

EXECUTIVE SUMMARY

This report presents the findings of a special evaluation study (SES) of the Asian Development Bank's (ADB) 1995 Policy on Involuntary Resettlement (IR). The evaluation was one among three included in the work program of the Operations Evaluation Department (OED) at the end of 2005 upon the special request of the Development Effectiveness Committee (DEC) of ADB's Board of Directors. The other two studies concerned (i) the 1998 Indigenous Peoples Policy, and (ii) the Environmental Safeguards. The studies were intended to provide DEC with an independent assessment and also to contribute to ADB's ongoing safeguard policy review, which will lead to a proposal by Management to the Board for consideration of a policy update in 2007.

The scope of this SES was to provide an overview of the scale and nature of IR in ADB operations; examine the extent of application of the IR policy;¹ review trends; make pertinent comparisons with other systems; and give OED's assessment of the IR policy's relevance, effectiveness, efficiency, and sustainability on the basis of evidence gathered within a tight time frame to fit the safeguard policy update schedule. The study has also identified some issues for consideration in the safeguard policy update, and offers recommendations.

The nature of the Involuntary Resettlement Policy. The IR Policy of 1995 required that a series of safeguard principles be upheld in the preparation and implementation of projects funded by ADB: (i) avoid involuntary resettlement where feasible; (ii) minimize resettlement where population displacement is unavoidable; and (iii) ensure that displaced people receive assistance, preferably under the project, so that they will be at least as well off as they would have been in the absence of the project. The Policy specified three types of assistance for IR: (i) compensation for lost assets and loss of livelihood and income; (ii) assistance for relocation, including provision of relocation sites with appropriate facilities and services; and (iii) assistance for rehabilitation to achieve at least the same level of well-being with the project as without it. Fixed procedures were to be applied, which included early public disclosure of intentions, consultation processes, the preparation of resettlement plans (RPs) before loan appraisal, and the setup of grievance redress mechanisms and of monitoring and evaluation systems during project implementation. The procedures were to be set in motion when a mandatory initial social assessment identified people who might be displaced by the project. One useful aspect of the Policy has been that it deals with land acquisition and resettlement in a systematic way and prior to the start of the project, which facilitates project implementation. OED agrees with the basic philosophy and general principles of the IR Policy—as a general principle people should not be adversely affected by ADB-financed projects.

ADB has expanded the scope of the Policy. This SES argues that the scope of the original IR Policy has expanded since the issuance of the Handbook on Resettlement in 1998, and especially since ADB's reorganization in 2002, which brought with it a new Safeguard Compliance Mechanism and, in December 2003, a new Operations Manual (OM) section F2 on IR. This consolidated the emerging practices on IR planning, which had put the emphasis on addressing all adverse impacts that infrastructure projects could have on people. Through the

¹ The term policy is used in a generic way, reflecting current consensus in ADB as to what this comprises, approximating the latest Operations Manual version of the Policy and the connected operational procedures, which may include elements not expressed in the original 1995 Policy statement. When this study refers to the IR Policy of 1995, the capital P is used.

new de facto policy, laid down in OM F2/BP, and the new procedures in OM F2/OP, ADB practice is now much more inclusive than the title of “IR policy” suggests, as it no longer centers on addressing only significant displacement, but on addressing as well all kinds of losses sustained by affected persons (APs). The procedures have also become more elaborate and prescriptive over the years. Formal compliance with this expanded IR policy has been stressed as a result of a new safeguard policy compliance memorandum, which requires a sign-off by the chief compliance officer on the quality of resettlement planning before loan appraisal. A fear among ADB staff of being “out of compliance,” generated by two inspections since 2002 and a compliance review in 2005, has further raised the profile of IR within project planning. Experiences with these inspections and review have caused staff to be much more demanding of executing agencies (EAs), although, in the face of occasional stiff developing member country (DMC) and EA resistance, compromises have often been made, which raises questions regarding how rigidly and consistently the new policy and procedures are being applied, and how much the 1995 Policy still applies (it was not drafted taking into account the new requirements for compliance).

