

**To:** Executive Directors, Asian Development Bank  
**From:** Michael Burstein, Legal Advocacy Coordinator, International Accountability Project  
**Date:** 6 February 2009  
**Re:** **INVOLUNTARY RESETTLEMENT FIXES FOR THE ADB W-PAPER**

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- 1) Land acquisition must be eliminated as a policy trigger within the IR policy, and the W-paper should retain the same scope as is currently operational under the 2006 Operations Manual.
  - a. The 2006 Operations Manual (OM) applies the policy to “any ADB operation that requires involuntary resettlement” and defines involuntary resettlement as “social and economic impacts that are permanent or temporary and are (i) caused by acquisition of land and other fixed assets, (ii) by change in the use of land, or (iii) restrictions imposed on land as a result of an ADB operation.”<sup>1</sup>
  - b. The IR Safeguard Requirements in the W-paper Appendix 2 (hereinafter: the W-paper) limits the IR policy to “projects” rather than “operations.”<sup>2</sup>
  - c. It also removes the trigger “by changes in the use of land” and defines involuntary resettlement as resettlement that occurs when “affected individuals or communities do not have the right to refuse land acquisition that results in displacement” as is the case in lawful expropriation and negotiations in which the buyer can resort to expropriation.<sup>3</sup>
  
- 2) Borrowers/clients must be prohibited from relying upon cash compensation for lost assets unless exceptional circumstances are publicly demonstrated and documented to the satisfaction of the Bank and affected community.
  - a. This measure is non-obvious in existing ADB materials, but should be given that empirical research has repeatedly affirmed that relying upon cash compensation for lost assets leads to new poverty among the displaced population.<sup>4</sup> Research has also repeatedly shown a strong relationship between projects that have invested in the community through benefit-sharing models and expanding educational and economic opportunities and displaced communities that avoid impoverishment.<sup>5</sup>
  - b. In contrast, the World Bank limits reliance on cash compensation to three instances and requires land-based solutions for displaced persons with land-based livelihoods.<sup>6</sup>
  - c. The W-paper grants the borrower/client the discretion to provide land or cash compensation for lost land or structures.<sup>7</sup> While a preference is stated for land-based strategies, it is unenforceable aspirational language. Likewise, there is no limitation upon when cash compensation could be used as the primary means of limiting impoverishment.

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<sup>1</sup> ADB, Operations Manual, OM Section F2/BP, 25 September 2005, ¶¶ 2 & 4 (hereinafter ADB OM); *See also* ADB, Involuntary Resettlement Policy, 1995 ¶ 34 (hereinafter 1995 policy).

<sup>2</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 2 ¶ 3 (hereinafter W-paper).

<sup>3</sup> *Id.* at Appendix 2 ¶ 4.

<sup>4</sup> Michael M. Cernea & Hari Mohan Mathur (eds.), *CAN COMPENSATION PREVENT IMPOVERISHMENT?: REFORMING RESETTLEMENT THROUGH INVESTMENTS AND BENEFIT SHARING*, Oxford 2008.

<sup>5</sup> *Id.*

<sup>6</sup> World Bank, Operational Manual, OP 4.12, December 2001.

<sup>7</sup> W-paper *supra* note 2 at Appendix 2 ¶ 6.

- 3) The W-paper must affirm the ADB's and member states' obligations under human rights law and ensure that all displaced persons retain their right to adequate housing and security of tenure.<sup>8</sup>
  - a. The W-paper merely ensures that persons physically displaced by land acquisition will receive security of tenure and adequate housing.<sup>9</sup>
  - b. Persons economically displaced by land acquisition or persons displaced by project activities other than land acquisition lack such protections. The W-paper permits the borrower/client to provide cash compensation for lost assets as the exclusive harm-mitigation measure.<sup>10</sup>
  
- 4) A final resettlement plan with time-bound actions and budgets must be made publicly available prior to project appraisal.
  - a. The current policy and operations manual obligate the borrower/client to submit a "satisfactory resettlement plan with time-bound actions and budgets" that was drafted in consultation with the affected population prior to appraisal.<sup>11</sup>
  - b. The W-paper merely requires the disclosure of a draft resettlement plan before project appraisal.<sup>12</sup> This creates an incentive exists to undervalue the costs of resettlement in order to secure approval and then to revise the resettlement plan on a post hoc basis.
  - c. A final resettlement plan is necessary prior to project approval because the appraisal process must be able to consider the costs and impacts of resettlement. The evaluation of this essential piece of information may be undermined by draft resettlement plans that fail to reflect the true costs of the project.
  
- 5) An initial poverty and social assessment must be undertaken for every development project by the time of fact-finding in order for the true costs of the project to be part of the appraisal calculus.
  - a. The current OM provides a compelling rationale for such a measure: "so that appropriate measures and sufficient resources for resettlement planning can be included in the terms of reference for the feasibility study."<sup>13</sup> In other words, this measure is essential for a rational and informed evaluation of the feasibility and costs of the proposed project.
  - b. The W-paper, however, make the initial social assessment optional: "The borrower/client will conduct socioeconomic survey(s) and a census where possible, and to identify all affected persons and affected assets and to assess the project's socioeconomic impacts."<sup>14</sup>
  - c. Because of its optional nature and its high human and financial resource toll, there is reason to believe initial social assessments will frequently not be conducted under the W-paper despite their recognized need by the ADB's own resettlement research.<sup>15</sup>
  - d. Exclusion of this provision is a very disturbing signal that the ADB is reluctant to recognize the true costs of their projects and undervalues the impacts their projects have upon affected people.

