

Regional Workshop: Capacity Building for Resettlement Risk Management

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Keynote Address

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Let me begin by expressing my appreciation for the invitation to address this important gathering and particularly for being given the opportunity to discuss the topic of resettlement in the development context and the risks associated with it for affected persons. I am delighted about this opportunity for an exchange of views between development and human rights specialists.

The notion that links the two communities is that of a rights-based approach to development which has gained so much ground in recent years. At its core, this concept expresses the idea that human beings should not be the objects but the subjects and agents of development and that, therefore, economic growth alone cannot guarantee sustainable development. Rather, the ultimate goal of development is to enable everyone in society to live a life in freedom and dignity. In this perspective, the beneficiaries of development activities are regarded as being entitled to the full enjoyment of all their human rights including economic, social and cultural rights.

The rights-based approach to development emphasizes the complementarity of development and human rights goals and, in fact sustainable development without human rights is as difficult to imagine as human rights without development. Thus, in principle, development and human rights go hand in hand.

We must, however, realize that tensions between development and human rights may arise under certain circumstances and that such tensions must be acknowledged and addressed in accordance with the basic principle of “do no harm”, a principle that is not only relevant for humanitarian but also development workers. Resettlement as a consequence of development projects, particularly if it is not voluntary, is one area where such tensions often arise, and it is the area I am concerned with in my capacity as Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons. In this capacity I have been tasked with entering into dialogue with governments, organizations and other relevant actors on how to improve the protection of the rights of internally displaced persons.

In this context, internally displaced persons are defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” (1998 Guiding Principles on Internal Displacement). This notion highlights two elements: (1) the coercive or otherwise involuntary character of movement, whatever the reason, and (2) the fact that such movement takes place within national borders. The list of causes of displacement is not exhaustive and the notion covers persons who are obliged to leave their homes and places of residence because of development projects. In this context, it is important to note that the notion of “displacement” is neutral in the sense of covering both situations where persons are forced to leave for illegitimate reasons and in violation of their rights and instances of evacuations and relocations/resettlements that are involuntary but perfectly legitimate and legal. Thus, the notion of displacement as used within the framework of my mandate includes instances of involuntary resettlement in the context of development projects such as dams, roads, airports, industrial or tourist complexes and other infrastructure projects.

It is almost exactly three years ago to the day that I took part in a conference in Washington DC on development-induced displacement. The conference was convened by the Brookings Project on Internal Displacement of which I am now Co-Director and was attended by academics, UN agencies, the World Bank and also the Asian Development Bank. It brought together for the first time experts on human rights and humanitarian issues with those on development to discuss the differences and similarities between development-induced and conflict-induced displacement and how the different communities might work more effectively together. My predecessor as Representative of the UN Secretary-General on Internally Displaced Persons, Dr. Francis Deng, chaired the meeting.

I learned from the discussions that there are many similarities between those displaced by conflict and those who had to leave their homes because of development projects. At the same time, there are also significant differences. First, development, unlike conflict, is usually viewed in a positive way. As a result, being displaced by development may be considered essential for the greater good of the country. Resettlement in the context of development also happens by design, thereby providing opportunities for prevention, mitigation and the opportunity to focus on creating sustainable livelihoods rather than merely a humanitarian response. The consequences of such displacement are also quite different on account of the fact that the relocated persons can usually never return to their homes whereas those displaced by conflict or natural disaster will often retain that option. It was also emphasized at the meeting that as in dealing with conflicts, it was important to manage development-induced displacement in

an effective and well-managed way. Otherwise it could lead to conflict and further displacement. To this end, it was essential to ensure that persons uprooted by development projects do not risk landlessness, joblessness, homelessness or other violations of their civil, political, economic and social rights. The particularly harsh consequences of impoverishment and disempowerment for women and children were emphasized together with the steps to be taken to overcome this possibility.

At the close of the Washington meeting, participants recommended that the Representative of the Secretary-General seek to strengthen the links between the United Nations human rights mechanisms on the one hand and multilateral development banks on the other so that a more comprehensive approach could be developed toward internally displaced persons. I consider my attendance here today a positive step towards promoting such linkages.

I should recall that the position of Representative of the Secretary-General on Internal Displacement was first created in 1992 against a backdrop of civil wars and growing numbers of persons uprooted by conflict and ethnic strife. The United Nations Commission on Human Rights requested the Secretary-General to appoint a representative to study the worldwide problem of internal displacement and identify ways and means to promote greater protection for the internally displaced.