The IR policy is now controversial. The IR policy is highly controversial among various borrowers and EAs, including APs and civil society organizations concerned with ADB delivering on its stated intents. Most nongovernment organizations (NGOs) hold ADB accountable for not only the spirit but also the letter of the policy. Some have criticized ADB saying it does not pay sufficient attention to implementation, and that this leads to unacceptable problems for APs. Some organizations are now concerned that ADB might revise the IR policy to align more with country safeguard systems, in which they have less faith.

The policy is also contentious among many of ADB’s client DMCs, but for different reasons. These DMCs question the IR policy itself, and particularly its present greater inclusiveness, because of its variance with their country systems for dealing with socially adverse project impacts. ADB’s requirement for compensating land and physical structure owners for losses at replacement cost or market value may be enshrined in law in most DMCs, but valuation systems to determine these are at odds with those that ADB promotes. ADB also requires that the removal of structures illegally built by affected squatters is compensated for, and that squatters who are affected are assisted to fully regain their previous levels of livelihood. This is not a mandatory requirement in most DMCs. Most countries do not wholeheartedly accept the need to provide special assistance to the vulnerable or, more precisely, to assure that such people are assisted through project-based resettlement operations and budgets, separately from more general assistance that they may get.

Among ADB project mission leaders, the policy is contentious because it is labor intensive and sometimes perceived to take resources away from other necessary and equally important project preparation tasks. The current procedures require much planning to be completed at an early stage (i.e., long before detailed design of projects, which is often completed after loan approval). This sometimes leads to duplication of work later, and can engender opportunistic behavior (e.g., people moving into the project area in the hope of receiving compensation). Another reason is that the goalposts have been changing over the years, which has required staff to attempt to reverse earlier agreements on IR with their clients at a late stage of implementation.

It may not be possible to develop a consensus among the many widely divergent and strongly held views on the policy and its impact.

Findings

The SES developed an overview of resettlement planning and operations within ADB and relied on ADB databases and documents; questionnaire surveys of ADB staff and EA staff; country visits to People's Republic of China (PRC), India, Philippines, and Viet Nam; and 16 case studies of ongoing and completed projects with resettlement conducted by consultants in the first three of these countries. There were several limitations to the study. Further work will need to be undertaken during the update of the IR policy to test the robustness of the conclusions of the study, particularly regarding the effectiveness of outcomes for APs. The limitations are explained in Chapter I, but the most important include the limited number of country and project case studies chosen, the small samples of questionnaires administered to APs, and lack of details on IR in project completion reports (PCRs). With these provisos, the key findings are summarized below.

Many projects now plan for resettlement. Since 2002, half of all ADB-supported projects have included resettlement planning; the corresponding figure was about 20% in the period 1994–2001. The proportion has grown because of increasing requirements and more due diligence on ADB's part, rather than a change in the nature of the projects supported.

Many people affected by ADB-supported projects. In terms of APs identified, the differences have not been similarly large, implying that the increase in attention to IR has led ADB to include RPs and resettlement frameworks (RFs) for many projects with relatively small resettlement impacts, and which earlier did not generate such treatment. ADB's reports and recommendations of the President (RRPs) issued between 1994 and 2005 anticipated that the projects would have an impact on at least 1.77 million APs. Projects approved in the last 5 years were expected to affect between 100,000 and 150,000 people every year.

Transport projects have affected the most people by far (76% of all APs; one quarter of the APs requiring actual resettlement); other sectors in which considerable resettlement was involved included urban and water (8%), energy (7%), agriculture and natural resource projects relying on infrastructure creation (6%), and multisector projects (3%). In the last 4 years, almost all infrastructure projects approved have included resettlement planning. Because of the large transport portfolio, dense population, and small landholdings, the majority (61%) of all APs of projects supported by ADB from 1994 to 2005 were in the PRC.

Weak estimation of the number of APs in the past. A review of all 62 PCRs that ADB issued until 2005 for infrastructure projects approved since 1994, shows that the performance of ADB and the EAs in estimating the number of APs was weak in that period. The actual number of APs recorded was 65% higher than estimated in the RRP. The estimation problem was less serious for people who were actually resettled: 10% more people were resettled than anticipated. The underestimation was much more pronounced for the categories of APs that lost access to land or assets but did not need to move: over 150% more people were affected than anticipated. Overall, 40% of APs identified actually needed to be resettled; the other 60% lost a part of their land or their structures but did not need to be resettled. Some of the APs in the latter group were affected by loss of economic opportunities that were not land related, such as shopkeepers, water vendors, and scavengers at dump sites.

