

## INVOLUNTARY RESETTLEMENT IN ADB-SUPPORTED PROJECTS IN INDIA

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### A. Introduction and Background

1. This review, undertaken as part of the India country assistance program evaluation in 2016, examines the application of the Safeguard Policy Statement, 2009 (SPS) of the Asian Development Bank (ADB) in India.<sup>1</sup> It aims to assess the differences between the most recent national legal framework for involuntary resettlement and ADB's policy, and to understand the key issues in designing and implementing involuntary resettlement in ADB-supported projects in India.

2. The review is based on a desk review of the documents of five selected projects, interviews with officials of implementing agencies and ADB staff, and field visits by sector specialists. A field survey was conducted in only one project suggested by the ADB resident mission, since the resident mission and the government felt that there were too many controversies and sensitivities concerning resettlement in other projects, including conflict and court cases in a few instances.<sup>2</sup> Their view was that the timing was not appropriate for reviews of ongoing projects involving recent resettlement.<sup>3</sup>

3. Section B describes the Indian legal framework for land acquisition and resettlement, and then discusses its congruence with the ADB SPS. Section C reports the findings of a review of five projects and describes how resettlement has occurred in these ADB-supported projects. Section D presents a review of results. The findings are limited, and are based on a single survey of affected persons in the Bihar State Highways Improvement Project. A final section provides lessons and suggestions. Appendix provides some supplementary information.

### B. Indian Law on Involuntary Resettlement

4. Land acquisition for development purposes in the public interest has long been a sensitive issue in India. Between 1950 and 2005, estimates suggest that over 65 million people were internally displaced through development projects.<sup>4</sup> Studies find that only about one-third were resettled in a phased manner, and that most displaced people were worse off than before resettlement. Many of those displaced have reportedly ended up in the slums surrounding New Delhi, Kolkata, and other cities (footnote 4).

#### 1. Pre-2013 Regime

5. Until 2013, the main national law governing acquisition of land was the Land Acquisition Act, 1894. As applied in practice it dealt only with compensation for land acquired, and did not address other social or economic losses suffered by those affected by involuntary resettlement. The land laws were developed for colonizing unsettled land and collecting revenue, and were based on the doctrine

<sup>1</sup> ADB. 2009. *Safeguard Policy Statement*. Manila.

<sup>2</sup> Court cases had been filed in ADB-supported projects in Himachal Pradesh and New Delhi. In general, there have been issues about the applicability of the newer more generous provisions in the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013 and their application to older projects. A 2015 ordinance, repealing some of the more progressive provisions in the act, has also proved controversial (paras. 16-19).

<sup>3</sup> ADB. 2015. *Safeguard Implementation How Can We Make It More Meaningful? Assessment of the South Asia Experience*. Manila. A project's involuntary resettlement category is determined by the category of its most sensitive component in terms of involuntary resettlement impacts. The involuntary resettlement impacts of an ADB-supported project are considered significant if 200 or more people will experience major impacts, which are defined as (i) being physically displaced from housing, or (ii) losing 10% or more of their productive (income-generating) assets. The level of detail and comprehensiveness of the resettlement plan are commensurate with the significance of the potential impacts and risks.

<sup>4</sup> W. Fernandes. 2009. *India's Forced Displacement Policy: Is Compensation up to its Functions?* in M. Cernea and H. Mathur, eds. *Can Compensation Prevent Impoverishment? Reforming Compensation through Investments and Benefit Sharing*. London-New Delhi: Oxford University Press. pp. 180–207.

of eminent domain.<sup>5</sup> They were revised in 1984, and since then have required an improved consideration of social and economic losses.<sup>6</sup> In 2007, the government issued a National Resettlement and Rehabilitation Policy (Ministry of Rural Development, Department of Land Resources), to be used along with the Land Acquisition Act, 1894 (amended in 1984).

6. There were many unpopular issues with the implementation of the Land Acquisition Act. The term “public purpose” was not well defined, and open to discretion. The government determined the compensation and the process was not perceived as being transparent. If the project was not utilized for the stated public purpose, the acquired land could be kept by the government or sold at higher prices. There were no restrictions on acquiring multipurpose agricultural land. No consent was required from people whose land was acquired, and their participation in the process was weak. A popular movement emerged protesting the way land was being acquired, and this sought to establish the rights of those affected. This local movement, which started in the 1980s, bolstered by the safeguard requirements of multinational banks, gradually led to the adoption of a new legal framework for acquisition of land, which is discussed in the next section.

## 2. Post-2013 Regime

7. To address the basic human rights of affected persons, and to respond to the overwhelming public protests on the subject, India adopted a new law in September 2013 to deal with involuntary resettlement. The Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act (LARR Act) replaced the Land Acquisition Act, 1894.<sup>7</sup> The LARR Act, which came into effect on 1 January 2014, applies when land is acquired for a public purpose. It defines the term public purpose more specifically than the Land Acquisition Act, reducing some of the scope for misinterpretation or broad interpretations. It disallows any change in purpose after acquisition and places restrictions on the acquisition of some types of land, such as irrigated multi-cropped land, save under exceptional circumstances, to safeguard food security.

8. A displaced family under the new act is any family that, because of the acquisition of land, has to be relocated and resettled from the affected area to the resettlement area. Any family that does not have legal title to land but whose primary source of livelihood for 3 years prior to the acquisition of the land has been affected would be compensated by the act, such as landless laborers (section 3c). The law considers widows, divorcees, and women deserted by families to be separate families, thus empowering women who may be in vulnerable situations. The act also covers tribal communities and forest dwellers (e.g., forest producers, hunters, fisher folks, and boatmen) who have lost legally recognized forest rights or whose primary source of livelihood has been affected. The act does not cover encroachers on government land or squatters whose primary source of livelihood is not affected.

9. The LARR Act has significantly improved the rights of those adversely impacted. It covers both land acquisition and the accompanying obligations for resettlement and rehabilitation, and aims to define the process more transparently. A social impact assessment (SIA) is mandatory under the act, except in cases of emergency or irrigation projects, prior to the notification of acquisition of land. The SIA is undertaken by an independent body for all acquisitions, and this constitutes a preliminary social

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<sup>5</sup> “Eminent domain” is the power that the state may exercise over land within its territory. Eminent domain, and the law related to the compulsory acquisition of land, requires that the power may be invoked only for a public purpose.

<sup>6</sup> The Land Acquisition Act, 1984 included market value for land, plus solatium of 15% for compulsory acquisition. “Land” as defined in the act included: buildings, any improvements, fishery rights, trees crops and standing crops page 4). It also included: payment for damage in surveying land (Article 5 Land Acquisition Act, 1894); damage to trees or standing crops by collector when taking possession of land; damage from severance of acquired land from another plot; damage to other property or loss of income in taking the land; cost of changing residence or business place that may result from land acquisition; any loss of profit arising between notification and taking possession. It also included an additional 12% for interest between notification and possession (Article 23). “Land” does not include firewood rights, which were separately assessed.

<sup>7</sup> Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act (LARR Act) (Compensation, Rehabilitation, and Resettlement, Development Plan) Rules 2015 were published in 2015.

investigation of the social impact and the public purpose, and the necessity of the acquisition in the context of overall public interest. The SIA employs a consultative approach,<sup>8</sup> and it must be completed within 6 months.<sup>9</sup> A social impact management plan is expected to result from the SIA, which lists the ameliorative measures to be provided to those affected. SIAs are exempted in limited cases of emergency or in irrigation projects where an environmental assessment is necessary.

10. An expert committee needs to review and approve the SIA, without which no land acquisition can begin.<sup>10</sup> The inclusion of two representatives of the *panchayat* or municipality in the expert group, which appraises the SIA report, is regarded as good practice. The act requires a public consultation in the affected place, after due notice and relevant information is provided in the local language. The discussions at these consultative meetings have to be recorded and attached to the SIA report. The act also states that the consent of 70% of the families is mandatory where land is sought to be acquired for public–private partnership projects, and consent of 80% is required for private projects.

11. The act standardizes the process for determining the amount that must be paid in case of land acquisition. The first schedule of the act provides the method for calculating compensation for land. The second schedule provides a list of other benefits that must be provided to the affected person.<sup>11</sup> The third schedule lays down the infrastructure that must be provided so that the resettled population in a new village can have a reasonable standard of living.

12. The calculation of compensation is more transparent and less arbitrary than under the previous legal framework. The district collector had sweeping powers under the Land Acquisition Act. The new law includes a formula that reduces the discretion of the collector, who, however, still has to fix the market value, which remains a challenging task in the Indian context, where market value is not often registered transparently. Once the market value is fixed, the collector is bound to apply a formula as directed in sections 26–30 of the act (see para 29). The act provides the baseline for compensation and provides a sliding scale that permits states to fix the multiplier (which will determine the final award) depending on distance from urban centers. In addition, compensation is to be paid for any structures, trees, or standing crops attached to the land as determined by the collector with the help of a competent engineer or other specialist. Finally, a solatium (or an additional sum of money paid over and above the compensation) of 100% of the agreed market price (including the factor) is to be paid. The compensation to the land owners should be determined by the collector within 12 months from the date of publication of the declaration.

13. Under the LARR Act, no person may be displaced without a resettlement and rehabilitation plan being prepared and disclosed. The act requires affected communities to be duly informed and consulted at each stage, including through the holding of public hearings in the affected areas for social impact assessment, wide dissemination of the details of the survey to be conducted for the resettlement and rehabilitation plan or scheme, consultations with the *gram sabhas* and public hearings in areas not having *gram sabhas*, consultations with affected families including women, non-government organizations (NGOs), *panchayats*, and local elected representatives, among others with a view to obtaining mandatory consent both for the land acquisition and for the compensation package.

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<sup>8</sup> Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014. Typically, an SIA was also important in identifying people on the land with no legal title, who would also be compensated and assisted. However, in this case, the act applied only to legal title holders.

<sup>9</sup> Section 4 (2) of the LARR Act.

<sup>10</sup> There has been some criticism of this provision on the grounds that this could affect the objectivity of the process since the government is in charge of setting up the expert committee. <http://www.livelaw.in/new-land-acquisition-law-critical-review-2/>

<sup>11</sup> Other benefits to be provided to affected persons include preference for employment in the project to at least one person from each nuclear family subject to availability and suitability; training and capacity development for taking up suitable jobs and for self-employment; preference to groups of cooperatives of the affected persons in the allotment of other economic opportunities in or around the project site; wage employment to the willing affected persons in the construction work in the project; housing benefits including houses to the landless affected families in both rural and urban areas; and other benefits.

