PHILIPPINES

Involuntary Resettlement: Policy and Institutional Frameworks, Practices, and Challenges
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<th>Description</th>
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<tbody>
<tr>
<td>BIR</td>
<td>Bureau of Internal Revenue</td>
</tr>
<tr>
<td>DA</td>
<td>Department of Agriculture</td>
</tr>
<tr>
<td>DENR</td>
<td>Department of Environment and Natural Resources</td>
</tr>
<tr>
<td>DILG</td>
<td>Department of the Interior and Local Government</td>
</tr>
<tr>
<td>DOF</td>
<td>Department of Finance</td>
</tr>
<tr>
<td>DPWH</td>
<td>Department of Public Works and Highways</td>
</tr>
<tr>
<td>DSWD</td>
<td>Department of Social Welfare and Development</td>
</tr>
<tr>
<td>EMB</td>
<td>Environmental Management Bureau</td>
</tr>
<tr>
<td>GFI</td>
<td>Government Financial Institution</td>
</tr>
<tr>
<td>HUDCC</td>
<td>Housing and Urban Development Coordinating Council</td>
</tr>
<tr>
<td>ICC</td>
<td>Investment Coordination Committee</td>
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<tr>
<td>IPRA</td>
<td>Indigenous Peoples’ Rights Act</td>
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<tr>
<td>LGC</td>
<td>Local Government Code</td>
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<tr>
<td>LGU</td>
<td>Local Government Unit</td>
</tr>
<tr>
<td>MCPs</td>
<td>Major Capital Projects</td>
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<tr>
<td>MOA</td>
<td>Memorandum of Agreement</td>
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<tr>
<td>NAPC</td>
<td>National Anti-Poverty Commission</td>
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<tr>
<td>NAPOCOR</td>
<td>National Power Corporation</td>
</tr>
<tr>
<td>NCIP</td>
<td>National Commission on Indigenous Peoples</td>
</tr>
<tr>
<td>NEDA-SDS</td>
<td>National Economic and Development Authority-Social Development Staff</td>
</tr>
<tr>
<td>NGO</td>
<td>Nongovernmental Organization</td>
</tr>
<tr>
<td>NHA</td>
<td>National Housing Authority</td>
</tr>
<tr>
<td>NIA</td>
<td>National Irrigation Administration</td>
</tr>
<tr>
<td>NIPAS</td>
<td>National Integrated Protected Areas System</td>
</tr>
<tr>
<td>PCUP</td>
<td>Presidential Commission for the Urban Poor</td>
</tr>
<tr>
<td>PO</td>
<td>People’s Organization</td>
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<tr>
<td>RA</td>
<td>Republic Act</td>
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<tr>
<td>RAP</td>
<td>Resettlement Action Plan</td>
</tr>
<tr>
<td>ROW</td>
<td>Right of Way</td>
</tr>
<tr>
<td>TRANSCO</td>
<td>National Transmission Corporation</td>
</tr>
<tr>
<td>UDHA</td>
<td>Urban Development and Housing Act</td>
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When certain development projects take away land, shelter, other assets, and access to livelihood, they result in the displacement of people. Government action sometimes leads to involuntary resettlement, for instance when government uses its inherent power to expropriate lands and right-of-way for development projects. International aid and lending agencies with policies on involuntary resettlement offer social safeguards against avoidable displacement. When involuntary resettlement is unavoidable, the policies provide guidelines to cushion the resulting displacement.

Over the years, many countries including the Philippines have worked to align their laws and policies with international good practice on involuntary resettlement. Yet, international aid and lending agencies continue to use their “in-house” involuntary resettlement policies on development projects they fund. This confines the positive impact of safeguard systems to the scale of the development project. There is also the perception of additional cost to projects because of the safeguards. In the Paris Declaration on Aid Effectiveness, governments and development agencies committed to work toward harmonizing donor systems and country systems. The ultimate goal is eventually to use the country’s own systems in donor-funded projects.

This diagnostic review is a necessary first step toward harmonization. Its purpose is to assess the prospect of harmonizing the country’s involuntary resettlement framework with World Bank and other international good practices. Results of the review can help determine a feasible course of action for formulating and eventually adopting a national safeguard system on involuntary resettlement.

The study looks into different laws on land valuation, housing provisions for poor informal settlers, and other types of compensation for lost assets and related implementing rules and regulations. It also looks at government memorandum orders that define the social safeguards to be applied by public agencies with major infrastructure projects that require significant involuntary resettlement. To determine the level of practice, several case studies are presented.

Finally, the review provides strategic guidance to both the Bank and the Government of the Philippines for strengthening the application of social safeguards for the benefit of displaced persons. It identifies gaps in building the capacity of institutions involved and suggests approaches to harmonize the country’s involuntary resettlement policies with international practice.
This study reviews the policy and institutional framework for involuntary resettlement in the Philippines. Its purpose is to assess the prospect of harmonizing the country’s involuntary resettlement framework with World Bank and international good practice following the spirit of the 2005 Paris Declaration on Aid Effectiveness.

Using eight themes common to the involuntary resettlement policies of the major development financing agencies in the Philippines, the study found that harmonization can be achieved in the following four themes: Process or Mode of Acquisition of Affected Properties; Voice; Humane Procedures for Relocation and Resettlement; and, Protection of Vulnerable Groups. Substantial work needs to be done in the other remaining four themes: Inclusiveness and Consistency in Treatment of Affected Persons; Valuation and Compensation; Measures to Restore Livelihood and Standard of Living; and, Resettlement Action Planning.

The institutional review looked at ways involuntary resettlement is addressed in the country, identified the institutions involved, and considered the strengths and challenges at each stage of resettlement. The study found that the absence of a resettlement instrument (even if there is legal basis) at the appraisal stage negatively affects the implementation of involuntary resettlement. Problems in harmonizing the budgeting and implementation stages and the unequal financial standing of sending and receiving communities compromise the quality and sustainability of resettlement sites.

Finally, the study found wide variances in practices across agencies. Some embedded the task in an internal resettlement policy and a specific office or committee. Others preferred doing resettlement on an *ad hoc* or as-needed basis following guidelines of the fund provider. In the case of informal settlers, compensation and shelter provisions generally exceeded pre-displacement levels.

However, the inability of resettlement sites and livelihood restoration measures to sustain these initial gains and restore standards of living pointed to weaknesses in policies and institutions. Case studies in this report show both the problem and promise in the practice of involuntary resettlement in the Philippines.

To achieve harmonization, the study opts for a developmental instead of a regulatory approach. It recommends the adoption of core guidelines through softer forms of legislation rather than the passage of a full-blown act of Congress. The study proposes a three-tiered approach for the development of these guidelines beginning with those that have bases in the policy framework, followed by those guidelines where the country system is silent, and ending in the more difficult issues that require amendments of existing laws or new legislation. It also identifies entry points and lead agencies for doing this work.
For the first tier, work will be done with the Investment Coordination Committee, Housing and Urban Development Coordinating Council, the clearance process of the Urban Development and Housing Act, and the Presidential Commission for the Urban Poor. For the second tier, the system and agencies involved are the Philippine Environmental Impact Statement System and the Environmental Management Bureau for rural resettlement and the National Anti-Poverty Commission for urban issues. The third tier will involve the Land Administration and Management System and the Bank-funded Land Administration and Management Project.

On the longer term, the study recommends a change in orientation in the policy and institutional framework—from a compensatory approach to benefit sharing to achieve not just restoration of livelihoods and incomes but improvement in the quality of life.
1 International Good Practice in Involuntary Resettlement

INTRODUCTION

The involuntary resettlement of populations across the world is a common outcome of new physical infrastructure projects. Infrastructure development or civil works often requires the acquisition of land and other assets. If not managed well, displacing populations from their homes and sources of land-based incomes can have serious economic, physical, and psychological repercussions. It can result in the breakdown of community ties, affect traditional livelihood systems, diminish cultural identity, further disadvantage women, children, and other vulnerable groups, and leave families and whole communities worse off than before the project was implemented.

For these reasons, multilateral and bilateral financing agencies, even governments, have adopted policies to address loss of assets, livelihoods, access to income sources, and other impacts associated with displacement and physical relocation. A discussion of all these policies in their breadth and depth requires a separate study by itself.

This chapter looks at the core principles underlying the involuntary resettlement policies of the major development financing agencies. These core principles are the areas or themes around which the harmonization effort ought to proceed.

CORE PRINCIPLES OF INTERNATIONAL GOOD PRACTICE

In the Philippines, the four major development agencies by size of lending and investment are the World Bank, International Finance Corporation (the World Bank’s private sector arm), Asian Development Bank, and Japan Bank for International Cooperation (not necessarily in the order of importance). All have policies on involuntary resettlement. These policies are fundamentally similar, differing only in procedural details. (See Annex 1.)

The four development agencies abide by eight main principles. These are:

1. **Involuntary resettlement is seen as the last resort once other alternatives are exhausted.**

The policies of all four agencies agree that involuntary resettlement should be avoided by exploring all viable alternatives. Where involuntary resettlement cannot be avoided, it should be minimized and those affected be compensated. Annex 2 shows the range of compensation in typical resettlement programs. The types of entitlements will depend on the tenurial status of the affected person.

2. **The State has the right to expropriate property in the public’s interest (principle of eminent domain).**

The context for understanding involuntary resettlement is the use of State power to either relocate individuals and households or acquire a portion of their property without their consent in the name of the greater good. This is the principle of eminent domain. These policies are not triggered in the case of private sector projects that entail land acquisition. Here, the acquiring agency has no expropriation power and hence is expected to rely on negotiation with affected private property owners to achieve its objective (willing seller, willing buyer).
The International Finance Corporation limits the application of its involuntary resettlement policy to “expropriation or restrictions on land use based on eminent domain” and “negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.” The World Bank also has clarified that its involuntary resettlement policy does not apply to disputes between private parties in land titling projects.¹

3. **Affected population includes not only those physically displaced but also those economically affected directly by the project.**

The third principle defines the range of impacts that are covered by the policies. Involuntary resettlement policies cover not only physical displacement or when people need to be relocated from their homes or land or a portion of the same. It also includes economic displacement, that is, when people lose either their income sources or access to certain productive resources as a direct result of the project.

The operative word is ‘direct’, which means “inextricably related to the taking of land.” Projects such as elevated rail systems have been proven to diminish economic activity on the ground by reducing pedestrian traffic. However, since no taking of land happens, it does not qualify as involuntary resettlement. This does not mean that the project can ignore these indirect economic and social impacts. They should be addressed through other means outside the involuntary resettlement policy.

