

**ASIAN DEVELOPMENT BANK**

**TAR: OTH 29074**

**TECHNICAL ASSISTANCE**

**FOR THE**

**REVIEW OF NATIONAL RESETTLEMENT POLICIES**

**AND**

**EXPERIENCE WITH**

**INVOLUNTARY RESETTLEMENT PROJECTS**

**March 1998**

## **ABBREVIATIONS**

<b>DMC</b>	<b>Developing Member Country</b>
<b>NGO</b>	<b>Nongovernment Organization</b>
<b>PRC</b>	<b>People's Republic of China</b>
<b>S OCD</b>	<b>Social Development Division</b>
<b>TA</b>	<b>Technical Assistance</b>

## **NOTES**

In this Report, "\$" refers to US dollars

## I. INTRODUCTION

1. The Bank's Policy on Involuntary Resettlement, which was approved in November 1995, foreshadowed that a regional technical assistance (TA) would review resettlement in ongoing Bank-financed projects. This would (i) provide greater understanding of resettlement needs and planning in each participating developing member country (DMC) based on analysis of national policies and resettlement activities; (ii) support resettlement capacity building in the DMCs; and (iii) help to ensure effective implementation of the Bank's Resettlement Policy. TA fact-finding missions to the People's Republic of China (PRC), Indonesia, Pakistan, Philippines, and Viet Nam took place in April-July 1997. The missions met various stakeholders including affected people and Government agencies. The scope, cost estimates, and implementation arrangements reflect these discussions.

## II. BACKGROUND AND RATIONALE

2. Each of the Bank's DMCs has its own framework for land acquisition through eminent domain and other regulatory measures, reflecting historical, social, and economic parameters. This framework comprises policies, laws, and guidelines. The frameworks for land acquisition in the PRC, Indonesia, Philippines, and Viet Nam have evolved quickly in recent years. Land collectivization (as in the PRC and Viet Nam) is a basic parameter shaping such frameworks. In the PRC the 1986 *Land Administration Law* clarifies land rights and registration of use rights for State-owned land, providing guidance to provinces, cities, counties, and collectives responsible for implementing land acquisition and resettlement. Regulations cover compensation for transport and industry projects (1982) and urban development (1991). Reservoir projects (1991) have lower compensation standards than other sectors. Nontitled, nonresidence permit holders in urban PRC are currently unprotected even if they are long-term migrants in an increasingly deregulated labor market. In Viet Nam the *Land Law* of 1993 defines State powers and clarifies the rights of people to use and transfer real property based on use rights. A 1990 decree sets compensation levels for recognized users of expropriated land, and does not allow for compensation of illegal users, but this issue, and others, are under review.

3. Where the legal bases are long-standing, as in Pakistan (the original *Land Acquisition Act* dates back to 1894), the Government recently introduced new project-based initiatives to set compensation levels at replacement rates and to rehabilitate affected people. Each province in Pakistan has its own interpretation of the Act through the Provincial Land Revenue Department and the Land Acquisition Collector. In the Philippines the 1987 *Constitution* sets land policy and requires compensation for expropriation by the State. *Executive Order 1035* of 1985 sets guidelines for Government land acquisition. The 1992 *Republic Act 7279* sets conditions and procedures for eviction of squatters for land to be expropriated, while providing some assistance for the underprivileged and homeless. Some other regulations and sector acts also apply in different cases. The key Indonesian law is *Presidential Decree 55 of 1993*, which covers compensation, grievance, and consultation procedures. Compensation varies according to the level of land ownership. A 1994 *Operational Directive* activates this Decree. Many countries increasingly use partnerships between nongovernment organizations (NGOs), community organizations, universities, and government agencies in resettlement planning and implementation.

