

THE BROOKINGS-SAIS PROJECT ON INTERNAL DISPLACEMENT

Summary Report of the Conference on Development-Induced Displacement

Washington D.C.

December 5, 2002

A Conference on Development-Induced Displacement was convened by the Brookings-SAIS Project on Internal Displacement on December 5, 2002 in Washington D.C. Participants included representatives from international financial and development institutions, research centers and universities, and non-governmental organizations (see Appendix). The issues examined at the meeting included the nature and scope of development-induced displacement; the international guidelines that apply, in particular the Guiding Principles on Internal Displacement, and policy guidelines on resettlement issued by institutions such as the World Bank or OECD aid agencies; and appropriate institutional frameworks for addressing the problem, including the most effective role for the Representative of the United Nations Secretary-General on Internally Displaced Persons and other UN bodies concerned with internal displacement. The background paper for the meeting, entitled "Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement," was prepared by W. Courtland Robinson, an expert in public health and refugee issues at John Hopkins University.

Francis M. Deng, Representative of the UN Secretary-General on Internally Displaced Persons, opened and chaired the meeting. After explaining the nature and history of his mandate and the development of the Guiding Principles on Internal Displacement, Deng emphasized the need to consider state sovereignty in the international efforts to address development-induced displacement. Although development-caused displacement was included in the Guiding Principles, there had not been substantial action or research undertaken on this topic by his office or other offices at the UN engaged with internal displacement, which have focused primarily on conflict-induced displacement. One of the main goals he identified for the meeting was to conceptualize and discuss strategies and approaches that could best be used, both under his mandate and on a broader scale, to address development-induced displacement.

Roberta Cohen, Co-Director of the Brookings-SAIS Project on Internal Displacement, underscored that when the Representative of the Secretary-General was first appointed, the concerns of the United Nations and international community were focused on persons displaced by civil wars and ethnic conflicts. However, it had since become evident that persons displaced by development projects are also internally displaced persons and subject to deprivation, impoverishment, and human rights abuse. Moreover, at the seminars organized by the Project, especially in Asia, strong concerns had been expressed about the plight of persons involuntarily displaced by development projects. As a result, the Project had turned to W. Courtland Robinson, the author of the background paper, and Michael Cernea, who developed the World Bank policy guidelines on involuntary resettlement, to examine three main questions:

- the nature and scope of development-induced displacement and the extent to which it should be of concern to international human rights and humanitarian bodies, including the Representative;
- the extent to which the Guiding Principles on Internal Displacement apply to situations of development-induced displacement and offer a framework for addressing the problem;
- how to determine which international institutions and remedies could prove effective mechanisms for addressing this type of displacement.

Answering these questions were the key objectives of the meeting.

Introduction of Report, *Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement*, by W. Courtland Robinson

Robinson, in introducing his report, pointed out that there had been a significant paradigm shift away from simply responding to internal displacement through humanitarian assistance to encouraging responses that promote social justice, environmental responsibility and human rights. He also introduced for addressing development-induced displacement: Michael Cernea's impoverishment, risks and reconstruction model and Balakrishnan Rajagopal's human rights challenges. Cernea's model identifies eight potential risks to displaced persons, among these landlessness, joblessness and loss of access to natural resources, which can signify the onset or aggravation of pre-existing poverty. Rajagopal establishes five human rights challenges in addressing development-induced displacement, in particular the right to life and livelihood and the right to participation.

Robinson broadly characterized populations displaced by development projects as typically poor and disadvantaged and advocated that responses to their plight should combine an assessment of impoverishment risks (such as increased morbidity, joblessness) with a recognition of their rights. While development projects brought benefits to society, they also imposed costs, which were often borne by its poorest and most marginalized members. Indeed, large numbers of people each year lost their homes, their livelihoods, their health and even their lives to such projects. He discussed the application of the Guiding Principles on Internal Displacement to persons displaced by development projects and pointed out the similarities and differences between those displaced by such projects and those displaced by conflicts. One of the key differences he identified was that development-induced displacement was generally more anticipated than conflict-induced displacement. As such, greater emphasis needed to be placed on prevention. This could help reduce the number of people displaced by development projects by focusing on situations *before* the displacement occurs. The country case studies in his report concerned water supply; urban development and transportation infrastructure; energy; agriculture and natural resources; and population redistribution schemes.