The land can be possessed only after full compensation has been paid,<sup>12</sup> and the affected persons cannot be removed from the land until replacement land has been provided.

14. Several features of the 2013 act addressed drawbacks of the previous legal regime. An important element was a clause that relates to the return of land where an award for land acquisition had been recorded but the physical possession of land has not been completed, nor has compensation been paid for 5 years.<sup>13</sup> In such cases, the land has to be returned to the owners and, if the government feels it is necessary, the proceedings of land acquisition would need to be initiated afresh. Accountability has increased, with the law holding government staff accountable under the act if they fail to implement the provisions of the law. The head of the department would be deemed guilty unless she or he can show that due diligence had been exercised to prevent the commission of the offence. The law also applies retroactively.<sup>14</sup> The law establishes an administrative machinery for implementation, but this is reportedly not yet in place at the central level nor in most states.

15. Exemption was given for 13 major acts, which included land acquisition provisions. The exemption was for a period of 1 year, and was to help the government to revise the exempted acts and include consistent provisions for involuntary resettlement. These included acts such as the Coal Bearing Areas Acquisition and Development Act, 1957, which included top-down and arbitrary provisions for acquisition of land.<sup>15</sup> However, the government was unable to amend the other laws, and when the ordinance, discussed below, elapsed, these laws were brought in line with the LARR Act.<sup>16</sup>

### 3. Ordinances of 2015<sup>17</sup>

16. The LARR Act has been criticized for its complexity and it has been argued that it has stalled large amounts of investment in infrastructure.<sup>18</sup> To speed up the process of land acquisition for strategic and development activities, the new government (led by the National Democratic Alliance) amended the LARR through an ordinance (LARR Ordinance).<sup>19</sup> The new ordinance added a new section to the LARR Act (Section 10 A under Chapter IIIA), which aimed to speed up the process, but which benefited those acquiring land rather than those who lost their land. Many perceived this as reversing the spirit of the law.

<sup>12</sup> Section 38 is vague, but given the spirit of the law, this is the most plausible interpretation.

<sup>13</sup> The Supreme Court has held that the deposit of the amount of compensation in the government treasury is not equivalent to paying the amount of compensation to the landowners or persons interested. <http://www.newindianexpress.com/nation/Land-Acquisition-Invalid-if-Compensation-not-Paid-to-Owner-SC/2014/01/28/article2023170.ece>

<sup>14</sup> In the Supreme Court Of India Civil Appellate Jurisdiction Civil Appeal No. 8468 Of 2015 (Arising Out Of Special Leave Petition (C) No. 28369 Of 2012) The Working Friends Cooperative House Building Society Ltd. vs. The State Of Punjab and Others which held that the compulsory acquisition of the appellant's land under the Land Acquisition Act, 1894 lapses in view of the provisions of Section 24(2) of the LARR. See also: Ram Kishan & Others vs. State of Haryana and Others [I.A. Nos. 3-4 of 2014 in Civil Appeal No.3872 of 2010] Also see clarification on its retroactive applicability at <http://rural.nic.in/sites/downloads/NewReleases/SGL.pdf>. V.GOPALA GOWDA, J.

<sup>15</sup> Land Acquisition (Mines), Act, 1885; Indian Tramways Act, 1886; Damodar Valley Corporation Act, 1948; Resettlement of Displaced Persons (Land Acquisition) Act, 1948; Requisitioning and Acquisition of Immovable Property Act, 1952; National Highways Act, 1956; Coal Bearing Areas Acquisition and Development Act, 1957; Ancient Monuments and Archaeological Sites Act, 1958; Atomic Energy Act, 1962; Petroleum and Minerals Pipelines Act, 1962; Metro Railways (Construction of Works) Act, 1978; Railways Act, 1989; Electricity Act, 2003.

<sup>16</sup> Examples include the Indian Electricity Act, 2003, amended in 2007, which consolidates the laws relating to generation, transmission, distribution, trading and use of electricity and includes some provisions for compensation for damage in private land for installation of electricity equipment.

<sup>17</sup> Ministry of Rural Development, Government of India. September 8th, 2013. *The Right of Fair Compensation and Transparency In Land Acquisition, Rehabilitation and Resettlement Act—An Overview*. [http://rural.nic.in/sites/downloads/general/RTTFC\\_in\\_LARR\\_2013.pdf](http://rural.nic.in/sites/downloads/general/RTTFC_in_LARR_2013.pdf)

<sup>18</sup> Arvind Panagariya, the vice-chairman of the NITI Aayog has commented that "The Land Act, 2013, is an onerous Act under which, by all calculations, it will take up to five years for acquiring land assuming that all steps progress smoothly." Business Economics, 1-15 September 2015.

<sup>19</sup> Department of Land Resources (undated) Information Note on Ordinance to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Ministry of Rural Development, Government of India, New Delhi (accessed 15 January 2015). [http://www.dolr.nic.in/dolr/downloads/pdfs/RFCTLARR%20Act%20\(Amendment\)%20Ordinance,%202014%20-%20Information%20Note.pdf](http://www.dolr.nic.in/dolr/downloads/pdfs/RFCTLARR%20Act%20(Amendment)%20Ordinance,%202014%20-%20Information%20Note.pdf)

17. The most debated revision was the removal of the requirement for an SIA and consent clause for five categories of projects: (i) national security and defense production; (ii) rural infrastructure and electrification, (iii) infrastructure projects including public–private partnerships where the ownership of land continues to lie with the government; (iv) industrial corridors; and (v) affordable housing for the poor. Compensation remained as per the act, but the procedure for acquiring land for these projects would become easier by omitting an SIA, assessing the impact on food security, and obtaining the consent of 80% of land owners when land is acquired for private purposes, among other features. The ordinance also allowed for the inclusion of private hospitals and private educational institutions as projects for which the government could acquire land and hand it over to the private sector.<sup>20</sup>

18. The ordinance also partially revised the feature that land would have to revert to its owners if it was unutilized (para 11). It gave partial relief to projects, where the physical possession of land or payment of compensation had not been possible due to a court injunction or an order. Section 105 of the LARR, 2013 was also revised, making it possible to issue a fresh notification, which would enable application of the “beneficial” provisions of rehabilitation and compensation in case of other laws being used to carry out land acquisition through their own processes.

19. However, the ordinance lapsed in August 2015 and the bill replacing it was not passed by Parliament. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was passed by the lower house of Parliament, but not by the upper house.<sup>21</sup> As a result, the attempt to revise the provisions of the LARR Act did not materialize.

#### 4. Application of LARR at the State Level

20. Both federal and state governments can legislate on land acquisition. Section 107 of the LARR Act empowers state governments to frame a law or policy which provides a higher compensation and thereby enables a person who has lost land to avail of the higher compensation under such policy or other act.<sup>22</sup>

21. Section 109 provides a long list of features upon which a state government can make rules. The state of Gujarat, for example, has passed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat Amendment) Bill, 2016, by removing the consent clause and the requirement for an SIA, and has conferred on the district collector the power to decide on the matter of land acquisition and compensation amount without enquiry, with mutual consent of the parties.<sup>23</sup> Section 108 allows payment of a higher compensation under a state government policy or law than that provided by the LARR Act, with the affected person having the option to select to receive the higher price or be compensated under the LARR. The state of Andhra Pradesh has decided to increase the compensation and thus provide those who lose land with the option to take the higher compensation. In Pune, a May 2012 government resolution offered at least 25% more compensation to land owners than envisaged in the federal LARR Act, 2013 in the hope that this would help speed up at least 1,000 pending cases of land acquisition.<sup>24</sup> These instances may be considered to be negotiated settlements without any acquisition of land taking place. In Bihar, the state government uses the mechanism of a perpetual lease to expedite the process and avoid acquisition of the land.

<sup>20</sup> See footnote 2, also Oxfam. 2015. Land Acquisition Ordinance 2014: Dismissing Democracy, Displacing Safeguards? *Oxfam India Policy Brief*. No. 11. 5

<sup>21</sup> P. Mishra. August 2015. Ordinance Lapses; Order to Extend Compensation and Rehabilitation Benefits under Land Acquisition Act, 2013 to other Acts. *Monthly Policy Review*. Delhi.

<sup>22</sup> See SPS (footnote 1): “The borrower/client is encouraged to acquire land and other assets through a negotiated settlement wherever possible, based on meaningful consultation with affected persons, including those without legal title to assets. For this purpose, the borrower/client will engage an independent external party to document the negotiation and settlement processes.”

<sup>23</sup> M. Pathak. 2016. Gujarat clears amendments in land acquisition law that does away with ‘consent’ clause. *Livemint*. 31 March.

<sup>24</sup> See more at: <http://indianexpress.com/article/cities/pune/new-gr-on-land-acquisition-to-help-speed-up-1000-cases-in-pune/#sthash.uWrJX3k8.dpuf>

## C. LARR Act and ADB Policies

### 1. Consistency of LARR Act, 2013 with ADB 2009 Safeguard Policy

22. The assessment found that the LARR Act, 2013, was consistent with the key principles of ADB's SPS (Table 1). The law requires avoidance of involuntary resettlement if possible, and where not possible, minimization of involuntary resettlement by exploring all project or design alternatives where population displacement is unavoidable. The preamble to the LAAR Act states that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development, leading to an improvement in their post-acquisition social and economic status and for matters connected therewith or incidentals thereto. The standards, therefore, are consistent with the objectives of the ADB SPS, which requires mitigation, enhancement, or restoration of the livelihoods of all displaced persons in real terms relative to pre-project levels and improved living standards of poor and vulnerable displaced persons.<sup>25</sup>

23. Consistent with the SPS, the LARR Act requires an SIA, consultation with people, and public disclosure of all information. It provides clear parameters for the provision of compensation, preparation of a resettlement plan, consultation with affected persons through implementation, and monitoring and evaluation. The act provides for the establishment of national and state committees for reviewing and monitoring the implementation of rehabilitation and resettlement schemes and plans. Specific areas of differences are discussed below.