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<sup>8</sup> U.N. CESCR, General Comment No. 7: The Right to Adequate Housing: Forced Evictions, 16<sup>th</sup> Sess., U.N. Doc. E/1998/22 (1997) ¶ 16 ("Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.").

<sup>9</sup> W-paper *supra* note 2 at Appendix 2 ¶ 8.

<sup>10</sup> *Id.* at ¶ 6.

<sup>11</sup> ADB OM *supra* note 1 at F2/BP ¶ 6 & F2/OP ¶ 31; *See also* 1995 Policy *supra* note 1 at ¶ 36. *See* ADB OM *supra* note 1 at F2/OP ¶ 32 (consultation and disclosure).

<sup>12</sup> W-paper *supra* note 2 Involuntary Resettlement Policy Principle #9.

<sup>13</sup> ADB OM *supra* note 1 at F2/OP ¶ 23.

<sup>14</sup> W-paper *supra* note 2 Appendix 2 ¶ 11.

<sup>15</sup> *See* Cernea & Mathur *supra* note 4.

- 6) Project activities that may cause resettlement must be linked to the dispersal of funds.
  - a. This is a necessary measure in order to ensure that displacement does not occur before social protection measures (*e.g.* the resettlement site) have been finalized.
  - b. The current OM recognizes this need: “The resettlement plan must also provide a time-bound action schedule for project activities such as acquisition of land to ensure that affected people are individually compensated and assisted before civil works contracts are awarded or similar milestone events occur.”<sup>16</sup>
  - c. The W-paper removes this key provision, and instead uses the weaker guarantee that no displacement will occur until compensation has been paid and other rehabilitation programs are in place.<sup>17</sup> By removing the “before civil works contracts are awarded or similar milestone events occur” clause, the W-paper removes a major incentive necessary to ensure borrowers/clients meet their obligations.<sup>18</sup>
  
- 7) The ADB must be obligated to conduct thorough semi-annual reviews of any significant resettlement and to continue monitoring any resettlement project after the completion of financing.
  - a. The current policy and OM requires semi-annual reviews and requires “in-depth reviews of midterm progress” for large-scale projects.<sup>19</sup>
  - b. The W-paper weakens this measure to merely requiring that the borrower/client submit “progress reports that describe the progress of the implementation of resettlement activities and any compliance issues and corrective actions.”<sup>20</sup>
  - c. The W-paper requires of the ADB even less – “periodic site visits for projects with adverse environmental or social impacts.”<sup>21</sup> As such, the W-paper reduces much of the obligation on the ADB to monitor the social impacts and eliminates any obligation to directly monitor involuntary resettlement.
  
- 8) The revised Glossary must be publicly disseminated prior to any final public comment period or review by the Board to ensure meaningful and clear analysis by civil society and the Board.
  - a. The refusal of management to disclose this key component is a concerning act of obfuscation and must be remedied for meaningful commentary to be provided.
  - b. The definitions within the Glossary must contain a higher degree of specificity than what is currently provided by the W-paper. For example, the W-paper defines the term “highly complex and sensitive” in language that places a high degree of discretion upon the ADB and fails to rely upon any objectively verifiable indicator as to when additional protections are required.<sup>22</sup> This is in contrast to the currently employed definition of “significant” which is “200 or more people experience major impacts. Major impacts are defined as involving affected people being physically displaced from housing and/or having 10% or more of their productive, income generating assets lost.”<sup>23</sup>

<sup>16</sup> ADB OM *supra* note 1 at F2/OP ¶ 36.

<sup>17</sup> W-paper *supra* note 2 Appendix 2 ¶ 20.

<sup>18</sup> However, please note that ¶ 23 does retain the aforementioned clause, but that is only in regards to supplementary resettlement plans which are required to address involuntary resettlement impacts that are identified during project implementation. W-paper *supra* note 2 Appendix 2 ¶ 23.

<sup>19</sup> ADB OM *supra* note 1 at F2/OP ¶ 49; *See also* 1995 Policy *supra* note 1 at ¶ 44.

<sup>20</sup> W-paper *supra* note 2 Appendix 2 ¶ 31.

<sup>21</sup> *Id.* at ¶ 62.

<sup>22</sup> *Id.* at Footnote 30.

<sup>23</sup> ADB OM *supra* note 1 at F2/BP Footnote 12.