4. The Bank's policy emphasizes the need, not just for compensation at replacement rates to restore lost assets, but also for measures to restore living standards and livelihoods so that people are not disadvantaged by resettlement. The Bank's policy, which briefly reviewed DMC resettlement, found that land acquisition policies and practices had mixed results in achieving these objectives. Many of the DMCs lack specific resettlement legislation. In some cases, measures to restore or enhance livelihoods and living standards are not explained in terms that can meet the Bank's policy. These issues are often addressed on a project basis during project preparation for resettlement.<sup>1</sup> There is a need to address these issues on a country basis, bringing together a more comprehensive analysis of the policy framework with an assessment of innovative elements that were developed for some individual projects.

5. Resettlement planners must often address emerging regionwide themes. These include rapid land use changes, population growth, urbanization, the escalating cost of land, land scarcity, and environmental limits. These all make it increasingly difficult to provide replacement land for the land acquired. In all countries, rapid urbanization results in significant land acquisition in urban fringe areas, while land acquisition in rural areas can induce rural-urban migration. Consequently, planners require a range of workable compensation and rehabilitation options to take account of different conditions. Increasingly, the challenge is to manage change and, in close consultation with people affected, provide a range of new opportunities in livelihood and living patterns.

6. Regional, provincial, and local governments play an increasingly important role in formulating, implementing, and financing resettlement. Agencies at these levels often lack the knowledge, experience, and resources to facilitate sustainable resettlement. While the circumstances differ between countries, project resettlement frameworks need to provide greater consistency in the entitlements offered to people affected across local government boundaries.

7. Nontitled persons occupying land present challenges in all countries. Legal frameworks do not usually ensure rehabilitation measures for genuine cases, as required by the Bank policy. In many countries, the claims to rehabilitation of many nontitled persons are being overshadowed by the activities of land speculators, thus escalating the cost of replacement land for the people affected. Growing problems of land speculation require special solutions in each country context. The calculation of compensation for assets lost at replacement rates is a challenge, particularly when compensation rates are not fixed at market values, or when transfer and relocation costs, or additional fees and taxes, are not met.

8. Given the current status of resettlement policies in many of the DMCs there is a need to (i) provide greater understanding of resettlement needs in selected DMCs based on analysis of national policies, resettlement procedures, and recent trends; (ii) evaluate the experience with Bank-associated involuntary resettlement and determine lessons learned; (iii) establish the extent to which the lessons should modify existing policy or practice; (iv) discuss the feasibility of making the needed changes, together with plans of action for change; and (v) share the experiences on a regionwide basis.

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<sup>1</sup> IN. 56-97: Policy on Involuntary Resettlement: *First Annual Report to the Board of Directors*, 11 April. This Paper summarizes some of the recent innovative practices in resettlement planning that were introduced for some Bank projects.

9. There is a need to support the efforts of selected DMCs to strengthen and implement the policy and legal framework for resettlement, highlighting positive project-specific initiatives. Each selected country has at least two Bank-funded projects approved during 1994 to 1996 involving resettlement, providing a basis for project-specific case studies of resettlement planning and implementation. The case studies will be based upon projects approved following the President's Staff Instructions on Resettlement of February 1994, thereby drawing upon more than one to four years of resettlement implementation. Plans and materials to enhance the policy framework and its implementation are needed, suited to the conditions of each country. Future Bank projects with resettlement can then draw upon these documents. The seven countries selected for the TA are those with the largest numbers of people displaced as a result of Bank-funded projects, and therefore are of highest priority for attention. They are Bangladesh, PRC, Indonesia, Nepal, Pakistan, Philippines, and Viet Nam.<sup>1</sup>

10. At the regional level, policy dialogue on resettlement is timely, drawing on shared social, economic, and environmental trends. The fact-finding missions to PRC, Indonesia, Pakistan, Philippines, and Viet Nam confirmed that the governments of these countries welcomed the opportunity to work in partnership with the Bank and draw on the experience of other countries to seek workable approaches to resettlement.

