

Comments on ADB's Special Evaluation Study of Involuntary Resettlement Safeguards (SST: REG 2006-14), 27 November 2006

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A. Definitions of Resettlement and Displacement.

The SES does not contain a detailed definition of involuntary resettlement and displacement. There are, however, statements that contain partial or implicit definitions.

A1. Scope of application to project types: SES para 19 and Appendix 2 state the argument that *“the focus of the 1995 Policy document and the January 1997 OM was on significant displacement and resettlement, especially in the context of large infrastructure projects”*.

Response: the Policy provides a safeguard for all cases under its scope. Firstly, the 1995 Policy does not restrict coverage to significant cases. The Policy section offering guidance on RP preparation requires a detailed RP “where population displacement is unavoidable” (para 38). Secondly, the 1995 Policy coverage is by no means limited to infrastructure projects. Policy paragraph 5 cites a wide range of examples of the Policy scope, including many infrastructure project types, certainly, but the list also includes non-infrastructure project examples such as protected parks, biodiversity and conservation areas, grazing and transhumance routes and forestry developments, including reforestation, plantations, and closure of forest areas (Policy para 5). Such projects do not appear to have been addressed in the SES, for example, they have been omitted from SES Figure 2 on *Percent of Infrastructure Projects with Resettlement Planning*. In terms of the impacts the 1995 Policy focused attention from the beginning on the project changes that generate social and economic effects on people, rather than the size or type of the project itself. Policy para 7, for example, cautions that “numbers alone may not present a full picture of the intensity of impact on the local people”.

A2. Long Distance Physical Movement

SES paras 11-13 introduce the idea that a requirement for IR may be long distance physical movement of people. SES cites as examples new dams with large reservoirs, and urban developments. SES para 13 states that *“most other types of projects do not usually require the resettlement of communities across longer distances out of their usual environment.”* For compact non-linear projects...*these generally have less severe impacts on communities and do not result in long-distance relocation away from sources of income.”*

This statement raises the question of Policy coverage for non-reservoir and non-urban development projects. It also raises a question of whether reservoir and urban projects inevitably mean long distance movement for all APs, which is not necessarily the case. There is no wording in the 1995 Policy to suggest that it only applies to long-distance movement. There are no criteria to guide staff in determining how far people would have to move before the Policy applies, or in differentiating between project types on basis of population movement. The 1995 Policy para 5 discusses projects that involve “acquisition or redirection of use of lands that are owned or utilized by individuals or communities” that may “entail some adverse impacts on people”, and specifically includes rail and road alignment projects, as well as a wide range of other project types, in the scope of the Policy application. In para 7 the Policy cites specific cases of a port, a power plant, a bridge and a railway project being covered by the Policy. ADB’s dictionary, the Merriam Webster Collegiate defines displacement, inter alia, in terms of removal from "home or homeland" or in terms of removal "from office, status or job". There is no hint in this definition that removal from home, office, job or status must take place over some distance.

A3. Resettlement for alignment projects

SES para 13 states that linear projects with alignments “*may lead to a relatively large number of people losing part but not all of their land and moving either to another location on their own land or to other land nearby*” . The SES draws the inference that this type of loss is less serious than for reservoirs or urban development projects, as in such cases the fabric of the existing community is less disrupted and so “*good planning can mitigate most of the negative impact on APs and their communities*”.

This last statement would seem to represent a ringing endorsement of the need for IR planning. Yet, whilst reservoir and urban development projects may represent special challenges, the SES presents evidence of continued difficulty with livelihood restoration even for alignment and other types of projects (eg. Table 7 SES survey). It is not clear from this small survey sample the types of APs who were particularly at risk (were they women, indigenous groups, people below the poverty line, for example?), or the magnitude and nature of the problems. For projects generally, the SES finds that livelihood restoration is more protracted and difficult than restoration of housing, eg. SES para 124 states that “in many cases APs judged new housing and access to public facilities as much better than before, but the restoration of livelihood was not yet fully achieved for all households”. This confirms the findings of the earlier OED SES study in 2000 on the *Policy Impact of IR* that income and livelihood restoration can be particularly problematic. The scope of the livelihood restoration challenge depends on the degree of economic and social impact. Of course, if a household losing land has significant non-farm income, or if a farm-dependant household loses a small strip of wasteland or boundary, then the household income and living standard might be scarcely affected by loss of land. But loss of part of the land or access to the land may have very serious consequences, for example for a household that is dependent on their landholding, or on access to grazing land, for their food and/or livelihood. This may raise the question of whether, even with compensation, that household can continue to survive in that area. Certainly, it would raise the possibility of their impoverishment. The 1995 Policy