**To:**

**From:** Michael Burstein, Legal Advocacy Coordinator, International Accountability Project

**Date:** 11 February 2009

**Re:** **QUESTIONS ON ADB W-PAPER IR SAFEGUARD ISSUES**

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**I. Categorization of projects with significant IR and IP impacts.**

The key concern in regards to eliminating categorization is that the W-paper grants the ADB a large degree of discretion in determining when heightened protections are required. This is of concern due to institutional pressures for expedited project implementation, which inhibits the application of heightened safeguards. The current OM and the existing World Bank policy both use objectively verifiable indicators (e.g. "200 or more people experience major impacts. Major impacts are defined as involving affected people being physically displaced from housing and/or having 10% or more of their productive, income generating assets lost.").<sup>24</sup>

**II. Where in the actual policy does it state that social issues that arise from environmental impacts will be covered by the environmental policy?**

*a. The IR Policy*

The first sentence of paragraph 10 of the IR Safeguard Requirements states, "If potential adverse economic, social, or environmental impacts from project activities other than land acquisition are identified, such as loss of access to assets or resources or restrictions on land use, they will be avoided, or at least minimized, mitigated, or compensated for, through environmental assessment process." (emphasis added).<sup>25</sup> This means that the W-paper shifts the responsibility for all adverse project impacts but for those caused by land acquisition to the Environmental Policy.

Paragraph 10 continues, "If these impacts are found to be significantly adverse at any stage of the project, the borrower/client will consider applying the policy principles and safeguard requirements on involuntary resettlement even though no land acquisition was involved." (emphasis added).<sup>26</sup> Please note the use of the passive voice which obscures who is responsible for finding said impacts to be "significantly adverse," which is an undefined term. Moreover, there is no obligation to apply the IR safeguard requirements, but merely an obligation to consider applying them.

*b. The Environmental Policy*

The Environment Policy paragraph 4 states, "The environmental assessment will consider all potential impacts and risks of the project on physical, biological, socioeconomic (occupational health and safety, community health and safety, vulnerable groups and gender issues, and impacts on livelihoods caused by project activities other than land acquisition [Appendix 2, para. 10]) and physical cultural resources in an integrated way."<sup>27</sup> This means that all social and economic issues, including economic displacement not caused by land acquisition, will be addressed through the environmental policy.

Paragraph 4 continues, "The project's potential environmental impacts and risks will be reviewed against the requirements presented in this document and applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental matters, including host country

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<sup>24</sup> ADB, Operations Manual, OM Section F2/BP, 25 September 2005, Footnote 12.

<sup>25</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 2 ¶ 10 (hereinafter W-paper).

<sup>26</sup> *Id.* at Appendix 2 ¶ 10.

<sup>27</sup> *Id.* at Appendix 1 ¶ 4.

obligations under international law.”<sup>28</sup> This fails to define any specific minimum standards, protections, or mitigation measures for addressing the social impacts.

Paragraphs 11 and 12 requires the environmental management plan to address the potential impacts indentified above, but again fails to define how such adverse impacts will be addressed, minimum standards, protections, or mitigation measures. Consequently, the borrower is barely obligated to even take the most basic measures for addressing persons economically displaced by project actions other than land-acquisition.<sup>29</sup>

### **III. Articulating clearly the scope of the social issues to be covered in environmental assessments.**

We strongly believe that the social aspects of the environmental analysis should be made much clearer throughout all sections of the text. However, as stated above, all forms of physical and economic displacement must be addressed under the IR policy as the EP is not equipped for ensuring sustainable livelihood options for displaced communities.

### **IV. Frequency of safeguard supervision missions for projects with significant impacts and reports**

A minimum frequency of review missions should be required. The current OM requires semi-annual reviews and requires “in-depth reviews of midterm progress” for large-scale projects.<sup>30</sup> This is adequate.

### **V. Scope issues for IR: change in land use, affected people, adverse effects of activities other than land acquisition**

The three issues are interrelated manifestations of the ADB’s decision to propose including land acquisition as a trigger for the protections within the IR policy. To wit:

- 1) The current policy recognizes change in land use, land acquisition, and “restrictions impose as a result of an ADB operation” as valid causes of involuntary displacement. The W-paper only recognizes the much more limited land acquisition and “involuntary restrictions on land use or on access to legally designated parks and protected areas.”<sup>31</sup> Therefore, the inclusion of “changes in land use” would be a significant step towards retaining the current level of protections for displaced people.
- 2) Along with recognizing broader causes of displacement, the current OM takes particular care to ensure that all persons who experience “social and economic impacts that are permanent or temporary” are recognized as affected persons and therefore included within the scope of the IR Policy. This is further supplemented by a robust definition of affected person.<sup>32</sup> In contrast, the W-paper has no explicit definition of affected person. This means that persons explicitly

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<sup>28</sup> *Id.* at Appendix 1 ¶ 4.

<sup>29</sup> The minimum necessary measures that should be taken are what can be found in a basic resettlement plan (e.g. entitlement matrix, inventory of losses, security of tenure guarantees, time bound implementation schedule, monitoring and evaluation, etc.).

<sup>30</sup> ADB OM *supra* note 1 at Section F2/OP ¶ 49.

<sup>31</sup> W-paper *supra* note 2 at Appendix 2 ¶ 4.

<sup>32</sup> “The term affected person includes any people, households, firms, or private institutions who, on account of changes that result from the project will have their (i) standard of living adversely affected; (ii) right, title, or interest in any house, land (including residential, commercial, agricultural, forest, and/or grazing land), water resources, or any other moveable or fixed assets acquired, possessed, restricted, or otherwise adversely affected, in full or in part, permanently or temporarily; and/or (iii) business, occupation, place of work or residence, or habitat adversely affected, with or without displacement. See para. 4(viii) on the meaning of “eligibility cut-off date.” ADB OM *supra* note 1 at F2/BP Footnote 3.

covered by the current IR OM who suffer adverse economic impacts from an ADB project may not be covered at all under the W-paper. As mentioned before, resettlement plans are the appropriate framework for ensuring adequate livelihood protection.