24. There is, however, a difference in the underlying principles in the compensation of acquired land, which may not necessarily cause a material difference. Both the guidelines and the LARR Act prefer land for land replacement as a first option. Where this is not possible, the LARR Act requires payment based on a calculation of the market cost, while the SPS requires compensation at replacement cost.<sup>26</sup> The LARR Act specifies that the market value be determined on the date the notification prescribed under section 11 of the 2013 act is issued. The market value should then be multiplied by a sliding scale based on which states can calculate compensation (2-4 times market value). To this is added the value of assets (buildings, trees, wells, and crops) attached to land. In addition, a 100% solatium equivalent to 100% of the market value of the land is added to determine the quantum of the compensation. Where land is acquired for urbanization, 20% of the developed land is expected to be reserved and offered to land-owning project-affected families in lieu of compensation. As an alternative, the company for whom land is being acquired may offer shares limited to 25% of the compensation amount.

25. **Applicability of the law.** The SPS covers physical and economic displacement resulting not only from involuntary land acquisition, but also from involuntary restrictions on land use or on access to legally designated parks and protected areas. The LARR Act does not apply where there is no acquisition of land or where there are involuntary restrictions on land that appear to create permanent losses. Landowners argue that this constitutes an involuntary restriction on use of land and that it constitutes a permanent loss, and decreases the value of the land.<sup>27</sup> This provision was of particular concern during the evaluation period since ADB funds a number of transmission projects. For example,

<sup>25</sup> At/below poverty line (landless, non-titled, household headed by a woman, Indigenous Peoples, elderly, disabled).

<sup>26</sup> Replacement cost means the "cost" to replace the lost asset at current market value or its nearest equivalent, plus any transaction costs such as administrative charges, taxes, registration and titling costs.

<sup>27</sup> See ADB. 2013. Completion Report, Madhya Pradesh Power Sector Investment Program, tranche 1. Manila. para 43. The Electricity Act, 2003, states that where a consumer refuses to allow a licensee or any person authorised to enter his premises or land in pursuance of the provisions of the law, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.

the Assam Power Sector Enhancement Investment Program, tranche 1<sup>28</sup> and the NE State Road Investment Project involve the construction of transmission lines (tower footings and stringing of transmission lines). This was considered to have had insignificant impact.<sup>29</sup> The placement was typically done under the Indian Electricity Act,<sup>30</sup> which did not require any compensation to be paid, except rent for the time construction was ongoing, compensation for loss of trees or crops, and any damage caused during the work. This inconsistency has, however, been partly removed through a government order, requiring payment of compensation towards damages in regard to right of way for transmission lines, when the transmission and distribution lines are above 66 KV.<sup>31</sup>

26. The SPS requires all displaced persons without titles to land or any recognizable legal rights to land to be eligible for resettlement assistance and compensation for loss of non-land assets.<sup>32</sup> The LARR Act, however, applies only when land is being acquired and compensates only affected persons who lose legally held land or selected non-title holders who have resided on the acquired land for 3 years before the acquisition and whose primary source of livelihood is affected. For example, in a road expansion project that does not involve acquisition of land, the SPS would require provision of compensation to encroachers (land owners who have encroached on government land that does not belong to them) and squatters (landless, but living illegally on affected lands) to restore their livelihoods. On the other hand, the LARR Act would not apply since there is no acquisition of land. Even if there was such acquisition, the act would only compensate selected vulnerable squatters.

27. The determination of the cut-off date for identifying eligibility for compensation or other entitlements can also cause an inconsistency. The LARR Act sets 3 years prior to the issuance of the notification for an SIA as the cut-off date for compensating vulnerable non-title holders for loss of primary livelihoods (para 27). ADB-supported projects typically mandate that, in the case of land acquisition, the date of publication of preliminary notification for acquisition will be treated as the cut-off date. This has not created a problem, since the government has tended to accept the dates set by ADB. A problem also arises as the most vulnerable often do not have the necessary documents to show the duration of their stay or their residence status.

28. The process of calculating the market price continues to be difficult. In remote areas, it is difficult to ascertain the cost of land, because there are few land transactions. Buyers and sellers do not accurately register the prices in order to avoid payment of taxes, and many payments is made under the table. While compensation will improve significantly under the new legal regime, there is no consensus that the addition of the multiplication factor and the 100% solatium will lead to a fair value for the person who has lost land, some arguing that the final amount paid as compensation will be equivalent to replacement costs, and others arguing that it is unlikely to be.

<sup>28</sup> Social Monitoring Report Semestral Report (Project Number: 41614-023 January 2015 Period: July –December 2014, Assam Power Sector Enhancement Investment Program, tranche 1.

<sup>29</sup> Resettlement Plan Project Number: 41614-023 October 2015 IND: Assam Power Sector Enhancement Investment Program - 1 Transmission Line.

<sup>30</sup> Section 164 of the Electricity Act also permits the exercise of power under the Telegraph Act under certain circumstances.

<sup>31</sup> No.3/7/2015-Trans Government of India, dated October 2015. This order provides "guidelines for determining the compensation towards 'damages' as stipulated in section 67 and 68 of the Electricity Act, 2003 read with Section 10 and 16 of Indian Telegraph Act, 1885 which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub-transmission and distribution lines below 66 KV."

<sup>32</sup> Footnote 1. See policy principle: "Improve the standards of living of the displaced poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas provide them with legal and affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing." See also para 28: "the borrower or client will pay particular attention to the need of disadvantaged or vulnerable groups, especially those below the poverty line, the landless, the elderly, the female headed households, women and children, indigenous peoples, and those without legal title to land."

## D. Desk Review of the Application of ADB Basic Principles

29. To understand whether ADB-supported projects comply with ADB policies on involuntary resettlement, this assessment did a desk review of five projects with resettlement in India. Table 1 lists the projects. IED selected the projects for desk review, based on the extent and nature of resettlement and ensuring sectoral representation as well as projects that have been approved at different points of the evaluation period. This rapid assessment looked at all resettlement plans and social safeguard monitoring reports (SSMRs) available on ADB website and those that were made available. Several ADB staff members associated with relevant sectors or with safeguard policies in the ADB resident mission were interviewed.

**Table 1: Projects Reviewed for Resettlement Assessment**

Name	Resettlement Category and Approval Year	Resettlement Plan Available on ADB Website
Bihar State Highways - Loan 2443	A – 2007	Resettlement plan available (2008). SSMR: March 2015
India: Himachal Pradesh Clean Energy Development Investment Program (Loan 2687-IND), MFF	A – 2010	Resettlement plan available (2010 and update plan in 2016) SMMR available as of April 2013
Karnataka State Highways Improvement (Loan 2705-IND)	A – 2010	Resettlement plan available (2010) as part of MFF. SSMR – March 2013
NESRIP – NE State Road Investment Project, Tranche 1(Loan 2770)	A – 2011	Resettlement plan available (2012) SSMR as of August 2015)
Assam Power Sector Enhancement Investment Program	B – 2014	Resettlement plan available (2014) SSMR – October 2015

IND = India, MFF = multitranche financing facility, SSMR = social safeguard monitoring reports.

Source: Asian Development Bank Independent Evaluation Department, Desk Review (as of 7 July 2016).

30. The evaluation found that, in all cases, the basic principles of the SPS were addressed in a mutually acceptable manner in the resettlement plans, the first draft of which is prepared during project processing. While this limited assessment does not claim to be representative, resettlement plans do not appear to have been updated in a timely manner during implementation, SSMRs are also not published on ADB's website in the requisite manner as agreed with ADB (Table 1). Monitoring and assessment of resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline condition is very weak.<sup>33</sup> It is thus difficult to assess results from a desk review. This review focuses mostly on lessons and good practices.

31. Resettlement plans covered all the key elements required by the SPS. In general, these included (i) where such adverse impact is unavoidable, mitigation of adverse impact; (ii) consultation with displaced persons on the impact, and participation of displaced persons in planning and implementing subprojects; (iii) disclosure of key resettlement information to displaced persons in a comprehensible manner; (iv) provision of special assistance to vulnerable groups; (v) payment of compensation to displaced persons including non-titled persons (e.g., informal dwellers or squatters, and encroachers) for acquired assets at replacement rates; (vi) payment of compensation and resettlement assistance prior to the contractor taking physical acquisition of the land and prior to the commencement of any construction activities; (vii) provision of assistance for income restoration and rehabilitation; and (viii) establishment of appropriate grievance redress mechanisms.

32. SIAs were conducted in all projects prior to preparing the resettlement plans. They were not readily available, since they are not posted on the ADB webpage, but outlined in the "socio-economic

<sup>33</sup> Footnote 1, Safeguard policy principle 12.

information and profile" section of the resettlement plan as per the SPS. As a part of the survey, data information collected includes family profile, occupational profile, income, land holding, crops grown, assets owned, among others. The desk review found significant consultation with affected persons. Resettlement plans appear to be formulated in all cases, based on the consultation and survey data.

33. Project designs reportedly explored alternative subproject designs to ensure minimization of land acquisition, and other involuntary resettlement impacts. This appears to have been done generally in all of the above ADB-supported projects on the basis of information obtained from the social impact assessments and surveys, and while preparing the resettlement plan. In Bihar, for example, the upgrading and rehabilitation of the road was kept within the existing right of way and followed the existing alignment, mainly to reduce the social impact.<sup>34</sup> During the field visits, IED found that in some cases a bypass had been constructed or different standards of rehabilitation had been used (such as reducing the right of way) to minimize displacement.

34. In accordance with the loan agreements, before land acquisition and any resettlement for the project, in all cases relevant authorities provided the relevant resettlement action plan, based on the consensus of the affected persons. These authorities typically confirmed that the plan was disclosed and that all the necessary information had made available to persons affected by the project and uploaded to the ADB website. However, the estimates and plans were not always accurate.

35. Updating and posting of resettlement plans was weak. In almost all of the five projects this was because there were changes in design or changes in project sites or and changing estimates of actual number of people affected.<sup>35</sup> Reporting of progress was also mixed for a variety of reasons. Reports were not timely and were almost always delayed. There was no consistent form of reporting that would help the reader understand the process consistently across projects. Information was provided differently at different phases, making it difficult to assess progress. There was little or no focus during progress monitoring on results or on the impact of the resettlement; the focus was entirely on outputs such as compensation paid and identity cards delivered.

36. The estimates of people affected by the project during the planning stage appear weak. In all five cases, there had been underfunding of resettlement and rehabilitation plans. The case of the Bihar State Highways Improvement Project is covered in Table 2. In the case of Karnataka, the resettlement plan for 2008 was revised only in 2011. While only 10.8 acres were expected to be acquired under the first resettlement plan, in the case of the second plan, the actual amount was more than three times that in the plan, 33.08 acres. The number of affected persons increased from 1,876 to 2,101 and the number of people whose incomes were affected increased from 390 to 511 because a certain pass was suddenly included in the design of the road.