4. **The lack of either formal or legal title to the property does not bar the occupants to compensation.**

Those with adverse possession rights or in peaceful occupation of private and public lands such as informal settlers are eligible for compensation for assets that they will lose such as the house, crops, or other improvements on the land. It is expected that those with legal documents expected to mature into full rights must be compensated for lands as well.

5. **The purpose of the policies is to prevent impoverishment by compensating and restoring to pre-project levels the standard of living of affected persons.**

The policies of the four international financing institutions share a common, overarching objective: the prevention of impoverishment directly caused by the development project. Operationally this means that the project design should include measures to adequately compensate losses and restore or rehabilitate project affected persons to their pre-project levels of living. Improvement is most desired; efforts must be taken to allow affected persons to directly share in project benefits.

6. **There is emphasis on vulnerable groups, e.g., indigenous peoples, the elderly, persons with disabilities, women, and children.**

All the policies acknowledge that involuntary resettlement affects groups differently. Some are in a better position to mitigate the impacts; others are more adversely affected because of their existing situation.

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¹ Discussions during the revision of the Involuntary Resettlement OP (OP 4.12, December 2001; revised April 2004) dealt explicitly with whether the titling components of land administration projects “triggered” the OP. It was initially suggested that when one claimant was adjudicated as owning the parcel over another, the losing party is displaced (“involuntarily resettled,” in the language of the OP) thus the OP would be triggered and its requirements of land compensation and support for resettlement costs might apply. After the Bank’s task managers for land administration projects (Land Policy and Administration Thematic Group) argued vigorously that no adjudication system, including the courts, could work under such requirements, a footnote was added to the OP explicitly excluding land disputes between private individuals from the operation of the OP (Bruce, J.W., et al. 2006. *Land Law Reform: Achieving Development Policy Objectives*. Law, Justice and Development Series. The World Bank).
In fact, it has been argued that the use of eminent domain tends to benefit those who either have secure property rights or have the means to enforce legal contracts and obtain redress from the judicial system. Hence, the policies of development agencies emphasize that the borrower should give special attention to the impacts of involuntary resettlement on vulnerable groups such as indigenous peoples, the elderly, persons with disabilities, women, and children.

7. **The policies require disclosure of information to important stakeholders and consultation, participation, and informed consent of the affected population in the crafting and execution of mitigating measures.**

This principle calls for disclosure of information to stakeholders in a language understandable and through media accessible to them. Identification of potentially displaced persons must be done at an early stage and their views must be taken into account in the design of projects.

The affected population should also be consulted and provided opportunities to participate in the planning, execution, and monitoring of the resettlement program. Those directly affected should have opportunities to choose among viable resettlement options and other mitigating measures. The project proponent and project affected persons should also agree upon procedures for dismantling affected structures and transferring to the resettlement site.

8. **In the event the policy is triggered, a resettlement plan has to be prepared.**

Finally, all four development agencies require formulation of a resettlement plan. The required level of elaboration of the plan is commensurate to the magnitude of the displacement. A Resettlement Plan must be prepared in consultation with affected persons, with due consideration to their number. (Box 1 contains a complete resettlement action plan.)

**CORE AREAS FOR HARMONIZATION**

These eight principles correspond roughly to eight themes or core areas that are common to international good practice. These eight are the thematic spaces where the country’s policy and institutional framework and international good practice ought to converge. These eight themes or areas are:

1) Process or Mode of Acquisition of Affected Properties (Principles 1 and 2);

2) Inclusiveness and Consistency of Treatment of Project Affected Persons (Principles 3 and 4);

3) Valuation and Compensation (Principle 5);

4) Humane Procedures for Relocation and Resettlement (Principle 5);

5) Measures to Restore Livelihood and Standard of Living; (Principle 5);

6) Protection of Vulnerable Groups like Indigenous Peoples, Women, Elderly, Children, and Persons with Disabilities (Principle 6);

7) Voice: Disclosure of Information to, Participation of, and Choice on the part of Project Affected Persons in Planning and Implementing Mitigating Measures (Principle 7); and,
8) Resettlement Action Planning (Principle 8).

The fourth, humane procedures for relocation and resettlement, is not explicitly spelled out in the policies of international funding agencies. These are guaranteed though by international conventions on human rights that funding agencies and state parties alike should observe.

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**Box 1. Contents of a Resettlement Action Plan (RAP).**

**Socioeconomic study** – To help in the preparation of the plan, the implementing agency shall conduct socioeconomic surveys to establish pre-project or baseline conditions. The results of this study should be included in the resettlement plan, with emphasis on those severely affected, especially the poor, the informal settlers, and vulnerable groups such as indigenous peoples, women, children, the elderly, and persons with disabilities.

**Policy and institutional framework** – The resettlement plan includes an elaboration of a resettlement policy framework which lists down all applicable national and local laws and their implementing rules and regulations, department orders and other policy statements of the proponent government agency pertaining to involuntary resettlement. The institutional framework should spell out the agencies responsible for implementing various components of the resettlement program. The policy framework also includes a criteria for establishing eligibility criteria of project affected persons.

**Description of impacts and corresponding compensatory measures** – The plan should describe what the impacts are, who are affected, the situation of these affected people, and finally the compensation that they are entitled to. These can include: compensation for residential lot; compensation for residential and commercial structures; compensation for agricultural lands; compensation for standing crops, trees and other land improvements; resettlement to developed sites including replacements of lost amenities and community facilities; and, compensation for loss of wages or incomes during transfer.

**Measures to restore standard of living and to allow project affected persons to share in project benefits** – The resettlement plan should provide measures to restore the standard of living of all affected persons not just those displaced and require resettlement and to allow them to share in project benefits. Examples of such measures are livelihood programs, microfinance programs, and preferential access to project facilities (e.g. vending spaces in train and bus stations).

**Measures to address the needs of vulnerable groups** – The resettlement plan includes a section on how involuntary resettlement shall affect vulnerable groups. Examples of such effects are disruption of schooling (children), lack of transport access (persons with disabilities), poor quality of services like water (women), increased health care costs due to distance to health facilities (elderly), and loss of identity and destruction of way of life (indigenous peoples).

**Impact on host communities** – The plan should also address impacts of resettlement on host communities and corresponding mitigating measures.

**Budget for resettlement including income restoration measures** – The plan should include a budget for the resettlement program, including costs of administration, costs of securing the necessary permits, and the cost of measures to restore standards of living to pre-project levels.

**Procedure for transfer of land, dismantling structures, relocating, and resettling** – The plan should include measures for the transfer of land, dismantling affected structures, relocating to the resettlement site.

**Disclosure, consultation, and grievance mechanisms** - In the preparation and execution of the resettlement plan, displaced persons, their communities and host communities are provided timely and relevant information. Displaced persons are consulted on the eligibility and grievance procedures thus they are able to participate in the planning, implementing, and monitoring of the whole resettlement program.

**Schedule of implementation** – The plan includes a schedule for implementing the program. Normally, the implementation of the plan should be completed prior to the start of the civil works component of the project (in the case of infrastructure projects.) Resettlement entitlements should be provided before displacement or restriction of access.

**Monitoring and evaluation** – The plan should include measures to assess the progress of implementation and evaluate the results upon completion, taking to account the baseline conditions established by the socioeconomic study.
Assessment of the Philippine Policy Environment for Involuntary Resettlement

INTRODUCTION

The policy environment or legal system for involuntary resettlement consists of statutes—provisions of the Constitution, acts of Congress, executive issuances, department orders, and jurisprudence—that come into play whenever a project causes involuntary resettlement. Discussing each law in detail deserves an entire study by itself.

This assessment will concentrate on the general orientation and characteristics of the policy environment, analyzing specific laws to illustrate these characteristics. The chapter ends with a stocktaking of the prospects for harmonizing the policy environment with World Bank and other international good practices using the eight themes identified in Chapter One.

CHARACTERISTICS OF THE POLICY ENVIRONMENT

The policy environment for involuntary resettlement displays the following characteristics:

Protection of private property is an important policy of State.

The policy framework is emphatic in its protection of private property. The Philippine Constitution declares that the protection of property is a policy of the State and is essential for Filipino citizens to enjoy the benefits of democracy (Article II, Section 5). Private property is every citizen’s right and that right can be curtailed only under certain conditions. The first provision of the Bill of Rights of the Constitution prohibits depriving any person of his property without due process (Article III, Section 1). Further, it declares that no taking of property is allowed without just compensation (Article III, Section 9).

Another law, the Local Government Code, declares that the power of local government units or LGUs, or sub-national administrative entities to expropriate (eminent domain) can only be applied for “public use or purpose or for the benefit of the poor and the landless” and always with just compensation being paid to the affected property owner (Section 19). In Barangay Sindalan, San Fernando, Pampanga vs. the Court of Appeals, the Supreme Court reminded government of the purpose of this power and its limitations because of the potential for abuse.

The use of eminent domain is a last resort.

Since private property is a fundamental right of citizens, it follows that the involuntary taking or loss of property by State fiat is an exception rather than the rule. Expropriation is a last resort, to be used after all other means of acquiring the land have been exhausted.

Republic Act 8974 or the Right of Way Acquisition Law and its implementing rules and regulations, the Local Government

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3 Section 8. Expropriation—If the owner of a private property needed by the government implementing agency does not agree to convey his property to the government by any of the foregoing modes of acquiring and/or transferring ownership of the property, then the government shall exercise its right of eminent domain by filing a complaint with the proper Court for the expropriation of the private property.
The laws provide various modes of acquisition as alternatives to expropriation. The ROW law, for example, lists among the options: a) Donation, b) Quit claim, c) Exchange or barter, d) Negotiated sale or purchase, and e) Easement rights.

Of the five modes, compensation is provided only in three. Quit claim allows the affected landowner to claim compensation on structures and improvements but not for the land because of the legal regime under which the latter was obtained. By nature, donation does not involve any compensation, and it implies willingness on the part of the property owner.

The Urban Development and Housing Act adds additional modes of acquiring land in the context of providing shelter to the homeless and the underprivileged. These include land swapping; joint ventures between government agencies and between government and the private sector; and, community-driven land acquisition, relocation, and resettlement called Community Mortgage Program. The last offers a range of choices to affected communities.

The policy framework accommodates a variety of methods for valuing property.