- 3) The consequence of the changes discussed immediately above and in Section II is exactly as you state: the weakening of the existing policy, inconsistency within the proposed policy, and the evisceration of protections and the promise of economic development for affected individuals.

#### **VI. Proposed fix to the definition of involuntary.**

Please note that all displacement is involuntary by definition. The easiest, by perhaps not the best, approach to mending the proposed definition of “involuntary” would be to retain the existing definition by deleting Appendix 2 ¶4 entirely and inserting ¶12 (including the footnote) from the current OM Section F2/BP. Alternatively, the following insertions could be made to the W-paper (insertions underlined, deletions struckthrough):

“ 4. The involuntary resettlement requirements apply to full or partial, permanent or temporary physical displacement (relocation, loss of residential land or shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) resulting from (i) ~~involuntary acquisition of land and other fixed assets~~, (ii) changes in the use of land ~~or (ij) involuntary restrictions on land use~~, or on restrictions on access to legally designated parks and protected areas (iv) or other loss of livelihoods. An affected person is one who experiences such impacts. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse ~~land acquisition~~ any of the aforementioned project impacts that results in displacement. This occurs in cases of (i) lawful expropriation or restrictions on land use ~~based on eminent domain~~, and (ii) negotiated settlements in which the buyer can resort to expropriation or other state action to impose legal restrictions on land use if negotiations with the seller fail.”

#### **VII. Problems with the language in Appendix 2 ¶ 7**

The primary flaw within paragraph 7 is its non-binding language and lack of procedural checks to ensure that land based resettlement strategies are the preferred option in implementation rather than mere aspirational language for the borrower/client to ignore upon whim. For example, the W-paper mirrors the language World Bank OP 4.12, but for the last sentence which states “The lack of adequate land must be demonstrated and documented to the satisfaction of the Bank.”<sup>33</sup> This, however, is of could be further strengthened because it excludes affected people from this demonstration of lack of land, and thus the following sentence should be add to the end of paragraph 7: “The lack of adequate land must be publicly demonstrated and documented to the satisfaction of the Bank and affected .”

Moreover, World Bank Policy OP 4.12 paragraph 12 addresses the corollary of a preference for land based solutions – a rejection of cash-based solutions except in a limited set of circumstances. They are as follows:

- 1) “livelihoods are land-based but the land taken for the project is a small fraction [less than 20% of the total productive area] of the affected asset and the residual is economically viable;
- 2) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing; or
- 3) livelihoods are not land-based.”<sup>34</sup>

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<sup>33</sup> World Bank, Operational Manual, OP 4.12, December 2001 ¶ 11.

<sup>34</sup> *Id.* at ¶ 12.

Please note that even when livelihoods are not land-based, displaced individuals should have access to rehabilitation programs that will ensure adequate economic and educational opportunities for a sustainable livelihood. Failure to explicitly require these measures may result in over-reliance on cash compensation for lost assets, which has been repeatedly shown to result in impoverishing the displaced community.<sup>35</sup>

#### **VIII. Social Assessments and Censuses**

If the clause “borrower/client will conduct socioeconomic surveys and a census where possible...” is changed to “and, where possible, a census,” then the census itself will often remain undone. The census should not be optional because the number of people that will be adversely affected by the ADB-financed project will affect the costs of the project. Therefore, the number of persons, plus the demographic information pertaining to their inclusion in a vulnerable group, must be part of the initial survey and part of the appraisal calculus and the term “where possible” should be eliminated.

#### **IX. Land and Water**

I am in complete concurrence with notion that any reference to land should be expanded to land and water rights. This inclusion could be explicit in the safeguard requirements or addressed through a revised definition of “asset” or “communal/common property” in the glossary. Please note that the current OM does both.<sup>36</sup>

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<sup>35</sup> Michael M. Cernea & Hari Mohan Mathur (eds.), *CAN COMPENSATION PREVENT IMPOVERISHMENT?: REFORMING RESETTLEMENT THROUGH INVESTMENTS AND BENEFIT SHARING*, Oxford 2008.

<sup>36</sup> ADB OM *supra* note 1 at F2/OP ¶ 15 (“Community and public resource losses to be considered as eligible for compensation include: (i) common property resources, including water bodies, forest, woodland, pasture, and community recreation, and cultural sites; (ii) public structures such as markets, health and educational facilities, water and washing points, and meeting houses; and (iii) infrastructure such as roads, bridges, and other transport lines; power facilities; telecommunication lines; and water sanitation and drainage facilities.”); ADB OM *supra* note 1 at F2/BP Footnote 3 (definition of asset).