Costs difficult to estimate. Costs of land acquisition and resettlement proved similarly difficult to estimate and were in practice often underestimated as well. The budgets for these items ranged from \$0.02 million (for only six households) to \$214.50 million, with an average of \$24 million, or 6% of the average project budget. The actual expenditure in one case increased

to \$333.7 million, and the average project expenditure was almost double the estimate at \$41 million (11%). In the four case study countries, almost half of the projects studied had land acquisition and resettlement estimates that proved to be at least 50% off; but only 7% of the projects had total cost estimates that were off by that much, implying that the cost of land acquisition and resettlement operations are less precisely estimated than other items of total project cost. This finding has some important operational implications, as policy changes adopted in 2005 allow ADB to finance land acquisition costs.

Forty percent of the PCRs for infrastructure projects studied reported on resettlement issues. Eight suggested the need for follow up actions, such as identification of APs that had not fully restored their livelihoods, preparation of plans to restore incomes, and continued monitoring. This SES recommends that the follow-up actions be pursued.

ADB staff views mixed. The small sample of ADB staff that responded to a call for filling out a questionnaire believed that ADB does not spend enough resources on EA training, the investigation of project alternatives, resettlement preparation, or resettlement implementation. Most respondents, however, believed that ADB added value through the implementation of its IR policy.

EA views mixed. The EA project directors who responded to a questionnaire survey (49% of EAs responded) were generally appreciative of the implementation of the policy, and saw benefits such as capacity development and better outcomes for APs. Almost two thirds reported to have had one or more differences with ADB staff on IR, and noted incremental costs and delays. Some representatives of borrowers in the four case study countries and EA officers interviewed during field missions pointed out that an important “transaction cost” for them was that the IR policy forced EAs to go considerably beyond their normal practice. This was believed to sometimes have a good demonstration value, but also larger, more questionable consequences such as setting double standards for foreign-funded and other projects, and diminishing respect for the law and government policy.

Convergence between country and ADB systems growing. An examination of the country systems for the management of IR studied in PRC, India, Philippines, and Viet Nam found some evidence of a trend towards convergence with the ADB standards, especially in PRC, India, and Viet Nam. In these countries, various new land acquisition and resettlement policies have been issued or new laws enacted, often with support from ADB. Good resettlement implementation capacity has been built up in some organizations in India and in many local governments in the PRC. However, divergence remains in all four countries, given that ADB is simultaneously raising its standards and due diligence. The divergence requires close involvement to ensure that the EAs continue to meet ADB’s higher expectations. Interviews with ADB staff and other sources confirmed that in all DMCs there are discrepancies between the DMCs’ resettlement regulations and the ADB policy, even in such countries as Sri Lanka, whose policy comes close to ADB’s. Although many countries allow the award of compensation for land at replacement cost under some circumstances, for instance, they do not prescribe this, leaving it to the project to negotiate this with the land authorities. Full alignment with country systems seems difficult to achieve without ADB relaxing its policy and procedures and curbing the trend to ever greater inclusiveness. Such relaxation may not be opportune, although a case can be made, from a broader capacity development perspective, to establish the principles of the policy as targets to be achieved over a period of time. Close involvement of ADB in the preparation of RPs and resettlement operations remains necessary for many agencies in DMCs with low capacity to implement government and ADB policies.

ADB's TA valuable. The SES assessed that the value of ADB's technical assistance (TA) in helping countries with IR policy development or capacity development was almost invariably high. ADB has approved TA worth \$7.6 million for this since 1994, a modest amount, and perhaps too modest.

Procedural compliance variable in project case studies. Sixteen case studies conducted by consultants in PRC, India, and Philippines showed that compliance with the IR policy has been variable, when measured against presently applied standards. All APs were compensated, and most were assisted in some way. Many APs in the PRC and to a lesser extent in the Philippines were compensated or assisted at levels much higher than seen in other DMCs. In many cases, however, compliance with one or more of the many procedures or special loan covenants was late, partial or questionable, given the lack of clear guidelines on how to interpret the compatibility of the country's procedures with ADB procedures. In some cases, RPs were not updated when they should have been; compensation was not provided in a timely manner, or was not provided based on the best method for determining replacement cost of lost assets or according to the RP procedure; APs were not consulted sufficiently about the resettlement sites; external monitoring arrangements were made late; and/or grievance redress mechanisms were not well organized. Assistance to the vulnerable and for rehabilitation of APs was mostly provided, but was of variable quality. In the PRC, the compensation for land loss went through the rural collectives that owned the land, and in the older cases was not distributed in cash to individual APs in accordance with the spirit of the ADB policy.

