (iv) introducing the replacement value method for calculating compensation and abolish the ceiling approach, (v) stopping land readjustment as it weakens farmers’ initiative to invest and increase productivity on their lands, (vi) ensuring that affected farmers directly receive 75–90% of the compensation paid, (vii) adopting the replacement value method for non-land assets, (viii) protecting women’s rights to compensation, (ix) clearly defining “public interest”; and (x) ensuring that APs have the opportunity to participate in the process including rights to appeal.

The PRC should enact the new policy as law—Document 28 being a progressive step in this direction—and establish special institutions to address APs’ grievances regarding land acquisition, such as a semi-judicial land tribunal system as in Hong Kong, China or Australia.

4. General

The following general observations have been made:

- (i) Implementation of land acquisition and resettlement in all three countries fails to prevent impoverishment.
- (ii) Significant legislative changes as well as improvements in practice are required to prevent adverse impacts on affected people.
- (iii) This has to be achieved through frank dialogue among governments, international agencies, civil society, and affected people.

V. Analysis of RETA Findings

A. Risk Reconstruction Model (RRM)

RRM identifies eight risks as being largely responsible for causing economic and social impacts on affected people. Despite growing evidence that these risks are present in projects, not all aspects of this model can be traced into the involuntary resettlement policies of donor agencies (ADB and the World Bank). The model has not been comprehensively used in resettlement planning and implementation.

These eight risks can be placed into two groups: *economic risks* and *social risks*. Landlessness, joblessness, homelessness, and food insecurity would fall under economic risks, and the other four under social risks. In practice, however, these economic risks are not always absolute in the sense that APs get no land, no jobs, and no homes; and suffer from absolute lack of food. Inadequate compensation and resettlement assistance (land given as compensation, employment opportunities, quality of housing, and income restoration strategies) cause relative impoverishment. Projects provide ample evidence of this.

Essentially, RRM does not address all causes of poor resettlement. Displacement adversely affects people in three ways: (i) livelihoods, (ii) shelter, and (iii) social and community integrity. This is a direct result of poor allocation of resources (management and financial) for resettlement planning and implementation. Official level commitment to ensuring that these resources are made available can only occur if national legislation and policies are clear on this issue. That will require political commitment at the highest level.

B. Additional Resettlement Risks

The empirical data from projects show that the following two broad categories of risks also deserve serious attention:

1. Legal and Policy Risks

- (i) Absent or weak political commitment, absent or inadequate legislative framework (incompatible with donor policies), absent or weak official commitment to address involuntary resettlement.

2. Organizational and Management Risks

- (i) Insufficient resources (financial and human)
- (ii) Weak capacity of EAs
- (iii) Poor resettlement planning
- (iv) Poor implementation, monitoring, and evaluation with no mechanisms for follow through.

Many resettlement issues identified in this RETA can be attributed to the absence of an adequate legislative and policy framework, which in turn is often the cause of the second set of risks (organizational and management). ADB has been working continuously with DMCs since 1998 to try and improve national policy frameworks for involuntary resettlement but success has been mixed. In only two countries was ADB instrumental in getting a clearly stated policy approved by government (Sri Lanka and the Lao People's Democratic Republic [PDR]). Follow-up progress in introducing necessary legislation has been slow. This is due to weak commitment at the political level. The Lao PDR and Viet Nam have also adopted lesser policy instruments. Commitment supported by essential legal and organizational frameworks is a key step to improving the livelihoods of affected people.

C. ADB Experience with Impoverishment Risks

Table 1 summarizes the incidence of risks in recent ADB projects using RRM categories. The research work