Robinson identified the guidelines and structures in place for addressing cases of development-induced displacement. He focused in particular on the World Bank and OECD guidelines on involuntary resettlement, as well as on the Guiding Principles on Internal Displacement, the first

international standards for internally displaced persons introduced into the United Nations by the Representative of the Secretary-General. He then reviewed the role and potential role of international financial and development institutions for dealing with the problem (eg. the World Bank, regional development banks, the OECD); the United Nations and other international organizations (the Representative of the Secretary-General, the IDP Unit of the Office for the Coordination of Humanitarian Affairs, the Office of the High Commissioner for Human Rights, the UN Development Program, the World Food Program as well as others); national institutions; non-governmental organizations; and the private sector.

Finally, Robinson presented recommendations. These included a global consultation that would bring together the development as well as human rights and humanitarian communities to harmonize operational guidelines and policies applicable to development-induced displacement; a global survey of development-induced displacement; and the undertaking of field missions to countries where there are severe problems of development-induced displacement. He also recommended that national governments review and incorporate international guidelines, including the Guiding Principles, into their laws and policies.

Conflict-Induced versus Development-Induced Displacement

At the suggestion of the Chair, participants discussed the differences between the needs of persons displaced by conflict and those displaced by development projects.

In general, there was recognition that although there were similarities between conflict-induced and development-induced displacement, there were also significant differences, which had bearing on the response to the problem. For instance, development was often viewed in a positive light whereas conflict was not typically perceived as beneficial. As a result, being displaced by development was viewed as a sacrifice to be made for the greater good of the nation. Development-induced displacement also happened by design, which was not often the case with conflicts. The consequences of development-induced displacement were also quite different since those displaced by development projects could never return to their homes whereas those displaced by conflict or natural disaster retained the potential to return. The relative levels of aid given to the displaced could also differ; for example, generally aid levels to those displaced by conflict were much lower than to those displaced by natural disasters. Conflicts and development projects, moreover, were human-made whereas natural disasters for the most part were not. A fundamental difference in the legal framework was also noted; in development-induced displacement, the right of eminent domain was generally used to justify the displacement of people, but it is also expected that such state-led legal expropriations should entail full and fair compensation for inflicted disruptions and all assets taken away. It was also emphasized that in situations of development-induced displacement, it was important to move beyond simply a humanitarian response to encourage support for a right to sustainable livelihood. Whereas reconstruction was the main focus after a natural disaster, after development-induced displacement, income levels and livelihoods had not only to be reconstructed but improved. It was pointed out as well that there was a linkage between conflict and development-induced displacement. Displacement caused by development projects could lead to conflict, which in turn could produce further displacement.

Nature of the Problem: Scope and Severity

Balaji Pandey of the Institute for Socio-Economic Development in India and Christopher McDowell of Macquarie University in Australia opened the discussion.

Pandey emphasized the need for rehabilitation of persons displaced by development projects, arguing that if rehabilitation did not take place, development could end up creating poverty rather than alleviating it. The majority of persons displaced by development projects in India had become poorer, he said. The Government of India and other national governments needed to be held accountable for displacement within their borders. The displaced in India were marginalized people who had no voice. Hundreds of thousands constituted a backlog, forgotten by project authorities and the government. Women in particular were affected and often led a precarious life. Governments did not seem to learn from the past in that they did not effectively reverse the impoverishment processes engulfing those displaced. The private sector was even less accountable as there was no viable mechanism to question the activities of private corporations, which often placed the responsibility for displacement upon the government.