**To:**

**From:** Michael Burstein, Legal Advocacy Coordinator, International Accountability Project

**Date:** 6 March 2009

**Re:** **CHANGES IN THE W-PAPER'S OBLIGATIONS TO RESEARCH SOCIAL IMPACTS PRIOR TO PROJECT APPROVAL.**

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**X. What Is an Initial Poverty and Social Analysis (IPSA) and Why Is It Important?**

The term IPSA is a term of art within the universe of ADB project preparation. It is, in effect, short hand for an exceptionally detailed analytical process that ensures a sufficient amount of information is gathered prior to project design phase in order to eliminate/minimize the adverse social issues and risks of creating new poverty that are associated with development projects.<sup>37</sup> Because of the term's density of meaning, its exclusion is in itself a dilution.<sup>38</sup> Consequently, the W-paper unacceptably reduces the degree to which the risks of impoverishment and adverse social impacts will be addressed in project design and therefore minimized and mitigated.

**XI. What Are the Outputs of an IPSA?**

The IPSA determines "the scope of poverty and social issues that will need to be addressed during project design."<sup>39</sup> The critical output will be its summary report, which will

- (i) validate that the proposed project relates to national priorities as identified in the CPA, in the priorities identified in the CPS, and in the NPRS;
- (ii) describe the contribution of this project to achieving the poverty reduction objectives set for the sector in the CPS;
- (iii) identify ways of improving the poverty reduction contribution of the project;
- (iv) categorize the project in terms of its involuntary resettlement and indigenous peoples' risks (categories A, B, or C);
- (v) identify stakeholders including
  - a. groups of people who may be beneficially or adversely affected by the project,
  - b. key informants, such as community leaders or local government officials,
  - c. possible institutions to be involved in the project and briefly assesses their capacities,
  - d. civil society organizations (CSO s) in the project area, and
  - e. private sector firms likely to be involved in or affected by the project;
- (vi) For each stakeholder group, the IPSA will
  - a. scope the broad characteristics of these groups and relevant subgroups
  - b. identify interests related to the project, and
  - c. capacity and resources to participate in the project (or to oppose or undermine the project);
- (vii) assess whether vulnerable groups will be worse off as a result of the project; ,
- (viii) assess the necessity for mitigating measures;
- (ix) assess whether women are substantially involved in the relevant sector and whether the project has the potential to directly improve women's or girls' access to opportunities, services, assets, or resources or whether the project could have a negative impact on women or girls;
- (x) flag poverty and/or social issues that need to be examined during project design such as
  - a. poor labor conditions for workers involved in project activities;

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<sup>37</sup> See generally ADB, Poverty Handbook Analysis and Processes to Support ADB Operations: A Working Document, 2006 Chapter 5; See also ADB, Handbook on Social Analysis: A Working Document, 2007, Chapter 3.

<sup>38</sup> Unless, of course, the W-paper were to specifically outline the processes and set of outputs that is the IPSA. It does not do this.

<sup>39</sup> ADB, Handbook on Social Analysis: A Working Document, 2007, p. 26.

- b. policy reforms supported by the project that could lead to loss of jobs or benefits through restructuring,
  - c. policy reforms under the project that could reduce access to services (e.g., through increases in user fees or other charges), or increase prices of essential commodities through tariff increases,
  - d. risks of HIV /AI DS transmission or human trafficking associated with large infrastructure projects, or
  - e. risks or vulnerabilities related to caste, age, disability, or a combination of these factors;
- (xi) identify the need and scope for a consultation and participation plan.<sup>40</sup>

Another critical output from the IPSA is a “TOR for poverty and/or social development specialists who will be needed on the PPTA (or other due diligence) team, including the areas of expertise, tasks, person-months, and resources required.”<sup>41</sup> This TOR, of course, will be predicated on the information on the report.

## **XII. The W-paper Is a Dilution from the Current Standard Because It Fails to Require Adequate Social Impact Research**

As is obvious from the above list, the IPSA is a substantial undertaking that requires an early investment of resources to avoid and mitigate adverse social and economic harms. It is exactly this type of early investment in minimizing harms that has been inaccurately criticized as inefficient.<sup>42</sup> Despite the lack of empirical research demonstrating the inefficiency of preventative research and project design, the W-paper minimizes the borrower/client’s obligation to avoid impoverishment and adverse social impacts by failing to require an IPSA. This omission undermines the substantial ADB-developed literature on implementing IPSA’s, and therefore creates a lacuna in guidelines and internal procedures. The W-paper only fractionally fills this gap and thus would be an unacceptable dilution.

### **a. The W-Paper Does Not Require Any Social Research Analogous to an IPSA**

The IR components of the W-paper are a much greater dilution than the mere omission of the term IPSA. The W-paper does not, in fact, require any preliminary research on the social impacts of an ADB-financed project. The entirety of Section C 1: Social Impact Assessment (SIA) merely obligates the borrower/client to “conduct socioeconomic survey(s) and a census where possible.”<sup>43</sup> The optional nature of this requirement leaves the decision to conduct the survey and the census to the discretion of the borrower/client.

The subsequent sentences of paragraph 11 and the entirety of paragraph 12 proceed to explain what would be the content a “social impact assessment.”<sup>44</sup> This is problematic because a social impact

<sup>40</sup> ADB, Poverty Handbook Analysis and Processes to Support ADB Operations: A Working Document, 2006 p. 70; ADB, Handbook on Social Analysis: A Working Document, 2007, pp. 27-30. While the Handbooks that outline these details are non-binding, they provide the guidance and expectations for what initial social research will be conducted.

<sup>41</sup> ADB, Handbook on Social Analysis: A Working Document, 2007, p. 26.