Table 1: Impoverishment Risks

Impoverishment Risks – as per RRM	Project Experience
A. Economic Risks	
Landlessness	In many projects, the severity of impact on incomes due to land acquisition is not well identified. Farming provides livelihood benefits that are inadequately captured in surveys. The PRC reports make this point very strongly. Often there is no control over quantity and quality of replacement land. Smaller, unsuitable plots are often given as compensation. Absolute “landlessness” is not the only issue; impoverishment often results from small, unsuitable, uneconomic plots being given as compensation. In the PRC, impacts are wider when “land readjustment” is done affecting host populations as well. Both in the PRC and India, land is generally scarce; hence, any attempt to provide replacement land is fraught with challenges. Locally available agronomic expertise is rarely co-opted for this work by resettlement planners.
Joblessness	Although identified in general terms, the quality of the data is often poor to adequately characterize employment losses and to develop appropriate strategies. The financial and human resources budgeted in the RP are inadequate. Assessment of self-employment and business incomes is weak and therefore compensation is poor, e.g., India–NHAI highways and the PRC projects. This again is not just a question of total “joblessness”. There are often degrees of impact—unsustainable jobs, job training not suited to needs, low skills among rural people that make them unemployable in urban settings. Support is lacking for unemployed APs after civil works are completed as documented in the PRC and Indian case studies. Responsibility for job creation and training are not clearly assigned, nor are they addressed from the outset.
Homelessness	Planning standards to adequately measure and value replacement of homes and structures is weak. Compensation is often insufficient to replace homes. Housing provided by government is generally poorly located and planned, and lack infrastructure. Where cash is paid, insufficient compensation can result in homes that are worse. Those opting to self-relocate lack the know-how to buy a plot, design a home, purchase appropriate materials, and hire qualified builders. Again this is not just a question of absolute “homelessness” but shows there are different degrees of this risk.
Food Insecurity	The surveys and RPs prepared on the basis of those data do not adequately address the risk of food insecurity in most projects. Monitoring reports do not effectively capture the incidence of this risk. This is a poverty issue and needs greater focus in resettlement planning and implementation. An example where an analysis was carried out to identify strategies to ensure food security was the Nam Theun 2 project in the Lao PDR. In the PRC projects where the smaller and/or poor quality plots may have been given as compensation, APs may not be able to produce enough food and may lack opportunities for off-farm employment.
B. Social Risks	
Marginalization	There are many instances where consultation has been inadequate or even absent. Efforts made to support social organization have not been promising (Cambodia Highway Project). Monitoring is weak and even where they are good, no follow-up action is taken. APs are rarely given the opportunity to approve RPs.
Morbidity / Mortality	Common especially in irrigation projects where water-borne diseases occur. Malaria, intestinal parasites, poor quality of drinking water, difficulty of access to health services have all occurred in projects. Health issues are not adequately addressed in RPs.
Access to CPRs	The weakness starts with the poor understanding of the role of CPRs, which then leads to inadequate planning of strategies, to provide appropriate responses. Communities are usually unable to provide leadership in this area.
Social Disarticulation	Common in projects where groups of people are dispersed to different areas during resettlement, thereby breaking traditional family and social links and support systems. This often happens in rural areas where replacement land is scarce.

ADB = Asian Development Bank, AP = affected person, CPR = common property resource, Lao PDR = Lao People’s Democratic Republic, NHAI = National Highways Authority of India, PRC = People’s Republic of China, RP = resettlement plan, RRM = risks and reconstruction model.

Source: Sam Pillai. Analysis of RETA 6091 Findings in Cambodia, India, and People’s Republic of China. 2005.

carried out for this RETA has demonstrated the presence of the four economic risks to varying degrees in projects. The quality of livelihoods after resettlement is largely a function of income, derived from farming, paid employment, or self-employment. Thus, productive replacement land, sustainable employment, and opportunities for engaging in business are vital to successful resettlement. In their absence, food insecurity becomes a real possibility. Failure to compensate for assets at replacement value can be a major factor causing economic impoverishment, including poor housing and services.

Whereas ADB policy and guidelines are generally adequate as far as the economic risks are concerned, it is in planning and implementation that improvements are needed. Although RPs generally meet the terms of reference, they are generally deficient in specific measures to address these risks. In particular, potential risks inherent in the measures proposed for livelihood restoration, especially their viability and sustainability, receive inadequate attention. Moreover, adequate resources are not allocated for this purpose and feedback received through monitoring and evaluation is not effectively used to take necessary corrective action. Poverty analysis is now a requirement in project planning; however, this should extend to an analysis of the potential risk of food insecurity and poverty that can arise due to resettlement.

The case studies for this RETA have not been able to identify specific instances of the four social risks but there is empirical evidence from a number of countries where each of these risks has been noted.

D. ADB Resettlement Policy and RRM Risks

ADB's policy adequately covers landlessness and joblessness. While the policy makes provision for ensuring adequate replacement housing, the timely delivery of relocation plots deserves emphasis, as it is often a major cause of project delays. Although the policy makes no special mention of food security, ADB's Operation Manual Section F2 (for use by ADB staff) requires poverty analysis as part of the resettlement planning process. Provision for addressing social disarticulation is implied in the overall policy objective; however, guidelines may have to be improved to include methods for doing this analysis. ADB policy has no provision for dealing with morbidity/mortality and CPRs. Its procedures refer to CPRs, but guidelines may have to be improved to expand on this.