Dr. Deng of the Sudan was appointed Representative. One of his lasting contributions was the identification of the human rights internally persons are entitled to, and to codify these rights in the Guiding Principles on Internal Displacement which he presented to the UN Commission on Human Rights in 1998 and which have been widely used ever since. I had the pleasure and honor of being actively involved in this process, having chaired the legal meetings developing the Principles. As the first international standards on internally displaced persons, they set forth the rights of internally displaced persons and the obligations of governments and other actors toward these populations. They broadly encompass all internally displaced persons – those displaced by conflict and human rights violations, those displaced by natural disasters and those relocated in the context of development projects. The Principles consist of 30 provisions that compile and restate the international norms relevant to the rights of internally displaced persons. And they cover all phases of displacement: providing protection against *arbitrary* displacement, protection and assistance *during* displacement and for safe and dignified *return or resettlement* and reintegration.

In April 2004 at the end of Dr. Deng's tenure, the Commission called upon the Secretary-General to create a new mechanism to build upon his work and specifically to give greater focus to the human rights dimension of internal

displacement. The responsibilities of this position, as set forth by the Commission, include: enhanced dialogue with governments and other actors; sustained advocacy to promote respect for the human rights of the internally displaced; promotion of the worldwide implementation of the Guiding Principles on Internal Displacement; and the mainstreaming of the human rights of the internally displaced into all relevant parts of the United Nations system. In September 2004, the Secretary-General appointed me his Representative on the human rights of internally displaced persons. It remains a voluntary position, which is serviced by the Office of the High Commissioner for Human Rights and works closely with the United Nations High Commissioner for Refugees and the Office for the Coordination of Humanitarian Affairs. Governments and foundations also support the mandate.

The principal tool in my advocacy with governments, and in my discussions with regional organizations and non-governmental groups, is the Guiding Principles on Internal Displacement. The Guiding Principles have been recognized at the international, regional and national levels, including by the UN Commission on Human Rights and the General Assembly. Recently, they have been recognized by the Heads of State and government assembled in New York for the September 2005 World Summit "as an important international framework for the protection of internally displaced persons" (World Summit Outcome Document, A/60/L.1, para. 132). Earlier, the Inter-Agency Standing Committee, composed of the major international humanitarian, human rights and development organizations endorsed them. As a standing invitee of the Standing Committee, the World Bank has acknowledged the Principles and in different situations has sought to integrate them into its activities with internally displaced populations. At the regional level, organizations in the Americas, Europe and Africa have acknowledged and disseminated the Principles, including the Organization of American States, the Organization for Security and Cooperation in Europe, the Council of Europe, the African Union, as well as the three sub-regional organizations of Africa -- the Economic Community of West African States, the Inter-Governmental Authority on Development and the Southern African Development Community.

An increasing number of governments around the world are also using the Principles as the basis for developing law and policy on internal displacement. In Asia, this includes the Philippines and Sri Lanka, whose governments have made effective use of the Guiding Principles as a means of promoting and protecting the rights of the internally displaced.

To what extent are the Guiding Principles relevant in the context of development-induced resettlement? They can prove useful in two important ways. First, they help identify the instances when forced resettlement as such might be arbitrary and thus in violation of human rights standards. Secondly, and of more general

application, the Guiding Principles identify those human rights that need to be observed in the course of the resettlement process, even when the relocation has been lawful.

Principle 6 sets out the rare circumstances in which development-induced displacement would be considered arbitrary and therefore prohibited. The general principle here being that displacement will be arbitrary if it is caused by a large-scale development project that is not justified by compelling and overriding public interests. Thus, forced relocations are not prohibited. The right to be protected against arbitrary displacement is inherent in the freedom of movement and the right to choose one's residence as, for example, embodied in Article 12 of the Covenant on Civil and Political Rights. Principle 6 of the Guiding Principles ensures that development cannot be used as an argument to disguise discrimination or any other human rights violation by stressing that development-related resettlement is permissible only when the requirements of necessity and proportionality are met. This requires an examination of whether involuntary resettlement could be avoided or minimized by viable alternative project designs such as realignment of roads or reductions in dam height which may significantly reduce resettlement needs. In this sense, Principle 7 paragraph 1 states that "Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects." The same Principle is recognized by the World Bank's Operational Policy on Involuntary Resettlement and OECD's Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects whose authority is reinforced by the underlying human rights norms.

The requirements of necessity and proportionality make it necessary to be particularly careful where indigenous people, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands would be forced to relocate (Principle 9). In this context, the right of members of ethnic, religious or linguistic minorities to enjoy in community with the other members of their group, their own culture, as embodied in Article 27 of the Covenant on Civil and Political Rights, is of particular relevance as this right entails protection of traditional livelihoods and natural resource utilization.