11. All countries agreed on the need to maximize complementarities between funding bodies in resettlement capacity building. The Mission is pursuing opportunities for cooperation with other funding bodies, especially in the workshops. Some countries requested national workshops to discuss the TA recommendations prior to the main regional workshop. This would provide an opportunity to involve regional and local resettlement personnel, with important spin-offs in awareness building.

### III. THE TECHNICAL ASSISTANCE

#### A. Objectives

12. The TA will evaluate (i) the adequacy of selected resettlement policy and legal frameworks in the Bank's DMCs, namely, Bangladesh, PRC, Indonesia, Nepal, Pakistan, Philippines, and Viet Nam; and, (ii) the resettlement experience in ongoing Bank-financed projects. It will also identify a range of innovative resettlement approaches and prepare initial action plans for the participating DMCs. The results will be drawn upon during country consultations, project preparation, project supervision, and for any future revisions of the Bank's Policy.

#### B. Scope

13. The TA will provide domestic and international consultants to prepare case studies of Bank-financed projects, review the policy and legal framework for resettlement, and

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the capacity of the key agencies to implement the framework. The TA culminates in national and regional workshops. The TA framework is in Appendix 1.

14. The TA will support national policy and legal resettlement frameworks, providing practical direction where such frameworks are incomplete. It will build awareness about resettlement among stakeholders including governments at all levels. The TA will include a national-level workshop in each country to extend consultations to include the local government and stakeholders. Broader regionwide understanding of resettlement policy and practice will be promoted through the synthesis overview report and the regional workshop concluding the TA, which will seek commitment of country participants to each of the initial country plans of action. Representatives of other funding bodies will be invited to share information and attend the workshop. The proposed TA will include the following activities.

1. **Prepare a country analysis for each selected DMC.** The main elements of the country analysis are to (i) review the resettlement policies, laws, and guidelines; identifying any gaps, ambiguity, or where such frameworks may contradict or be incomplete compared to the Bank's policy; (ii) consult with key stakeholder representatives; (iii) liaise with other funding bodies involved in resettlement; (iv) review selected Bank projects to assess the nature and effectiveness of resettlement entitlements, impacts, and implementation procedures compared to legal requirements; (v) review the capacity of agencies responsible for resettlement; (vi) draw out examples of current good practice, analyzing the reasons for success in meeting resettlement policy objectives, paying special attention to whether social and economic well-being is being restored among the people affected; and (vii) identify innovative approaches to achieving resettlement objectives. The findings will be used to prepare recommendations for (i) any practical refinements necessary to ensure that Bank resettlement policy objectives are met in ongoing Bank projects; (ii) measures to enhance the policy framework, and to build implementation capacity; and (iii) country-specific training materials and operational guidelines. A national workshop will discuss the findings and recommendations with participants from relevant sectors and levels of government, together with other key stakeholders from the private sector, communities, NGOs, and other aid agencies. Country-specific plans of action with a compendium of good practice, principles and next steps, will be prepared at the national workshops by the participants for discussion at the regional workshop.

2. **Synthesize the lessons learned and innovative approaches to resettlement.** An overview report synthesizing the country studies will (i) analyze the elements of best practice on resettlement; (ii) compare the policy frameworks, procedures, and implementation capacities in each DMC to draw out key themes and issues; (iii) synthesize key findings and recommendations to strengthen the resettlement frameworks and build capacity; and (iv) report on the outcome of the regional workshop organized to discuss the findings and recommendations of the study.

### **C. Implementation Arrangements**

15. The TA will be implemented over 12 months and is expected to commence early in 1998. The TA requires the services of a firm or institution that will provide two international consultants together with one domestic consultant in each of the seven participating countries. All consultants will have significant experience in resettlement planning and management. One international consultant, designated as team leader, will take responsibility for selecting domestic consultants for Bank approval; organizing the research, consultations, and

workshops; supervising the country studies; and producing the inception, interim, and final reports. The latter will include seven country studies to be submitted at the end of month five, and an overview synthesis volume to be submitted at the end of month nine. The domestic consultants, supervised by the international consultants, will prepare the country studies. The consultants' firm will be engaged by the Bank according to the Bank's *Guidelines on the Use of Consultants*, using the simple technical proposal. A total of 14 international and 35 domestic consultant-months are required. The outline Terms of Reference are in Appendix 2.