Efficiency and procedural compliance is improving. Overall, efficiency and procedural compliance have improved over the years—early resettlement operations were planned and implemented less systematically than those approved more recently. In so far as the issue of replacement cost is concerned, a rigorous application could not always be negotiated with the countries concerned (authorities other than the EAs are often responsible for awarding compensation), and the lower compensation rates achieved were in practice complemented in part by special assistance packages. This applied also to some other aspects of the policy and procedures, such as (i) the cost of housing in new resettlement sites for squatter households, which was in practice often shared with these households; and (ii) the timing of award of compensation and resettlement, sometimes set more practically than the procedures required.

While the policy seems to require total compliance, in practice its application was often a compromise. This SES in principle supports such a flexible approach, but wonders whether the policy allows this, and whether ADB's Compliance and Accountability Mechanism would endorse it when put to the test. This should be clarified as part of the safeguard policy review.

APs often satisfied with housing. Most APs interviewed in PRC and Philippines responded that they were by and large satisfied with housing improvements, and many with compensation and economic rehabilitation. Satisfaction levels were lower in most projects studied in India, but even there, there was usually appreciation for some aspects of the resettlement process. This was due mainly to the APs' awareness that they had been compensated and treated better than would have been the case if an institution like ADB had not been involved. Even in the PRC this seemed to be the case more recently, where EAs are now doing more in terms of addressing adverse impacts and assisting APs than previously.

Incremental and transaction costs high. The study asked the question whether the outcomes had been sufficiently positive to justify the incremental costs and the transaction costs associated with ADB's involvement. This study believes efficiency in policy implementation is a

valid criterion. Circumstantial evidence suggests that some of the more identifiable transaction costs have been too high in at least a few of the project case studies. In one case, an EA that had been a partner of ADB for decades decided not to go for another loan, due to ADB's perceived intransigence and insensitivity in that particular case, and because of the changing goal posts in the area of resettlement. In another case, a loan was cancelled when a government decided to turn a two-lane highway improvement project into a dual carriageway. ADB was not requested to provide funding for the new project, partly because of onerous new resettlement planning required as part of the appraisal process, which the government thought did not fit its schedule. Overall, OED believes that the bar is sometimes set at a too high level for countries and EAs, thereby either lowering their interest in requesting assistance from ADB or, when the loan is already signed by borrowers and EAs, creating resistance and delays at the level of the implementing agencies.

Assessment of the Policy and Its Implementation

The study assesses the policy as relevant to project implementation and to ADB's aim to reduce poverty. ADB's policy has been practical in many cases, as it promotes early planning and appropriate compensation to APs to get the land required to implement infrastructure projects. Treating APs in the manner prescribed in the policy helps to reduce social turmoil and resistance to the project, and facilitates land acquisition and project implementation. The study, however, also notes that formal compliance with procedures, especially those promoted since 2002, has been somewhat at the expense of the goal of capacity building, which presupposes that the procedural targets need to be seen as performance standards, to be aspired to by EAs that need to work to improve their IR policies and procedures. The level of compliance with the procedures needed could have been worked out better and earlier. The IR policy itself has become a misnomer, as policy implementation increasingly deals with adverse impacts other than those related to significant displacement of people. About 60% of the affected people did not require resettlement; rather, livelihood restoration was their key concern.

The study tentatively assesses the IR policy as effective in terms of outcomes for APs, because of the limited number of countries visited and projects examined, although on the borderline of a "less effective" rating due to the variations encountered among projects and countries. This assessment is based on the available information about the coverage of compensation provided to APs and the satisfaction levels often registered with housing provided, and in spite of the variable compliance with ADB procedures and variable achievement of economic rehabilitation of APs across projects and countries. The assessment takes into account the fact that later resettlement operations appeared to be better planned and implemented than earlier ones. The study expects most ongoing resettlement operations to achieve a higher level of effectiveness (except perhaps for sector projects). Outcomes for capacity development in EAs have also been by and large effective. Half of the EA project directors saw the increase in experience with resettlement safeguards as one of the main benefits of ADB involvement. ADB TA for IR often had high value in terms of policy development and capacity building.