The Constitution is clear that there can be no expropriation without compensation, save in a few, exceptional cases. However, it leaves to Congress, the judiciary, the executive department, and government financial institutions the task of determining the monetary value of “just compensation.”

In Barangay Sindalan, San Fernando, Pampanga vs. Court of Appeals, the High Court listed criteria for the compensation to be deemed just. These criteria refer to the timing of valuation and payment, the perspective that should be taken in the appraisal of affected persons, and the desired qualities of the actual payment. They are:

1) The value of compensation is computed at the time of taking;
2) The owner’s loss not the taker’s gain is the basis of computation;

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4 Section 19 of the Local Government Code makes it clear that the LGU can resort to the power of eminent domain only after a valid and definite offer has been made to the owner and such offer was not accepted.
5 Exchange or barter of private land for public land is administratively difficult to accomplish since the Administrative Code grants the power to enter into such transactions on the President of the Philippines.
6 Quit claim applies to those lands acquired under the Public Land Act (Commonwealth Act 141).
7 In a Community Mortgage Program, the originator can be a nongovernmental organization, a local government unit, a private corporation, national government agency, or a government controlled corporation. The Urban Development and Housing Act provides incentives to participants in the Community Mortgage Program (Section 32).
8 The importance of choice and participation of the affected community in CMP is shown in its objective. “The primary objective of the program is to assist residents of blighted or depressed areas to own the lots they occupy, or where they choose to relocate to, and eventually improve their neighborhood and homes to the extent of their affordability.” (Section 31). (Emphasis added.)
9 The few cases that land can be expropriated without payment of corresponding compensation is when the land has been acquired under special laws like Commonwealth Act 141. Section 112 of this Act reserved 20 meters of the land acquired
3) The equivalent payment is real, substantial, full, and ample; and,

4) The payment is made within reasonable time from the taking of property.\(^{10}\)

Failure to pay within a reasonable time from the taking of property violates the Constitutional provision on just compensation. In *Reyes vs. National Housing Authority*,\(^{11}\) the Court ruled that 12% interest per annum shall be imposed on the final compensation from the date of the court’s decision to the time of taking. Any further delay will result in the imposition of another 12% per annum.

In *Republic vs. Lim*,\(^{12}\) the Supreme Court ruled that “where the government failed to pay just compensation within five (5) years from the finality of the judgment in the expropriation proceedings, the owners concerned shall have the right to recover possession of their property.”

The Local Government Code equates “just compensation” with fair market value, which it defines as “the price at which a property may be sold by a seller who is not compelled to sell, and bought by a buyer who is not compelled to buy” (Section 199 (1)). The payment of a deposit equivalent to at least 15% of the fair market value of the property is one of two conditions that the Code sets for the LGU to take possession of the property.\(^{13}\)

The fair market value for the LGU’s payment is to be determined using the current tax declaration of the property to be expropriated. LGUs are expected to levy taxes on real property on the basis of its fair market value following rules set by the Department of Finance.\(^{14}\) LGUs are to determine fair market value using a variety of methods.

1. The first is self-declaration. The Local Government Code obliges all property owners to declare the current and fair market value of their property with the provincial, city, or municipal assessor once every three years (Section 202). The Code directs the LGU to keep and file all declarations under a uniform classification system (Section 207). In reality, few property owners declare their properties because they want to avoid higher real property taxes. In the absence of selfdeclarations, provincial, city, or municipal assessors resort to other means to determine fair market value (Section 204).

2. The second method of determining fair market value is found in the notification that everyone transferring real property must make to the local assessor (Section 205).
The notification is usually accompanied by documents attesting to the transfer like a deed of donation or a deed of sale. The Code requires notification to ensure that the assessment rolls of the LGUs are up-to-date.

3. The third method for computing fair market value uses abstracts of the records that the Registrar of Deeds is required to furnish provincial, municipal, and city assessors (Section 209). This abstract should be accompanied by a brief but sufficient description of the properties listed, their present owners, and if transfers have been made, the date of the most recent transfer with copies of corresponding deeds of sale, donation, partition, or other forms of alienation. The Deed of Sale usually contains the agreed upon selling price.\(^{15}\)

This selling price is used as one basis for determining current and fair market value. To verify the accuracy of the information in the deeds of sale and in the abstracts, the Local Government Code authorizes the assessor to summon owners of the properties to be affected or persons having legal interest to make depositions concerning the ownership, amount, nature, and value (Section 213).

The assessor prepares a schedule of fair market values for the different classes of real property situated in his jurisdiction (Section 212). This is presented to the Sanggunian or local legislative body for enactment and promulgation as an ordinance or local law. He can also recommend to the Sanggunian or local legislative body amendments to the schedule to correct errors in valuation (Section 214). The schedule is the basis for the assessments or reassessments that the assessor does for taxation purposes. The Local Government Code requires the LGU to disclose this schedule to the public.

The Right of Way law has other modes for determining just compensation. Its implementing rules and regulations provide the following three methods of land valuation:

1. The first method is the “Zonal Valuation” of the Bureau of Internal Revenue.

Under a negotiated purchase or sale mode, the first offer of the government to the landowner is zonal valuation. Zonal value is set by the Bureau of Internal Revenue and is meant to track the current selling prices of different types of land in the area.\(^{16}\) However, the law implicitly admits that BIR Zonal Valuation can fall short of the current selling prices of land in an area. Thus, it introduces a second method of valuation.

2. The second method is “fair market value.”

If the landowner rejects the BIR’s Zonal Valuation, the national government agency is authorized by the ROW law to offer fair market value. Its implementing rules and regulations contain eight criteria plus one prohibition for the determination of fair market value to be used by the national government agency or by the court appointed commissioners in the case of expropriation. (See Annex 3 for the 8+1 criteria) One of the more important criteria is “factor/s to enable the affected property owners to have sufficient funds to acquire similarly-

\(^{15}\) The selling price is usually understated to avoid paying higher taxes.

\(^{16}\) The Bureau of Internal Revenue is mandated by law to set the fair market value of land in consultation with competent appraisers in both the public and private sectors. The basis are documents of transfer filed with the Bureau and the Land Registration Authority; private records of banks, realtors, and appraisers; and records of city/municipal and provincial assessors. Studies have shown that the Bureau’s Zonal Value often falls short of current selling prices of land in the vicinity because of political intervention, lack of professional qualifications or standards for local assessors, inability to address market distortions, and the varying time periods in which the valuations are performed with no uniform year of conduct by the municipality. (Domingo and Fulleros, Real Estate price index: a model for the Philippines. http://www.bis.org/publ/bppdf/bispap21K.pdf)
situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible” (Section 5 h).

The ROW allows the government agency to engage the services of government financing agencies and/or private appraisers duly accredited by said institutions to determine fair market value (Section 11).

3. The third method is “replacement cost.”

The ROW law is definite that this method should be applied to the valuation of structures and improvements.

Section 10 of the implementing rules and regulations defines the replacement cost method as the “amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor’s profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures.” This method also takes into account the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices.

**The legal system lodges the responsibility of rendering final judgment on just compensation on the judiciary.**

Both the Local Government Code and the ROW Law defer to the power of the court—or its appointed agents—in deciding what constitutes the fair market value of property in cases of expropriation. Rule 67 of the Rules of Court governs expropriation. This Rule delineates the procedure to be followed in cases of expropriation. A flow chart of the procedure is found in Annex 4.

There are four important points in Rule 67 dealing with: the scope of lands to be covered by expropriation proceedings; prerequisites before the government can take possession of the property; a mechanism to resolve disputes; and, avenues for appealing the decision of the lower court. These four points are:

1. Land that appears to belong to the government but occupied by private individuals can be subjected to expropriation proceedings.

Uncertainty over ownership of the land is not a ground to dismiss the complaint to expropriate property. The acquiring agency only needs to register this in the complaint. Hence, land that appears to belong to government but is currently occupied by private individuals can be expropriated.

2. The acquiring agency is required to deposit with the National or Provincial Treasurer an amount fixed by the court. After the deposit, the agency can take possession of the property involved.

The court requires that the complaint be accompanied by a temporary deposit into the National or Provincial Treasurer. The court determines the amount of this deposit. When this is deposited, the acquiring agency can take possession of the property. The deposit is held by the National or Provincial Treasurer until the court renders its final judgment on what is just compensation for the property.¹⁷

3. The court appoints commissioners when the complaint for expropriation is challenged by the affected property

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¹⁷This provision appears to have been repealed by both the ROW Law and the Local Government Code. As previously mentioned, the ROW law requires a direct, initial payment to the land owner and not just the deposit of an amount with the National or the Provincial Treasurer. The ROW law pegs the amount of this direct payment to the full BIR Zonal Value of the land being expropriated. The Local Government Code sets the initial payment to the affected landowner at 15% of the fair market value stated in the current tax declaration. The only time the court could conceivably decide on the amount of the initial payment is when no BIR zonal valuation is available in the area.
Rule 67 gives the affected private landowner the opportunity to challenge expropriation. A challenge by the affected landowner compels the court to appoint three competent and disinterested persons as commissioners, whose duty is to ascertain and report to the court the just compensation for the property sought to be taken (Section 5). The commissioners are given 60 days from the date of their appointment to render a report, unless the court prescribes a longer or shorter period.

A copy of the report is given to the affected property owner and his legal counsel. The law gives them 10 days to file an objection (Section 7). When all objections and responses to the objections are given, the court then renders judgment on the report. It has the option to accept the report in full, reject some recommendations and accept others, recommit it to the commissioners for changes, or if the report is unacceptable, appoint a different set of commissioners altogether.

4. Affected property owners can appeal the judgment of the court.

The affected property owner can appeal the judgment of the lower court to an appellate court. An appeal, however, does not prevent the acquiring agency to enter the property and appropriate it for public use. However, the appellate court can reverse the judgment, in which case the property reverts back to its original owner and damages paid to him by reason of possession.

The policy framework is divided along administrative (central-local) and geographical, sectoral lines (urban, housing-rural, agricultural).

The Local Government Code governs expropriation to be done by LGUs. On the other hand, the ROW law prescribes the procedure to be followed by national government agencies acquiring right-of-way for national government projects.

Aside from the differing valuation methodologies, the laws differ on the amount of initial payment that the affected property owner is entitled to receive while expropriation is ongoing. In the Code, this is pegged at 15% of the land’s fair market value. The ROW law directs the acquiring government agency to immediately pay the landowner the equivalent of the full BIR Zonal Value for the land being expropriated.