E. The RRM Model vis-à-vis ADB and World Bank Policy Requirements for Resettlement Planning

Table 2 compares ADB's and the World Bank's resettlement policies as they relate to RRM risks. Both ADB and the World Bank policies are seen to need improvement to address food insecurity and CPRs. Additionally, ADB could improve policy on morbidity/mortality and social disarticulation.

F. Adequacy of ADB Policy to Address Legal / Policy Risks and Organizational/ Management Risks

Table 3 reviews the ADB's current position in relation to the additional resettlement risks identified above. Commitment at the highest level, appropriate legislation, and committed EAs supported by adequate financial and human resources are essential requirements to ensure that involuntary resettlement is successfully planned and implemented. ADB recognizes this and has been assisting DMCs improve their policy frameworks. A renewed effort is required in this important area. A gap between ADB's resettlement policy and the legislative provisions for land acquisition and compensation in DMCs exists and this continues to be a major challenge for project planning and implementation. Nonetheless, the efforts that are being made both at the national and the donor levels do show a reduction in the policy gap over the last 10 years. The weaknesses in resource allocation, staff deployment, resettlement planning, and implementation can be addressed if DMC governments take steps to improve the legislative framework.

G. Conclusions

Risk management in involuntary resettlement starts with good responsive policies and effective planning guidelines. This RETA has looked at two classes of risks. The incidence of RRM risks has been discussed and suggestions have been made to adapt ADB resettlement policy and guidelines to reflect this model more effectively.

However, the study shows that the eight RRM risks are not comprehensive. Five additional risks that are also important and need to be managed have been suggested.

Table 2: ADB and World Bank Policy Coverage of RRM Risks

RRM Risk	ADB Policy	World Bank Policy
Landlessness	√	√
Joblessness	√	√
Homelessness	√	√
Food Insecurity	Policy does not cover.	Policy does not cover.
Marginalization	√	√
Morbidity/Mortality	Policy does not cover.	√
CPRs	Policy does not cover.	OP 4.12 requires description of CPR and provision of alternative or similar resources to compensate for the loss of access to community resources (such as fishing areas, grazing areas, fuel, or fodder).
Social Disarticulation	Policy covers but needs better focus. Policy requires initial screening to identify presence of indigenous people and address this separately during resettlement planning. OM section F3 covers indigenous people.	Policy states that resettlement should be compatible with cultural preferences of the displaced persons. OP 4.10 covers indigenous people.

ADB = Asian Development Bank, CPR = common property resources, OM = Operations Manual, OP = Operational Policy, RRM = risks and reconstruction model.

Source: Analysis prepared by Sam Pillai based on Michael M. Cernea's *The Risks and Reconstruction Model for Resettling Displaced Populations in World Development*, 25 (10), 1997.

Table 3: Additional Impoverishment Risks vis-à-vis ADB Policy — Analysis and Conclusions

Impoverishment Risks	ADB Strategy / Policy	Conclusions	ADB Resettlement Planning Requirements	Conclusions
Absent/weak political, legislative, and official commitment	ADB recognizes that DMCs need a legislative framework conducive to successful involuntary resettlement. From 1998, it has been supporting DMCs' efforts to develop and adopt involuntary resettlement policy.	Results of efforts to encourage DMCs formulate policy have been somewhat encouraging. A review of work done so far and a renewed strategy would be useful.	RPs are required to identify gaps in policy and legislation that do not meet ADB's policy requirements and propose strategies to bridge the gaps.	Dialogue at the top policy-making level may be required to ensure that conflicts between national policies and ADB policy do not impede development.
Insufficient financial and human resources	ADB provides technical assistance to prepare RPs but country resources are often insufficient in both financial and (competent) human resource terms. Compensation has to be paid out of government resources.	Decisions are needed at the government level to give higher priority in allocating funds and to training and retaining professionals for resettlement work.	Technical assistance and specialist guidance are provided by ADB during resettlement planning.	National budgets are often under pressure and cannot meet project schedules for payment of compensation. Limited budget also results in lower compensation. Most EAs do not have career paths for social and environmental specialists.
Weak EAs capacity	ADB assists EAs strengthen capacity.	Assistance is given on a project-by-project basis and there is no continuity.	ADB requires DMCs to provide adequate staffing and resources for resettlement.	EAs that undertake infrastructure projects where resettlement is significant rarely have the required capacity to plan and implement resettlement.
Poor resettlement planning	ADB supports planning efforts. Usually EAs use consultants to prepare RPs. Again, no institutional capacity is built to ensure that improvements in planning ability are achieved.	Poor resettlement planning results in inadequate attention being paid to analyzing impoverishment risks as evident in the country reports.	ADB closely supervises and reviews resettlement planning for projects.	Resettlement planning capacity, especially in DMCs with significant resettlement, can be strengthened.
Poor implementation, monitoring, evaluation, and follow-through	ADB assists DMCs through technical assistance.	EAs rarely develop and retain institutional capacity on a sustainable basis.	ADB project supervision missions are required to monitor and follow-up.	Follow-up supervision of resettlement implementation by ADB may have to be strengthened.