<sup>42</sup> While discussion of the efficiency of preliminary research is beyond the scope of this paper, independent and ADB-financed resettlement specialists have repeatedly confirmed the efficiency of such investment. *See generally* ADB, CAPACITY BUILDING FOR RESETTLEMENT RISK MANAGEMENT, 2007; Michael M. Cernea & Hari Mohan Mathur (eds.), CAN COMPENSATION PREVENT IMPOVERISHMENT?: REFORMING RESETTLEMENT THROUGH INVESTMENTS AND BENEFIT SHARING, Oxford 2008.

<sup>43</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 2 ¶ 11.

<sup>44</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 2 ¶¶ 11 & 12.

assessment is never specifically required. While this may be due to sloppy drafting, the W-paper is unclear if the optional “socioeconomic survey(s) and a census” is a different document than the “social impact assessment.”

This ambiguity creates two scenarios, neither of which is adequate. If they were identical documents, then all social research would then be optional. This interpretation would obviously be a massive dilution from the current policy. On the other hand, presuming they are two separate documents and that the SIA is required and the socioeconomic survey(s) and censuses were merely optional components, the borrower would merely be obligated to

- (i) identify past, present and future potential social impacts,
- (ii) identify individuals and groups who may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status,
- (iii) create an inventory of affected persons and their assets,
- (iv) assess their income and livelihoods, and
- (v) report upon gender-disaggregated information pertaining to the economic and sociocultural conditions of affected persons.

Even in this best case scenario, the social impact research requirements will be clearly dramatically weakened from the current OM.

#### **b. Unspecified Timing of the SIA (presuming a mandatory SIA)**

The current OM and Handbooks require the IPSA to be completed prior to the project design phase, and ideally “by the time of fact-finding for a PPTA or other project preparatory study or due diligence.”<sup>45</sup> In contrast, the W-paper fails to specify a point before which the SIA must be completed. The only milestone within the relevant text of the W-paper is footnote 1, which merely requires “If a census is not conducted prior to project appraisal and the resettlement plan is based on a sample survey, an updated resettlement plan will be prepared based on a census of affected persons after the detailed measurement survey has been completed but before any land acquisition for the project.” (emphasis added). This means that the only social research milestone within the W-paper could be met after appraisal. This makes it exceptionally challenging to see how the information gathered in the SIA will be applied or influence on the design of the project to avoid, if not minimize, social harms.

#### **c. The SIA Would Be Limited to Land Acquisition (presuming a mandatory SIA)**

Because paragraph 10 of the IR Safeguard Requirements transfers the responsibility for all social impacts stemming from project activities other than land acquisition to the Environmental Impact Assessment, the SIA would only apply to persons displaced by land acquisition.<sup>46</sup> Unfortunately, the environmental components of the W-paper fail to require any meaningful social impact research.<sup>47</sup> Thus, it is unreasonable to expect the borrower to effectively mitigate or avoid the social and economic harms caused by project activities other than land acquisition.

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<sup>45</sup> ADB, Operations Manual, OM Section F2/OP, 25 September 2005, ¶ 23; *See also* ADB, Poverty Handbook Analysis and Processes to Support ADB Operations: A Working Document, 2006 pp. 69-72; ADB, Handbook on Social Analysis: A Working Document, 2007, pp. 27-30.

<sup>46</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 2 ¶ 10.

<sup>47</sup> The most specific obligation within Appendix 1 pertaining to social impact research can be found in paragraph 4, which notes, “The assessment process will be based on current information, including an accurate project description, and appropriate environmental and social baseline data.” Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 1 ¶ 4.

**To:**

**From:** Michael Burstein, Legal Advocacy Coordinator, International Accountability Project

**Date:** 12 February 2009

**Re:** FOLLOW UP TO 11 FEBRUARY 2009 CONVERSATION

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### **I. What is economic displacement/resettlement and why is it important?**

To borrow a definition from Susan Tamondong, formerly of the ADB, displacement is “the inevitable disruption of people’s lives and livelihoods as a consequence of development, while resettlement is the rebuilding of their lives, incomes, and asset bases elsewhere.”<sup>48</sup> *Economic* displacement is merely those disruptions that pertain to the loss of income sources, asset bases, economic opportunities and livelihood means that are caused by a development project. The risks, however, that people face due to economic displacement are similar to the risks people face when they are physical displaced (i.e. physically relocated). Mitigating the economic disruptions associated with development projects is essential to preventing the impoverishment of the affected population. This in turn is a necessary step to preventing the following impacts that are strongly correlated with development-induced impoverishment: increased morbidity, decreased public health, social disarticulation, increased exposure to human rights violations and increased probability of social unrest.

### **II. How does the W-Paper IR Policy manage economic displacement?**

In Appendix 2, the W-paper first lists a set of disruptions that amount to economic displacement: loss of land, assets, access to assets, income sources, or means of livelihoods.<sup>49</sup> The W-paper then exclusively recognizes two causes of the aforementioned disruptions as legitimate, namely, “(i) involuntary acquisition of land, or (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.”<sup>50</sup> All other causes of economic displacement are not covered by the IR components of the W-paper, but rather delegated to the Environmental components.<sup>51</sup> This is affirmed in the W-paper’s definition of involuntary resettlement.<sup>52</sup>

This means that the W-paper takes a bifurcated approach towards managing economic resettlement whereby those persons economically displaced by land acquisition are covered by the IR policy. These individuals are thus eligible for the harm-reduction measures within the resettlement plan. Every other economically displaced person is thus excluded from the resettlement plan, and is rather covered by the Environmental Assessment Process and the Environmental Management Plan, which is noticeably silent on economic and social harm-mitigation measures.

