

Stocktaking ADB's Role in Displacement

Observation on the Operations Evaluation Department Study on the Involuntary Resettlement Policy¹

The Asian Development Bank's role in development-induced displacement of local people has been widely criticized in the last two decades. Its contribution to the uprooting of individuals and communities has been well-documented by concerned national and international civil society organizations (CSOs) that have actively engaged with the Bank over its problematic projects and policies for years. In a number of very prominent and highly contentious cases, displaced individuals and communities caused by ADB-financed projects have continued to suffer from the absence of basic income or sustainable livelihood and social services. Sri Lanka's Kirindi Oya Irrigation and Settlement project, which was built from 1978-1986 and uprooted around 15,000 families, is one glaring example. The Centre for Environmental Justice (CEJ), which has monitored the project said: "For many years, not a single plot has been cultivated in the new development area. The ADB's OED report said livestock land, shrimp lagoons, and wildlife habitats have been destroyed, which has adversely affected the livelihood of some groups in the project area. This has led to conflicts among settlers and herdsman."²

Similarly, the recent Special Evaluation Study (SES) of the Involuntary Resettlement (IR) Policy has bared these alarming findings: "*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 affected peoples (APs). Projects approved in the last five years were expected to affect between 100,000 and 150,000 people every year.*"³ The study also reported that the actual figure is 65 percent, much higher than estimated in the RRP's. While 76 percent of the APs have been affected by the transport projects across Asia, 61 percent come from the People's Republic of China. The findings point to public sector projects as responsible for majority of the displacements.

As requested by CSOs, including the NGO Forum on ADB, the SES was conducted by the Bank as an important adjunct to the ongoing consolidated review of the Bank's safeguard policies. Together with other NGOs closely monitoring the Bank, we view the consolidation process as a way to weaken the IR, Environment and Indigenous Peoples policies in order for the Bank to accommodate more loans from certain borrowing governments. Nonetheless, we appreciate the OED's study for raising critical resettlement and displacement issues that we have repeatedly voiced out in the past. These contentious issues have to be confronted, addressed and considered by the Bank relative to its ongoing safeguards review to prevent the further displacement of individuals and communities.

Specifically, the Involuntary Resettlement (IR) Policy, adopted in 1995, has been one of the token measures developed by the Bank to avoid possible resettlement issues or cases. The policy also ensures that displaced people are compensated properly. It is very clear that these key provisions are crucial to the very survival of affected people and communities, which are increasingly being displaced to give way to the Bank's development projects. "*Since 2002, half of all ADB-supported projects have included resettlement planning; the corresponding figure was about 20 percent in the period 1994-2001.*"⁴

Essentially, the IR Policy requires all ADB projects to uphold these major safeguard principles: (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.

It also specifies three types of assistance for APs: (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.

¹ Asian Development Bank, Operation Evaluation Department, Evaluation study on Involuntary Resettlement Safeguards September 2006

² Snapshots of ADB Disasters - NGO Forum on ADB- September 2006

³ SES., V

⁴ Ibid., V

Over the years, we have joined the chorus of protests from CSOs and APs against the failure of the ADB and local executing agencies (EAs) to follow the IR policy in a number of projects. The Southern Transport Development project in Sri Lanka and the Melamchi Water Supply Project in Nepal are just two projects with serious and controversial resettlement issues, which have been elevated to the Bank's Accountability Mechanism.

We would like to single out this statement: "*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.*"⁵ We believe that the local people did not get much benefit from this exercise due to bureaucratic red tape, corruption, lack of political will and the tug-of-war between International Financial Institutions and national/local agencies.

Implementation problems

While the SES has significantly underscored the Bank's role in the displacement of people, the stark reality remains the same: the number of projects having resettlement issues has been rising. Likewise, we find it alarming that existing resettlement safeguards cannot be implemented in some Developing Member Countries (DMCs) due to lack of resources and capacity.