ADB = Asian Development Bank, DMC = developing member country, EA = executing agency, RP = resettlement plan.

Source: Analysis prepared by Sam Pillai based on Michael M. Cernea's *The Risks and Reconstruction Model for Resettling Displaced Populations in World Development*.

25 (10), 1997.

VI. Recommendations

A. Asian Development Bank

The analysis of the RETA studies suggests that improvements are required to ensure that: (i) compensation standards more closely reflect market realities by requiring that replacement values be paid, (ii) income restoration for APs is improved, (iii) resettlement planning is done more comprehensively especially by improving the analysis of the socioeconomic conditions of affected people, (iv) monitoring and evaluation procedures are enforced more strictly, and (v) grievance redress processes are made more effective. Another significant inference from the RETA is that ADB staff should review resettlement implementation at more frequent intervals, especially in countries that do not have the expertise and the experience to plan and implement involuntary resettlement.

The resettlement issues identified in the RETA point to significant deficiencies in two areas in all three RETA countries: (i) inappropriate legislative and policy frameworks, and (ii) weak organizational and management capacity. Even though loan covenants require countries to conform to ADB resettlement policy, the studies show that this is not being achieved in many instances. Thus, ADB should address this fundamental challenge if it were to make a real impact on people affected by involuntary resettlement. However, this requires commitment at the highest levels of government, so that it can lead to action in the form of better legislation, greater involvement of senior officials, increased human and material resources for resettlement, and finally to sound resettlement planning and implementation. Without this, resettlement will continue to be an add-on to the main investment and thus receive much less attention.

B. RETA Countries

1. Cambodia

In Cambodia, there is already an appreciation that the priority is to get the legal framework in place to ensure fair and just compensation. The results of the Highway 1 Project have clearly demonstrated that without a legal basis, compensation was not provided in a comprehensive way and a significant number of APs are still waiting for relocation and compensation. Second, one institution currently plans, finances, implements, monitors, and arbitrates resettlement. This has not worked and was changed to permit EAs to have responsibility for the planning and implementation aspects of resettlement. Third, Cambodia needs to develop human resource capacity for this work.

2. India

In the highway sector, the National Highways Act is used to acquire land but this Act has not significantly hastened the acquisition process nor has it improved compensation. The LAA is still the basis for computing awards and it does not recognize replacement value. Consequently, statutory compensation is always less than real market value for acquired assets, although NHAI tops up compensation to achieve replacement value. NPRR recognizes that impoverishment can result from resettlement but the Government must integrate these positive elements into the LAA.

The National Highway Authority of India's ambitious highway development program involves significant land acquisition and resettlement but its human resource capacity to manage this huge responsibility is

very limited. It should seriously consider increasing the social science expertise at its head office. It should also encourage more NGOs to get involved in resettlement implementation, especially in income restoration programs, where weaknesses have been identified.

Greater attention must be paid to internal monitoring as well as external monitoring and evaluation as a means of identifying and addressing resettlement implementation issues. Grievance redress processes should be improved.