### **III. How does the W-Paper compare to the current policy and OM on economic displacement?**

The W-paper is a significant dilution from the current standards. The current OM does not list out a specific set of acceptable disruptions, but rather covers all “social and economic impacts that are

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<sup>48</sup> Susan D. Tamondong, *Can Improved Resettlement Reduce Poverty?*, in Michael M. Cernea & Hari Mohan Mathur (eds.), *CAN COMPENSATION PREVENT IMPOVERISHMENT?: REFORMING RESETTLEMENT THROUGH INVESTMENTS AND BENEFIT SHARING*, Oxford 2008; See also Michael M. Cernea, *Population Displacement inside Protected Areas: A Redefinition of Concepts in Conservation Policies*, Policy Matters vol.14, March 2006 pp. 8-26.

<sup>49</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 2 ¶ 4.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at Appendix 2 ¶ 10 & Appendix 1 ¶ 4.

<sup>52</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, Appendix 2 ¶ 4 (“Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of (i) lawful expropriation or restrictions on land use based on eminent domain, and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.”) (emphasis added).

permanent or temporary.”<sup>53</sup> Then, the OM lists three possible causes of the aforementioned impacts/disruptions: “(i) caused by acquisition of land and other fixed assets, (ii) by change in the use of land, or (iii) restrictions imposed on land as a result of an ADB operation.”<sup>54</sup> Finally, the current OM explicitly states that all persons within the definition of involuntary resettlement are affected persons and provides a lengthy and specific definition of affected persons.<sup>55</sup> (See Annex 1.)

#### **IV. How can the W-Paper be modified to cover economic displacement?**

Three approaches are possible. The easiest in terms of re-drafting may be to simply retain the current policy and OM wholesale. However, this current OM could be further strengthened with the explicit recognition that “changes in use of land” includes changes in how affected persons can use their land (*e.g.* downstream effects from dams, changes caused by project induced erosion, etc. ). The second approach would be to simply adopt the current OM’s definition of involuntary resettlement, affected person and the linkage between the two. The drawback of this approach is that many elements within the W-paper’s IR components are predicated upon the exclusion of economically displaced persons (*e.g.* Appendix 2 ¶ 10), which means that much smoothing over may be required. Further, it would require all social impacts to be addressed under the IR policy, which would require significant redrafting of some provisions to ensure adequate protections exist.

The third approach would be to try to integrate the most relevant terms in the current policy into the W-paper’s language. This has the advantage of permitting some flexibility in terms of the language employed that could minimize necessary revisions to other safeguards, but will come at the cost of negotiating for specific linguistic inclusions. Considering the amount invested in ensuring that economic displacement is not addressed by the IR policy, this may be a challenging negotiation process. However, below are the minimum changes necessary to ensure economically displaced persons are integrated into the IR components.:

“ 4. The involuntary resettlement requirements apply to full or partial, permanent or temporary physical displacement (relocation, loss of residential land or shelter) and economic displacement (loss of land, assets, access to assets, income sources, or means of livelihoods) resulting from (i) ~~involuntary~~ acquisition of land and other fixed assets, (ii) changes in the use of land ~~or (ii) involuntary~~ restrictions on land ~~use~~, or ~~on~~ restrictions on access to legally designated parks and protected areas (iv) or other loss of livelihoods. An affected person is one who experiences such impacts. Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse ~~land acquisition~~ any of the aforementioned project impacts that results in displacement. This occurs in cases of (i) lawful expropriation or restrictions on land use ~~based on eminent domain~~, and (ii) negotiated settlements in which the buyer can resort to expropriation or other state action to impose legal restrictions on land use if negotiations with the seller fail.”

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<sup>53</sup> ADB, Operations Manual, OM Section F2/BP, 25 September 2005, ¶ 2.

<sup>54</sup> ADB, Operations Manual, OM Section F2/BP, 25 September 2005, ¶ 2.

<sup>55</sup> ADB, Operations Manual, OM Section F2/BP, 25 September 2005, footnote 3 (“The term affected person includes any people, households, firms, or private institutions who, on account of changes that result from the project will have their (i) standard of living adversely affected; (ii) right, title, or interest in any house, land (including residential, commercial, agricultural, forest, and/or grazing land), water resources, or any other moveable or fixed assets acquired, possessed, restricted, or otherwise adversely affected, in full or in part, permanently (*sic*) or temporarily; and/or (iii) business, occupation, place of work or residence, or habitat adversely affected, with or without displacement. See para. 4(viii) on the meaning of ‘eligibility cut-off date.’”).