recognizes this point, and specified that people displaced should not have to “sacrifice” for the larger good. The Policy recognized that in the past “resettlement programs in general were limited to statutory monetary compensation for land acquired for the project” (para 28) and that “monetary compensation for land alone may not be adequate” to restore the economic and social base (para 38). The Policy states that “If people must lose their land, means of livelihood, social support systems or way of life in order that a project might proceed, they should be compensated and assisted so that their economic and social future will generally be at least as favorable with the project as without it” (para 34 (iii)) (emphasis added).

In sum, it seems clear that the Policy intends to provide a safeguard with scope that extends well beyond infrastructure projects, requires a resettlement plan whenever population displacement is unavoidable, focuses on a range of possible adverse social and economic effects including loss of jobs and status, does not state that losing a house is a pre-condition for Policy coverage, and does not specify a minimum moving distance for Policy coverage. Counter-measures to restore the economic and social base encompass losses of social support systems and way of life, as well as livelihoods and land. The 1995 Policy is founded on economic and social definitions – it does not contain the word physical. Rather, references to economic and social effects, risks and counter-measures are key themes running consistently through the 1995 Policy. Put simply, the Policy centralizes people, their experience of loss, and counter-measures offering them both protection and opportunity.

B. Raising the Bar

The SES states 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, and new OM Section F2 on IR (Executive Summary page i).

B1. Handbook Definition of “Significance” raises the bar (SES Appendix 2).

Response: The 1995 Policy section on RPs requires a detailed RP “where population displacement is unavoidable” (para 38). The first Board Paper had identified a number of cases where impacts of were not fully identified in terms of the Policy, raising concerns about noncompliance. OGC staff worked closely with OESD in formulating the 1998 Handbook definition of “significance” to meet the Policy requirement to cover all cases, whilst prioritising scarce resources to more serious cases. The World Bank’s OD 4.30, on which the figure of 200 people was drawn, was already familiar to ADB staff through the President’s Instructions of February 2004. During preparation of the Handbook several Board members expressed keen interest in the Policy statement of para 38, viewing the RP as a critical mechanism that would allow ADB to offer a safeguard to all those displaced. The Handbook was circulated interdepartmentally prior during its preparation. Neither of the previous OED SES studies on Resettlement questioned this interpretation.

B2. Scope of OM Section application: The SES claims that “*The OM F2 consolidated the emerging practices on IR planning which had put the emphasis on addressing all adverse impacts that infrastructure projects could have on people*”.

Both the Policy and OM F2 apply only in certain circumstances: first, when a project is location specific; second, when there are project impacts on land in terms of acquisition or redirection; third, when the taking of land or fixed assets on land is involuntary. There are many other potential adverse projects impacts that are outside this scope, for example, loss of jobs, social services or pensions that result from sector re-organisation; or loss of access to basic services through raising of tariffs. In fact, SES itself in para 15 presents a number of examples of addressing project impacts on vulnerable people that go beyond involuntary resettlement.

B3. Scope of assessment of loss: SES para 19 states that the focus of the OM F2/BP and OP is on “*recognizing and addressing all kinds of losses that people affected by projects can sustain, including those that do not generate involuntary displacement and do not require actual resettlement, or even loss of part of the land*”. (See also SES para 24 for a similar statement about making “*full assessments of all possible losses that people in the direct influence of projects could sustain*”).

The OM F2/BP opens with a definition limiting coverage to a particular class of people, that is, to a group defined by experiencing adverse social and economic impacts that are caused by acquisition of land and other fixed assets; change in the use of land; or by restricted access to land (OM F2/BP para 2). The footnote elaborates upon categories of persons “*who experience such impacts*”, that is, who may be affected within the parameters of this basic definition.

B4. Degree of Significance: Executive Summary page (ii) claims that “*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...*”

The Policy scope was not restricted to significant displacement. As noted, in setting the requirements for resettlement planning the 1995 Policy does not restrict coverage to significant displacement (Policy para 38). In this paragraph there is no suggestion that “insignificant” displacement needs no RP.