3. People's Republic of China

The country report and the four thematic papers have clearly identified the key resettlement issues in the PRC and proposed specific measures to address them: (i) wide scope of the current interpretation of “public interest” in land acquisition, (ii) low compensation

levels, and (iii) absence of guarantees of livelihoods for APs. The Government needs to review the phased strategy proposed for narrowing the scope of land acquisition with a view to implementing an appropriate plan. The recommendation made to diversify the current single resettlement compensation mode that is based on land productivity also needs to be considered. Recent pilot studies in a number of provinces have demonstrated the feasibility of other compensation and resettlement modes that could be adopted in projects. Compensation based on recognition of the property rights of farmers that more closely reflects market conditions will go a long way toward ensuring adequate compensation. The recommendations for improving income restoration, public participation, and social security for APs and transparency of the whole land acquisition and resettlement process also need the government's attention.

Appendix

Regional Workshop: Capacity Building for Resettlement Risk Management

Asian Development Bank Headquarters, Manila, Philippines

8–9 December 2005

Keynote Address

Presented by Dr. Walter Kälin, Representative of the United Nations (UN) Secretary-General on the Human Rights of Internally Displaced Persons

Let me begin by expressing my appreciation for the invitation to address this important gathering and particularly for being given the opportunity to discuss the topic of resettlement in the development context and the risks associated with it for affected persons. I am delighted about this opportunity for an exchange of views between development and human rights specialists.

The notion that links the two communities is that of a rights-based approach to development, which has gained so much ground in recent years. At its core, this concept expresses the idea that human beings should not be the objects, but the subjects and agents, of development and that, therefore, economic growth alone cannot guarantee sustainable development. Rather, the ultimate goal of development is to enable everyone in society to live a life in freedom and dignity. In this perspective, the beneficiaries of development activities are regarded as being entitled to the full enjoyment of all their human rights including economic, social, and cultural rights.

The rights-based approach to development emphasizes the complementarity of development and human rights goals; in fact, sustainable development without human rights is as difficult to imagine as human rights without development. Thus, in principle, development and human rights go hand in hand.

We must, however, realize that tensions between development and human rights may arise under certain circumstances and that such tensions must be acknowledged and addressed in accordance with the basic principle of “do no harm”, a principle that is not

only relevant for humanitarian but also development workers. Resettlement as a consequence of development projects, particularly if it is not voluntary, is one area where such tensions often arise, and it is the area I am concerned with in my capacity as Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons. In this capacity, I have been tasked with entering into dialogue with governments, organizations, and other relevant actors on how to improve the protection of the rights of internally displaced persons.

In this context, internally displaced persons are defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” (1998 Guiding Principles on Internal Displacement). This notion highlights two elements: (1) the coercive or otherwise involuntary character of movement, whatever the reason, and (2) the fact that such movement takes place within national borders. The list of causes of displacement is not exhaustive and the notion covers persons who are obliged to leave their homes and places of residence because of development projects. In this context, it is important to note that the notion of “displacement” is neutral in the sense of covering both situations where persons are forced to leave for illegitimate reasons and in violation of their rights and instances of evacuations and relocations/resettlements that are involuntary but perfectly legitimate and legal. Thus, the notion of displacement as used within the framework of my mandate includes instances of involuntary resettlement in the context of development projects such as dams, roads, airports, industrial or tourist complexes, and other infrastructure projects.

It is almost exactly 3 years ago to the day that I took part in a conference in Washington, DC on development-induced displacement. The conference was convened by the Brookings Project on Internal Displacement of which I am now Co-Director and was attended by academics, UN agencies, the World Bank, and also the Asian Development Bank. It brought together for the first time experts on human rights and humanitarian issues with those on development to discuss the differences and similarities between development-induced and conflict-induced displacement and how the different communities might work more effectively together. My predecessor as Representative of the UN Secretary-General on Internally Displaced Persons, Dr. Francis Deng, chaired the meeting.

I learned from the discussions that there are many similarities between those displaced by conflict and those who had to leave their homes because of development projects. At the same time, there are also significant differences. First, development, unlike conflict, is usually viewed in a positive way. As a result, being displaced by development may be considered essential for the greater good of the country. Resettlement in the context of development also happens by design, thereby providing opportunities for prevention, mitigation, and the opportunity to focus on creating sustainable livelihoods rather than merely a humanitarian response. The consequences of such displacement are also quite different on account of the fact that the relocated persons can usually never return to their homes whereas those displaced by conflict or natural disaster will often retain that option. It was also emphasized at the meeting that as in dealing with conflicts, it was important to manage development-induced displacement in an effective and well managed way. Otherwise it could lead to conflict and further displacement. To this end, it was essential to ensure that persons uprooted by development projects do not risk landlessness, joblessness, homelessness or other violations of their civil, political, economic and social rights. The particularly harsh consequences of impoverishment and disempowerment for women and children were emphasized together with the steps to be taken to overcome this possibility.