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<sup>34</sup> Social Monitoring Report. (Project Number: 41127-013 March 2015. Period: January 2014 – December 2014. Bihar State Highways Project).

<sup>35</sup> See para 40. Again, in the Bihar State Highways Improvement Project, the final monitoring report was not fully updated, with the stakeholders changing when road alignment was changed to mitigate adverse impact of the project.

**Table 2: Summary Subproject Estimated Impacts**  
(Bihar State Highways Improvement Project)

Resettlement Impact	SH68	SH69
Total number of private structures affected	74 (277)	317 (463)
Total number of households affected	74 (231)	315 (367)
Total number of affected persons	691 (1091)	3,092 (1,831)
Total number of non-title holders	74 (231)	315 (369)
Total number of common property resources affected	2 (46)	2 (94)
Total number of government properties affected	2 (33)	2 (94)
Estimated cost of compensation to affected persons (as per resettlement plan, 2008)	₹3.0 million	₹9.0 million
Actual cost of compensation to affected persons as of date of report	₹14.7 million	₹18.0 million

Note: ( ) = actual numbers as per microplan at the sub-project level at that date.

Source: Bihar State Highways Project, Social Monitoring Report for SH 68 and SH 69 (January-December 2014).

37. The costs for those affected, including non-title holders, were typically higher than the estimates based on the survey. The overall costs for resettlement in the case of the Bihar State Highways Project were estimated at ₹58.3 million in the resettlement plan, while the social monitoring report for the period January 2013–June 2013 suggests that the compensation in the case of two out of nine road packages had come to almost ₹30 million. The second monitoring report dated 15 March 2015 for the period January 2014–December 2014 indicates that the costs had increased to ₹34 million rupees. There are no other social monitoring reports for the other road packages as yet. In the NE State Road Investment Project, however, the social impact of resettlement increased considerably because it was decided to increase the right of way, keeping in mind future developments and traffic growth. This increased the land area to be acquired from 18.51 ha to 45.60 ha and the budget requirements for the resettlement plan implementation.

38. These projects were approved before the LARR and different methods of computing the cost of replacement land were utilized (Table 3). Whether the compensation under the old regime translates into payments that will enable the affected people to buy similar land in the vicinity cannot be commented upon, as no detailed studies were conducted with payment to recipients. ADB staff did not confirm one way or the other. Market value was based on the asset registration value, which, given Indian practices, are lower than market value. Such calculations are likely to result in insufficient compensation because the valuation is based on understated prices in publicly registered deeds.

39. A more recent trend appears to be to establish a land valuation committee (LVC) at the district level. This committee is typically chaired by the district collector or his/her representative and will have representatives of local self-government institutions. The LVC is responsible for making independent valuations of land and other assets based on existing market replacement cost and for completing land acquisition on behalf of the executing agency.<sup>36</sup> The additional multiplication factor of the market values is stated in the act, and the additional 100% of market price as the solatium increases the chances that the affected persons will receive replacement costs.

40. Environmental monitoring reports were found to be updated by the government on a regular basis. The same cannot be said of social safeguard monitoring reports. There is a slight difference in the treatment of these two reports in the legal agreement for the Himachal Pradesh energy projects in that the Himachal Pradesh Power Corporation Limited is required to submit progress and completion reports on land acquisition and resettlement as part of its quarterly progress reports, while, for

<sup>36</sup> Asian Development Bank (ADB). 2007. *Compensation and Valuation in Resettlement: Cambodia, ADB, People's Republic of China and India*. Manila. This report recommended: "Consider establishing expert tribunals to help set compensation in all projects involving land expropriation." This report also provides a good insight into the evolution of Indian law on resettlement.

environmental safeguards, the requirements are more specific. Reports on the implementation of the EIAs and EMPs are to be submitted to ADB on a quarterly basis. The reports on environmental safeguards require a greater focus on the issues, while for the reports on land acquisition and resettlement there is no specific format. In the case of the Assam project, biannual reports are required in MFFs with have resettlement components.

**Table 3: Key Resettlement Provisions in the Selected Projects**

Project Name and Resettlement Plan Date	Applicable Law	Calculation of Compensation for Land Acquisition	Compensation for Vulnerable Affected Persons	Compensation for Squatters and/or Encroachers <sup>a</sup>
Bihar State Highways Project (2008)	State Law BLARP (2007) and NPRR (2007) and ADB Policy (1995) and Operations Manual for Involuntary Resettlement (2006)	If it takes place, replacement of land will be an option, otherwise, cash-for-land compensation based on replacement value. Replacement cost means the method of valuing assets to replace the loss at market value or its nearest equivalent, plus any transaction costs. Temporary loss of land of land also compensated.	Includes people living below the poverty line, SC, ST, households headed by women, the elderly and the disabled.	1 month notice to remove structures. Compensation for loss of structure at replacement cost. Relocation assistance of ₹10,000. Right to salvage materials. Encroachers: Compensation for structures and the right to salvage materials from demolished structures to be given only to vulnerable households.
Himachal Pradesh Clean Energy Development Investment Program (Sainj Saj Subproject June 2010)	NRP Policy 2007 and Himachal Pradesh Hydro Power Policy	Compensation at replacement value or land for land where available for legal titleholders or displaced persons with customary land right or displaced persons with a permit from the local authority.	Additional one-time financial assistance equivalent to 500 days minimum agricultural wages.  Vulnerable households to be given priority in project construction employment.	HPPCL is contributing to the Local Area Development Fund in the district concerned as per the provisions of the Himachal Pradesh Hydro Power Policy.  No non-titleholders are to be affected as per original resettlement plan. However, by December 2011, 19 non-titled persons were reported in the SSMR and they had constructed homes on the acquired land. By March 2013, the number had risen to 46. It is unclear whether these affected persons were given compensation for homes. There are no updated plans since then.
Karnataka State Highways Project (2010)	Karnataka Highways Act, Karnataka Land Acquisition Act, NPRR (2007) and ADB SPS	A Consent Award Process is utilized. Price negotiations are conducted by a land evaluation committee with land losers in clusters. A price is determined that is acceptable to those losing land. It is expected that this will help	Widows, people who are physically challenged and those aged above 60 years: (i) assistance to include government pension schemes if not included in the resettlement package, if eligible as per Government criteria	Squatters: residential squatters to be given a constructed house or a house plot and ₹40,000 for constructing a home; and commercial squatters to be given an alternative plot for a shop or an amount of ₹40,000 for income generating activities. Encroachers: (i) Replacement cost of affected structure

Project Name and Resettlement Plan Date	Applicable Law	Calculation of Compensation for Land Acquisition	Compensation for Vulnerable Affected Persons	Compensation for Squatters and/or Encroachers <sup>a</sup>
		displaced persons to receive the market price or replacement cost of land as compensation.	(OR) Lumpsum amount of ₹25,000, (ii) training assistance to be provided for income- generating vocational training and skills upgrade options as per the displaced persons' choice.	calculated at current PWD scheduled rates without depreciation, and (ii) compensation for crop loss or advance notice for harvesting crops.
North Eastern State Roads Investment Project 1 (2013)	Land Acquisition Act, 1894	Compensation to be decided at market replacement cost by competent authority. ₹10,000 for each eligible displaced person. Notice for seasonal crops – if notice cannot be given, then compensation. All fees, taxes incurred in relocation to be paid by the acquirer. Additional grant of 10% of the compensation in some cases.	Vulnerable people will receive a one-time grant of ₹10,000 in lieu of economic rehabilitation and consideration in employment.	60 days' notice to remove structures. Compensation for loss of structures at replacement cost as per latest prevailing basic schedule of rates without depreciation. Relocation assistance of ₹10,000. Right to salvage materials. Encroachers: Compensation for structures (as per above) and right to salvage materials from demolished structure within 60 days of notice.
Assam Power Sector Enhancement Investment Program (2014)	LARR (through retrofitting in 2014), TA Act, and ADB SPS	Twice the market rate in rural areas and the market price in urban areas plus 100% solatium (market price to be calculated as in LARR). Temporary loss of land of land also compensated.	SC, ST, and households headed by women (considered to be vulnerable) will receive a one-time grant of ₹25,000 and preference in income generating training and consideration in employment.	Squatters: (i) replacement value of structures and right to salvage materials and (ii) all displaced families to receive a monthly payment of ₹3,000 for a year and SC/ST households to receive additional payment of ₹50,000. Both squatters and encroachers: (i) 60 days' notice for loss of encroached land and an allowance to harvest crops or if not to receive compensation; (ii) additional compensation for vulnerable households.

ADB = Asian Development Bank; BLARP = Bihar Land Acquisition, Resettlement and Rehabilitation Policy; HPPCL = Himachal Pradesh Power Corporation Limited; LARR = Land Acquisition, Resettlement and Rehabilitation; NPRR = National Policy on Resettlement and Rehabilitation; NRP = National Rehabilitation Policy; SC = scheduled caste; SPS = Safeguard Policy Statement; SSMR = social safeguard monitoring report; ST = scheduled tribe; TA = technical assistance.

<sup>a</sup> The term *squatter* refers to persons without legal title who are occupying land for residential or commercial purposes, while the term *encroacher* refers to persons extending their structures or commercial businesses

Source: Asian Development Bank Independent Evaluation Department.

## 1. Squatters and Encroachers<sup>37</sup>

41. Commercial squatters and vulnerable groups have reportedly been compensated for non-land assets in all cases, which is consistent with the SPS. They were provided with livelihood training, credit facilities, and employment opportunities to ensure that their income earning capacity, productive capacity and standards of living are restored to their original pre-displacement levels. The findings of the Bihar State Highways Improvement Project are discussed in the next section. About 50% of the work had been completed when ADB requested a corrective action plan to compensate encroachers. Finally, after significant discussion, a resettlement plan was prepared and implemented in line with the resettlement framework to mitigate impacts on encroachers.<sup>38</sup>

## 2. Gender Issues<sup>39</sup>

42. Gender issues are considered in the resettlement plan.<sup>40</sup> Typically, the primary concession in this regard is additional compensation proposed for households headed by women, as they are considered more vulnerable. A household headed by a woman does not have a male earning member. Thus, if a woman's younger brother or adult son is living with her and is earning, the household would not qualify. While this is consistent with traditional understanding that a male member is typically the head of the household, no transformation was envisaged in such cases to establish the headship of the woman. In many cases, there is no doubt that the woman herself may not want such a reversal of positions in several areas of the country.