B5. Focus on social dimensions of loss: SES para 20 states that “*the growing realization of practitioners that displacement has consequences above and beyond loss of house or land, affecting livelihoods and social networks has led to greater rigor in examining the social dimensions of projects*”.

This issue is not new, it was addressed in the 1995 Policy. It may certainly be true that knowledge and awareness about IR realities took time to percolate through ADB. However, at the outset the Policy states that “any development project that introduces significant changes in the patterns of use of land, water, or other natural resources that

may entail some adverse impacts on people who are currently using such resources and associated economic, social, cultural and religious facilities” (Policy para 5). Loss of “means of livelihood, social support systems or way of life” are legitimate losses under the Policy scope (para 34 (iii)). Nor did the Policy limit IR counter-measures to replacement land and housing. The Policy specifies that “appropriate land, housing, infrastructure and other compensation comparable to the without project situation, should be provided to the adversely affected population, including indigenous groups, ethnic minorities, and pastoralists who may have usufruct or customary rights to the land or other resources taken for the project.” (para 34 (iii)). These Policy pronouncements did not fall from heaven, they resulted at least partly from a long experience of dedicated researchers working on actual case studies, grounded in theoretical knowledge and enlightened by insights from people with direct experience of the costs and “sacrifices” inherent in one-sided growth. This significant body of knowledge informed the Policy preparation. The challenge has been in obtaining the resources and time to achieve the necessary “greater rigor in examining the social dimensions of projects” on a case by case basis, to ensure a good match between risks and countermeasures.

B6. Non-titled People: The SES para 21 states that, contrary to the 1995 Policy, the OM F2/OP means that nontitled people “*would not have right to compensation for loss of land, only to assistance*”. A footnote explains that, in the OM F2/OP resettlement assistance to non-titled APs may include replacement land, but there is no entitlement to it.

In fact, non-titled people are eligible for other compensation as well as assistance under OM F2/OP. The Policy states only that “absence of formal legal title to land by some affected groups should not be a bar to compensation” (para 34 vii), it does not specify compensation for land, although this might well be implied. However, OM F2/OP specifically states that nontitled people are eligible for compensation for non-land assets, as well as for transfer costs, transitional income support, assistance for restoration of income, social services, community property, etc, designed to restore their economic and social base.

B7. Sector Loans: SES para 23 notes that “*the increased rigor in application of the policy and its OM Section*” have resulted in “*the introduction of the RF...in the case of sector projects*”.

The 1995 Policy had special requirements for sector loans with likely significant IR. It required a broad assessment of the likely magnitude of IR, at least one sample RP and the criteria and outline of RPs for other subprojects, with mandatory Bank review (Policy footnote para 43). The RF as defined in OM F2 covers these requirements. This is a flexible way of providing a safeguard for the increasing number of loans types where likely resettlement impacts do not become apparent until some time after loan approval, and it is surprising that the SES does not see the possibility inherent in this approach.

B8. Resettlement planning in case of doubt: SES para 28 notes that a growing fear of non-compliance, which might trigger the application of the accountability mechanism,

partly accounted for longer RPs that try to protect against vagueness and ambivalence in the guiding documentation. It states that OM F2/OP reinforces this by requiring that “*in case of doubt in the early stages of project preparation, a resettlement-planning document must be prepared.*”

The rationale for resettlement planning in case of doubt seems well justified by evidence from SES itself that demonstrates that, at project completion, the numbers of people actually affected was significantly higher than the estimates of APs in the RRP. The SES rightly notes that this could lead to underbudgeting for the full cost of resettlement (eg SES paras 42, 60) – and the real risk that people who should be protected fall outside the safeguard. This is doubly of concern when, as already noted, the SES found evidence that livelihoods were not necessarily being restored. The first Board Paper flagged this risk, finding a number of projects where likely effects were not fully identified in terms of the Policy. The Policy requires thorough identification and socio-economic survey as necessary to good resettlement planning. The SES notes the increase in the length of RPs, but attributes this to a need to “*protect against vagueness and ambivalence in the guiding documentation*” in the context of noncompliance (para 28). This entirely overlooks the basic rationale for good resettlement planning, that is to particularize the broad Policy standards within the specific project context and socio-economic framework, in order to provide a sound safeguard that takes account of specific conditions, risks and opportunities. Again as noted in early Board Papers, this needs expertise, time and resources.