We think that lack of capacity cannot be an excuse since it is the main responsibility of the local agencies and the IFIs to improve the capacity before they get involved in a project with serious resettlement issues. On the other hand, we agree that problems arise from the lack of experience on the part of DMCs and even some ADB staff in managing those issues.

The SES study makes three major recommendations in regard to the IR implementation:⁶

- (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. Thus, the 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.** The 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.

The main recommendations echo those contained in the Environmental Safeguard evaluation that push for the establishment of the so-called "Country Systems Approach". The pressing question is whether the "Country Systems" can provide the necessary resettlement safeguards to affected people living in countries plagued with corruption, misgovernance, bureaucratic red tape, and incompetent court systems. Will the monitoring of these projects be effective, objective and independent sans supervision from a third party like the ADB? Will this constitute an abandonment of the entire decision-making process on resettlement in favor of the borrowing countries?

Avoid development displacement

We strongly believe that development-induced resettlement is a crime against humanity if displaced individuals are not given the proper and just assistance for them to have better lives. However, some of the DMCs Government officials and bureaucrats see the compensation issue as a sacrifice for the national interest. They treat the compensation package as a privilege rather than the right of those affected people. Sri Lanka's Appeal Court Judgment on STDP, however is emphatically clear about the

⁵ Ibid., III

⁶ Ibid., XI

issue. It has stated: *“that if it is permissible in the exercise of a judicial discretion to require a humble villager to forego his right to a fair procedure before he is compelled to sacrifice a modest plot of land and a little hut because they are of “extremely negligible” value in relation to a multi-billion rupee national project, it is nevertheless not equitable to disregard totally the infringement of his rights: the smaller the value of his property, the greater his right to compensation.”*⁷

Except in very few cases, APs in rural areas are generally unhappy about what resettlement has done to their lives. (Although their urban counterparts may seem happier with what they have gotten out of the deal, they, too, suffer from difficulties.) This unhappiness is not only about compensation money. It practically stems from intangible and non-material losses that neither the Bank nor the Governments can ever be able to remunerate.

For example, the affected people in the STDP project not only lost their sustainable home gardens and paddy fields. Their relationships with relatives, neighbors, and friends have been unwittingly severed. Further, they have irretrievably lost their affinity with their former environment as well as their access to natural resources. Likewise, they have been dissociated from their schools and places of worship. They have lost other important social and environmental links that no financial recompense can match. Obviously, the ADB, or EAs do not have the capability to provide them their old lives. Therefore, avoiding development displacement remains the single, most important resettlement principle.

The Bank has repeatedly failed to adopt the first principle of the IR Policy: avoid involuntary resettlement in most cases. Very simply, the ADB and government project designers were not able to identify innovative “alternatives” to their projects. In most cases, the APs become sort of sacrificial lambs of development projects in favor of a greater majority who have neither a clear grasp nor inkling of how the former are suffering from displacement.

Although, the first principle of the Sri Lankan Involuntary Resettlement Policy (2001) clearly states that *“involuntary resettlement should be avoided or reduced as much as possible by reviewing alternatives to the project as well as alternatives within the project.”* The project proponents have not complied with it relative to the STDP project.

People’s participation or prior informed consent

We find the underestimation of the actual number of Affected People, validated by the SES report as a grievous offense. *“The actual number of APs recorded was 65 percent higher than estimated in the RRP.”*⁸ Together with other CSOs, we have pointed out this discrepancy for many years. In most cases, individuals who have been identified from the start of the project are in a better position to participate in the project consultation and process, including the Environmental Impact Assessment procedure. They also have adequate time to plan for their future. However, those who have not been identified at the early stages lose all these opportunities. According to the SES: *“The estimation problem was less serious for people who were actually resettled: 10 percent 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 percent more people were affected than anticipated. Overall, 40 percent of APs identified actually needed to be resettled; the other 60 percent lost a part of their land or their structures but did not need to be resettled.”*⁹

The violations are glaring in the STDP. And we would like to quote this IR Policy provision: *“The Bank Policy on Involuntary Resettlement says that the affected people should be fully informed and closely consulted on resettlement and compensation options. But no discussion, consultation, or information about where and how the affected people are going to be resettled has ever mentioned. The current design of the road has not been given to the public and this amply exhibits the inefficiency of the implementing agencies of the project that have not been accountable and transparent in their approaches.”*¹⁰ We are surprised that the OED report has citing this specific provision relative to STDP.