43. The resettlement plan for Road AS37C (Kalitakuchi to Barpeta) under the NE State Road Investment Project (Loan 2770)<sup>41</sup> notes that "in terms of resettlement, the project gender impacts are largely non-significant." However, the plan includes a table summarizing the views of women and how the concerns they raise will be addressed, which also captures some of the important gender issues in households headed by males. However, subsequent monitoring reports are for the most part gender-blind.<sup>42</sup> In the Karnataka State Highways Project (2010), consultations with women during the design of resettlement plans indicated that improved roads could also increase risks; for example, the increased speed of traffic could make it difficult for women and children, who are mostly pedestrians, to navigate the roads and the number of accidents may increase as children in village areas tend to play near the roads. If the improved road led to greater movement of heavy vehicles carrying ore and goods this was not welcome in the village limits. However, resettlement plans do not indicate whether such needs were addressed.<sup>43</sup>

<sup>37</sup> The term *squatter* refers to persons without legal title who are occupying land for residential or commercial purposes, while the term *encroacher* refers to persons extending their structures or commercial businesses. One exception was the Kolatta Environment Improvement Project but this was prior to the country assistance program evaluation period. Nevertheless, it is mentioned because it sets a standard for treatment of gender issues in resettlement in a manner that would strengthen gender equality.

<sup>38</sup> Back to the office report. February 2015.

<sup>39</sup> The Eleventh Five Year Plan emphasizes the importance of women's property and land rights. It notes a variety of initiatives that will ensure land to women in the case of governmental transfers to enable equitable allocation.

<sup>40</sup> The ADB. 1998. *Handbook on Resettlement: A Guide to Good Practice*. Manila. This required that resettlement plans "identify special measures for addressing gender issues and those related to vulnerable groups." The handbook indicated several gender issues that must be addressed if women are to be relocated successfully. In 2003, a gender and resettlement checklist was also to guide users in identifying and addressing gender issues in resettlement planning, implementation, and monitoring, and in designing gender-inclusive resettlement plans.

<sup>41</sup> Resettlement and Indigenous Peoples Development Plan, March 2012.

<sup>42</sup> See North Eastern State Roads Investment Program - Tranche 1: Kalitakuchi to Barpeta (AS-37C) and Bilasipara (NH-31) to Fakiragram (AS-11), Assam - Social Monitoring Report (July-December 2014), dated April 2015. See Safeguards Monitoring Report. Semi-Annual Report on Land Acquisition and Resettlement North Eastern State Roads Investment Program - Tranche 1: Improvement & Up-gradation of Road Sections of Kalitakuchi - Barpeta (AS-37C) & Bilasipara (NH-31) - Fakiragram (AS-11) - Social Monitoring Report (January-June 2015) August 2015. (This was the last available social monitoring report for the project as of May 2016.)

<sup>43</sup> Small bridges are provided for in the design, for example in Karnataka, but whether this is for vehicles or pedestrians is unclear.

44. Key mechanisms for supporting women's empowerment include ensuring that funds are paid directly into women's personal bank accounts, and carrying out an awareness campaign on HIV/AIDS. The monitoring reports provided by the government are generally, however, gender-blind, with a limited focus on households headed by women. In some cases, women from disadvantaged communities and female heads of households were given livelihood training. However, the interpretation was rather narrowly applied in Bihar, where the NGO considered only women who were engaged in larger commercial activities. Women who were weaving baskets for survival and selling them in markets for small amounts of profit were not considered to be engaged in commercial activities.

45. The project or program administration manuals were in general not highly gender-aware except for stating that executing agencies must monitor the status of compliance with labor laws and employment of the poor, particularly women, in the civil works contract<sup>44</sup> (Bihar). The monitoring and design frameworks also typically did not spell out the gender dimension. ADB's focus on gender issues in resettlement was not strong during the evaluation period. Consultant monitoring reports for infrastructure projects did not include gender<sup>45</sup> nor did consultants' terms of reference or the pro forma of the implementing agency's progress report. Phrases are used which are gender-blind.<sup>46</sup> The design and monitoring frameworks are gender-blind, containing only a limited focus on households headed by women.

### 3. Dispute Settlement

46. Grievance cells appear to have been established in these five projects, although the IED mission could not obtain access to any data on the number of disputes addressed. In some projects, this was because all the concerns were settled at the levels of the executive committee, in consultation with affected persons. However, IED's Urban Water Sector Assessment, conducted for the CAPE evaluation, found that a functioning grievance redress mechanism was not fully available across some projects in the water sector. An exception was noted in the case of Karnataka where, although the project loan was approved before the approval of the SPS, a grievance redressal committee (GRC) was established for the facility soon thereafter, and is reportedly functioning well. In Bihar, a couple of cases were found during the survey where two out of the many women interviewed had no idea as to whom to turn to when the banks refused to cash their out of date checks. The survey in Bihar also found that only seven of the 200 people encroachers and squatters questioned were aware of such a grievance cell.

### 4. Accountability Mechanisms

47. All projects require internal monitoring of resettlement plans, as well as independent monitoring by an external expert of the loan agreements or the resettlement framework. This was found to be an area of weakness in all projects. Monitoring of social safeguard performance is varied across projects. When SSMRs are received from the government, they are automatically uploaded to the ADB website. Accountability mechanisms to ensure that the conditions of the affected persons are restored to, or improved from, the pre-resettlement conditions are weak. Although there are requirements for monitoring, both internal and external, overall monitoring appears to be weak, with little focus on outcomes. In more recent projects such as the Assam Power Sector Enhancement Investment Program, tranche 1, there has been an improvement in the regularity of updated reports.

48. The Bihar State Highways Improvement Project included a provision that a consultant's report would comment on the results of the resettlement activities.<sup>47</sup> However, the consultant's report

<sup>44</sup> Project Administration Memorandum, Bihar State Highways Project.

<sup>45</sup> Examples include projects marked as Category 1 or 2.

<sup>46</sup> The commonly used the word is "social" even in category 1 and 2 projects such as Bihar State Highways Project.

<sup>47</sup> ADB. 2013. *Bihar State Highways Project: Social Monitoring Report for SH 68 and SH 69 (January-June 2013)*. Manila.

available on the ADB website was silent on these issues. SSMRs for the Bihar project were not necessary since the project was governed by the ADB Resettlement Policy, 1995.

49. The Rural Connectivity Investment Program Roads Sector I Project, (which was financed through the Prime Minister's Rural Roads Program (Pradhan Mantri Gram Sadak Yojana) provides an example of community-based resettlement and rehabilitation.<sup>48</sup> In the preparation stage, the alignment of the roads under the program, is finalized through community consultation. The guidelines for this program require the PIU to conduct a transect walk and consultations along project roads before finalizing the alignment, to ensure active community participation, to select the alignment that best suits the community's needs, and to minimize the adverse social and environmental impacts of the proposed improvement. ADB has encouraged women to participate in transect walks and this can give them some sense of empowerment, particularly in rural areas. To reduce the adverse impact, the government tries to use as much revenue land (land belonging to the government) as possible. Whenever more land is needed, voluntary donations are sought, a system which both the government and ADB staff confirm works satisfactorily.

50. A safeguards unit has been established in the resident mission to supervise and provide support for implementing the resettlement plan. Consisting of one international member of staff, and three national staff, the unit is reportedly overstretched. It has to prioritize and focus on those projects with the greatest number of implementation issues. The complexity of supervising land acquisition and subsequent resettlement is bound to increase with the new act, given the different variations in each state.

## E. Use of Country Systems for Involuntary Resettlement

The objectives and principles of the new legal regime are broadly equivalent to those of the ADB SPS (paras. 23-30). The spirit of the law has changed in favor of affected persons, and the act focuses on the importance of considering livelihoods. Some stakeholders have remarked that the law is complex, and the process is cumbersome, causing delays. Capacity to address risks is still weak and needs to be strengthened, particularly at the state level. The administrative mechanism under the LARR Act is still being established in most states. Other stakeholders have argued that there is an national law with standards equivalent to ADB's SPS and should be applied. As of now, the law is only being implemented gradually at the state level, in part to avoid delays caused by processes perceived as cumbersome (see paras 21-22). Given the newness of the law, there is little track record or full understanding of the risks involved in implementation issues, transaction costs, or performance criteria. However, some agencies, such as Power Grid, have significant experience in implementing resettlement policies that are consistent with ADB's SPS. An agency-by agency approach to implementing the new regime may be more suitable in the immediate future.

## F. Findings of the Bihar State Highways Improvement Project Survey

51. The Bihar State Highways Project aimed to foster economic growth in the state. The long-term objectives were to contribute to the economic development of Bihar by providing better connectivity with an emphasis on promoting commerce and improving livelihoods for the poor. The primary focus of the project is to improve rural connectivity and facilitate all-round development in educational and health facilities and trade activities within the state for economic growth.

52. The project was designed before the LARR Act. The act would in any case have been irrelevant for the purposes of this project, because no land acquisition is reported as having taken place. In addition to ADB's Involuntary Resettlement Policy (1995), the National Rehabilitation and Resettlement Policy, 2007, and the Bihar Land Acquisition and Rehabilitation Policy 2007 were applicable.

<sup>48</sup> ADB. 2012. *India: Rural Connectivity Investment Program (Facility Concept)*. Manila.

53. Involuntary resettlement in this project mainly dealt with compensation for squatters and encroachers, since improvement took place within the existing right of way. Although highway SH 68 in Southern Bihar was not entirely funded by ADB, it was also covered by the project, in addition to SH 73, SH 74, and SH 75 in Northern Bihar (Table 4). In total, 200 affected persons along these roads were surveyed on issues related to compensation, and to understand how their circumstances had changed since they received the resettlement compensation. Of the people in this list, 18 were ineligible due to change in the right of way.

**Table 4: State Highways Alongside Which Affected Persons Lived**

Civil Work Package	SH No.	Road Name	Length (km)	Year Initiated (Approximate)
1	68	Shivganj-Badrabad	65.5	2009
5	73	Siwan- Shitalpur	88	2010
6	74	Hajipur-Areraj	85	2010
7	75	Darbhang-Madawpur	47	2010

SH = state highway.