Human rights law also provides guidance in cases where resettlement is unavoidable and perfectly legal. These are the more likely circumstances in which the Asian Development Bank could usefully apply the Guiding Principles in order to determine and promote protection of the rights of persons affected by such resettlement. I will mention just some guarantees listed in Principle 7:

- The decision to resettle must be taken by the State authority empowered by law to order such measures in accordance with procedures required by the law;

- Those to be resettled must be fully informed of the reasons and procedures for their displacement and of compensation and relocation;
- Authorities should try to get the free and informed consent of those to be resettled before ordering forced resettlement;
- Those affected, particularly women, should be involved in the planning and management of their relocation;
- The right of those affected by a resettlement decision to an effective remedy, including the review of such decisions by appropriate judicial authorities, must be respected; and
- Law enforcement measures, where required, must be carried out by competent legal authorities, and in a manner that fully respects the rights to life, dignity, liberty and security of those affected.

As regards the protection of property, Principle 29, paragraph 2 states the duty of competent authorities to provide resettled internally displaced persons with “appropriate compensation or another form of just reparation” where restitution of lost property is not possible. Furthermore, they must establish the conditions, as well as provide the means, that allow resettled persons to start a new life in safety and dignity at the place of relocation (Principle 28).

The application of the Guiding Principles and their underlying human rights norms in the context of development is a task that has been taken up by state and non-state institutions. In this regard, I commend the initiatives taken by national human rights institutions in the Asian region to address the human rights dimensions of development-induced displacement, including in India, the Philippines and Thailand. National human rights institutions can play an important role in monitoring situations of displacement and in devising programs aimed at protecting human rights, including through training, holding national fora, engaging in advocacy with governments, and acting as an honest broker among affected communities, governments and civil society. These institutions require capacity building and resources, and the Asia Pacific Forum of National Human Rights Institutions in collaboration with the Brookings-Bern Project has been working with them in support of their role in dealing with internal displacement by conflict, disaster and development projects.

I most warmly commend the Asian Development Bank for developing operative guidelines on the question of resettlement. I refer here to the Operations Manual on Involuntary Resettlement and the Gender Checklist on Resettlement. The first of these recognizes that, in some instances, development may have adverse effects on certain sectors of the community but that steps can be taken to ameliorate such effects.

The Operations Manual, like the Guiding Principles, speaks of avoiding displacement when feasible, the need to ensure that livelihoods are maintained, the importance of consultation, the challenges posed by customary and other traditional regimes that do not involve a legally recognizable title to land and, in particular, the need to protect the poorest and most vulnerable.

The Gender Checklist, in turn, recognizes that even within displaced communities, some groups, in this case women, may have particular needs or particular skills to offer and such needs and skills must be taken into consideration at all stages of resettlement.

Finally, I commend the states that have adopted laws and policies that seek to implement, either implicitly or explicitly, the Guiding Principles on Internal Displacement. For example, in 2004, India adopted a National Policy on Resettlement and Rehabilitation of Project Affected Families. The Policy aims to provide relief and rehabilitation for the rural poor, including small and marginal farmers and women who have been displaced. It also aims to encourage an open dialogue between the displaced and those in charge of administering the development project.

The Asian Development Bank has played an exemplary role in assisting states develop such laws and policies and I welcome its active role in this regard. After all, the primary duty and responsibility to respect and ensure respect for the rights set out in the Guiding Principles lies with states. In my opinion one of the most effective ways for states to meet this responsibility is to incorporate the Guiding Principles in domestic laws.

To assist states in this challenging endeavor, I have begun, with the assistance of experts from varied backgrounds and regions, to develop a manual for legislators and executive policy-makers at the domestic level. This manual will include best practices and identify legal and policy options for ensuring protection of the human rights of the internally displaced. Among the several issues the manual will address are restitution and compensation when property cannot be restored.

The Asian Development Bank's commendable work in assisting governments in developing domestic policies and legal frameworks on development-induced displacement will hopefully be reinforced by the Legislators' Manual. It should be completed next year and I look forward to consulting the bank in its application at the national level.

In conclusion, I would emphasize that it is important for the United Nations, the various development, financial and humanitarian institutions, governments, national human rights institutions, civil society and affected communities to work together to ensure that the Guiding Principles on Internal Displacement are applied to development induced resettlement programs. This will entail harmonizing operational guidelines, laws, policies and practice relating to development-induced displacement. The adoption of a comprehensive response is vital to ensuring that, in the long-term, development effectively benefits the people and nations concerned.

The ADB, through its policies and practices in working with governments, has already taken steps to enhance the positive effects of development. It is my hope that this meeting will be successful in reinforcing the ADB's role in monitoring situations of internal displacement caused by development projects and assisting governments to find appropriate solutions that reflect and fulfill the rights of those resettled. I look forward to receiving the conclusions of this meeting and am sure that they will contribute to helping transform the full range of human rights of those displaced from their homes into reality in the Asian region.