B9. Board Information Papers on IR: SES para 25 states that “Management submitted two progress reports, but these saw the expansions as good practice”.

Good practices in the Board Papers were drawn from Policy wording. Based on review of RRPs and selected RPs, Board papers identified deficiencies in the quality of resettlement planning, in relation to the Policy requirements. With limited staffing resources, SOCD staff decided to publicise the Policy requirements and how they might better be addressed, by selecting projects which represented good examples of Policy implementation. For example, Figure 1 in Board Paper 1 presents examples and ideas of how to avoid or minimize resettlement, how to compensate and assist people affected to ensure their economic and social future is favourable, how to inform and consult APs, how to undertake social preparation, how to include APs without formal title, how to identify and record APs to avoid later influx, how to pay attention to the poorest and most vulnerable, and how to include full costs in the project budget. All of these requirements are drawn directly from the 1995 Policy wording. The Board paper also pointed to the complexity of setting income restoration strategies, especially involving vulnerable groups, highlighting the need for “sufficient time and resources during project processing and implementation” for identifying and planning (para 19) and for strengthening supervision (para 20).

B10. Preparation of RPs: SES para 30 states that “the Director, SOCD, had significant influence on the preparation of RPs for projects as many were prepared by SOCD specialists”.

There is misunderstanding of OESD/SOCD role. The 1995 Policy assigned the responsibility for preparation of the RPs to the EA or project sponsor, often supported by ADB TA (Policy para 41). The Policy assigned to OESD (SOCD) the responsibility for advising on the adequacy of the Plan in conforming to the Bank's Policy (para 43) and on the Summary Resettlement Plan (SRP) that was to be included in both the draft RRP for MRM and the final for Board circulation (Policy para 40). SOCD staff, after reviewing the RP on the ground and with the EA/project sponsor and recommending changes where necessary, often assisted the Mission Leaders by preparing the SRP as an RRP appendix, and explaining key points on IR to Board members if required. SOCD resettlement staff would not have had time personally to prepare RPs for any individual projects, let alone for "many" projects.

Conclusion: It appears that the SES overstates the extent to which the bar may have been raised.

C. Capacity Building, Poverty and Vulnerability.

C1. National macro frameworks for IR: In para 26 the SES states that the IR Policy, the OM F2 and Handbook "do not allow for compromises with national laws, policies, capacities and budget constraints, and do not address the question of "how to deal with existing borrower laws, systems and practices".

This overlooks a number of 1995 Policy paragraphs. For example, Policy para 4 calls for sensitivity to each national context. Policy paras 13-17 briefly review the national legal frameworks in certain DMCs, highlighting strengths and weaknesses of the existing systems, including specific mention of national laws and policies and, suggesting strategies that would build on the strengths and address weaknesses of the national framework in each country discussed. Policy paras 34 (ix), 35, 41, 42, 43 and 45 set out a range of capacity-building and financial support actions, both at the level of specific projects and more generally at the level of the borrower policy, legal and regulatory framework. Capacity-building efforts at all levels are integral to the 1995 Policy, and as the SES itself notes, have been implemented to the extent of available funding in RETAs and TAs, which have developed recommendations for country-specific enhancements based on a detailed assessment of specific country parameters. In sum, the Policy offers strategic advice going beyond the principles and project practice to the wider macro-framework. This generated RETAs and country-specific TA from 1998 onwards. The SES para 157 acknowledges that, on one hand, such ADB TAs "have often had high value in terms of policy development and capacity building" but, confusingly, claims also that "formal compliance has been somewhat at the expense of the goal of capacity building" (SES Executive Summary page viii).

C2. Poverty Reduction: SES para 151 states that the relevance of the Policy to ADB's poverty reduction agenda is "*in principle high*". Para 154 states that "*the goal of rehabilitating the livelihoods of 100 % of APs is one to be aspired to and on the same order as, for example, ADB's intentions to lift beneficiary populations out of poverty*".