McDowell highlighted some of the similarities between persons displaced by conflict and development. In both cases, the outcome was similar; the persons affected were for the most part poor, marginalized, minority groups or indigenous populations. Often they were geographically and politically distant from centers of power, were culturally distinct, and their tenure over land was generally not recognized. However, there were also key differences; for example, in some cases of development-induced displacement, governments seized land, together with private companies, with little justification. In other instances, governments and corporations had legitimate reasons and applied resettlement policies. Any response to displacement should recognize the characteristics of the displacement and of the populations affected. McDowell outlined a continuum of displacement from forced displacement with massive human rights violations to land being taken by the state against the wishes of the inhabitants. Along this continuum, the risk of human rights violations varied significantly. The appropriate role of the international community in responding to the different types of displacement would therefore vary as well.

McDowell explored the shift of responsibility for internal displacement onto the private sector. He noted the efforts of British Petroleum to develop appropriate guidelines for resettlement of displaced persons in West Papua. Given that private interests were increasingly responsible for development-induced displacement, he considered it important to ensure that frameworks for addressing development-induced displacement were appropriate to those entities. Although he perceived a value in applying the Guiding Principles to such situations, he felt that there already existed sufficient international human rights law that could be backed up by principles of resettlement. National legislation would need to be framed both to protect against unjust displacement and also ensure that development was not stifled.

In the discussion, there was focus on the changing nature and financing of development projects. One participant pointed out that while development projects had definite beneficiaries, there were those who were adversely affected. Therefore, the design of the projects should be linked to poverty reduction, an objective to which governments and the World Bank were committed. This

linkage would help encourage governments and international organizations to ensure that those displaced by development projects should receive not only compensation, but also clear benefits from the projects. This actually was World Bank policy even though it was not always implemented. Resettlement too should be central to project design; when it was, the development outcome was positive.

A participant from the Asian Development Bank described the bank's efforts to build national legal frameworks. A representative from the Inter-American Development Bank agreed with the need to build better domestic legal frameworks, and recommended that allocation of responsibility between the public and private sectors be built into the framework. This would make it harder for corporations to deny responsibility. It was also suggested that criteria or guidelines be developed to determine when or the extent to which a project is in the public interest.

While the potential benefits of development projects were emphasized, it was pointed out that large-scale dam projects, to mention one area of development, often had not provided benefits for the areas in which they were built. There was usually a severe environmental impact on the people in the area as well. It was therefore important for local people to have the ability to articulate their interests and act against development projects if they considered them harmful. The challenges of addressing other types of development-induced displacement, such as urban displacement and displacement caused by tourism-driven development, were also discussed.

Normative Framework

Michael Cernea, Professor of Anthropology and International Affairs at George Washington University, and Walter Kälin, professor of law at the University of Bern, opened the discussion.

Cernea pointed out that the Guiding Principles were written for all categories of IDPs and thus were germane also to IDPs from development-induced displacement. But they could not address all specific characteristics and issues for each sub-category of IDPs, including development-displaced groups. Cernea emphasized that the Guiding Principles offer a broad framework for addressing this category and for improving current resettlement practices based on the Principles. Some of the phrasing of Guiding Principle 6, which prohibited displacement from "large-scale" projects not justified by overwhelming public interest, might have been phrased more in line with current research on resettlement. Even if a "large-scale" development project were justified, the persons displaced by it would still be internally displaced. The Principles, in his view, should embrace and do provide a compass regarding not only those displaced by unjustified projects but those also displaced by justified, needed projects. The poverty reduction paradigm was also essential in this regard, since projects that impoverished people through resettlement could not be defended. Indeed, the risks of impoverishment should be incorporated into development project design, together with sufficient financing to improve the livelihood of poor people who were displaced.

The World Bank, Cernea continued, had developed an operational policy framework for involuntary resettlement for the projects it finances. This policy, which consisted of a compelling set of norms, had been applied to development projects in different countries. The

application of the policy had legal implications. The agreements reached between the World Bank and governments based on this policy were legal agreements that were intended to supersede national law. Along the same policy lines, the Asian Development Bank was assisting governments to develop their own policies and laws on resettlement. In turn, some large-scale private corporations, he said, had also begun to recognize their responsibility in addressing development-induced displacement. Triggered by their interventions, the opportunity thus increased for development agents to provide improved compensation and even investment financing to assist people in undertaking more successful resettlement moves. In his view, the principle of eminent domain, and its application, needed a legal review and additional provisions for ensuring the sustainable productive reestablishment of those subjected to expropriation and involuntary resettlement.