The policy environment also follows the urban and rural divide. Separate laws govern involuntary resettlement in urban and in the rural sectors. These two laws are Republic Act 7279 or the Urban Development and Housing Act of 1992 and Republic Act 6657 or the Comprehensive Agrarian Reform Law of 1988.

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As defined in the law, national government agencies cover any department, office and agency of the national government, including any government-owned and controlled corporation or state college or university, authorized by law or its respective charter to undertake national government projects. (Section 1, Implementing Rules and Regulations of Republic Act 8974).
The Urban Development and Housing Act seeks to combine equity with efficiency in the use of urban land and resources. One of its more important objectives is the institution of an “equitable land tenure system that shall guarantee security of tenure to beneficiaries but shall at the same time respect the rights of small property owners and ensure the payment of just compensation” (Section 2d). To achieve these, the Act authorizes the acquisition of eligible lands, including the use of the State’s power of eminent domain, for a socialized housing program for informal settlers, underprivileged, and homeless citizens.

Eligible lands are all those in urban and ‘urbanizable’ areas, including areas that LGUs might identify as suitable for socialized housing, with certain exemptions (Section 4). Their acquisition follows a defined order according to ownership. Private lands are the last to be acquired (Section 9).

As mentioned previously, expropriation is a last resort (Section 10). Exempted from compulsory acquisition are parcels of land owned by small landowners. Also, the Urban Development and Housing Act grants the right of first refusal to residents of government land or government foreclosed land that the LGU or the National Housing Authority is planning to purchase for socialized housing.

Nevertheless, the law subjects all idle lands in urban and ‘urbanizable’ areas to expropriation (Section 11) if the owner fails to introduce improvements after a lapse of one year following receipt of the notice of acquisition.

Valuation of land qualified for socialized housing are to follow the guidelines of the Department of Finance. The basis is market value determined through BIR Zonal Valuation, or in its absence, the latest real property tax declaration. The valuation will factor in the blighted status of some of the lands (Section 13).

The second law, the Comprehensive Agrarian Reform Law, is a redistributive measure aimed at transferring agricultural lands of a predefined crop and size to qualified beneficiaries. To achieve this, the State’s power of eminent domain was applied in those cases where the landowner did not voluntarily offer land for sale. The Agrarian Reform Law introduced a valuation methodology for these lands (Section 17) and various modes of compensation. The valuation methodology includes the following variables.

1) Cost of the acquisition of the land;
2) Current value of like properties;
3) Its nature, actual use, and income;
4) Sworn valuation by the owner or the tax declarations;
5) Assessment made by government assessors;
6) Social and economic benefits contributed by the farmers and the farmworkers and by the government to the property; and,

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19 This can be seen in Sections 2a and 2b. Section 2a states that the Urban Development and Housing Act shall aim to “uplift the conditions of the underprivileged and homeless citizens in urban areas and in resettlement areas” by providing them decent housing at affordable cost, basic services, and employment services.” Section 2b states that another objective of the Act is the “optimization of the use and productivity of land and urban resources.”

20 Exempted from the Urban Development and Housing Act are those lands included in the coverage of the Comprehensive Agrarian Reform Law; those used for national defense and security of the State; those used, reserved or otherwise set aside for government offices, facilities and other installations, whether owned by the National Government, its agencies and instrumentalities, including government-owned and controlled corporations, or by the local government units, subject to certain limitations; those used or set aside for parks, reserves for flora and fauna, forests and watersheds, and other areas necessary to maintain ecological balance or environmental protection, as determined and certified to by the proper government agency; and those actually and primarily used for religious, charitable, or educational purposes, cultural and historical sites, hospitals and health centers, and cemeteries or memorial parks. These exemptions apply only when the use of such lands are maintained. (Section 5, UDHA).

21 Section 10 states: “Expropriation shall be resorted to only when other modes of acquisition have been exhausted.”
7) Nonpayment of taxes or loans secured from any government financing institution on the said land, if any.

The detailed formula is found in the Department of Agrarian Reform’s Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994.\textsuperscript{22}

The modes of compensation are combinations of cash payment, government securities like bonds, shares of stock in government-owned and controlled corporations, tax credits, land swapping, payment of tuition in school, security for loans in government banks, and payment of fees in government hospitals.

**The consequence of this division is the lack of consistency in protection for persons affected by involuntary resettlement.**

The consequence of dividing along administrative, geographical, and sectoral boundaries is the uneven protection for persons affected by involuntary resettlement. For instance, the Urban Development and Housing Act requires that underprivileged, homeless, and informal settlers cannot be evicted from public or private lands without a valid court order and without proper consultation.

In cases of eviction, its implementing rules and regulations provide that relocation should be carried out in a humane manner. The Act also requires the State through the National Housing Authority and/or the LGU to provide resettlement sites. These resettlement sites should have livelihood and basic services like potable water, sewerage, power, roads, and transport facilities (Sections 21 and 22). The implementation of the Urban Development and Housing Act, therefore, should result in the urban poor achieving residential security of tenure where previously they had none.

There is no statute providing the same protections and entitlements to the homeless and informal settlers in the rural areas. This is so despite a Constitutional mandate that “Urban and rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner” (Article XIII, Section 10).

The entitlements of the rural poor, unless they are agrarian reform beneficiaries,\textsuperscript{23} indigenous peoples, or bona fide tenants or agricultural lessees,\textsuperscript{24} are limited to compensation at replacement cost of the affected structures and/or improvements. Without security of tenure, these entitlements do not amount to much. (See Case Study 1).

\textsuperscript{22} The formula in DAR Administrative Order No. 6, as amended, is as follows:

\[ LV = (CNI \times 0.6) + (CS \times 0.3) + (MV \times 0.1) \]

- \( LV \) = Land Value
- \( CNI \) = Capitalized Net Income
- \( CS \) = Comparable Sales
- \( MV \) = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

\textsuperscript{23} Agrarian reform beneficiaries have Certificates of Land Ownership Award (Section 28). The certificate grants temporary and restricted rights to the land to the beneficiary. The Land Bank of the Philippines has a lien by way of mortgage on the land awarded to the beneficiaries. The mortgage can be foreclosed if the beneficiary is unable to pay an aggregate of three annual amortizations (Section 26). Even with the certificate, the beneficiary cannot sell the land or transfer except by hereditary succession, to government, or to other agrarian reform beneficiaries within a period of ten years (Section 27). If the land has not been fully paid, a condition for the transfer is that the receiver must cultivate the land himself.

\textsuperscript{24} Executive Order No. 1035 directed government to provide to tenants and settlers (agricultural) displaced by ROW Acquisition financial assistance equivalent to the average annual gross harvest for the last three years for both primary and secondary crops and should not be less than Php15,000 per hectare. Section 7 of Republic Act 6389 declares that in the event of any change in land use from agricultural to other uses, agricultural lessees are entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years.
The policy framework limits resettlement options to those whose tenure is insecure. Affected private property owners and landowning residents whose incomes are above the poverty threshold do not qualify for socialized housing under the Urban Development and Housing Act. Consequently they are compensated in cash and are expected to provide their own replacement land and housing.

Moreover, the Act is basically a shelter or housing law. Its mantle of protection does not extend to the commercial properties of the poor. Vendors registered with their LGUs are protected against arbitrary demolition through an Executive Order issued by former President Fidel V. Ramos.

However, registration is of little help if their place of business is the pedestrian walkway, other easements, or the road itself. The law declares that these places are “beyond the commerce of man” and, therefore, they have no right to build or conduct business there in the first place. Their structures are illegal and therefore not subject to compensation when dismantled. Neither does the law provide any compensation for their loss of income during relocation.

Strictly speaking, informal settlers in public lands or easements who simultaneously use their residences as places of commerce are excluded from becoming beneficiaries in the socialized housing program. The assumption is that having a business, they have the means to obtain their own housing. When dismantled, structures used for commercial purposes or even mixed use structures are not entitled to compensation or replacement. The reason is to discourage professional squatting.

The Urban Development and Housing Act is silent on other vulnerable groups like those in rental housing, employees who have to quit their jobs or incur higher costs of transport and other expenses because their enterprises have to relocate elsewhere, and daily wage employees who lost income in the days when the enterprises had to close and transfer to another site. The Rent Control Law protects renters from arbitrary eviction by their landlords; however it is silent on eviction due to expropriation. In the case of displaced employees/workers, the legal system presumes that their principals or employers will shoulder the cost of compensation following the principles and procedures enunciated in the Labor Code.

**Case Study 1. Uneven Protections for Project Affected Persons: The Bukidnon-Davao City National Highway Project**

The Department of Public Works and Highways approach to involuntary resettlement is determined by the project’s funding source. This is clearly shown in the Bukidnon-Davao City National Highway Project (1999-2002). One section of this highway was initiated under the World Bank’s Highway Management Project and continued under the National Road Improvement and Management Program Phase 1. A Resettlement Action Plan based on the World Bank’s Operational Policy was prepared in May 2000.

The RAP was subsequently implemented and those affected were compensated according to the entitlement package. Another section of the same national road from Bukidnon to Davao City was financed by the Asian Development Bank through its Sixth Road Project. In this case another RAP was prepared following Bank resettlement guidelines. This RAP was also implemented and project affected persons were compensated according to the entitlement package. The third section of the road was financed by the Philippine Government. For this stretch there was no RAP elaborated and the Department of Public Works and Highways only paid the compensation required by national legislation. In the case of squatters and non-title holders there was no compensation.
The policy framework is strongly concerned with tenure but the multiplicity of instruments and the introduction of new policies complicate resettlement implementation and introduce tension in the policy environment.

Another feature of the policy framework is the large number of laws that provide various kinds of tenure (evidenced by a specific tenurial instrument) to different types of land, almost all of which belong to the public domain. (See Annex 5 for a list of these laws.) Some of these tenurial instruments can be perfected into a full-fledged title; others are terminal instruments. Many of these instruments were introduced to encourage development in what were then frontier areas, and some have outlived their usefulness. Others were introduced in recognition of changes in land use and to formalize claims by long-standing occupants while avoiding alienation or transfer of ownership.

An example of such a tenurial instrument is the “occupancy rights” granted by Republic Act 7586 or the National Integrated Protected Areas System Act25 to “tenured migrant communities.” These are “communities within protected areas which have actually and continuously occupied such areas for five (5) years before the designation of the same as protected areas in accordance with the NIPAS Act and are solely dependent therein for subsistence” (Section 4, l). The grant of occupancy rights including a cut-off date to distinguish tenured migrants from new entrants defused a potentially dangerous conflict between environmental protection and social objectives.

