

Building Country Safeguard Systems

## Briefing Note No. 3

# Strengthening Country Safeguard Systems for the Protection of Displaced Persons



Country safeguard systems are composed of the policies, practices, legal frameworks, and institutions that a country puts in place in order to avoid, minimize, or mitigate potentially harmful environmental and social impacts of development activities. All developing member countries have safeguard systems which meet ADB requirements to some degree.

The 2009 Safeguard Policy Statement of the Asian Development Bank calls for strengthening country safeguard systems as an objective in itself, to ensure that such systems achieve the benchmarks set by international good practices.

The Asian Development Bank (ADB) estimates that the Asia and Pacific region will need \$8.2 trillion in infrastructure investment in this decade as the region pursues rapid economic growth. Many ADB stakeholders are concerned about the potential adverse environmental and social risks and impacts of such growth. Left unaddressed, the risks and impacts associated with development projects can endanger their long-term environmental and social sustainability. Rising demand for land for much-needed infrastructure projects, combined with high population densities, has led to large-scale involuntary resettlement in the fastest growing countries in the region. For example, in the People's Republic of China (PRC), from 1950 to 2000, over 45 million people have been displaced by development projects in the country.<sup>1</sup>

## Asian Development Bank's Involuntary Resettlement Safeguards

ADB experience indicates that involuntary resettlement in development projects, if not managed appropriately, can give rise to severe economic, social, and environmental risks: production systems are dismantled; people face

poverty when their productive assets or income sources are lost or they are relocated to environments where their productive skills may be less applicable, and the competition for resources are greater; community institutions and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished or lost.

Involuntary resettlement is one of three safeguard areas within the scope of ADB's 2009 Safeguard Policy Statement (SPS), alongside environment and Indigenous Peoples.<sup>2</sup> SPS involuntary resettlement safeguards apply to all ADB-supported public and private projects and their components. The SPS includes a set of distinct requirements that ADB and borrowers or clients need to meet in addressing the anticipated risks and impacts of involuntary resettlement. The involuntary resettlement safeguards cover both physical displacement and economic displacement. ADB financing is contingent on borrower and client responsiveness to these requirements as well as the country's environmental and social laws. The involuntary resettlement safeguards have a number of objectives, which include avoiding involuntary resettlement wherever possible, minimizing it by exploring project and design alternatives, enhancing, or at least restoring the livelihoods of displaced persons relative to their pre-project situation, and improving their standards of living.<sup>3</sup> The policy principles of the involuntary resettlement safeguards are summarized in the figure.

<sup>1</sup> R. Fuggle, et al. 2000. Experience with Dams in Water and Energy Resource Development in the People's Republic of China. Country review paper prepared for the World Commission on Dams, Cape Town, South Africa. [www.dams.org/kbase/studies/cn/](http://www.dams.org/kbase/studies/cn/) in ADB. 2007. *Compensation and Valuation in Resettlement: Cambodia, People's Republic of China, and India*. Manila. [http://www.landesa.org/wp-content/uploads/2011/01/ADB-RDI\\_Report\\_on\\_Land\\_Taking\\_Law\\_and\\_Practice\\_in\\_China\\_India\\_Cambodia.pdf](http://www.landesa.org/wp-content/uploads/2011/01/ADB-RDI_Report_on_Land_Taking_Law_and_Practice_in_China_India_Cambodia.pdf)

<sup>2</sup> ADB. 2009. *Safeguard Policy Statement*. Manila. <http://www.adb.org/documents/safeguard-policy-statement>

<sup>3</sup> Footnote 2.

# Involuntary Resettlement Safeguards Policy Principles

- 1** SCREEN EARLY on to determine involuntary resettlement impacts and risks
- Undertake **MEANINGFUL CONSULTATIONS** with affected persons, host communities, and concerned nongovernment organizations
- 3** IMPROVE or RESTORE livelihoods of all displaced persons
- Provide **ASSISTANCE** to physically and economically displaced persons
- 5** IMPROVE STANDARDS OF LIVING of the displaced poor and other vulnerable groups, including women, to at least national minimum standards
- Develop procedures in a **TRANSPARENT, CONSISTENT, and EQUITABLE** manner to ensure that affected people have same or better income or livelihood status
- 7** ENSURE that affected persons without title to the land are eligible for resettlement assistance and compensation
- Prepare **RESETTLEMENT PLAN**
- 9** DISCLOSE draft Resettlement Plan
- 10** CONCEIVE & EXECUTE Resettlement Plan including full cost and benefits
- 11** PAY COMPENSATION and provide other entitlements **BEFORE DISPLACEMENT**
- 12** Monitor and assess **RESETTLEMENT OUTCOMES** and DISCLOSE **MONITORING REPORT**

Source: ADB. 2009. *Safeguard Policy Statement*. Manila.