Kälin expanded on the development of the Guiding Principles and their potential role in acting as an appropriate normative framework for development-induced displacement. Even though the Guiding Principles were not written to address all specific issues of development-induced displacement—for example, they did not explicitly address compensation for expropriated property and recovery needs after development-induced displacement—they are nonetheless relevant and applicable to situations of development-induced displacement. The principles specifically relevant to development-induced displacement are, in particular Principles 6, 7.3 (which provide guidelines for situations of displacement *other* than armed conflict), 9 and 18, the latter serving as a basis for rehabilitation.

In response to the questions raised about Guiding Principle 6, Kälin explained that the word “large-scale” was part of an illustrative list; it did not imply at all that persons displaced by smaller-scale development projects were not internally displaced. Principle 6 also did not mean that persons displaced by justifiable and lawful projects were not internally displaced. In fact, the Guiding Principles describe anyone as an internally displaced person who is coerced to leave his or her place of habitual residence and has not crossed an international frontier regardless of whether the displacement was illegal or not. With regard to the phrase, “compelling and overriding,” it was added as a limitation to the assumed public interest that exists in any development project. In this sense, the word “compelling” indicates the notion of proportionality whereas the word “overriding” demands the balancing of public and private interests. Courts all the over the world regularly rule on compelling and overriding interests.

As a matter of strategy, it was important that humanitarian and human rights organizations work closely with development agencies on the legal agreements they negotiate with governments on projects including involuntary resettlement. The development of national legislation to regulate involuntary resettlement was also important. He described various monitoring projects being undertaken by the Representative and the Brookings-SAIS Project in different countries that examined national legislation in terms of the Guiding Principles. The Principles, he pointed out, were influencing governments to think about their obligations with respect to displacement in light of current international standards.

In the discussion, participants focused on the criteria for determining when a person was internally displaced under the Guiding Principles. Terms such as “forced eviction” and “involuntary displacement” were examined in an attempt to clarify the precise nature of internal

displacement. One participant questioned the utility of relying on the Guiding Principles if they covered only arbitrary displacement because that would result in some development-induced displacement not being included. To this, Kālin responded that a person is still an internally displaced person (IDP) even if his/her rights were respected. The causes of displacement could be legal or illegal, but the legality did not alter the factual state of being internally displaced.

Another point of discussion was over how physically far a person had to travel to be considered an IDP. If someone were evicted from his home, would he/she still be considered an IDP? Regarding definitional aspects, Cernea warned against broadening the development-displaced category, for instance, to encompass persons evicted from a rented apartment because they hadn't paid the rent or because they had defaulted on other obligations. Nor should those affected by a factory that closes because of unprofitability, bad management etc. be considered IDPs.

Discussion also focused on the relevance of causes in defining displacement. One participant argued that the cause of displacement was fundamental to the definition, but that it could prove to be a slippery slope. If causes were at the center of the definition, the definition would either have to include an exhaustive list of causes or be vague enough to leave open the possibility that virtually anyone (eg. economic migrants) could be considered IDPs, which would blur any distinction. Kālin responded that the two features relevant to the overall definition of an IDP were coercion (that is being forced or obliged to leave), and not crossing a border. The causes were simply an indicative list, not an absolute legal statement of who is an IDP. Cernea emphasized that within the general definition of IDPs are causes of displacement relevant for defining and distinguishing one sub-category of IDPs from another.

The legal and policy ramifications of the debates over defining IDPs were examined. One participant pointed out that while a country may not have a law about development-induced displacement and resettlement, certain legal agreements, such as those written between international financial institutions (e.g., the World Bank) and states have the status of international treaties and are registered with the UN. They are binding on the borrowing states, notwithstanding domestic legislation.

The distinction between the normative systems of the Guiding Principles and of the World Bank was also highlighted. The Guiding Principles are a restatement of the rights of IDPs as set forth in international law and were therefore non-negotiable. What the World Bank stipulated in its legal agreement with borrowing governments was largely negotiated between the bank and the contracting state for very specified situations and processes, and binding in direct operational terms. However, the gap between agreements and action was also noted when another participant pointed out that despite the agreements based on World Bank policies, in reality the actual practices of many developing countries' governments on the ground were often different.