At the close of the Washington meeting, participants recommended that the Representative of the Secretary-General seek to strengthen the links between the United Nations human rights mechanisms on the one hand and multilateral development banks on the other so that a more comprehensive approach could be

developed toward internally displaced persons. I consider my attendance here today a positive step toward promoting such linkages.

I should recall that the position of Representative of the Secretary-General on Internal Displacement was first created in 1992 against a backdrop of civil wars and growing numbers of persons uprooted by conflict and ethnic strife. The United Nations Commission on Human Rights requested the Secretary-General to appoint a representative to study the worldwide problem of internal displacement and identify means to promote greater protection for the internally displaced.

Dr. Deng of the Sudan was appointed representative. One of his lasting contributions was the identification of the human rights internally persons are entitled to, and to codify these rights in the Guiding Principles on Internal Displacement which he presented to the UN Commission on Human Rights in 1998 and which have been widely used ever since. I had the pleasure and honor of being actively involved in this process, having chaired the legal meetings developing the Principles. As the first international standards on internally displaced persons, they set forth the rights of internally displaced persons and the obligations of governments and other actors toward these populations. They broadly encompass all internally displaced persons—those displaced by conflict and human rights violations, those displaced by natural disasters, and those relocated in the context of development projects. The Principles consist of 30 provisions that compile and restate the international norms relevant to the rights of internally displaced persons. And they cover all phases of displacement: providing protection against arbitrary displacement, protection and assistance during displacement and for safe and dignified return or resettlement, and reintegration.

In April 2004, at the end of Dr. Deng's tenure, the Commission called upon the Secretary-General to create a new mechanism to build upon his work and specifically to give greater focus to the human rights dimension of internal displacement. The responsibilities of this position, as set forth by the Commission, include: enhanced dialogue with governments and other actors, sustained advocacy to promote respect for the human rights of the internally displaced, promotion of the worldwide implementation of the Guiding Principles on Internal Displacement, and the mainstreaming of the human rights of the internally displaced into all relevant parts of the United Nations

system. In September 2004, the Secretary-General appointed me as his representative on the human rights of internally displaced persons. It remains a voluntary position, which is serviced by the Office of the High Commissioner for Human Rights and works closely with the United Nations High Commissioner for Refugees and the Office for the Coordination of Humanitarian Affairs. Governments and foundations also support the mandate.

The principal tool in my advocacy with governments, and in my discussions with regional organizations and nongovernment groups, is the Guiding Principles on Internal Displacement. The Guiding Principles have been recognized at the international, regional, and national levels, including by the UN Commission on Human Rights and the General Assembly. Recently, they have been recognized by the Heads of State and government assembled in New York for the September 2005 World Summit “as an important international framework for the protection of internally displaced persons” (World Summit Outcome Document, A/60/L.1, para. 132). Earlier, the Inter-Agency Standing Committee, composed of the major international humanitarian, human rights, and development organizations endorsed them. As a standing invitee of the Standing Committee, the World Bank has acknowledged the Principles and in different situations has sought to integrate them into its activities with internally displaced populations. At the regional level, organizations in the Americas, Europe, and Africa have acknowledged and disseminated the Principles, including the Organization of American States, Organization for Security and Cooperation in Europe, Council of Europe, African Union, as well as the three subregional organizations of Africa—the Economic Community of West African States, Inter-Governmental Authority on Development, and the Southern African Development Community.

An increasing number of governments around the world are also using the Principles as the basis for developing law and policy on internal displacement. In Asia, this includes the Philippines and Sri Lanka, whose governments have made effective use of the Guiding Principles as a means of promoting and protecting the rights of the internally displaced.

To what extent are the Guiding Principles relevant in the context of development-induced resettlement? They can prove useful in two important ways. First, they help identify the instances when forced resettlement as such might be arbitrary and thus in violation of

human rights standards. Secondly, and of more general application, the Guiding Principles identify those human rights that need to be observed in the course of the resettlement process, even when the relocation has been lawful.