Declaration of protected areas can be contentious because it entails involuntary restriction of access to sources of livelihood. The law instituted a participatory regulatory mechanism, the Protected Area Management Board (consisting of representatives from the national government, the affected local governments, civil society organizations, and local community organizations), to oversee the implementation of management and land use plans for the protected area.

Tenurial instruments like occupancy rights to tenured migrants provide protection in the event of involuntary resettlement. The large number of instruments, however, fragments land administration can complicate the determination of eligibility and entitlements in case of involuntary resettlement. Other attempts at securing tenure not only introduce complexity but also tension in the policy environment.

An example is Republic Act 8371 or the Indigenous People’s Rights Act, which became law in 1997 but did not come into force till 2001 due to challenges to its constitutionality—a challenge resolved by the Supreme Court though a technicality. Voting in the Supreme Court was deadlocked. The law was declared constitutional not because of a satisfactory resolution of the substantial aspects of the case but because of the Rules of Court. The crux of the challenge is the conflict between the Regalian doctrine and the concept of native title introduced by the Indigenous Peoples’ Rights Act.

The Regalian doctrine states that all lands of the public domain, waters, minerals, coal,

25 Republic Act 7586 or the National Integrated Protected Areas System became law in 1992 for the purpose of securing “for the Filipino people of present and future generations the perpetual existence of all native plants and animals through the establishment of a comprehensive system of integrated protected areas within the classification of national park as provided in the Constitution.” This comprehensive system covers “outstandingly remarkable areas and biologically important public lands that are habitats of rare and endangered species of plants and animals, biogeographic zones and related ecosystems, whether terrestrial, wetlands or marine.”
petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. These cannot be alienated or privatized except in the case of agricultural lands. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. (Article XII, Section 2 of the Philippine Constitution.)

On the other hand, the Indigenous Peoples’ Rights Act recognizes the concept of native title. Section 31 defines native title “as pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by indigenous cultural communities and indigenous peoples, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest.”

By the concept of native title, ancestral domains of indigenous cultural communities have never been State owned. The rights of indigenous cultural communities to these territories precede the State and are not bestowed by the State. If ever the State confers a formal title to the community over these lands, what is conferred is recognition of ownership and not ownership per se. It follows that what the State never owned, it cannot take back through the use of eminent domain. Therefore, there can be no such thing as expropriation of ancestral domains and no involuntary resettlement of indigenous cultural communities

No portion of the ancestral domain can be taken for public use without the consent of the indigenous cultural communities holding native title. Transactions between the State and indigenous cultural communities over ancestral domains are in the nature of a purely private transaction, willing seller-willing buyer.

However, the State’s power of eminent domain is recognized by Section 7c of the Indigenous Peoples’ Rights Act.26 This recognition is made in the context of the indigenous community’s right to stay inside its ancestral domain. Section 7c circumscribes this power of the State in its substantial, procedural, and durational aspects:

- **Substantial**, by describing the relocation to be an exceptional measure (meaning not in the ordinary course of events or the conduct of state affairs and obviously as a last resort) or due to a calamity or catastrophe;
- **Procedural**, by requiring the free and prior informed consent of indigenous groups;
- **Durational**, by declaring it to be only temporary, not permanent, and affirming and guaranteeing the right of the displaced indigenous community’s right to return to their ancestral domain as soon as the grounds for relocation cease to exist.

The procedural aspect introduces serious difficulties. With the requirement of free and prior informed consent, it can be said that the power of eminent domain no longer exists. The State is bound to respect the refusal of the indigenous peoples and cannot proceed with

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26 Section 7c of the Indigenous Peoples Rights Act states:

Right to Stay in the Territories -- The right to stay in the territory and not be removed therefrom. No indigenous cultural communities and indigenous peoples will be relocated without their free and prior informed consent, or through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the indigenous cultural communities and indigenous peoples concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, indigenous cultural communities and indigenous peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury.
resettlement. The problem is: What if the State presses on with its case? Under what rules would an impasse between the State and the indigenous community be resolved?

Furthermore, the resettlement is to be of temporary duration. This limits the application of eminent domain to those cases where the change of land use is reversible and relocation is temporary. This goes against the grain of most development projects where the change in land use is irreversible and relocation is more or less permanent with little possibility of return.

Another source of tension is Republic Act 7942 or the Philippine Mining Act of 1995. The Mining Act basically affirms the Regalian doctrine of State ownership over all mineral lands (Sections 2 and 4). Following this doctrine, the Mining Act authorizes holders of mining rights to enter into private lands (Section 76). Only prior notification is required. Damage to property of the surface owner is to be compensated according to the provisions of the law. It is silent on who shall bear the costs of transfer and resettlement.

Section 76 has provoked court cases between affected landowners and indigenous peoples on one side and mining companies on the other. The Indigenous Peoples’ Rights Act requires consent from the affected indigenous peoples. That consent is to be embodied in a memorandum of agreement detailing not only compensation but also benefits that indigenous peoples would receive over the duration of the mining operation. However, the case is more complicated with non-indigenous landowners. Protection and entitlements found in the Indigenous Peoples’ Rights Act are unavailable to them.

The policy environment is strong on voice and disclosure.

The policy bases for disclosure of project plans and their adverse impacts are present. The Philippine Constitution declares the “full public disclosure by the State of all its transactions involving the public interest” as an official policy (Article II, Section 28). Citizens have the right of access to information on matters of public concern (Article III, Section 7).

The Constitution also guarantees the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making. It directs the State to facilitate the establishment of adequate consultation mechanisms (Article XIII, Section 16). Lesser statutes put these principles into operation by requiring civil servants to provide information to the public (Section 5 of the Code of Conduct and Ethical Standards for Government Officials and Employees) and requiring public consultation prior to demolition, relocation, and resettlement.

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27 Section 2 of Republic Act 7942 states: “All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.” Section 4 of Republic Act 7942 states: “Mineral resources are owned by the State and the exploration, development, utilization, and processing thereof shall be under its full control and supervision. The State may directly undertake such activities or it may enter into mineral agreements with contractors. The State shall recognize and protect the rights of the indigenous cultural communities to their ancestral lands as provided for by the Constitution.”

28 Section 76 states: “Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein: Provided, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations; Provided, further, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.”
(UDHA, Section 28, 2). Affected communities often learn about project-induced involuntary resettlement through the public consultation and information dissemination required by the Philippine Environmental Impact System.

**PROSPECTS OF HARMONIZATION**

Stocktaking of the country’s involuntary resettlement policy framework prepares the ground for its eventual harmonization with international good practice. As discussed in Chapter 1, the involuntary resettlement policies of the major financing institutions operating in the country differ only in degree and in detail. On the broad themes that an involuntary resettlement policy ought to cover, there is no disagreement. The involuntary resettlement policies of the major donors are harmonized around the eight core areas or themes discussed in the previous chapter.

The next step is to determine how near or how far is the domestic policy framework with international practice and assess the prospects of harmonization along each of the eight themes. In this chapter, seven of the eight themes will be discussed. The eighth, Resettlement Action Planning, will be discussed in the next chapter.

1) Process or Mode of Acquisition of Affected Properties;
2) Inclusiveness and Consistency of Treatment of Project Affected Persons;
3) Valuation and Compensation;
4) Humane Procedures for Relocation and Resettlement;
5) Measures to Restore Livelihood and Standard of Living;
6) Protection of Vulnerable Groups like Indigenous Peoples, Women, Elderly, Children, Persons with Disabilities; and,
7) Voice: Disclosure of Information to, Participation of, and Choice on the part of

Source: Simon Peter Gregorio, World Bank
Project Affected Persons in the Planning and Implementation of the Mitigating Measures.

**Process or Mode of Acquisition**

The policy framework allows for various ways of acquiring land, including one—donation—that is only to be used in exceptional cases under international good practice. Nevertheless, donation as the first offer in negotiating with the affected landowner is optional and at the discretion of the government negotiator. More importantly, the use of eminent domain is a last resort and subject to due process with the possibility of appeal and reversal. In the case of resettlement sites, the Urban Developing and Housing Act declares that private lands are the last to be expropriated for socialized housing owners. Small land owners are also exempted from coverage of land for socialized housing for resettlement.

PROSPECTS: In this area, the policy framework can harmonize with international practice without need of new legislation or executive issuance.

**Inclusiveness and Consistency of Treatment**

The policy framework displays a strong urban bias in the scope of protections it extends to the urban poor, the unsheltered, and informal settlers. It lacks similar safety nets for the rural poor and informal settlers, unless they belong to the tenured agricultural underclass.

Even in urban areas, the scope of protection extends only to the residential property of the urban poor and does not cover their commercial assets sitting on land not their own. Landowning residents are presumed to be capable of finding replacement land and housing on their own; consequently, they are compensated in monetary terms. The entitlements due to workers of affected enterprises are not articulated, as are the protections for commercial and residential renters.

PROSPECTS: The uneven treatment of different project affected persons makes it difficult to immediately achieve harmonization in this area. New legislation might be required to remove the inconsistencies and introduce protections for affected persons who are not normally visible, e.g., renters and workers in affected enterprises, especially small ones.

**Valuation and Compensation**

The policy framework permits use of different valuation standards for national and local government projects. This can lead to different amounts of compensation for similarly situated lands and other properties, depending on the party acquiring the land and the court-appointed commissioners. The process of land acquisition and the amount of provisional or initial payment are also different for national and local government projects. All of these can introduce confusion and precipitate conflicts between project affected persons and implementers.

PROSPECTS: In this area, the policy framework needs substantial work to attain internal coherence, let alone harmonization with international good practice.

**Humane Procedures for Relocation and Resettlement**

The Constitution directs that all evictions and demolitions be done in accordance with law and in a humane manner. The Urban Development and Housing Act and its implementing rules and regulations have a detailed process and procedure for relocation and resettlement. (See Annex 6.) The implementing rules and regulations require clearance from the Presidential Commission for the Urban Poor and the LGUs before demolition and eviction can take place. The Commission is also tasked to monitor the conduct of demolition and
eviction and the condition of displaced persons in the resettlement sites.

PROSPECTS: With additions extending the same protection to rural informal settlers, the policy can easily be harmonized with international good practice.