Several participants pointed out that the Guiding Principles and development agency frameworks were basically complementary and that there was potential for development agencies to promote and effectively utilize the Guiding Principles. At the same time, a number of participants wondered whether special guiding principles for development-induced displacement should be drafted. Cernea argued in favor of explicit domestic legal frameworks being created for

development-displaced persons rather than simply relying on a restatement of existing international principles of human rights. In particular the economics of displacement should be reflected better in legal provisions since legal regulations only for compensation did not generally amount to restoring people's livelihoods.

Kälin raised the issue of non-state actors and the obligations of the state to protect its citizens from the actions of private actors. He argued that this issue should be advanced more forcibly by development agencies and that governments should be involved in imposing conditions on private enterprise in development projects. He noted too that the Guiding Principles applied not only to governments but also to non-state actors.

It was noted that in considering development-induced displacement, attention should be paid to processes in both developing and developed countries; in developed countries, urban displacement uprooted large numbers of people.

Institutional Responsibilities

Dana Clark, consultant and author, and Lanfranco Blanchetti-Revelli of the Asian Development Bank opened the discussion.

Clark outlined some of the mechanisms that development banks have set up to encourage accountability. The World Bank, as a result, has modified some of its conduct; for example, it has challenged the building of certain dams. Nonetheless there remained a gap between bank-adopted principles and the practices of many bank-assisted projects. The Inspection Panel, for example, was intended to allow voices to be heard that otherwise might not be. Yet the claims brought before the Panel did not have an effective remedy to support them. Although the Inspection Panel had helped to reinforce and assert the World Bank's operational policies and consistent procedures, it had no power to follow-up on cases after it issued its findings. There were also no effective mechanisms in place for helping people, who were forced to move because of World Bank-funded development projects, to reestablish and improve their livelihoods. After discussing various violations by states of the World Bank's resettlement policy, she pointed out that there was no institution to address grievances against these violations. There would thus be potential benefit in creating a model of restitution for those forcibly displaced and ensuring that the state's obligations to them would continue until the loan is repaid.

Blanchetti-Revelli described how the Asian Development Bank (ADB) had tried to bridge the gap between policy goals and implementation by encouraging the development of domestic policies and laws within countries. To date, the ADB had assisted seven Asian countries through a special exercise to develop their own domestic policies and legal frameworks on development-induced displacement. ADB projects also included planning for preventing impoverishment risks and for reconstruction after resettlement. National frameworks, he said, were often a form of compromise but they were better than no implementation. He emphasized the importance of encouraging and allowing local groups to take over the projects. He also noted the insufficiency of funds allocated for post-displacement reconstruction and the lack of funds available for assessing the impact of development projects.

In the discussion, Deng asked to what extent the UN and the mandate of the Representative of the Secretary-General should be involved in development-induced displacement and how to most effectively encourage that involvement, if it were considered useful. Many participants expressed the view that under his mandate, it was appropriate and very timely for the Representative of the Secretary-General to address the issue of development-induced displacement.

As to the manner of involvement, a variety of opinions and recommendations were forthcoming. One participant suggested that the best way for improving displacement by development projects would be to influence local policy and local institutions. To this end, the Representative should focus heavily on the need for policy development and capacity building. Others expressed concerns about various kinds of violations of existing rules and cautioned about expecting too much from national institutions, in particular national human rights organizations, which often had little power.

In addition, the Representative was encouraged to explore the potential for dialoguing with other actors, including transnational corporations whose projects cause development-induced displacement, and promoting mechanisms to evaluate empirically how these processes unfold on the ground. Still others felt the Representative should act as an honest broker in major situations of development-induced displacement and undertake dialogue on the basis of individual projects. The Representative could play a role in helping to close the gap between development policies and actual practices, using the moral authority of his office and the Guiding Principles.