SES para 167 recommends a results based framework that should, inter alia, have the aspirational goal of lifting the poor above the poverty line, a goal to which ADB and EA would contribute, but for which ADB would take no responsibility for ensuring achievement.

Response: The purpose of the 1995 Policy is to offer a safeguard such that, in context of projects that displace people, no-one need “sacrifice” to the greater good. The Policy is directed specifically to those people who will be deliberately placed at risk of impoverishment, whether they are currently poor or not, so that the project might proceed. This objective does not appear to be on the same general level as “ADB’s intentions to lift beneficiary populations out of poverty”. The proposed approach of making poverty reduction aspirational for IR would seriously weaken the concept of the IR Policy as a safeguard by removing from ADB’s responsibility the need to avoid impoverishment as a result of ADB-financed projects. Involuntary resettlement is fraught with risks of impoverishment, and this is well documented in the literature, but not discussed in the SES. SES para 125 discusses the problem of the poor sliding in and out of poverty para 125 in the context only of the difficulty of determining the “cut-off date” for responsibility by ADB/project sponsor. The SES found that some APs had become wealthier, whilst others were impoverished – but does not present clues as to the starting point or the magnitude either way. This discussion glides over the fact that development-induced displacement itself may exacerbate processes of impoverishment, not only making the poor poorer but also making the non-poor poorer. Beyond the general discussion on livelihood restoration – or lack of it – that is drawn from a small sample, and a few examples of certain vulnerable categories having difficulty restoring their livelihood in Appendix 21, the SES has very little to say about impoverishment trends among APs. It says virtually nothing about the extent to which the status of the poorest affected persons may have been raised, as required in the Policy para 34 (vii). If anything, the SES seems unconcerned about the poorest affected persons. Similarly, it does not address a central Policy objective “that displaced people receive assistance....so that they would be at least as well-off as they would have been in the absence of the project” (Policy para 33). In short, the SES appears to miss a key opportunity for discussion of poverty and processes of impoverishment that the 1995 Policy initiates, despite the fact that ADB’s overarching objective is poverty reduction.

C5. Vulnerable groups: SES Executive Summary page iv states that most countries do not see the need to provide extra assistance to vulnerable groups in IR, and this is a subject for contention in planning ADB projects. Further details on a country basis are provided in the SES text. SES Executive Summary page ix states that assistance to the poor and vulnerable, when it is against DMC law, contributes to high incremental costs for IR, (see also SES paras 131 and 132). In SES para 14 ADB’s requirement to assist poor and vulnerable groups have allegedly contributed to the development of crime syndicates. Table 6 presents some impressionistic findings from a small sample on the extent to which vulnerable people were assisted, elaborated by mixed positive and negative examples from Appendix 20. Executive Summary page vii states that this assistance was mostly provided but of variable quality, with SES para 156 stating that “*in several cases studied in PRC, India and the Philippines, the original Policy’s principle of*

fully restoring livelihoods, especially of the vulnerable ones, was unlikely to be achieved within a reasonable time frame” – and further review is warranted.

The SES largely treats vulnerable groups as a problematic issue that lead to high incremental costs. The SES recommendation for further RSDD studies, including consultation with civil society, appears well justified. SES elaborates on costs resulting from special measures for the vulnerable in some detail from different stakeholder perspectives but does not quantify the costs. Potential benefits and costs saved by properly assisting vulnerable people affected could have been similarly elaborated from different stakeholder viewpoints, but are only briefly acknowledged. Examples, only some of which are mentioned in the SES, include the value of production increases resulting from effective IR planning, diminished drain on the health and welfare budgets, avoiding environmental costs as displaced people move into marginal areas that cannot properly support them, reputational risks avoided, reduced costs and down-time for dispute resolution including delays in land acquisition, and diminished social unrest. The SES treatment of this issue serves to highlight costs at the expense of benefits of IR planning. In claiming that assisting the poor and vulnerable is against DMC law the SES ignores a range of DMC constitutional guarantees and human rights measures. Despite the SES’ recognition of the need to know more about this question for individual project cases, the SES recommends that *“rules to establish the vulnerable among APs may need to be established by country basis to reduce the costly socioeconomic surveys that in many cases generate unreliable data”*(SES para 169). It is not clear how this recommendation would deal with the apparent current lack of knowledge about the categories of the vulnerable and how they might best be assisted in the IR context.

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