The SES further notes: *“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*

⁷ Hemantha Withanage- Dream Road That Destroyed Sustainable Livelihood- Centre for Environmental Justice May 2004

⁸ Ibid., V

⁹ Ibid., V

¹⁰ Hemantha Withanage- Dream Road That Destroyed Sustainable Livelihood- Centre for Environmental Justice May 2004

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.”¹¹ These findings definitely fall below internationally-acceptable practices. Since resettlement is a “major decision-making” process that involves the APs, project proponents should respect and follow the principle on “prior informed consent.” However, the non-compliance with this important resettlement provision has become a major drawback of the existing IR Policy.

Again, as proven by the STDP case, necessary documents such as the Resettlement Implementation Plan (RIP), resettlement package and income generation plan, as well as possible resettlement sites plan were not made available for the APs in time. The RIP became available only after a case was filed before the Compliance Review Panel (CRP). Still, the plan was not properly implemented by the EA. A Fact-Finding Mission organized by the Bank Information Center (BIC), NGO Forum on ADB and CEJ revealed that “most of the RIP provisions are yet to be implemented.”¹² To which an affected person from Akmeemana resettlement site attested: “Implementation is not proper as there is no adherence to RIP”. The RDA is the one responsible for implementing the RIP and is supposed to involve and consult the affected people. The local communities, however, felt that this was not practiced at all by RDA. In the Diyagama, Kokmaduwa and Akmeemana resettlement sites, the Fact-Finding Team was told that RDA has neither visited nor provided support to affected people for relocation.

Another finding that we have taken note is this: “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.”¹³ This statement gives the impression that Bank is in a dilemma regarding the function of the Accountability Mechanism vis-à-vis policy violations.

The Risks of Country Systems

We agree completely that the Bank’s policies and the country policies are far from being equal. In fact, most DMCs still do not have Involuntary Resettlement Policies in place. This has somehow compromised the Bank’s involvement in projects that involve displacement of people.

We also agree that certain issues are very complex. While we understand the difficulties involved in separating new squatters (mainly in urban projects) from the original inhabitants, there are some “squatters” who are not actually squatters. To understand this complex situation, the Bank needs to have a clearer grasp and understanding of the local dynamics on land practice and ownership in each country. In many countries, most land belongs to the State. Some people who have lived in those lands for years do not have deeds to prove their ownership. Ergo, some Governments treat them as mere squatters which we find objectionable. The SES report states: “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.”¹⁴ Some countries do not acknowledge the basic human rights of people, whether they are legal or informal settlers. Country systems may be seen as a solution to this situation. But we would like to caution the Bank. Supporting these DMCS and their unjust policies under the country system approach would signify that the Bank is indirectly abetting such discriminative acts.

With the IR policy in place, APs can pressure the Bank and the EAs in foreign-funded projects for just and adequate compensation. The case is completely the opposite in projects that are Government or Export Credit Agency (ECA) financed. Thus, we support this SES finding: “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.”¹⁵ We think that it is important to establish country policies that give equal protection to every citizen affected by any development project, regardless of the funder/financier.

¹¹ OED IR Evaluation Report- September 2006., VII

¹² BIC, NGO Forum on ADB and CEJ – A Fact-Finding Report on the Status of Resettlement Implementation Plan, May 2006

¹³ Ibid., VII

¹⁴ Ibid., IV

¹⁵ Ibid., VI

On the other hand, we disagree with this statement: *“Full alignment with country systems seems difficult to achieve without ADB relaxing its policy and procedures and curbing the trend to ever greater inclusiveness.”* While capacity building is fundamentally needed, making policies and procedures flexible might make project-affected individuals and communities more vulnerable to manipulation and non-compliance of EAs and Governments.