Source: Asian Development Bank Independent Evaluation Department (Survey of Affected Persons Along SH 68, SH 73, SH,74, and SH 75 (2016))

54. The key objectives for the survey were to determine: (i) were affected persons (squatters and encroachers) compensated as agreed with ADB, (ii) to what extent did affected persons perceive their lives had improved, (iii) to what extent did affected persons receive training, and (iv) to what extent did affected persons utilize the grievance cell?

55. A few caveats need to be made. Construction of these roads was initiated several years before the survey, and the accuracy of the response depends upon the respondent's ability to recall facts. In the case of SH 68, the project was begun under the ADB project in 2009, but completed more recently using government funds so there were affected persons from both periods. In order to ensure greater accuracy, the numbers stated as compensation in the government database were mentioned to jog their memory, when necessary. Only 15% of the respondents were women. The survey team leader noted that it was difficult to find women surveyors who would accompany them overnight to the survey villages. Customary practices made it difficult to speak to women because in some cases, they were not allowed to speak to strangers, and in some cases, although they received the benefits in name, they had little or no idea about it. Finally, the survey team spent only one day at each road, in addition to the first day of survey testing in SH 68. In some cases, the respondent was not at home, and information was obtained from the person at hand.

56. Overall, the review finds that the resettlement that has taken place was by and large consistent with the principles of ADB's Involuntary Resettlement Policy. The survey confirmed that no private land was acquired for the purposes of this project for these four roads. Field visits found that efforts were made to reduce the extent of impact. The survey confirmed that 63%–80% of the affected persons had obtained their compensation. However, only one of the 200 persons claimed to have received training. With regard to improvements to the respondents' lifestyles, 46% felt that there had been no change in their lives, 40% that their lives had become better or were good, and about 14% felt their lives had become worse. There was a gender variation in the responses, with more women responding that there were no change in their lives. The findings are discussed below.

57. Field visits found that efforts had been made to avoid involuntary resettlement by shifting alignments and reducing the right of way when necessary and possible. The IED mission drove by the Bantara Village bypass, which had specially been designed to avoid involuntary resettlement of about 30 households who would have lost livelihoods if the road had been built as planned.

58. **Receipt of compensation.** Of the surveyed affected persons, 81% confirmed that they had received the compensation. There was a small discrepancy in 3 out these 125 cases in terms of the amount received, and in 10 cases persons considered ineligible to receive funds actually received funds. This discrepancy was explained by the project staff as a result of a subsequent realignments of the roads, resulting in reducing the effect on certain households, and bringing in 10 new households who, although not previously affected, became affected after the realignment. All compensation was paid into the affected person's bank account, and in two tranches: one advance payment for dismantling the encroached structure, and one after completion. However, payment through bank accounts resulted in a lot of additional work, because the majority of households did not have bank accounts, and thus lacked familiarity with the banking system.

59. Less than 20% of respondents said they had not received the compensation, although the NGO monitoring report indicated the amounts had been disbursed. Less than a quarter of these were women. The majority of the cases involved people living on the sides of SH 74 and 75, and 65% were encroachers, of whom nearly 90% lived on SH 74. The NGO representative noted that their staff departed immediately once the compensation check had been delivered and a photograph taken as evidence of handover. They were unaware of affected persons who did not receive their compensation. Also, since local government staff are not involved in the payment process for the resettlement, they are also unable to address such grievances.

60. There could be various reasons for nonpayment, including unfamiliarity with the banking system. Two women complained that they had not received the second half of their compensation. One remembered the second check and the exact amount, but the check had not been honored by the bank, which apparently informed her that "there were no more funds." She sought avenues to make a complaint, but those she contacted, such as the member of the legislative assembly, were unable to help her. A second woman in the same neighborhood said that the check was made in her husband's name since he was the legitimate titleholder, but he had died just before the receipt of the check. The bank told her that they could not cash the check without other documents. She also was unable to find the competent authority, who could rectify the situation. One important issue was the lack of awareness of the grievance cell.

61. There was no evidence of any adverse treatment of respondents by gender; in fact, households headed by women were paid an additional amount. In one case, a woman's wall had to be broken down. The wall was not rebuilt, and when asked whether she had received the compensation, she said she had, but used the funds to get her daughter married (Picture 1). Nevertheless, there appears to have been little sustainable effort to support women's empowerment, reflecting a lost opportunity.

**Photo 1: Home Without Walls**

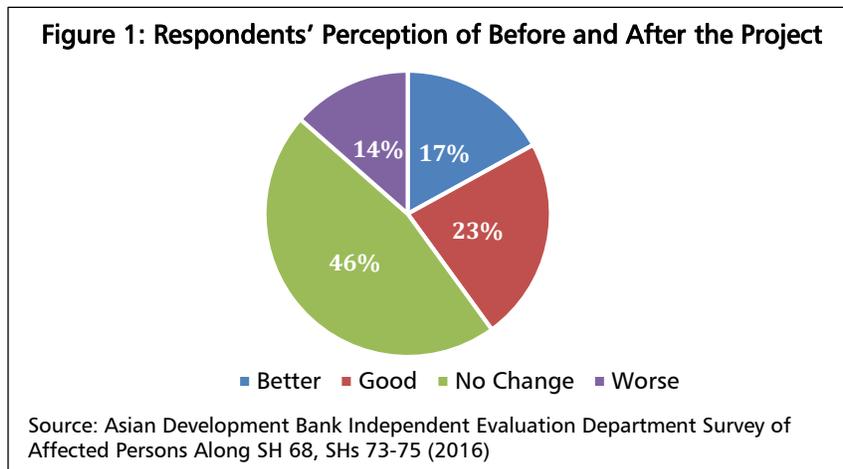


Source: Asian Development Bank Independent Evaluation Department.

62. **Improvement of lives.** Respondents were asked whether their lives had improved after the construction of the road using a four-scale rating. Translated from Hindi, these were: better, good, no change, worse. Of the respondents, 46% were of the view that there was no change in their lives, 40% felt their lives were good or had improved, and only 14% felt their lives were worse (Figure 1). There was a gender difference in the responses. Only about one-third of the women responded that their lives were good or better, while 41% of the men did so. Most women felt that their situation was no better (53%) while 45% of men felt this. About 13% of women and 14% of men felt that their lives had become worse (Figures 2 and 3).

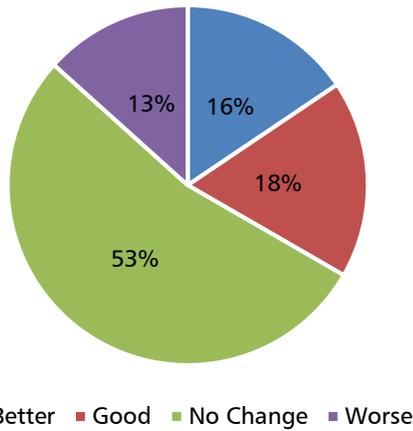
63. When the responses are segregated by state highways, the most satisfied respondents appear to be those along the side of SH 68. There may be several reasons for this. Field visits indicate that SH 68 was a very badly maintained road and the improvement to an all-weather road made a significant difference; people noted that previously in the rains they were knee deep in water at many places. Several stakeholders, however, pointed out that the sewerage planned during the project had still not been constructed. Previously, they did not have many services in the villages, which had now increased. In one area, they noted that the road allowed the opening of a police station nearby, which helped to reduce crime, because police could get to the villages more easily. Some explained that improvements to the road to Gaya, a prominent city in Southern Bihar, and an important market place, meant that the journey times was now only 3 hours as opposed to 6 hours previously. The road was also in Southern Bihar, where poverty is higher, and it may be that the road opened up more options in this area. Additionally, SH 73-75 had been completed a few years earlier and memories of the advantages may have been affected by time.

64. The responses for SH 73, SH 74, and SH 75, was similar when disaggregated by encroachers and squatters: 85% of the encroachers felt life had improved or was better or that it was the same as before, while 87% of the squatters felt similarly.



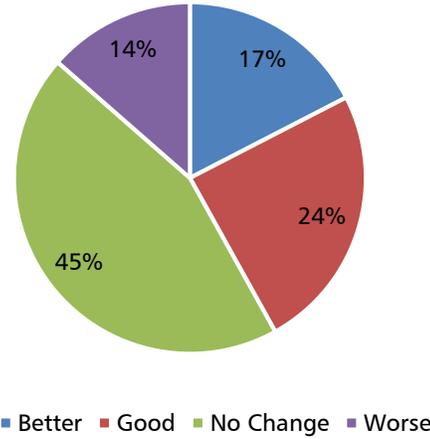
65. **Improved transportation.** Stakeholders met during the field visit were unanimous that the road had improved their road connections. It was now less time consuming and more comfortable to access medical facilities. Children could travel to schools and universities more comfortably, particularly by bicycles. Except for a teacher and social worker, most women explained that they travelled mainly for family gatherings, health clinics, and markets (either to sell produce or to buy necessary items). Men spoke of their ability to get to government offices, and to search for work in other villages or in Patna. This was corroborated by the three focus group discussions held on the roadsides (SH 73, 74, and 75).

**Figure 2: Female Respondents' Perception of Before and After the Project**



Source: Asian Development Bank Independent Evaluation Department Survey of Affected Persons Along SH 68, SHs 73-75 (2016).