Measures to Restore Livelihood and Standard of Living

The Urban Development and Housing Act directs that all resettlement or socialized housing sites be provided with basic services and serviced by adequate transport facilities. Livelihood provision is also mandatory. However, livelihood as an income restoration measure is available only to those resettled or to beneficiaries of the socialized housing program. There are no policy pronouncements compelling project implementers to do the same for displaced vendors and employees of micro and small enterprises that have to be relocated or have shut down due to the project.

PROSPECTS: Significant work still needs to be done in this area. Harmonization might not be forthcoming in the immediate future.

Protection of Vulnerable Groups like Indigenous Peoples, Women, Elderly, Children, and Persons with Disabilities

The Indigenous Peoples’ Rights Act requires ‘consent’ from affected indigenous peoples before they are to be displaced from their ancestral domain. Grounds for displacement are defined in the Act and in the Free Prior and Informed Consent Guidelines of 2006. The Philippines has laws protecting women, elderly, children, and persons with disabilities. These laws can be applied in the context of resettlement. The problem is in the implementation and attention to the different impacts that the same event may have on different groups.

PROSPECTS: Harmonization can proceed swiftly in this area.

Voice

There is strong basis in the Constitution for disclosing project information. The problem is the absence of a stronger law, such as a Freedom of Information Act, to counteract a government tendency to be less than transparent especially on controversial matters and to standardize policies and practices across agencies.

The Local Government Code requires the disclosure of the schedule of fair market values prepared by local assessors. Persons whose properties are the subject of expropriation can refer to this schedule to guide them in their negotiations with the implementing government agency. Participation and consultation also have strong legal backing in the country. On paper, underprivileged, homeless, and urban poor who lack tenure have a choice in resettlement sites, financing schemes, and partnerships through the Community Mortgage Program spelled out in the Urban Development and Housing Act.
PROSPECTS: The policy framework can still be improved but the foundations that can facilitate harmonization are present.

CONCLUSION
Prospects for harmonization are positive in four areas: 1) Process or Mode of Acquisition of Affected Properties, 2) Humane Procedures for Relocation and Resettlement, 3) Protection of Vulnerable Groups, and 4) Voice. The policy or legal foundations in each of these four areas are sufficient and substantial so that harmonization has a good chance of succeeding. Whatever distance remains between international good practice can be bridged by softer forms of legislation like executive issuances, department orders, guidelines, and operating manuals.

In contrast, the policy framework requires work in three areas: 1) Inclusiveness and Consistency in Treatment of Affected Persons, 2) Valuation and Compensation, and 3) Measures to Restore Livelihood and Standard of Living. The policies in each are either insufficient to match the scope of international good practice or conflicting so that they lead to mixed outcomes for project affected persons.
Involuntary resettlement resulting from development projects involves many agencies—from those tasked with project approval, to those implementing the project, to those charged with monitoring and evaluation. (Annex 7 lists these agencies and their roles.) This chapter analyzes the institutional environment for resettlement in the Philippines by using the project cycle as a framework. It discusses involuntary resettlement as addressed in different parts of the cycle, the agencies involved, and challenges in each. It proceeds to a presentation of three cases that illustrate problems and opportunities. This chapter concludes with a summary of the strengths and gaps of the institutional environment for involuntary resettlement.

PROJECT IDENTIFICATION AND PREPARATION

Identification of the project begins with the proponent agency, acting either alone or in consultation with others. Priority projects are entered into the six-year Medium Term Philippine Development Plan, with a mid-term review and update after the third year. The Plan covers various sectors such as infrastructure, agriculture, trade and industry, housing, and social services, among others. National government agencies frequently base their annual priorities on the State of the Nation Address that the President delivers at the opening of Congress in July of each year.

For LGUs, project identification begins with the formulation of the Local Development Plan as required by the Local Government Code. The Local Development Plan is prepared with representatives of various sectors who are members of the Local Development Council. The three-year Local Development Plan is translated into Annual Investment Plans. Local government planners and implementing offices also obtain directions from the annual agenda announced by the Local Chief Executive at the start of the budget preparation period in the middle of the calendar year.

Once a project is identified, the agency prepares a general project description and undertakes feasibility studies. Consultants are often hired to undertake feasibility studies. At this stage, the implementing agency can already determine the likelihood of a project causing involuntary resettlement. Usually, social effects are identified in the course of environmental impact studies that consultants perform to obtain an Environmental Compliance Certificate from the Environmental Management Bureau of the Department of Environment and Natural Resources.

In linear projects like national highways, these studies can provide ballpark figures on the number of households and structures likely to be affected using straight line/plane or linear mapping. But no census of project affected persons, land, and structure are undertaken to avoid raising expectations and fears. The agency remains cautious as the overall feasibility of the project has yet to be established and no clearance has been obtained from the Environmental Management Bureau or if applicable, the Investment Coordination Committee. Resettlement Action Plans are not prepared because of limited skills in the proponent agencies and the effort to save on costs. Oversight agencies also do not require a resettlement action plan.
PROJECT APPRAISAL

The appraisal of projects in the Philippines differs depending on the need for clearance from the Investment Coordination Committee and an Environmental Clearance Certificate.

The scope of project appraisal depends on the route the projects take. Major Capital Projects require Investment Coordination Committee appraisal and clearance and approval from the National Economic and Development Authority Board before they can be implemented. Projects outside the scope of the Investment Coordination Committee have to pass through the Environmental Management Bureau if they fall within the purview of the Philippine Environmental Impact Statement System.

The ICC Route

The Investment Coordination Committee is an inter-departmental body consisting of a Cabinet Committee, a Technical Board, and a Secretariat. (Annex 9 contains a detailed explanation of the functions and composition of each.) The Committee advises the President on Major Capital Projects to be undertaken by the Philippine Government. In the latest Committee guidelines, ICC covers all programs and projects of national line agencies with a total cost of PhP500 million and above, regardless of financing.

Committee Review also covers private sector projects seeking concessional Overseas Development Assistance financing under on-lending arrangements and/or National Government financing guarantees, including infrastructure projects to be implemented under Public-Private Partnership schemes. (See Annex 8 for types of projects covered by ICC review and their cost thresholds.)

To properly advise the President, the Investment Coordination Committee conducts a review and evaluation of two important aspects of these Major Capital Projects:

• The fiscal, monetary, and balance of payments implications;
• The technical, financial, economic, social, institutional development, and feasibility/viability of the projects and their consistency with sectoral plans and geographical strategies.

The task of undertaking project evaluation rests with the Investment Coordination Committee Secretariat, specifically the National Economic and Development Authority sector staff under which the project falls. For example, if the project is in the agricultural sector proposed by the Department of Agriculture, the NEDA Agriculture staff does the project evaluation, including the social aspects. If it were an infrastructure project submitted by the Department of Public Works and Highways, the NEDA Infrastructure Staff performs the evaluation. The Investment Coordination Committee submits its findings and recommendations to the Investment Coordination Committee Technical Board, which discusses and deliberates on the economic, social, financial, technical, and institutional aspects of projects, including the policy issues.

The Technical Board makes recommendations to the ICC Cabinet Committee, which in turn recommends to the NEDA Board for approval decisions on specific projects/programs submitted for Investment Coordination Committee clearance as well as other issues concerning the Committee. The NEDA Board is chaired by the President.

Involuntary resettlement issues reach the attention of the Investment Coordination Committee through the evaluation of the social aspects of the Major Capital Project done by the different staff. Three of the requirements that the Secretariat requires the proponent agency to submit are:
1. Agency Plan for Rights-of-Way acquisition when it is applicable;
2. Environmental Impact Statement; and,

One section of the Environmental Impact Statement is devoted to the anticipated social impacts and the social acceptability of the project. If the project will cause major displacement, relocation, and resettlement, the Environmental Management Bureau usually requires the submission of a social development program as a condition for the issuance of an Environmental Compliance Certificate. One of the reviewers that the Environmental Management Bureau invites to evaluate the Environmental Impact Statement is a social development specialist. The Environmental Compliance Certificate normally lists as one of its conditions the implementation, monitoring, and evaluation of this social development program.

This is the ideal institutional set-up as spelled out in the Investment Coordination Committee Project Evaluation Guidelines. In reality, evaluation proceeds without a resettlement plan, which is not the same as a right of way acquisition plan. The Committee Secretariat does not require a resettlement plan because it immediately increases the risk profile of the project, boosts the cost to a point where a project with major involuntary resettlement might not pass the threshold for economic feasibility (the Net Present Value and the Internal Rate of Return) required for endorsement to the Board of the National Economic and Development Authority. While the proponent agency normally includes the resettlement cost in the total project cost, the computation of the internal rate of return and net present value does not include resettlement cost because of methodological limitations.

This is a major gap. It underestimates the project’s financial requirements and the time frame and overestimates its acceptability to affected persons. Financial and social aspects are usually the major reasons for delay in implementation. The lack of a resettlement plan also means that benefits coming from successful resettlement are not covered in the appraisal.

The root of the problem is the lack of a definite policy statement obligating projects that need Investment Coordination Committee evaluation and clearance to prepare, if applicable, a Resettlement Action Plan and not just a ROW plan.

An added problem is the absence of a domestic project preparation facility that an agency can tap into for the preparation of its projects. Foreign-assisted projects come with project preparation funds but locally funded ones do not. The agency has to source the funds from its own budget. Spending on project preparation, including a RAP, is a risk for the agency. It is sunk cost that the agency cannot recover if the project does not obtain Investment Coordination Committee clearance or is disapproved by the NEDA Board.

Thus, the proponent agency normally defers the preparation of the RAP after the project has obtained Investment Coordination Committee clearance. Preparation of the RAP is usually done in compliance to conditions set by multilateral financial institutions and bilateral funding agencies. For the rare locally funded projects that pass through the scrutiny of the

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29 A resettlement plan is more comprehensive than a rights of way acquisition plan, as a resettlement plan not only involves private landowners but also informal settlers on public land. It should identify vulnerable groups, especially indigenous people, women, children, the elderly, persons with disabilities and mitigating measures to prevent impoverishment and to restore living standards of all affected persons.
Investment Coordination Committee, it is unusual for a RAP to be prepared.

The Non-ICC Route

The Investment Coordination Committee excludes from its purview projects below PhP500 million. Also excluded are projects funded by LGUs from their own resources. For these projects, the critical point for involuntary resettlement is the project’s inclusion or non-inclusion into the Philippine Environmental Impact Statement System.30

To be included in the Environmental Impact Statement System, the project needs to be (a) an environmentally critical project or Category A; (b) non-critical but implemented in environmentally critical areas or Category B; and (c) intended to directly enhance environmental quality or address existing environmental problems not falling under Category A or B. Projects that do not fall in any of these three categories and have little or no environmental impact are given a Certificate of Non-Coverage.