Good practices

Despite the controversial nature of STDP, the project has produced some good learning and practices that the Bank should encourage. One important aspect that came out of the project is the establishment of both the Land Alienation and Resettlement Committee (LARC) and the Super LARC Committee, which allow the full committee membership of APs. The committee allowed affected people to negotiate the value of the compensation and even the quality of the land. Nevertheless, since some APs did not have access to right information as well as adequate bargaining powers, the process has become defective. Other problems have pertained to corruption as well as the bias of some committee members.

The ADB missed the golden opportunity to facilitate the people’s claim in STDP due to bad project facilitation and mediation process of the Office of the Special Project Facilitator (OSPF). Moreover, the ADB failed to take advantage of the opportunity to settle most resettlement-related issues by ignoring the requests of APs for a truly Independent and Competent Monitoring System that is acceptable to all parties concerned. The first two NGOs brought in for Third Party Monitoring were not capable of handling the contentious situation.

Most problematic projects show the absence of the APs involvement and participation in the project designing at the early stages. The involvement of project affected people is not synonymous to the so-called “public consultations.” The principle of prior informed consent can only be genuinely achieved through the active involvement of APs. We believe that most resource and capacity-related issues can be avoided through this open, transparent and participatory process.

Disregard of previous recommendations

Finally, we would like to hark back to the previous IR Policy recommendations of the OED that was conducted in year 2000. According to the evaluation: *“Specific recommendations included the need to (i) streamline the Policy on Involuntary Resettlement implementation; (ii) adopt appropriate and improved national resettlement policies in individual DMCs; (iii) provide adequate funding for resettlement activities to prevent impoverishment of the affected people; (iv) strengthen supervision and monitor project resettlement activities by both ADB and EAs (v) strengthen and improve initial social assessment through comprehensive surveys of those affected, and improve disclosure and public consultation; (vi) strengthen ADB capacity for project resettlement activities by providing additional staff and consulting resources; (vii) strengthen the institutional capacity of the DMCs by providing technical assistance; and (viii) improve cooperation among multilateral and bilateral agencies within each DMC.”*¹⁵ It seems that these recommendations were not properly considered in the IR Policy. Had these recommendations been incorporated or implemented, then the Bank resettlement-related problems would not have escalated.

Conclusion

ADB’s role in the displacement of people in the Asia-Pacific region is quite significant. The figures in China and India are very high. And development-induced displacements are rising annually in other DMCs.

The experiences of the affected people are not very positive. Other than IR Policy violations, problems such as corruption and bureaucratic tug-of-wars have further aggravated their sufferings. There are some APs who have yet to fully recover from the displacement shock they have suffered two decades ago. This effect is also being experienced by second and third generations of APs who are beset with problems ranging from lack of lands, inadequate resources and job opportunities.

¹⁵ Ibid., iv

¹⁶ Appendix 1., 65

We believe that relaxing the IR safeguards to accommodate the Country System approach might worsen their current plight. We urge the Bank to prevent this from ever happening. The lives and future of vulnerable individuals and communities should not be sacrificed in the name of so-called national interest. Avoiding displacement of people through better, viable alternatives should be the guiding principle of the ADB.

We recommend that the Bank focus on “prior informed consent” as the greater alternative to the “public consultation process” in all resettlement-related issues. The ADB should encourage the greater involvement and participation of affected people and communities in the decision-making process. Access to project information and capacity building are also vital to the APs as well as to the national/local project staff. While we strongly support third party monitoring, the Bank should put in place a credible, suitable and reliable accreditation system of NGOs. Lastly, rather than bringing in consultancy firms that lack the necessary social work and development background as well as networking, the project should ensure the inclusion of APs at designing, construction and post construction periods.

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