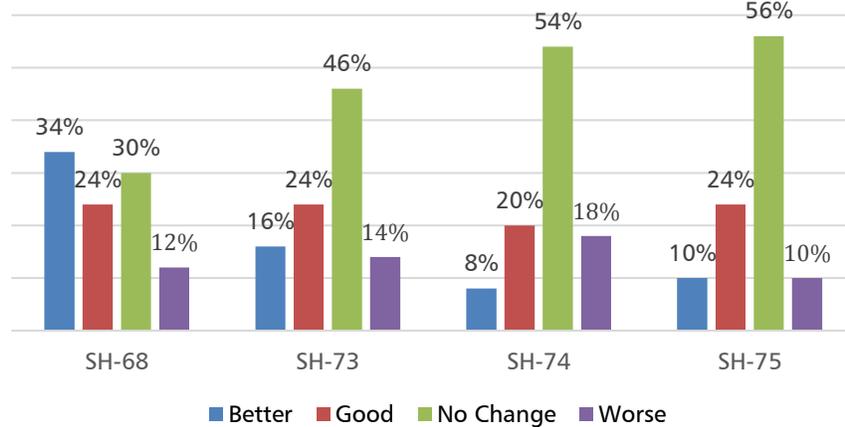
**Figure 3: Male Respondents' Perception of Before and After the Project**



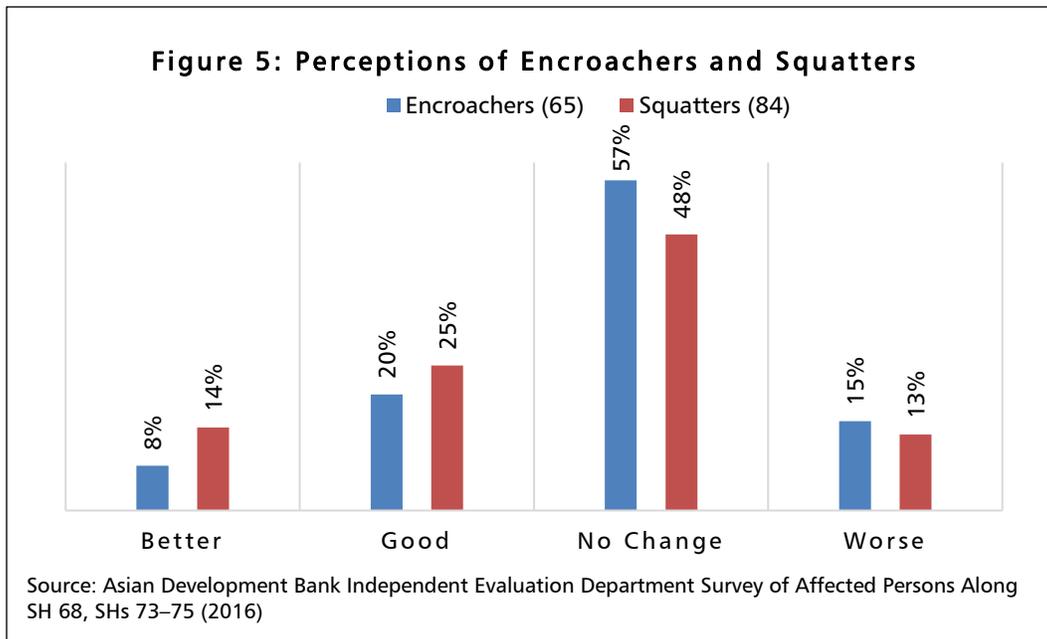
Source: Asian Development Bank Independent Evaluation Department Survey of Affected Persons Along SH 68, SHs 73-75 (2016).

66. The IED team also met two young women who had registered in colleges in the city but were working from home. The roads had made their trips to the schools to write exams much easier. However, the focus group discussion for SH 74 noted that there was no bus facility after 6 pm, because of weak demand; this made it difficult when there were emergencies (Figure 4).

**Figure 4: Ratings According to Roads**



Source: Asian Development Bank Independent Evaluation Department Survey of Affected Persons Along SH 68, SHs 73-75 (2016).



67. **Improved income.** In terms of a single question on additional income or economic opportunities, perceptions were mixed. The majority of respondents felt their incomes had not risen as a result of the road. Most women noted that they had had little opportunity to access any additional income-generating activities. Focus group discussions suggested that people were going to other cities because of easier transport links and because there was less income available in their villages alongside SH 73 and 75, particularly due to low rainfall. Thus, people who were dependent on agriculture were leaving the village and looking for work in other places for additional income. Given the conversations with men and women, and the high level of gender inequalities in rural Bihar, it can be assumed that most people going out looking for work are men, and this is perhaps reflected in the differences in responses between men and women.

68. **Role of nongovernment organizations.** For all four roads, nongovernment organizations (NGOs) assisted the project implementation unit in implementing the resettlement plan. The NGO was expected to play the role of a facilitator and to work as a link between the project implementation unit and the affected persons. The NGO was also expected to raise the awareness of the affected persons on the need to implement the subproject and on aspects relating to compensation and other measures, and to ensure proper utilization of compensation to the affected persons under the resettlement and rehabilitation entitlement package. Two NGO representatives were also interviewed during ADB field visits, one dealing with SH 68 and the other with SH 74. Generally, discussions with staff indicated that it was a challenge to arrange for competent NGOs to work in remote areas. Most were out-of-state NGOs, with headquarters outside Bihar, and were not available to support project implementation in a timely manner. Rates paid by NGOs to social workers were very low, and this reduced the quality of the staff.

69. **Effectiveness of grievance cell.** The above cases also raise concerns about the effectiveness of the grievance cell. Only seven men of the 200 respondents surveyed were aware of the grievance cell. They had apparently used it but only one had a written record. Six out of the seven felt justice had not been done. During the field visits, it was explained by government officials that the cases that came to the grievance cell were because households did not fully understand their entitlements or because there were inter-family disputes about who owned an asset. Because of this, they were rarely taken up or recorded.

70. **Training for affected persons.** Only one of the 200 survey respondents (a person on SH 68) recalled receiving training as part of the compensation package in all four cases. The social monitoring report for SH 68 for the period January to December 2015 said ₹86,000 (\$1,200) had been spent on training activities for 31 people, of whom six were surveyed. The final monitoring report for SH 73, SH 74, and SH 75 reported that only 60 affected persons out of a total of 236 received training, in making incense sticks and preparing indigo blue. During the field visits, the NGO representative introduced the IED team to a few project-affected men, who had received such training. The concerned NGO apparently helped them to market such incense sticks. On average, they said they received anywhere between ₹200 to ₹300 per month additional income.

Photo 2:-Men Trained in *Agarbathi* (incense) making

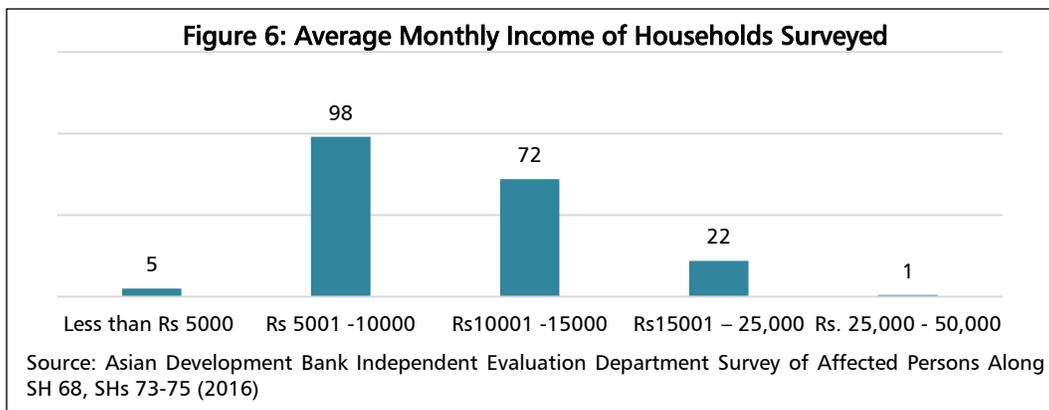


Source: Asian Development Bank Independent Evaluation Department team field visit.

71. During the field visits, the squatters who were met had been compensated, and now continued to squat on pieces of land away from the roadside. In one case, a woman who headed a household did not receive training given to persons in “commercially affected households”, although she made and sold baskets for a living. The NGO representative explained that her activity was limited to making traditional baskets (one in two or three days) and selling them at the market, and this could not be considered a commercial activity. Squatters interviewed had for the most part not had their lives improved. They had received compensation for structures that had been destroyed, and some additional assistance had been given to people considered vulnerable. Most had built other houses a little away from the road (see pictures below). On SH 73, SH 74, and SH 75, they were not provided with any training, because according to the monitoring report they were not interested.

72. **Economic status of affected persons.** The survey suggests that most of the respondents (85%) had a monthly income of less than ₹15,000 for the household. Only one person had an income between ₹25,000 and ₹50,000. Most of the encroachers appear to fall below the poverty line of \$1.90 per head (World Bank poverty line), assuming an average family size of five.<sup>49</sup> Only 15% of the encroachers may be considered as being above the poverty line.

<sup>49</sup> The average household size fell from 6.00 in 2001 to 5.48 in 2011. See <http://iigeo.org/wp-content/uploads/2014/07/Vol.36-No.12014-Transaction-IIG-1.pdf>



**Photo 3: Reconstructed Squatter Dwelling**



Source: Asian Development Bank Independent Evaluation Department team field visits.

**Photo 4: Reconstructed Squatter Dwelling**



Source: Asian Development Bank Independent Evaluation Department team field visits.

## G. ADB's Performance

73. **Capacity development.** ADB has undertaken several capacity development efforts for policy makers and implementing agencies in India, at project, state, national, and international levels. In 2012, before the LARR Act, for example, ADB conducted an international workshop of safeguard experts to discuss progress in implementing safeguards and to encourage South–South learning (TA 7566).<sup>50</sup>

74. At the national level, since 2008 the resident mission has carried out a capacity development program for executing agencies and in 2011 it established a capacity development resource center. The resident mission team has carried out two training sessions for consultants on safeguard policy requirements under a TA. The center has collaborated with various national institutions including the Indian Institute of Technology, Roorkee, the Administrative Staff College of India in Hyderabad, the Indian Academy of Highway Engineers, the National Institute of Construction Management and Research in Pune, and the Indian Institute of Administration in Ahmedabad, for the delivery of training programs on project implementation and thematic topics. Safeguard implementation is a regular feature of such training efforts.

<sup>50</sup> ADB. 2012. *Country Safeguard Systems Regional Workshop Proceedings. Towards Common Approaches and Better Results 18–19 April 2012*. Manila. This workshop was conducted under a regional TA (7566).

## H. Overall Findings

75. Overall, addressing and mitigating the impact of involuntary resettlement caused by development projects is a significant challenge in India. Social safeguards were not necessarily considered an important dimension until the Resettlement Policy of 2007 and much more firmly with the passing of the LARR Act in 2013. With the LARR Act and the expiry of the ordinance, there is a clearer framework. The improvements in compensation, for example, are reflected in the revised resettlement framework for the Assam Power Sector Enhancement Investment Program, which was retrofitted to the LARR provisions in August 2014. However, ownership of the law by national and state governments is unclear given the attempt to revise some of its fundamental provisions.