Involuntary resettlement enters into the picture through the project’s social acceptability, which is among the key principles of the Philippine Environmental Impact Statement System. As defined in DAO 30-2003, social acceptability refers to the project’s environmental impact (Section 3 ff) and concerns over them (Section 1f). It does not refer to social impacts per se, such as the potential for impoverishment, although DAO 37-1996 lists among the required contents of the Environmental Impact Statement, a specific chapter on socioeconomic impact assessment for projects with significant impact on population (Article III, Section 9 l).

Furthermore, DAO 37-1996 requires the Department of Environment and Natural Resources to consider as a factor for social acceptability, the project’s promotion of social and intergenerational equity and poverty alleviation (Article IV, Section 1 d). Nonetheless, the Environmental Impact Statement System does not explicitly require projects to submit a resettlement action plan alongside an Environmental Management Plan. A resettlement action plan might be required as one of the conditions for Environmental Compliance Certificate, and in practice, the preparers of the Environmental Impact Statement normally include a social scientist within its ranks.

One limitation of the Environmental Management Bureau route is that appraisal of the financial and economic viability of projects is left to proponents. It assumes that proponents have done their due diligence in these aspects. This is important since involuntary resettlement has major cost implications—and major benefits if carried out properly.

PROJECT BUDGETING

A precondition for Investment Coordination Committee appraisal is the submission of a clearance from the Department of Budget and Management attesting to the availability of funds. In the case of foreign-assisted projects, the Department issues a Multi-Year Obligation Authority for the entire lifespan of the project. Funds for resettlement are usually the government’s counterpart and included in the Obligation Authority. In the absence of a RAP, the figures cited are rough estimates causing inefficiency in allocation.

30 The important policies here are: Presidential Decree 1586 that established the Philippine Environmental Impact System; Presidential Proclamation 2126, series of 1981 that proclaimed certain areas and types of projects as environmentally critical and hence included in the scope of the Environmental Impact Statement System; Department Administrative Order No. 37-1996 that reinforced the implementation of the Environmental Impact Statement System; and Department Administrative Order No. 30-2003 that set the Implementing Rules and Regulations for the Philippine Environmental Impact Statement System.
and usually underestimation of resettlement cost. Budgeting also fails to take into account price escalation of land and building materials caused by delays.

The Department of Budget and Management releases the budget for resettlement to the project proponent, even if the agency has neither the capability nor the mandate to undertake resettlement. For example, budget for resettlement in national highway projects are lodged with the Department of Public Works and Highways, even if resettlement and related livelihood activities are outside its mandate. This belongs to the LGU or the National Housing Authority. This practice raises coordination problems since the LGU and National Housing Authority, not having been involved in project identification or preparation, have not allocated funds for the activity. With no participation, no sense of ownership is created. No ownership and no funds mean that no action is taken, and the project is delayed because of resettlement.

Transfer of funds across agencies is difficult because of Commission on Audit regulations and accountability issues. This happens not only in national government projects but also in sub-national projects involving the relocation of a community from one LGU to another. The burden falls on the receiving LGU. It has to look for funds within its budget and realign some of them to accommodate the new entrants.

Budget and transfer issues trigger problems of equity because, more often than not, the affected households are removed from wealthy LGUs and relocated to lower income LGUs. The project benefits accrue to the former while problems of resettlement and integration pass on to the latter. This has caused some LGUs to refuse resettlement, especially of informal settlers. Rightly or wrongly, resettlement sites are perceived to bring social problems to host communities, e.g., increase in drug use, juvenile delinquency, and crimes against persons and property. Resettlement sites also tend to lower the market value of lands in their vicinity.

RESETTLEMENT IN PROJECT IMPLEMENTATION

Institutional Policies and Mechanisms

Resettlement implementation is the responsibility of the proponent agency. For this purpose, some agencies where involuntary resettlement is a regular project risk have adopted a resettlement policy and designated a specific office to handle involuntary resettlement concerns among others. Some treat resettlement in an ad hoc fashion; they develop the policy and designate responsible persons or units to handle resettlement when it occurs. Discussed below are five government agencies that regularly confront involuntary resettlement and a description of their policies and institutional mechanisms. The first two are line agencies of the government; the rest are government-owned and controlled corporations.

Department of Public Works and Highways

This agency developed a policy called the Land Acquisition Resettlement and Rehabilitation Framework to deal with Involuntary Resettlement and Indigenous Peoples in 2000 as part of the First National Roads Improvement and Management Project. It subsequently developed an Infrastructure Right of Way Manual and a Social Environment Management System Manual to help its various bureaus do Environmental Assessment, Social Assessment, and Resettlement Action Planning. The Department requires the preparation of a

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31 The Department of Public Works and Highways updated this for the Asian Development Bank Sixth Roads Project in 2004. It was again revised in 2006 to reflect the Indigenous Peoples’ Rights Act and new National Commission on Indigenous Peoples guidelines in preparation for the Second National Roads Improvement and Management Project.
Case Study 2. RAP Completion Before the Start of Civil Works: The First National Roads Improvement and Management Project

Involuntary resettlement issues can be a project stopper in highway projects. Ignoring or underestimating resettlement concerns can mean delays, or worse, complete stoppage. To avoid this from happening, the World Bank required that RAPs be prepared for contract packages anticipated to have involuntary resettlement. It required that land acquisition, compensation, and if applicable, relocation of project affected persons be completed before bidding for the civil works component is done.

For this purpose, the Department of Public Works and Highways hired an External Monitoring Agent who worked with the Department’s Environmental and Social Safeguards Office to ascertain if RAP implementation has been completed. The external agent’s work continues on to the construction stage where due to changes in design, more private land has to be acquired, more structures/improvements are affected, and affected persons have to be compensated. After the road is completed, the external agent does a post-RAP evaluation to determine impacts of the mitigating measures.

This was the first highways project that required a resettlement instrument. When project implementation started in 2000, the Department of Public Works and Highways had the notorious reputation as a “demolition squad.” Major infrastructure projects of the government were at a standstill or experiencing major slippages because of the opposition of project affected persons.

NRIMP-1 successfully solved these problems by requiring a resettlement action plan and making its full implementation a prerequisite for commencing construction. Monitoring did not stop after the RAP had been implemented; it continued on during actual construction to ensure that additional displacement or acquisition is properly compensated and mitigated.

Resettlement Action Plan in all its projects (DPWH Department Order No. 5 and 327, Series of 2003). Department Order 187, Series of 2002, directs all offices to include the cost of ROW acquisition, squatter relocation, and the development of a resettlement site in the total construction cost of any proposed project.

The unit that oversees resettlement implementation in the Department is the Environmental and Social Safeguards Office. This office was originally the Environmental Impact Assessment Project Office created as part of the World Bank-funded Highway Management Project. The Safeguards Office is under the Assistant Secretary for Planning. However, the office has yet to have its own plantilla or its own funding other than those from foreign-assisted projects. Safeguards Office staff members are seconded from other units.

There are regional Environmental Impact Assessment Officers but no single staff member dedicated to involuntary resettlement concerns or the social dimension of infrastructure projects. Negotiations with landowners are carried out by ROW Agents at the District Engineering Office but ROW agents are casuals and not part of the agency’s plantilla, raising accountability issues and problems with institutional memory when turnover happens.

RAP preparation in the DPWH is usually done by consultants, in some cases with the participation of the District Engineering Office that covers the affected areas. District Engineering Offices are tasked with validating the RAP prepared by the consultants. Funds to compensate affected persons are downloaded to the District Engineering Offices, which pay the affected persons.

In the First National Roads Improvement Management Project, the DPWH created the Resettlement Implementation Committees, a multi-sectoral body consisting of representatives from the DPWH Regional Office and District Engineering Office, the LGU, the regional office of the National Commission on Indigenous Peoples, officials of affected barangays or villages, representatives of
project affected persons, and representatives of affected indigenous peoples. The role of the Resettlement Implementation Committee is to assist in land acquisition, validation if the person or household is indeed project affected, grievance handling, and the enforcement of ROW ordinances. RAP implementation was monitored by an external party. (See Case Study 2.)

For urban projects, ROW acquisition is handled by the Infrastructure Right of Way Project Management Office.

**National Irrigation Administration.** This national government agency is responsible for developing irrigation systems. In 2006, the National Irrigation Administration was implementing 10 nationally funded projects and six foreign funded projects with a total budget of PhP3 billion (USD60 million). In 2006 and beyond, this office has 67 projects ongoing or in the pipeline with a total budget of more than PhP122 billion (USD2.5 billion).32

Many of these projects entail resettlement. Despite a relatively long history with resettlement33 the National Irrigation Administration has neither an agency-wide involuntary resettlement policy nor any written guidelines. Involuntary resettlement is handled on a case-to-case basis, with a Resettlement Action Plan prepared if needed. (See Case Study 3.) If a project is funded externally, the RAP follows the procedures of the financing institution, which in many cases is either the World Bank or the Asian Development Bank.

In a nationally funded project, the National Irrigation Administration may ask other government offices, such as the National Housing Authority and LGUs, to undertake the involuntary resettlement. This situation produces differences in how project affected persons are dealt with. For example, in the Participatory Irrigation Development Project, which is financed by a World Bank loan, a full-scale RAP was prepared by international consultants based on World Bank operational policies on resettlement. The project also includes an indigenous peoples framework, which was also prepared by international consultants. According to NIA it was only from 2005 onwards that the institution took indigenous peoples issues into account.

**National Power Corporation.** Publicly referred to as ‘Napocor’, this is a government-owned corporation in charge of electricity generation. Napocor formulated a resettlement policy handbook in 1994, which was amended in 1995 and 1996.34 The policy is guided by international operational policies and national legislation such as Republic Act 7279 (Urban Development and Housing Act), EO 1035 (ROW), Republic Act 7160 (Local Government Code), and Republic Act 7638 (Energy Act). The handbook includes copies of relevant legislation, organization, and division of responsibilities among its units. It begins with the objectives of the RAP, which are the following:

1. To resettle smoothly and effectively project affected persons residing within areas affected by power generation/transmission line projects and associated facilities.
2. To restore the economic life of project affected persons or better yet to improve it.
3. To define the responsibilities of concerned Napocor offices as well as to assist NGOs, POs, and the relocatees in RAP planning and implementation.
4. To develop a RAP that is socially and economically acceptable to project affected persons, funding agencies and Napocor.

