

TECHNICAL ASSISTANCE COMPLETION REPORT

Division : RSES

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TA 5781-REG: Review of National Resettlement Policies and Experience with Involuntary Resettlement Projects)	Revised Amount: US \$ 831,000
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Description (Background rationale)

Asian Development Bank's *Policy on Involuntary Resettlement* requires, in addition to projectspecific Resettlement Plans, measures to strengthen DMC macro frameworks for involuntary resettlement. The Policy enjoins support for efforts by government and other project sponsors to formulate and implement resettlement policies, strategies, laws, regulations and specific plans; and technical assistance to strengthen the capacity of agencies responsible for resettlement policy, planning and implementation. The Policy specifically calls for efforts to ensure that laws and regulations provide for compensation sufficient to replace all lost assets, and to restore living standards, income earning capacity and production levels among those people affected¹.

ADB chose to implement this requirement through a consultative process that engaged a wide range of stakeholders in selected DMCs. This strategy recognized the complexity of the issues. Whilst ADB's Policy sets broad principles to minimize dispossession and displacement, with time-bound action plans designed to restore or improve incomes for those unavoidably affected, these principles are implemented in ADB-financed loan investments through the DMC's macro frameworks for land acquisition, which incorporate eminent domain and other regulatory measures. Although many DMCs in East and Southeast Asia have developed policies on land acquisition for development projects in recent years, still they lack comprehensive national standards for involuntary resettlement through policy and legal instruments. They might apply different standards for different projects, sectors, and regions. In general, compensation is based on national land acquisition laws that do not meet ADB policy guidelines to restore the economic and social base of those who lose assets, resources, or income, taking special measures to assist the poor and vulnerable to improve their status².

Against this background the RETA aimed to (i) provide greater understanding of resettlement needs in selected DMCs; (ii) evaluate experience with ADB-associated involuntary resettlement and lessons learned; (iii) establish the extent to which lessons should modify existing policy and practice; (iv) discuss the possibility of making any needed policy, legal and administrative changes, together with plans of action for change; (v) share the experience on a region-wide basis.

Objectives and Scope

The overall goal of the RETA was to promote commitment to strengthened resettlement policies and practices. Specific objectives were to evaluate (i) the adequacy of selected resettlement policy and legal frameworks in key DMCs, and (ii) the resettlement experience in Bank-financed projects. The RETA was also designed to identify a range of innovative resettlement approaches and prepare country plans for the participating DMCs. The seven participating countries were selected on the basis of their recent resettlement significance in ADB's portfolio, namely Bangladesh, Indonesia, Nepal, Pakistan the Philippines, the PRC, and Vietnam.

The scope of work for the TA included, in each DMC (i) a review of the policy, legal, regulatory, and institutional framework for land acquisition and resettlement; (ii) preparation of case studies of selected ADB projects; and (iii) consultation with key stakeholders, including through national and regional workshops. These objectives were specifically designed to be achieved through a consultative process in each case, which allowed exploration of the issues through a team-based approach. In each participating DMC, a country team was to be established, comprising key agencies and local consultants, supported by two international consultants. The TA was intended to build awareness among stakeholders, including government at all levels. Consultations, including, in each case, a national workshop, were intended to involve relevant government agencies, other development agencies and wider civil society stakeholders; with wider consultations designed on a regional basis through a final regional workshop.

Evaluation of Inputs (Adequacy of formulation, terms of reference, performance of consultants, other inputs, review missions, inputs of recipients)

The inputs included 14 person-months (PM) of international consultants and 35 person-months of domestic consultants from each of the seven participating countries. The selection of an international consulting firm was important in avoiding a heavy additional administrative burden for ADB staff. The international consultants identified a team of domestic consultants and jointly undertook the following tasks: (i) identified focal agencies in each country to coordinate the TA on behalf of the government, (ii) reviewed relevant national macro frameworks for land acquisition and resettlement, (iii) prepared case studies of selected ADB funded projects, (iv) consulted with key stakeholders, (v) analyzed institutional capacity for and identified innovative approaches to resettlement, (vi) conducted national workshops, (vii) presented and prepared initial findings and recommendations in the form of National Resettlement Action Plans (NRAPs), and (viii) prepared country reports.