16. During the first month, the international consultants will (i) attend an inception meeting at Bank Headquarters; (ii) finalize the list of project case studies for each country through discussions with an Interdepartmental Steering Committee, the Bank's Social Development Division (SOCD), and key counterparts in agencies responsible for resettlement in each DMC; (iii) select domestic consultants; and (iv) prepare an inception report setting out the proposed work plan to complete the TA. The interim report and country studies are due at the end of the month six, and month eight, respectively. The national workshops will take place in month nine and ten, the regional workshop in month eleven, and the draft final report is due in month twelve.

17. The Bank will be the Executing Agency for the TA. SOCD will guide implementation in coordination with an interdepartmental steering committee comprising representatives from the Programs Departments; Agriculture and Social Sectors Departments; Infrastructure, Energy, and Financial Sectors Departments; Private Sector Group; and Postevaluation Office. In each selected country, the participating agencies will include, as appropriate, the ministries or departments of land, resettlement planning, finance, environment, and local government; together with key sector agencies (construction, power, water resources, transport, and agriculture).<sup>1</sup>

#### **D. Cost Estimates**

18. The total cost of the regional TA is estimated to be \$831,000, which will be funded by the Bank on a grant basis from the TA Special Fund (Appendix 3).

### **IV. THE PRESIDENT'S DECISION**

19. The President, acting under the authority delegated by the Board, has approved the provision of regional technical assistance, on a grant basis, in an amount not exceeding the equivalent of \$831,000 for the purpose of the Review of National Resettlement Policies and Experience with Involuntary Resettlement Projects, and hereby reports such action to the Board.

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<sup>1</sup> The *First Annual Report to the Board of Directors on the Policy on Involuntary Resettlement* found that, for Bank loans approved between 1994 and 1996 the key sectors causing resettlement effects were, in ranked order, transport, power and energy, irrigation, urban infrastructure, environment, rural development, and water resources.

## TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	Targets	Monitoring Mechanisms	Risks and Assumptions
<p><b>1. Goal</b></p> <p>To promote commitment to strengthened resettlement policies and practices</p>	<p>Agreement of country participants to a set of resettlement principles and next steps in country initial plans of action. Positive workshop evaluation for one regional workshop by TA completion date.</p> <p>TA reports distributed to key personnel of the developing member countries (DMCs) and other funding bodies.</p> <p>Use of TA results and materials in country consultations, project preparation and possible policy revisions.</p>	<p>TA report and evaluation from the regional workshop</p> <p>TA follow-up report</p>	<p>Other funding bodies will attend country and regional workshops.</p> <p>Policy/legal frameworks will be strengthened where necessary.</p>
<p><b>2. Purpose</b></p> <p>To increase the awareness, understanding, and practice of selected DMCs to implement the Bank's Policy on Involuntary Resettlement</p>	<p>7 sets of compendium of good practice, comprising case studies by participants and initial plans of action for Bangladesh, People's Republic of China, Indonesia, Nepal, Pakistan, Philippines, and Viet Nam prepared at workshops</p> <p>7 positive national workshop evaluations</p>	<p>Workshop reports and outputs</p> <p>Reports and evaluations for national workshops</p>	<p>Key planners and managers, and other stakeholders on resettlement will participate.</p> <p>Other funding bodies will attend workshops.</p>
<p><b>3. Components/Outputs</b></p> <p>Country analysis for 7 selected countries</p>	<p>7 stakeholder analysis and consultations</p> <p>7 reviews of resettlement policy and legal frameworks and their implementation</p> <p>Information sharing with other funding bodies in 7 countries</p> <p>Review of two to three Bank projects; plus remedial recommendations for 7 countries</p>	<p>Country reports</p> <p>Country reports</p> <p>Country reports</p> <p>Country reports</p>	<p>Other funding bodies will participate</p> <p>Data are available for review</p>