ADB and other multilateral financial institutions (MFIs) have been at the forefront of developing and applying involuntary resettlement safeguards in development projects, by drawing on each other's practices and experiences as well as those of their developing member countries (DMCs).<sup>4</sup> The current generation of safeguards used by MFIs are substantially harmonized, with an approach to land acquisition that goes beyond expropriation at fair market value toward a more inclusive process, which has restoration or improvement of displaced persons' livelihoods at its core.

## Strengthening Country Safeguard Systems on Involuntary Resettlement

The majority of ADB developing members already have land acquisition legislation in their country safeguard systems (CSS). Some have evolved decades-old eminent domain legislation to address the impoverishment risks of involuntary resettlement due to projects with a public purpose,<sup>5</sup> while others are developing safeguards from scratch. In recognition of these efforts, the SPS paves the way for the application of CSS to ADB-financed projects in lieu of the SPS requirements by supporting strengthening of CSS. This has several benefits including reducing transaction costs, enhancing country ownership, and helping ensure the long-term sustainability of development activities. ADB works with DMCs to strengthen CSS by supporting systematic and rigorous assessments of CSS in relation to international good practices; and formulation and implementation of appropriate gap filling measures and capacity development plans. It must be noted, however, that the application of CSS in ADB-financed projects is neither automatic nor mandatory, and requires assessments to determine that the legal framework is equivalent to ADB's safeguard requirements and the government agencies have acceptable implementation capacity and a good track record.

Progress toward improving involuntary resettlement safeguards often meets significant challenges in DMCs, especially those provisions related to (i) social impact

assessment, (ii) meaningful consultation, (iii) compensation at replacement cost, and (iv) livelihood restoration. Unlike environmental legislation, where most DMCs have aligned their legislation with international good practices and industry standards, the management of involuntary resettlement risks and impacts varies significantly across DMCs, reflecting major differences in land tenure systems and in how states apply the power of eminent domain.<sup>6</sup>

The SPS recognizes these challenges in implementing involuntary resettlement safeguards, such that support for borrower and client capacity development is the first of four action areas of the SPS Medium-Term Action Plan (2010–2012). To deliver on this action agenda, ADB approved technical assistance for Mainstreaming Land Acquisition and Resettlement Safeguards in Central and West Asia, Strengthening and Use of Country Safeguard Systems (with 14 of 29 subprojects dealing with involuntary resettlement safeguards), and the Preparation of Regulations and Capacity Development Plan for Involuntary Resettlement in Mongolia.<sup>7</sup>

Overall, the technical assistance work undertaken to date by ADB points to continued interest by DMCs in drawing on available LAR safeguard expertise and a willingness to consider MFI LAR safeguard policies as a suitable benchmark for convergence. There has been a welcome increase in information exchange and coordination on safeguard use among DMCs and MFIs.<sup>8</sup>

## Supporting Legislative Action on Land Acquisition and Resettlement: A Case Example from Mongolia

The radical changes in the structure of Mongolia's economy after 1990 and, more recently, the fast economic growth tied to the mining sector, have driven infrastructure and urban development. The population of the capital city of Ulaanbaatar has more than doubled since 1990 to 1.25 million, accounting for nearly half of the country's total population. The explosive growth of Ulaanbaatar and the

<sup>4</sup> Supported by initial experience in applying the 1995 Involuntary Resettlement Policy, ADB engaged in an extensive policy dialogue with its clients between 1998 and 2004 that formed the basis for the involuntary resettlement component of SPS. ADB's technical assistance to DMCs for developing domestic capacity to address social impacts in general goes back even further. The first briefing note in this series provides a concise summary of safeguard system evolution.

<sup>5</sup> In India, for example, the 2013 Land Acquisition, Rehabilitation, and Resettlement Bill has its roots in the Land Acquisition Act of 1894.

<sup>6</sup> Eminent domain (known also as compulsory purchase or compulsory acquisition) refers to the power of the state to take private property for public use under certain conditions (compensation foremost) specified in legislation. The reference to the lack of eminent domain provisions refers more to their absence in urban redevelopment rather than absence as such.

<sup>7</sup> ADB. 2009. *Technical Assistance for Mainstreaming Land Acquisition and Resettlement Safeguards in Central and West Asia*. Manila; ADB. 2010. *Technical Assistance for Strengthening and Use of Country Safeguard Systems*. Manila; ADB. 2012. *Technical Assistance to Mongolia for Preparation of Regulations and Capacity Development Plan for Involuntary Resettlement*. Manila.

<sup>8</sup> ADB. 2012. *Country Safeguard Systems: Regional Workshop Proceedings: Towards Common Approaches and Better Results*. Manila. <http://hdl.handle.net/11540/2926>

legacy of the largely uncontrolled influx of people present a major challenge to the government in improving existing public infrastructure and creating conditions for future growth. Putting in place adequate legislation is a crucial aspect of this effort. Unplanned and unregulated *gher*<sup>9</sup> communities sprouted in the surrounds of Ulaanbaatar as a result of the migration to the city. Since there was no private ownership before the enactment of the 2003 Land Allocation Law, the status of these lands had been uncertain. Through the law, land can now be owned, leased, or used.