## Annex 1

<b>W-Paper and Current OM Comparison Chart re: Economic Displacement</b>		
<b>VERSION</b>	<b>W-PAPER</b>	<b>2006 OPERATING MANUAL</b>
<b>RELEVANT SECTIONS</b>	Appendix 2 ¶ 4 (defining resettlement) Appendix 2 ¶ 10 (delegating all non-land acquisition impacts including economic displacement to the Environmental Policy) Appendix 1 ¶ 4 (accepting all non-land acquisition impacts including economic displacement in the Environmental Policy) Appendix 1 ¶ 11 (defining protections, or lack thereof, for economically displaced persons under the Environmental Policy)	OM Section F2/BP ¶ 2 (defining resettlement and linking affected persons to the definition) OM Section F2/BP Footnote 3 (defining affected person)
<b>DISRUPTIONS</b>	Economic Displacement: loss of land, assets, access to assets, income sources, or means of livelihoods Physical Displacement: relocation, loss of residential land or shelter	social and economic impacts
<b>CAUSES</b>	(i) involuntary acquisition of land, (ii) involuntary restrictions on land use or on access to legally designated parks and protected areas.	(i) caused by acquisition of land and other fixed assets, (ii) by change in the use of land, or (iii) restrictions imposed on land as a result of an ADB operation.
<b>AFFECTED PERSON DEFINITION</b>	None	The term affected person includes any people, households, firms, or private institutions who, on account of changes that result from the project will have their (i) standard of living adversely affected; (ii) right, title, or interest in any house, land (including residential, commercial, agricultural, forest, and/or grazing land), water resources, or any other moveable or fixed assets acquired, possessed, restricted, or otherwise adversely affected, in full or in part, permanently ( <i>sic</i> ) or temporarily; and/or (iii) business, occupation, place of work or residence, or habitat adversely affected, with or without displacement. See para. 4(viii) on the meaning of “eligibility cut-off date.”
<b>IMPACTS</b>	Only persons economically displaced by land acquisition are covered by the IR components and the resettlement plan. All other persons are governed by the environmental components.	All economically displaced persons are covered by the IR policy and the resettlement plan.
<b>CONCLUSION</b>	The current policy is vastly superior to the W-paper because the W-paper does not recognize most economically displaced people as legitimate beneficiaries of a resettlement plan.	

**To:**

**From:** Michael Burstein, Legal Advocacy Coordinator, International Accountability Project

**Date:** 12 February 2009

**Re:** FOLLOW UP TO 11 FEBRUARY 2009 CONVERSATION RE: WORLD BANK STANDARDS

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**I. When is a full resettlement plan required under the World Bank Operating Policy 4.12?**

A full resettlement plan is required at all times unless either of the following two conditions can be met:

- 1) “where impacts on the entire displaced population are minor,” which is “when affected people are not physically displaced and less than 10 percent of their productive assets are lost;” or
- 2) fewer than 200 people are displaced.<sup>56</sup>

When either of these above conditions are met, an abbreviated resettlement plan may be permitted.

**II. How do these requirements compare with current OM?**

Paragraph 19 of the current ADB OM requires a full resettlement plan for Category A projects, which are those projects with “significant resettlement.”<sup>57</sup> Significant resettlement is “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 assets (income generating).”<sup>58</sup> In sum, the World Bank and current ADB triggers are harmonized.

**III. What changes will the W-paper make to this system?**

The W-paper will eliminate the categorization system.<sup>59</sup> Paragraph ¶ 32 states, “ADB is the only MFI that uses a classification system for involuntary resettlement and Indigenous Peoples and that subdivides environmental category B. ... It is therefore proposed that environmental category B-sensitive be eliminated and that project classifications for involuntary resettlement and Indigenous Peoples be eliminated in line with other MFIs’ practices.”

While it is ostensibly true that the World Bank does not employ a formal categorization system, the important fact is that the World Bank does have specific trigger for when a full resettlement plan is required. (See Section I). This trigger is objectively verifiable and happens to be identical to the trigger within the categorization system currently employed. However, when the W-paper eliminates the categorization system, it also eliminates the trigger for when a full resettlement plan is required.

**IV. What is the impact of eliminating this trigger?**

Because the W-paper eliminates a distinction between a full resettlement plan and a short/abbreviated resettlement plan, all resettlement plans are procedurally equal under the W-paper. However, not all resettlement plans will be equal because the W-paper fails to provide a list of minimum items that must be included in any resettlement plan. Instead it offers a non-binding outline, and a vague set of objectives to be realized and specific components spread across 11 paragraphs.<sup>60</sup> Both the World Bank and ADB, however, extensively list the elements that must be in both the full and the short/abbreviated resettlement plans.<sup>61</sup> Any failure to list an list equal to the one currently employed by the ADB must be considered a dilution of the current policy.

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<sup>56</sup> World Bank, Operational Manual, OP 4.12, December 2001 ¶ 25 & Footnote 25.

<sup>57</sup> ADB, Operations Manual, OM Section F2/OP, 25 September 2005, ¶ 19.

<sup>58</sup> ADB, Operations Manual, OM Section F2/OP, 25 September 2005, ¶ 19.

<sup>59</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, ¶ 32.

<sup>60</sup> Asian Development Bank, Safeguard Policy Statement: Working Paper, January 29, 2009, ¶¶ 13-24 & Annex to Appendix 2.

<sup>61</sup> ADB, Operations Manual, OM Section F2/OP, 25 September 2005, ¶¶ 26 & 27; World Bank, Operational Manual, OP 4.12, December 2001, Annex A available at <http://bit.ly/cPQj5>.