## Technical Assistance Framework - Continued

Design Summary	Targets	Monitoring Mechanisms	Risks and Assumptions
<p>Seven country workshops conducted</p> <p>Summary synthesis report</p> <p>One regional workshop conducted</p>	<p>Review of resettlement institutions in 7 countries</p> <p>New options for resettlement implementation in 7 countries</p> <p>Findings and recommendations for 7 countries</p> <p>Guidelines and training materials for 7 countries</p> <p>Analysis of international best practice</p> <p>7 workshop reports and budgets</p> <p>Analysis of international best practice on resettlement</p> <p>Comparison of policy frameworks and procedures and plans of action</p> <p>Findings and recommendations</p> <p>One regional workshop report and budget</p>	<p>Country reports</p> <p>Country reports</p> <p>Country reports</p> <p>Country reports</p> <p>Country reports</p> <p>Reports</p> <p>Summary synthesis report</p> <p>Summary synthesis report</p> <p>Summary synthesis report</p> <p>Reports</p>	<p>Other funding bodies will attend; key resettlement stakeholders will attend</p> <p>Other funding bodies will attend; key resettlement stakeholders will attend</p>
<p><b>4. Activities</b></p> <p>Prepare inception report</p> <p>Prepare interim report</p> <p>Prepare country reports</p> <p>Prepare summary synthesis report</p> <p>Conduct workshops</p> <p>Complete final report</p>	<p><b>Inputs</b></p> <p>\$831,000 for consultant's reports, workshops, and support over six months.</p>		

(Reference in text: page 3, para. 13)

## OUTLINE TERMS OF REFERENCE

1. The Bank will recruit a firm of consultants to provide two international consultants and one domestic consultant from each of the seven participating countries: Bangladesh, People's Republic of China (PRC), Indonesia, Nepal, Pakistan, Philippines, and Viet Nam.
2. Both of the international consultants will have substantial experience in resettlement policy analysis and planning in the Bank's region. The two international consultants will, between them, have background and experience in successful planning and management of livelihood improvement projects, land use planning or a related field, land law, social development, and gender analysis. Both consultants should be familiar with resettlement issues in the seven countries selected for the regional technical assistance (TA). They must have analytical and writing skills of a high order and experience in workshop facilitation.
3. The domestic consultants will have significant experience in resettlement policy analysis and/or resettlement planning and implementation, together with relevant tertiary qualifications. The domestic consultants will each be engaged for a period of 5 person-months. They will prepare case study material for their respective countries, and help to arrange the national workshops.
4. The responsibilities of the international consultants will be to
  - (i) select one domestic consultant in each of the seven participating countries and submit their selection for Bank approval;
  - (ii) analyze, in liaison with other funding bodies, the elements of resettlement policies and practice, comparing them with the Bank's own Policy on Involuntary Resettlement;
  - (iii) in each selected country, supervise a stakeholder analysis and consultations; review the policies, laws, guidelines, and directives in the local setting; and compare with the Bank's Policy;
  - (iv) in each selected country, supervise a review of two to three selected Bank projects, and analyze current practice and innovative approaches to land acquisition and resettlement to develop resettlement objectives for key sectors of the Bank's region involvement requiring resettlement;
  - (v) in each selected country, supervise the review of agencies responsible for resettlement in terms of mandates, understanding, commitment, staff and financial resources, and implementation experience;
  - (vi) supervise the preparation and production of each country study summarizing key findings and recommendations to enhance the policy and implementation framework;