With respect to land acquisition and involuntary resettlement (LAR), Mongolia's legal and administrative systems were weak, and implementing agencies lacked clear procedures and oversight. Other challenges have included: inadequate institutional capacity, public participation, and transparency. The key constraints to urban development have been the lack of eminent domain for local development, and land compensation rates that were not based on market values.

In October 2010, ADB approved the first of three phases of the Reform of Legal and Regulatory Framework for Involuntary Resettlement in Mongolia as a subproject of the larger regional technical assistance project for Strengthening and Use of Country Safeguard Systems.

### The Process and the Outputs

Situation and gap analyses of Mongolia's existing legal and institutional framework for LAR and corresponding ADB safeguard provisions were conducted during the first phase. The major differences found are summarized in the table. The analyses identified other weaknesses, including (i) inadequate and unclear procedures for the valuation of land and properties and a dearth of experienced valuation appraisers; (ii) cases of conflict of interest between project approval and land acquisition approval; (iii) weak resettlement implementation; (iv) unclear role and

responsibilities of the private sector in LAR; (v) property database irregularities, lack of cadastral records, overlapping disputes on land titles, and inaccuracies and incompleteness of the cadastral maps; and (vi) absence of LAR monitoring. The subject of compensation valuation is where the greatest disagreements arise, especially between those at risk of resettlement (in particular, those dwelling in the *gher* areas) and the authorities.

The initial assessments and local consultations served as a basis for recommendations for improved LAR legislation and regulations, and for institutional and capacity development needs assessment. A review of possible amendments to the Land Law and the Law on Urban Redevelopment was conducted and development of a separate LAR legislation was recommended and agreed upon by local stakeholders. Two initial drafts of LAR legislation incorporating international good practices were prepared during Phase I for consideration by the Ministry of Construction and Urban Development. Public awareness and consultation activities continued throughout all phases.

Phase II comprised (i) assistance to the Government of Mongolia to finalize the LAR law and build consensus for its approval, (ii) assessment of institutional requirements and formulation of a capacity development plan, and (iii) capacity development for government officials. The drafting of LAR regulations was deferred until a complete version of the law was reviewed by the government. Phase III<sup>10</sup> generated a revised draft of the LAR law, a set of supporting regulations, an assessment of the impact of the draft law, and an institutional assessment and capacity development plan to implement the proposed legislation.

### Conclusions

ADB experience in Mongolia indicates that: (i) international good practice standards on involuntary resettlement are an appropriate basis for a legal framework that addresses LAR risks and impacts, (ii) there should be adequate capacity to initiate the legislative action, and (iii) efforts in reforming the LAR framework and improving capacity must include nurturing domestic support of legal reform. Despite the success of the LAR reform project in Mongolia, there is no assurance that a consensus has been achieved on all underlying issues.

Experience from the project also shows that a phased approach to implementing a demanding reform agenda in DMCs that have weak capacity and limited experience with international good practices is preferred. ADB's engagement must then be more collaborative, longer-term, and shared with other MFIs whenever possible to ensure that the reform agenda continues to advance.

<sup>9</sup> A traditional round tent used as a dwelling in Mongolia.

<sup>10</sup> Financed under a separate technical assistance project (footnote 7).



# Principal Findings of the 2011–2012 Gap Analysis of Mongolia’s Land Acquisition and Resettlement Legislation

Aspect of LAR	Country Safeguard System	International Good Practices
Completeness of eminent domain	Eminent domain provisions exist but do not cover local-scale redevelopment projects. Power to expropriate is lacking.	Eminent domain applies to all kinds of lands. Power to expropriate included in LAR legislation.
Compensation of resettled persons	Compensation for lost assets only.	Compensation for lost assets and assistance to at least restore original livelihoods.
Entitlements of informal (nontitled) residents	No compensation.	Entitlements to at least restore original living conditions.
Valuation of affected assets	Law on Privatization stipulates compensation for land and property at their value. In practice this is translated into compensation at prescribed rates typically divorced from market values.	Compensation at replacement cost (i.e., market value plus transaction cost).
Stakeholder consultation	No explicit requirement.	Informed participation of affected individuals and communities in resettlement planning and implementation.
Grievance mechanism	Judicial redress only; no provision for independent grievance mechanism.	Establishment of an understandable, transparent, timely, and culturally appropriate grievance mechanism early in the process.
Screening of resettlement impacts	In most cases, data is gathered on owners of affected assets only. No explicit provision for consideration of resettlement-minimizing design alternatives.	Early investigation of design alternatives that would minimize displacement. Wider socioeconomic baseline established to help design appropriate rehabilitation measures.
Resettlement planning	No obligation to prepare a formal resettlement plan.	Mandatory preparation and disclosure of resettlement plan.
Consideration of vulnerable groups	No targeted support for vulnerable groups.	Targeted support for vulnerable groups.

LAR = land acquisition and resettlement.



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