The study assesses inputs, processes, and systems for IR policy implementation as having been less efficient. Applying the policy has been singularly painful in many cases. ADB's IR policy, through its changing procedures and the organizational arrangements made to enforce it, has been gradually setting the bar higher. This tendency was not questioned by Management in the progress reports on policy implementation submitted to the Board; a formal review with recommended policy modifications, required after 2 years of Policy implementation,

was never submitted to the Board. In an area as contentious as resettlement, Management should not have allowed the significant extension of the scope and application of the IR Policy without drafting another policy paper for consideration by the Board to ensure that these extensions were consistent with the wishes of ADB's shareholders. In a number of cases ADB staff have reinterpreted original agreements made (or not made) with clients. Variable interpretations and attention given to the policy have caused much confusion and upheaval on the side of ADB's clients over an extended period. A larger effort has gone into resettlement preparation than into implementation and loan administration. The lack of supervision by ADB during project implementation has sometimes contributed to less than satisfactory outcomes and adverse impacts on APs. Many APs have experienced uncertainty, fear of uprooting and wrong information for short or long periods. In sector projects, where potentially many dozens of RPs may need to be prepared after loan preparation and with less consultant support, more challenging subprojects are sometimes excluded because of the time and resource requirements. These projects in time will most likely go ahead with domestic funding, but without the benefit of ADB's standards for IR. On a more positive note, in spite of overall lack of IR specialists in ADB due to the now higher demands, the number has increased compared with 5 years ago, and experience in ADB with resettlement operations has also increased greatly. ADB's Environment and Social Safeguard Division (RSES) of the Regional and Sustainable Development Department (RSDD) and the Safeguard Policy Compliance Memorandum have helped raise the profile of resettlement in ADB's operations, but RSES lacks staff to be fully efficient in ensuring quality assurance within the context of the current IR policy and procedures. More resources allocated to capacity development rather than short-term compliance within ADB-supported projects may yield better long-term results.

The study assesses ADB's IR policy approach as less likely to be sustainable, given the high costs for ADB and clients and the widely diverging views held by various stakeholders. Sustainability is defined here as replicability, and is shown by a growing acceptance of ADB's approach by clients. Both incremental and transaction costs weigh against maintaining and expanding relations with clients, even though a survey of EAs also registered many positive reactions; but many of these EAs did not have to pay all the associated costs. What is more, those that declined or would decline ADB loans when offered were not included in the coverage of the survey. Incremental costs can be summarized as high consultant costs, costs of the socioeconomic surveys to determine levels of vulnerability and need for rehabilitation, additional costs borne by some governments due to award of replacement value for land and structures when their system for establishing a property's value is different from ADB's preferred method in principle or practice, compensation for structures and income lost of nontitleholders (if this was not mandatory in the DMC), and assistance to the poor and vulnerable when DMC law gives them no rights to this. Transaction costs are apparent in delays due to preparation of intricate RPs, which lead to longer involvement of government staff than otherwise normal, extra costs due to contract extensions, and higher commitment charges for ordinary capital resources loans when there are delays due to differences between ADB and the EA. Ultimately these translate into lower economic and financial returns of projects. They are also apparent in risk avoidance behavior by ADB staff, or clients losing interest in ADB, leading to ADB having less influence on IR processes. A policy that will not be adopted for locally financed projects cannot be called replicable and is therefore not sustainable in a wider sense. While there are transaction costs associated with the policy, there are also transaction costs associated with not adequately addressing resettlement and livelihood restoration issues (e.g., social unrest, reputational issues for ADB and the DMC, delays in acquiring land, unacceptable adverse impacts on APs).

Recommendations Considered During the Safeguard Policy Update

The team in RSDD working on the policy update should consider the following recommendations and expand the evidence base as deemed needed, in order to arrive at a strengthened assessment of past experience, and a well justified proposal for policy update.