With 7 countries participating, and only two international consultants, the RETA scope presented a challenge in management. It was critical to develop a sense of ownership in each country for the RETA agenda, through the identification of a focal agency which would take responsibility for coordinating the RETA program, and building a team based approach to the RETA work with the involvement of national and local level government agencies, researchers, consultants and civil society representation. Significant weight was placed on the consultation process and on the national workshops as a means of generating broadly based support for the RETA agenda through the NRAPs. In several countries formal Coordinating Committees were established which included related agencies.

The international consultant team managed the RETA process and budget with efficiency and effectiveness, and achieved more than the targets initially specified well within the budget allocated. RETA contingency financing extended to cover additional outputs: preparation of the preliminary drafts of new policy and or legal documents reflecting the NRAP agenda in six out of 7 participating countries, and, a contribution to financing for the second regional workshop on involuntary resettlement policy and legal frameworks held in ADB HQ in 2002. In view of the complexity of the issues, however, and the need for sufficient time for a full consultation process, the original 12-month timeframe for the RETA was more than doubled.

Evaluation of Outputs (Reports generated, institution building, training, analysis of quality, and comparison with terms of reference)

The RETA presented a challenging agenda covering 7 countries, and addressing a range of sensitive issues, including consultation with people displaced by development projects, fair valuation sufficient to replace for land and other assets, and rehabilitation for people who lacked formal title to land. Generally, in all seven countries, the RETA targets set in the TOR were met and, in most cases, exceeded. The NRAPs articulated an initial

¹ See ADB's *Policy on Involuntary Resettlement* paragraphs 35, 41 and 42.

² ADB's *Policy on Involuntary Resettlement* requires particular attention to those among the people affected who are poor and vulnerable, by taking special measures to help them to improve their status (paragraph 34 (vii)).

range of measures designed to enhance the policy, legal and administrative framework, and to build capacity for implementation, that drew upon innovative practices that had already been developed at the project level, together with suggestions from a range of government and civil society stakeholders. The RETA country teams created an awareness of the importance of national standards in setting broad principles, which are necessary to underpin the effective implementation of resettlement plans at the project level.

The review of selected case studies revealed that, in the absence of national resettlement policy standards, there were risks in implementing involuntary resettlement. Adherence to ADB's Policy is mixed, but certain projects encapsulate good practice approaches that are well ahead of the legislative framework.

Consultation workshops were held in all seven countries to discuss and refine the NRAPs. Representatives of civil society and other development institutions joined the country workshops. In all countries, the workshops concluded that there was a need for enhanced policy, legal and regulatory measures to enhance the national standards. In Bangladesh, the Ministry of Lands expressed its commitment to develop a national resettlement policy standardizing equitable and timely compensation and livelihood restoration measures, drawing on the experience of the Jamuna Bridge Project, amongst others. The World Bank promised support for this endeavor through a TAPP. In Indonesia, with support of Bangda, the NRAP recommended the central Government to set new national resettlement standards by formulating a new Law on Land Acquisition in line with laws 22 and 25 on Decentralization (1999), with the development of a supporting regulatory and institutional framework. In Nepal, with the support of the focal agency Water and Energy Commission Secretariat (WECS) the NRAP recommended preparing a policy statement on involuntary resettlement and revising the 1977 Land Acquisition Act, together with appropriate regulatory and administrative refinements. In Pakistan, under the guidance of the PAK-EPA, the NRAP recommended drafting of a national resettlement policy which addressed fair and timely compensation, planning, budgeting, consultation, income restoration, and grievance redress. In the Philippines, with the support of the Housing and Urban Development Coordinating Council (HUDCC), the NRAP proposed policy, legal and institutional changes to address the RETA agenda. In the PRC the Foreign Capital Project Management Center for the State Council Leading Group Office of Poverty Alleviation and Development proposed, amongst others, to amend the Chapter 5 of the Regulations on the Implementation of the 1998 Land Administration Law of the PRC. Finally, in Viet Nam, under the auspices of the focal agency, the Ministry of Planning and Investment (MPI), together with the interdepartmental Coordinating Committee, the NRAP proposed the revision of the current Decree 22/CP on land acquisition, together with complementary institutional arrangements. A Country TA was subsequently requested.