Principle 6 sets out the rare circumstances in which development-induced displacement would be considered arbitrary and, therefore, prohibited. The general principle here being that displacement will be arbitrary if it is caused by a large-scale development project that is not justified by compelling and overriding public interests. Thus, forced relocations are not prohibited. The right to be protected against arbitrary displacement is inherent in the freedom of movement and the right to choose one’s residence as, for example, embodied in Article 12 of the Covenant on Civil and Political Rights. Principle 6 of the Guiding Principles ensures that development cannot be used as an argument to disguise discrimination or any other human rights violation by stressing that development-related resettlement is permissible only when the requirements of necessity and proportionality are met. This requires an examination of whether involuntary resettlement could be avoided or minimized by viable alternative project designs, such as realignment of roads or reductions in dam height, which may significantly reduce resettlement needs. In this sense, Principle 7, paragraph 1 states that “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.” The same Principle is recognized by the World Bank’s Operational Policy on Involuntary Resettlement and OECD’s Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects whose authority is reinforced by the underlying human rights norms.

The requirements of necessity and proportionality make it necessary to be particularly careful where indigenous people, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands would be forced to relocate (Principle 9). In this context, the right of members of ethnic, religious, or linguistic minorities to enjoy in community with the other members of their group, their own culture, as embodied in Article 27 of the Covenant on Civil and Political Rights, is of particular relevance as this right entails protection of traditional

livelihoods and natural resource utilization.

Human rights law also provides guidance in cases where resettlement is unavoidable and perfectly legal. These are the more likely circumstances in which the Asian Development Bank could usefully apply the Guiding Principles in order to determine and promote protection of the rights of persons affected by such resettlement. I will mention just some guarantees listed in Principle 7:

- (i) The decision to resettle must be taken by the State authority empowered by law to order such measures in accordance with procedures required by the law.
- (ii) Those to be resettled must be fully informed of the reasons and procedures for their displacement and of compensation and relocation.
- (iii) Authorities should try to get the free and informed consent of those to be resettled before ordering forced resettlement.
- (iv) Those affected, particularly women, should be involved in the planning and management of their relocation.
- (v) The right of those affected by a resettlement decision to an effective remedy, including the review of such decisions by appropriate judicial authorities, must be respected.
- (vi) Law enforcement measures, where required, must be carried out by competent legal authorities, and in a manner that fully respects the rights to life, dignity, liberty, and security of those affected.

As regards the protection of property, Principle 29, paragraph 2 states the duty of competent authorities to provide resettled internally displaced persons with “appropriate compensation or another form of just reparation” where restitution of lost property is not possible. Furthermore, they must establish the conditions, as well as provide the means, that allow resettled persons to start a new life in safety and dignity at the place of relocation (Principle 28).

The application of the Guiding Principles and their underlying human rights norms in the context of development is a task that has been taken up by state and non-state institutions. In this regard, I commend the initiatives taken by national human rights institutions in the Asian region to address the human rights dimensions of development-induced displacement, including in

India, the Philippines, and Thailand. National human rights institutions can play an important role in monitoring situations of displacement and in devising programs aimed at protecting human rights, including through training, holding national fora, engaging in advocacy with governments, and acting as an honest broker among affected communities, governments, and civil society. These institutions require capacity building and resources, and the Asia Pacific Forum of National Human Rights Institutions in collaboration with the Brookings-Bern Project has been working with them in support of their role in dealing with internal displacement by conflict, disaster, and development projects.

I most warmly commend the Asian Development Bank for developing operative guidelines on the question of resettlement. I refer here to the *Operations Manual on Involuntary Resettlement* and the *Gender Checklist on Resettlement*. The first of these recognizes that, in some instances, development may have adverse effects on certain sectors of the community but that steps can be taken to ameliorate such effects.

The Operations Manual, like the Guiding Principles, speaks of avoiding displacement when feasible, the need to ensure that livelihoods are maintained, the importance of consultation, the challenges posed by customary and other traditional regimes that do not involve a legally recognizable title to land; and, in particular, the need to protect the poorest and most vulnerable.

The Gender Checklist, in turn, recognizes that even within displaced communities, some groups, in this case women, may have particular needs or particular skills to offer, and such needs and skills must be taken into consideration at all stages of resettlement.