76. Resettlement plans were prepared in the case of the ADB-supported projects that were reviewed. All principles were complied with on paper, thus clearly leading to an increased likelihood of a more inclusive program covering both encroachers and squatters. At project approval, there is compliance with ADB safeguard policies on involuntary resettlement. However, after that the review finds that it is an uphill task to carry out effective implementation, timely updating, and monitoring that would provide adequate data on whether compensation is being provided as required by ADB policy.

77. Lack of availability, consistency, and quality of information makes resettlement challenging to implement, and the results difficult to understand. Different project documents for the same project provide information differently. The quality of the information in resettlement plans, subsequent social impact assessments, and those reported in the project documents varies greatly. Methods of computation are inconsistent and lack uniformity. Resettlement instruments used different units of analysis and are difficult to compare across states. Monitoring is weak and focuses on impacts. Even monitoring of progress towards impacts is weak.

78. Overall, there are several issues that constrain ADB's monitoring process. The failure to provide updated resettlement plans and Social Safeguards Monitoring Reports is one major constraint. According to some ADB staff, despite repeated requests, such requests are not responded to in a timely manner. This is also evident from a review of the available reports on the ADB website. Unlike environment reports, there are few social safeguard reports and those that appear are posted irregularly. The reports do focus on the compensation paid but do not explain whether it was adequate to purchase alternate land of a similar type. Project completion reports (PCRs) confirm that there monitoring and assessments by ADB staff or consultants are inadequate. They recommend that periodic social safeguard reviews by ADB experts, followed by corrective action, be carried out, although this may require a strengthening of the resident mission team for resettlement, which currently consists of one international member of staff and three local staff.

79. Gender issues need to be better addressed in resettlement. As ADB's Gender Equality Diagnostic of Selected Sectors (2013) notes, there is a need to focus on gender issues in households headed by males as well as females, to ensure that women's livelihood losses are restored, to implement provisions for ensuring joint titling encouraged by the government since the 1980s and reinforced by the Planning Commission, and to take appropriate steps to mitigate women's loss of networks.

80. One issue that emerged from the Madhya Pradesh Power Sector Investment Projects and in Assam was the impacts from use of private land for stringing transmission wires and erecting towers. Although they are presumed to be temporary impacts, these were not. The PCR for the Madhya Pradesh Project notes that such damage is correctly perceived by affected persons to cause permanent impact in terms of access to the affected land for cultivation as well as devaluation of the land and assets in the corridor of impact (para. 48). Under ADB-supported projects, these temporary losses need

to be compensated, but during the evaluation period in most cases they were not. This inconsistency has now been partly addressed by the government (para 25).

81. Finally, there is no doubt that applying the LARR Act or the resettlement policy is a challenge, for several reasons. First, market rates are rarely recorded correctly in the books. Computing the market price therefore becomes extremely challenging, and in a market where prices are artificially inflated due to the acquisition, obtaining compensation at replacement rate is a tricky issue, despite the multiplication factor and the solatium. Second, the influx of people who enter an area being acquired is uncertain. Ascertaining the resettlement benefits for vulnerable groups who do not have land titles becomes very difficult, especially with a cut-off date of 3 years prior to notification (as provided in the LARR Act). Third, several Indian stakeholders resist the principle that well-to-do encroachers needed to be compensated. They were of the view that this would encourage encroachment and should not be facilitated.

## I. Suggestions

82. Based on this rapid study, some suggestions are provided below:

- (i) Involuntary resettlement in Category A projects should be considered a complementary development project by itself, whether financed by the government or ADB. Local NGOs should be empowered to support affected persons, and required to stay on after the compensation is paid to ensure some minimal level of post-monitoring and hand-holding.
- (ii) SPS principle 10 requires monitoring and assessment of resettlement outcomes, their impacts on the standards of living of displaced persons, and whether the objectives of the resettlement plan have been achieved. Baseline conditions need to be taken into account and the results of resettlement monitored. All resettlement plans should therefore include both robust outcome-related monitoring indicators that are monitored even post-resettlement, and a budget for such purposes.
- (iii) Resettlement plans should focus on households headed by women, but also ensure that gender issues are identified and addressed.
- (iv) ADB should support state governments through a participatory process to develop a common format for monitoring progress and the results of resettlement.
- (v) ADB should ensure that there are adequate staff and consultants in the resident mission to facilitate periodic social safeguards reviews by ADB experts for all projects with resettlement category A and B, and to take corrective actions as recommended (a recommendation of the PCR of the Madhya Pradesh Power Sector Investment Program, tranche 3).
- (vi) ADB should help build the capacity of client stakeholders to implement the LARR Act, not just the staff of ADB executing and implementing agencies.

## APPENDIX: ADDITIONAL NOTES ON THE LARR ACT<sup>1</sup>

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1. **The LARR Act applies retrospectively.** All provisions of the act relating to the determination of compensation, rehabilitation, and resettlement shall apply even to cases where land acquisition proceedings have been initiated under the Land Acquisition Act, 1894, but (i) where no award under Section 11 of the act has been made; or (ii) where an award under section 11 has been made, such proceedings shall continue under the provisions of the Land Acquisition Act, 1894 as if the act has not been repealed. In cases where land acquisition proceedings have been initiated under the Land Acquisition Act, 1894 and where an award under Section 11 has been made 5 years or more before the commencement of the 2013 act, but the physical possession of the land has not been taken or the compensation has not been paid, the proceedings shall be deemed to have lapsed and the appropriate government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the 2013 act. Furthermore, where an award has been made and compensation in respect of a majority of landholdings has not been accepted, then all beneficiaries specified in the notification for acquisition under Section 4 of the Land Acquisition Act, 1894 shall be entitled to compensation in accordance with the provisions of the 2013 act.
2. Affected persons recognized by the act include:
  - (i) a family whose land or other immovable property has been acquired;
  - (ii) a family which does not own any land but a member or members of such family may be agricultural laborers, tenants including any form of tenancy or holding of usufruct right,<sup>2</sup> share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;
  - (iii) families that fall under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; and
  - (iv) a family that has for the previous 3 years, prior to the acquisition of land, been depending on natural resources in the area being acquired for their livelihood.
3. The act establishes a clear time-bound process that requires:
  - (i) **Preparation of a social impact assessment and plan.** The assessment and plan should be prepared in a participatory manner, approved by an independent multidisciplinary expert group appointed for the purposes, without which no land acquisition can be initiated;
  - (ii) **Preliminary notification, objections, and hearing.** Once the social impact assessment is approved and within a period of 12 months a preliminary notification must be issued. If such a preliminary notification is not issued in the time, a fresh social impact assessment and plan will be required. The preliminary notification allows the appropriate government to undertake various surveys and update records, which need to be compulsorily completed within 2 months. Within this period, all affected landowners and families have the right to raise objections in writing to the district collector and be heard in person.
  - (iii) **Rehabilitation and resettlement scheme.** After preliminary notification, the rehabilitation and resettlement administrator shall conduct a survey and census of the affected families and prepare a draft rehabilitation and resettlement

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<sup>1</sup> This section is based mainly on the LAAR Act.

<sup>2</sup> A civil law term referring to the right of one individual to use and enjoy the property of another, provided its substance is neither impaired nor altered.

scheme (RSS). The RSS is sent through the district collector to the Commissioner Rehabilitation and Resettlement who finally approves the RSS. The district collector then publishes a summary of the RSS along with a declaration under the hand and seal of the secretary to the government. The declaration shall be published only after the deposits for cost of land acquisition are deposited. The RSS summary and declaration shall be made within 12 months after the issue of the preliminary notification. If not, the preliminary notification shall be rescinded.

- (iv) **Public notice and award.** Following the declaration and the deposits of required funds, the district collector shall issue a public notice and hear objections within 6 months from the date of its issue. The district collector shall made an award within a period of 12 months from the date of publication of the declaration and if an award is not made within the period, the entire proceedings shall lapse.

4. The law mandates further compensation in case the land remains unutilized after acquisition for a period of 5 years, the act empowered states to return the land either to the owner or to the State Land Bank. Whenever the ownership of any land acquired under this act is transferred to any person for a consideration, without any development having taken place on such land, 40% of the appreciated land value shall be shared amongst the persons from whom lands were acquired, or their legal heirs, in proportion to the value at which the lands were acquired, within a period of 5 years from the date of acquisition.

5. **The LARR provides for greater transparency and safeguards for the affected populations.** The land can be acquired only after full payment of compensation, including rehabilitation and resettlement entitlements within the time stated, 3 months for the compensation, and 6 months for the monetary part of the rehabilitation and resettlement entitlements commencing from date of the award. However, families will not be displaced from the site till their alternative rehabilitation and resettlement sits are ready for occupation.

6. Section 26 of the Land Acquisition, Rehabilitation and Resettlement Act, 2013, "Determination of market value of land by Collector" states:

- (i) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—
  - (a) the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or
  - (b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or
  - (c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

7. The benefits to be offered to the affected families include:

- (i) Land-for-land, to the extent Government land would be available in the resettlement areas;
- (ii) Preference for employment in the project to at least one person from each nuclear family subject to the availability of vacancies and suitability of the affected person;
- (iii) Training and capacity building for taking up suitable jobs and for self-employment;

- (iv) Preference to groups of cooperatives of the affected persons in the allotment of other economic opportunities in or around the project site;
- (v) Wage employment to the willing affected persons in the construction work in the project; housing benefits including houses to the landless affected families in both rural and urban areas; and
- (vi) Other benefits.

8. The act restricts private developers from purchasing such land directly from the private owners, but requires the government to acquire such land for any purpose. The latter would be allowed only “under exceptional circumstances,” and in the case of railways, highways, major district roads, irrigation canals, and power lines projects.

9. Consent of land owners is necessary for acquisition that involves private entities and public–private partnerships carrying out public purpose projects. Such entities may approach the government to acquire land on their behalf after receiving the consent of 80% of the landowners for private projects and 75% for public–private projects. It does not apply to state projects for the public good. The LARR Act would require the consent of indigenous peoples when the government is acquiring the land. It requires prior consent of the Gram Sabha for acquiring land in Scheduled Areas where such acquisition is the last resort. Sections 43 to 50 of the act contain provisions for resettlement and rehabilitation as part of the statute and specific safeguards to Scheduled Tribes in respect of Scheduled Areas under Section 41 and 42. Section 4(5) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 provides that no member of a forest-dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from land under his or her occupation until the recognition and verification procedure for settlement of forest rights is complete.