- (vii) prepare and conduct, with the assistance of the domestic consultants and key agencies, a national workshop in each country to discuss the findings and recommendations of the study, with participants from all relevant sectors and levels of government, together with other stakeholders from the private sector, communities, nongovernment organizations (NGOs), and funding bodies. Facilitate arrangements for country participants to prepare additional case studies;
- (viii) supervise the preparation of training materials and operational guidelines on a country basis;
- (ix) compare the policy frameworks, procedures, and implementation capacities in each participating DMC to draw out key themes and issues;
- (x) prepare a summary synthesis report summarizing key findings and recommendations to strengthen the resettlement frameworks and build capacity, taking account of the practices of other funding bodies;
- (xi) prepare training materials and operational guidelines; and
- (xii) organize and conduct an international workshop to discuss the findings and recommendations of the study, including the proposed country-specific plans of action, with selected participants from the country workshops and representatives of other funding bodies. Seek agreement of the country participants to each country plan of action.

5. The domestic consultants will carry out their assignments under the general supervision of the international consultants. They will each have responsibility for the production of a country study. They will commence their studies within two months of the commencement of the TA study and present their report at the end of month seven. The tasks of the domestic consultants will be to

- (i) conduct stakeholder analysis to identify the key participants in resettlement planning and management; and consult with key stakeholder representatives;
- (ii) liaise with other funding bodies involved in resettlement to share information;
- (iii) review the policies, laws, guidelines, and directives at national and, where appropriate, regional and local levels, identifying any areas or sectors where there may be gaps or ambiguity, or where such frameworks may contradict or be incomplete compared to the Bank's Policy on Involuntary Resettlement; provide copies of each such policy, law, guideline, and directive;
- (iv) review two to three selected Bank-financed projects to assess the nature and effectiveness of resettlement entitlements and implementation procedures, and the extent to which policy objectives are being achieved and legal requirements met;

- (v) assess if the agencies responsible for resettlement have the required mandates, understanding, commitment, staffing, financial resources, and experience to plan and implement resettlement;
- (vi) draw out examples of current practice; analyze the reasons for success in meeting resettlement policy objectives, with special attention to whether social and economic well-being is restored (this could be done through with or without project comparisons, using suitable objective indicators);
- (vii) identify innovative practices and existing mechanisms in the local setting to avoid or minimize land acquisition and resettlement, and—where resettlement is unavoidable—to achieve resettlement objectives for key sectors where the Bank has, or is likely to have, projects and programs necessitating resettlement;
- (viii) recommend, if necessary, appropriate practical refinements and modifications necessary to ensure that the Bank's resettlement policy objectives are met in ongoing Bank projects;
- (ix) prepare a report summarizing key findings and recommendations to enhance the policy framework, foster good practice, and build implementation capacity;
- (x) prepare country-specific training materials and operational guidelines, and translate them into the official language;
- (xi) assist in the conduct of a national workshop to discuss the findings and recommendations of the study with participants from all relevant sectors and levels of government, together with other key stakeholders from the private sector, communities, NGOs, and other funding bodies; and
- (xii) prepare and discuss with government authorities initial country-specific plans of action to improve resettlement; these should include resettlement principles and the next steps.

(Reference in text: page 4, para. 15)

**ESTIMATED COST OF TECHNICAL ASSISTANCE  
(in US Dollars)**

<b>I.</b>	<b>Consultants</b>	
	A. Remuneration and Per Diem	
	1. International Consultants	312,000
	2. Domestic Consultants	105,000
	B. International and Local Travel	63,000
<b>II.</b>	<b>Workshops<sup>1</sup></b>	
	A. National Workshops	126,000
	B. Regional Workshop	103,000
<b>III.</b>	<b>Publications (incl. editing and translation)</b>	25,000
<b>IV.</b>	<b>Communications</b>	10,000
<b>V.</b>	<b>Miscellaneous Administration and Support Costs</b>	12,000
<b>VI.</b>	<b>Contingency</b>	75,000
	<b>Total</b>	<b>831,000</b>

<sup>1</sup> The regional workshop includes international airfares, accommodation, per diems and expenses, together with administrative costs. The national workshops include national airfares and travel, accommodation, per diems and expenses, together with administrative costs.