Delegations from 6 out of 7 DMCs presented their country reports at a regional workshop in Manila on 23-24 August 1999.³ Representatives of civil society and other development institutions joined DMC delegations in working group discussions focusing on country specific policies, implementation of the NRAPs, institutional mechanisms for approving the policy, dealing with differences between national and ADB's policy and the process for preparing the policies. The World Bank and Japan Bank for International Cooperation (JBIC) were strongly represented at the regional workshop. Seven country reports, country NRAPs, policy and legal documents, and overview reports, were prepared.

In addition to the terms of reference, the consultants also assisted government delegations to prepare for the presentation of NRAPs during the regional workshop and began the follow-up activities towards improving national resettlement policies. Out of the contingency budget, all of the seven countries were funded to take a next step towards developing the NRAPs. Preliminary draft resettlement policies were subsequently prepared in Bangladesh, Pakistan and Nepal while draft legal documents and revisions to existing land laws and regulations were prepared for Indonesia, People's Republic of China and Vietnam. In the Philippines, endorsement of the NRAP was delayed due to changes in the focal agency's coordinators. As a result of the consultation process and the follow-on activities, the original RETA schedule was extended.

Overall Assessment and Rating (Highly successful, successful, partly successful, unsuccessful)

An OEO *Special Study on the Policy Impact of Involuntary Resettlement*, 2000, endorsed the findings and strongly recommended increased ADB support for such TA initiatives.

ADB's initiative attracted considerable attention amongst multilateral financial institutions, for example at the Multilateral Development Bank Third Roundtable on Operational Policies, Strategies, and Practices in Washington on 26 March 2000. Follow-on discussions with the World Bank have highlighted the potential for complementary efforts to maximize scarce TA resources.

The TA won an Annual CIDA Award for "Improvement of Physical Infrastructure or Improvement of Social Infrastructure."

The TA is rated as highly successful in achieving its original objectives.

Major Lessons Learned (if any)

Several important lessons emerged, the most obvious being that major policy change requires significant time, expertise and resources, and will not take place quickly. The RETA started from the very first steps. Firstly, it was necessary to recognize that involuntary resettlement principles are important, and need to be streamlined in order to manage risk. An important first task in achieving this was to identify an agency to champion the NRAP agenda, to be responsible for coordination to identify lessons learned and to highlight the good practices that already existed in each DMC at the project level. The formation of the country teams of RETA consultants, civil society and government was also critical, to build the momentum in each DMC, as was the establishment of good working relations between ADB, the consultants and the focal agency.

The next step was to involve as many stakeholders as possible from civil society, academe, government, development agencies, international finance institutions and affected persons. Whilst the RETA work obtained insight into the challenges that lay ahead, and captured such insights in the form of the initial practical recommendations of the NRAPs, further refinement of this agenda and progress in NRAP implementation depends upon the commitment of such stakeholders. Although the TA identified focal agencies, in many cases other agencies would also need to be involved, and, some cases, it was realized that the focal agency, as a "champion" of the issue, would not, itself, be likely to become a regulatory agency for resettlement. Whilst the RETA achieved general acceptance, among participating countries, of the principles, how to address them fully and completely in each case requires further work, and will take time and resources for full consolidation and implementation.

Recommendations and Follow-Up Actions

The TA recommended:

- (i) That it is important for each country to develop the macro framework based on its own unique characteristics; and that this complex task requires concerted vision and will of a range of stakeholders, building upon the lessons learned from past experience.
- (ii) That the national involuntary resettlement macro framework, along with other important areas of national policy, should incorporate the principles of fair compensation, consultation, transparency, accountability, right of appeal, and special attention to disadvantaged groups;
- (iii) That ADB work together with other development institutions, such as the World Bank and JBIC, to assist DMCs to develop and/or refine their resettlement macro frameworks, minimizing risk of duplication and maximizing the coordinated best use of scarce resources;
- (iv) That ADB should consider follow-up TA that would broaden the geographic base by including additional countries, to build upon the momentum established; and
- (v) That ADB should consider country-specific TAs, to bring to bear the necessary country-specific resources for consolidation and implementation, and to monitor pro-actively the full implementation of the 7 NRAPs.

³ The Viet Nam delegation was unable to attend due to disruption of air traffic by a typhoon.