With regard to the UN, it was suggested that the Representative work with the different UN Special Rapporteurs on this issue, in particular the rapporteurs on adequate housing and on indigenous peoples, both of whom had expressed a strong interest in development-induced displacement. It was also suggested that the Representative provide a report on development-induced displacement to the UN Secretary General and to the Working Group of the UN Inter-Agency Standing Committee (IASC). The report would address the extent and content of the issue, as well as highlight best policies and practices, and make recommendations. Overall, the report would seek to raise awareness of the issue. In addition, it was proposed that the Representative begin to integrate development-induced displacement into his routine reporting to the UN on IDP issues. It was also suggested that the Representative seek to strengthen links between the UN and multilateral development banks on IDP issues. The fundamental value in the Representative's taking up this issue was that development-induced displacement was a frequent occurrence in both developed and developing countries and that improved mechanisms for resolution were needed, to which the UN could make an important contribution. The UN had vast experience with emergencies and the role of the Representative could be especially helpful in emergency situations.

It was pointed out that insistence on the application of the Guiding Principles to development-induced displacement could provide important benefits to affected populations and to development, but also might run into resistance from some governments and organizations that did not yet realize the importance of development-induced displacement in the same way that they recognized conflict-induced displacement. Some development organizations and certain governments, moreover, had standards for development-induced displacement that were higher

than those contained in the Guiding Principles, and this would help the generalized application of the Guiding Principles.

Several felt that principles for development-induced displacement should also reflect the differences in causes and approaches as was the case with conflict-induced displacement. A few proposed that more detailed principles should be drafted for development-induced displacement that would create a general framework for all the actors involved. Most participants considered the Guiding Principles a very sound starting point, arguing that the Principles should apply broadly and effectively to development-induced displacement and could be made more specific in this regard. Several participants suggested that a correct interpretation of the Principles include a right to maintain one's livelihood in the explanation of Principle 6 as well as a right to protest displacement where appropriate remedies are not provided.

Some participants argued that the World Bank should develop more explicit criteria, for example, criteria that would establish when a development project that causes displacement should be disqualified and not be financed, as well as criteria for when displacement is appropriate and how it should take place. It was also emphasized that because the vast majority of people affected by development-induced displacement are poor, displacement should never be allowed to aggravate their poverty; this was in line with overall government support for poverty reduction. When displacement was unavoidable, it should be treated as an opportunity to proactively reduce the poverty of those relocated and improve their livelihoods. Moreover, it was pointed out that development-induced displacement could cause conflict, if done irresponsibly, making conflict prevention through sound resettlement approaches essential.

Conclusions and Recommendations

At the end of the meeting, Walter Kälin was invited to summarize the main points of the discussion and provide some concluding comments. He noted that the meeting had brought together communities that didn't often interact, namely the development, conflict resolution, human rights and humanitarian communities. Whereas at the beginning of the day, the similarities between conflict-induced displacement and development-induced displacement had been emphasized, by the end of the day, both similarities and differences between the two had become more apparent. The intrinsic complementary nature of the World Bank guidelines on resettlement, as a widely accepted internationally set of standards, and of the Guiding Principles had been recognized. In recognizing the role and limitations of the Guiding Principles in addressing development-induced displacement, Kälin stressed that unlike the World Bank guidelines, the Guiding Principles did not focus only on development-induced displacement but on all categories of IDPs in their totality and, therefore, could not address all aspects of each particular category of forced movement of persons remaining in their own country. Nevertheless, he emphasized that the Principles provided a useful framework for addressing the fundamental issues, but that at the same time caution should be exercised.

Deng concurred that agreement on the basic principles existed but that caution should be shown on details and specific characteristics. He suggested that after the publication and dissemination of the Robinson report, some stocktaking should be undertaken. He agreed with various participants that a paper should be prepared for the UN that would highlight some of the

development-induced displacement issues discussed, including a broader interpretation of the Guiding Principles. The paper should focus on linking an analysis of the problem with what is already being done positively in various places and include where the gaps exist. Such a paper could be tested on the IASC Working Group in order to ascertain what type of support, concerns and recommendations it might expect in the broader UN system.

APPENDIX

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