- (i) **Management and the Board need to reconcile the differences between the 1995 Policy and the currently applied policy**, as laid down in the OM F2 section. In OED's view, the three key principles of the policy remain valid, but ADB needs to decide whether to endorse the greater inclusiveness of the IR policy and procedures, or return the current OM and IR practice back to greater focus on displacement of APs.
- (ii) Whatever the nature of the policy adopted, **it should have a results-based framework—distinguishing desired impact, outcomes, outputs, activities, and inputs both at macro (country) and micro (project) level**. At the macro level the impact should be a good country system of safeguards, at the micro level of individual projects the restoration of livelihoods of APs. At the micro level of an individual project, ADB and EAs and related local organizations can only contribute to the achievement of the desired impact and outcomes; the EA would be fully responsible for outputs, and ADB and EA for an agreed set of activities and inputs.
- (iii) **The updated policy should highlight a set of performance standards**. It should set standards for both ADB and EA in terms of vulnerability assessment, public consultation, disclosure of information, reporting, monitoring, and grievance redress.
- (iv) **The updated policy should elaborate on the objective of greater reliance on country EA systems for land acquisition and resettlement safeguards**. The common objective should be for ADB's operations to rely more on country systems for IR. This would need to be accompanied by certifications, preferably by ADB working jointly with other aid agencies, of sufficient convergence with the IR policy and effective implementation capacity.
- (v) **There should be clearer guidelines and procedures regarding the identification of resettlement operations needed**, such as those for (i) the consideration of project alternatives, (ii) retroactive compliance with the policy, (iii) different types of operations and lending modalities, (iv) the minimum number of APs, and (v) RFs.
- (vi) **There should be clearer guidelines and procedures regarding compensation and assistance within resettlement operations**. The issues and recommendations concern (i) procedures for ADB-financed acquisition of land, (ii) use of the replacement cost method for the determination of compensation and assistance, (iii) ADB approaches in squatter situations, (iv) definition of the period after which economic rehabilitation should be achieved, (v) public consultation and disclosure requirements, and (vi) external monitoring. The detailed recommendations regarding resettlement planning, compensation and assistance are presented in Section B of Chapter VI, Boxes 3 and 4.

Recommendations for Involuntary Resettlement Implementation

ADB is facing a dilemma. The IR bar has been continuously raised. Staff dedicated to IR have increased but not sufficiently. The policy is equivalent to that of the World Bank, but staff resources available for its enforcement are not. The record shows that ADB is giving insufficient attention to supervising the administration of RPs and monitoring their implementation. However, ADB shareholders have also made it clear that ADB staff numbers should not grow significantly. Management must find ways to balance the staff resources and the IR policy. Options include some combination of the following: (i) allocating more resettlement specialists, either through reallocation of existing positions or creating more positions; (ii) identifying ways to focus ADB's scarce resettlement expertise in areas of greatest value added; and/or (iii) changing the policy in ways that will be less staff intensive for ADB. This may involve making greater use of country systems.

The study made three major recommendations regarding IR implementation issues:

- (i) **Formulate a time-sequenced implementation plan** to complement the IR safeguard policy update. This should fully identify the required resource requirements, staffing and organizational implications, and perhaps benchmark staffing against that of the World Bank for the implementation of its policy.
- (ii) **Improve IR monitoring.** Loan covenants regarding IR need to be more consistent across loan agreements. ADB monitoring of resettlement implementation, including post-resettlement rehabilitation, needs to improve, particularly during review missions, and reporting needs to be updated more regularly and made more detailed in project performance reports. Partnerships with NGOs and civil society organizations should be strengthened with a greater involvement in project monitoring arrangements. ADB should develop a better system to follow up on actions recommended in PCRs.
- (iii) **Deepen the involvement in building country systems and capacity for IR.** ADB should accord a higher priority to training programs for EA staff, as the payoff may be high in terms of improved resettlement operations. A country review on safeguards should be undertaken as part of country planning, to assess which aspects of the procedures should be instituted over and above the country's own safeguard systems. ADB TA on country systems, led by RSES, could feed into this. Other than this, policy dialogue with countries needs to continue, as does the harmonization dialogue with other aid agencies. Under the IR policy, ADB is required to build capacity for resettlement, but only modest resources have been directed towards this area. A greater effort can be justified.

Bruce Murray
Director General
Operations Evaluation Department