Finally, I commend the states that have adopted laws and policies that seek to implement, either implicitly or explicitly, the Guiding Principles on Internal Displacement. For example, in 2004, India adopted the National Policy on Resettlement and Rehabilitation of Project Affected Families. The Policy aims to provide relief and rehabilitation for the rural poor, including small and marginal farmers and women who have been displaced. It also aims to encourage an open dialogue between the displaced and those in charge of administering the development project.

The Asian Development Bank has played an exemplary role in assisting states develop such laws and policies and I welcome its active role in this regard. After all, the primary duty and responsibility to respect

and ensure respect for the rights set out in the Guiding Principles lie with states. In my opinion, one of the most effective ways for states to meet this responsibility is to incorporate the Guiding Principles in domestic laws.

To assist states in this challenging endeavor, I have begun, with the assistance of experts from varied backgrounds and regions, to develop a manual for legislators and executive policy makers at the domestic level. This manual will include best practices and identify legal and policy options for ensuring protection of the human rights of the internally displaced. Among the several issues the manual will address are restitution and compensation when property cannot be restored.

The Asian Development Bank's commendable work in assisting governments in developing domestic policies and legal frameworks on development-induced displacement will hopefully be reinforced by the Legislators' Manual. It should be completed next year and I look forward to consulting the bank in its application at the national level.

In conclusion, I would emphasize that it is important for the United Nations; the various development, financial, and humanitarian institutions;

governments; national human rights institutions; civil society; and affected communities to work together to ensure that the Guiding Principles on Internal Displacement are applied to development-induced resettlement programs. This will entail harmonizing operational guidelines, laws, policies, and practices relating to development-induced displacement. The adoption of a comprehensive response is vital to ensuring that, in the long-term, development effectively benefits the people and nations concerned.

ADB, through its policies and practices in working with governments, has already taken steps to enhance the positive effects of development. It is my hope that this meeting will be successful in reinforcing ADB's role in monitoring situations of internal displacement caused by development projects and assisting governments to find appropriate solutions that reflect and fulfill the rights of those resettled. I look forward to receiving the conclusions of this meeting and am sure that they will contribute to helping transform the full range of human rights of those displaced from their homes into reality in the Asian region.

References

- Asian Development Bank. 2000. *Special Evaluation Study on the Policy Impact of Involuntary Resettlement*. Manila. Available: <http://www.adb.org/Evaluation/reports/ses-resettlement.asp>
- Cernea, Michael M. 1997. The Risks and Reconstruction Model for Resettling Displaced Populations. In *World Development*. 25 (10), pp. 1,569–1,587.
- . Forthcoming. Risk Analysis and the Risks and Reconstruction Model in Population Resettlement: Training Course Syllabus, Training Modules, and Supporting Materials. Presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines. Available: <http://www.adb.org/Resettlement/activities/ta6091reg.asp>
- China Land Surveying and Planning Institute. 2005. Capacity Building for Resettlement Risk Management: People's Republic of China (PRC) Country Report. Paper presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines. Available: <http://www.adb.org/Resettlement/activities/ta6091reg.asp>
- . 2005. Capacity Building for Resettlement Risk Management: PRC Thematic Reports. Paper presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines. Available: <http://www.adb.org/Resettlement/activities/ta6091reg.asp>
- Ghosh, Parthopriya. 2005. Capacity Building for Resettlement Risk Management: India Country Report. Paper presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines. Available: <http://www.adb.org/Resettlement/activities/ta6091reg.asp>
- . 2005. Handbook on Resettlement for Transport Projects in India. Presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines. Available: <http://www.adb.org/Resettlement/activities/ta6091reg.asp>
- Rural Development Institute. 2005. Compensation and Valuation in Resettlement: Cambodia, PRC, and India. Paper presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines. Available: <http://www.adb.org/Resettlement/activities/ta6091reg.asp>
- Sarin, Chea. 2005. Capacity Building for Resettlement Risk Management: Cambodia Country Report. Paper presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines. Available: <http://www.adb.org/Resettlement/activities/ta6091reg.asp>
- . 2005. Handbook on Resettlement for Transport Projects in Cambodia. Presented during the Regional Workshop on Capacity Building for Resettlement Risk Management held on 8–9 December 2005 at ADB Headquarters, Manila, Philippines.

About the Final Report

The report synthesizes specific knowledge on addressing impoverishment risks associated with involuntary resettlement generated from field-based research in three focal countries, namely, Cambodia, People's Republic of China, and India.

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