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33 From the National Irrigation Administration web page: The first resettlement site developed was for residents displaced by the construction of the Pantabangan Dam in Nueva Ecija, then of the Magat Dam in Isabela. The Pantabangan Dam was constructed in 1975 and the Magat Dam in 1983.
The handbook goes into detail concerning the different elements of the policy framework for the RAP. It includes guidelines for designing power projects in a way that lessens displacement, compensation principles, information and consultation procedures, livelihood projects, participation of project affected persons, conflict and grievance procedures, monitoring arrangements, and organizational responsibilities. All costs related to the implementation, management, and monitoring of the RAP are covered by Napocor.

The handbook contains most of the elements considered part of international good practice on involuntary resettlement. The land-for-land option is available only in a few projects. In all other cases cash payment is the norm. The handbook states that resettlement will take place only in case a power project displaces 50 or more families. In cases where families are scattered along transmission lines passing through several barangays and municipalities or in power generation projects where there are less than 50 affected families, project affected persons are expected to transfer on their own, if transfer is necessary, after having received payment.

The National Transmission Corporation.

TransCo is a government-owned and controlled corporation that assumes transmission functions of the Napocor in the major Philippine grids. TransCo is undergoing privatization. It is expected that its right-of-way acquisition function will be a responsibility of government. In 2006, its Social Engineering/Right-of-Way Management Department prepared a draft Land Acquisition and Resettlement Manual. The manual does not mention any specific national laws as guidance for the involuntary resettlement process. It also does not refer to international guidelines for involuntary resettlement, such as those of the World Bank or the Asian Development Bank. Overall policy objectives are:

1. Avoid involuntary resettlement, whenever feasible, or at least minimize the adverse impacts of transmission development projects;
2. Provide timely and just compensation to project affected persons, when impacts are unavoidable;
3. Ensure that the socioeconomic condition of project affected persons is improved or at least maintained after project implementation; and,
4. Prior to project construction, develop and implement the Land Acquisition and Resettlement Plan in consultation with project affected persons and other stakeholders.

For Official Development Assistance and foreign bank-financed projects, the policies and guidelines of the funding institution on Land Acquisition and Resettlement Plan “shall

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Table 1. Involuntary Resettlement Policies/Guidelines and Operating Mechanisms of National Government Agencies in Charge of Infrastructure Projects.

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<thead>
<tr>
<th>Agency</th>
<th>Policy and Related Manual</th>
<th>Responsible Unit</th>
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<tbody>
<tr>
<td>National Irrigation Administration</td>
<td>No written policy. The National Irrigation Administration deals with resettlement on a case-to-case basis and usually follows procedures required by the funding agency.</td>
<td>May ask other government agencies to implement a relocation program.</td>
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govern, if stipulated in the loan agreement.\footnote{National Transmission Corporation: Land Acquisition and Resettlement Plan Manual, page 2.} The Manual focuses mainly on the determination and payment of cash compensation to project affected persons who have legal claims to land and property. Squatters and indigenous peoples may receive a grant of a serviced residential plot in a resettlement area, if developed, or a grant of financial assistance. This is consistent with the Urban Development and Housing Act and Republic Act 8974, which both approach the right-of-way requirement through negotiation for just compensation with legitimate landowners and resettlement for squatters.

**Philippine National Oil Company-Energy Development Corporation.** Energy Development Corporation is a wholly owned subsidiary of the Philippine National Company, a government-owned and controlled corporation. It mainly develops and operates geothermal power facilities. The Corporation established an environmental policy in 1994. As a client of the World Bank for many years the company has developed its own environmental and social safeguards along the lines of the Bank’s operational policies. The Corporation’s first resettlement experience was in 1993, and succeeding geothermal projects produced more experiences.

At present there are three existing resettlement sites: Leyte Geothermal Production Field (51 households resettled), Mindanao Geothermal Production Field (21 households resettled), and the Northern Negros Geothermal Project Site (25 households resettled). (See Case Study 4, Chapter 4.) Resettlement plans are consolidations of agreed arrangements between the company and affected households. Before finalizing these resettlement plans, extensive social preparation was undertaken through consultations and meetings with affected households, the concerned LGU, and relevant government agencies.

The Corporation has no involuntary resettlement policy that applies to all its projects. Instead it develops a Resettlement Policy Framework for specific projects where resettlement is necessary. The objectives of the Corporation’s resettlement programs usually include the following:

1. To relocate houses and other structures to areas where residents are not exposed to physical, health, and security hazards that might result from the company’s energy exploration, development, and operation activities;
2. To ensure that affected households are fully and justly compensated for any crop and property damages;
3. To help relocated households regain and improve their standard of living in the settlement sites; and,
4. To facilitate the formation of a community institution that will promote unity, self-reliance, and productivity among relocated households and engender harmonious relationships between the company and the resettled community.

Recently, the company formulated its Corporate Social Responsibility Policy, which incorporates these resettlement objectives.

**RAP Preparation and Implementation**

When the project does require a RAP, its preparation normally begins after the NEDA Board has approved the project and the loan agreement signed between the Philippine Government and the foreign financier. An exception is the National Roads Improvement and Management Project Phase One and Two financed by the World Bank, where Resettlement Action Plans for the Year One Contract Package were finalized prior to negotiations. The completion of the plans and their disclosure were made a condition of project appraisal.
In linear projects (e.g., national highways and railroads), RAP preparation is usually done during the Detailed Engineering Stage, when alignment and design of the project are finalized. Preparation of the RAP, specifically the census of project affected persons, follows the parcellary survey that determines the amount of land that has to be acquired for the project and the owners of the land. The census identifies the number of people who will be affected, the land to be acquired, the type of structures standing on the land, their uses, their owners, and their socioeconomic situation.

A few persons are either provisionally exempted or included in the list of affected persons. Provisionally exempted project affected persons remain so or become bona fide project affected persons once construction begins. During construction, changes in the alignment can increase or reduce the number of people to be affected. A problem in highways is the sloping and curving portions, especially in mountainous areas. This makes it difficult to accurately estimate the number of project affected persons using simple linear mapping or straight line method. RAP preparation in roads can be made more accurate with the use of ortho photo-mapping to complement the parcellary survey. Ortho photo-mapping, however, is expensive, and projects cannot afford its use.

The usual problems encountered in RAP preparation are due largely to inefficiencies and complexities of land administration and management in the country. These include overlapping claims over one parcel of land, public lands titled in the name of a private individual or occupied by settlers who are paying real property taxes to the LGU, uncertainty over land ownership due to the absence of Right of Way Mapping and monumenting, lack of updated cadastral maps, land still titled in the name of a deceased person and not yet extrajudicially partitioned among the heirs, and poor record keeping in the Office of the Register of Deeds.

On the lack of updated cadastral maps, implementing agencies, especially those engaged in linear projects, are partly to blame. They do not do a post-construction parcellary survey that should be submitted to the Department of Environment and Natural Resources’ Land Management Bureau in order to keep records updated.

Another problem area is valuation. Republic Act 8974 mandates the use of the Bureau of Internal Revenue’s zonal valuation. However, not all areas have BIR zonal value. There are also multiple valuation regimes imposed by different agencies, causing the same property to have two or three different pricings.

The practice of property appraisal also requires professionalization. It has happened in a project where the same appraiser is hired by both the government and the affected landowner. The appraiser quotes two different values for the same land, the higher price usually to the private landowner who presumably paid more for his services.

Republic Act 8974 also mandates the use of replacement value for affected structures and improvements. Replacement value is based on the current cost of constructing the same affected structure. In reality, local government appraisal committees depreciate the structure being acquired, as if it were a willing buyer and willing seller transaction.

Problems in valuation ultimately cause the private party and the implementing government agency to disagree, break off negotiations, and take each other to court. Expropriation becomes the mode of acquisition, and proceedings can go all the way to the Supreme Court. The project is delayed since uncertainty over the court ruling prevents the implementing agency from altering the land even if it has already taken possession of it through its payment of...
the full BIR Zonal or the 15% market value (in the case of LGU-led expropriations). While the court deliberates on its decision, the prices of land, labor, and construction materials have increased in the meantime, making initial budget estimates obsolete.

**Displacement, Relocation, and Resettlement of Informal Settlers**

Following the country’s legal framework, landowning residents affected by development projects are compensated in cash for land, structures, and improvements acquired by the project. In case of physical displacement necessitating transfer to another location, they are expected to acquire land and build replacement housing on their own. This is not the case with informal settlers in urban and ‘urbanizable’ areas. Republic Act 7279 or the Urban Development and Housing Act mandates the provision of a resettlement site, the provision of basic services, and to the government’s best ability, the provision of safeguards for the homeless and underprivileged citizens, including those who lack security of tenure. This applies to those informal settlers affected by development projects or simple law enforcement.

The responsibility of undertaking resettlement of informal settlers is lodged with the National Housing Authority and the sending and hosting LGUs. Before actual demolition, all projects that will involve evictions and demolition of informal settlers are required by Executive Order No. 152 to secure a permit from the Presidential Commission for the Urban Poor.

However, this Executive Order was superseded in February 2008 by a new Executive Order that transferred clearance for demolition and resettlement in local government projects from regional Presidential Commission for the Urban Poor offices to LGUs. The Executive Order ordered the Department of the Interior and Local Government to draft implementing rules and guidelines for the creation of Local
Housing Boards, the body in the LGU tasked with issuing these clearances. This creates potential conflict of interests, since the LGU is simultaneously the project proponent, the implementer of demolition and resettlement, and the regulator.

It also raised concerns whether the intentions of the Urban Development and Housing Act on humane relocation and resettlement could be better served under the new set-up than in the old one. The devolution of clearances came at a time when the Metropolitan Manila Development Authority was aggressively pursuing a campaign against informal dwellers in the National Capital Region and taking liberties with the law in doing so.

The Urban Development and Housing Act requires that any underprivileged or homeless persons, including those who lack security of tenure, should be provided a place to resettle. For this reason, the National Housing Authority has prepared a comprehensive package that includes not just housing but also basic services such as electricity and water and a livelihood program. (See the details of the package in Box 2). This package is not always followed, as illustrated in the North and South Rail benefit package found in Box 3.

A value analysis will show that—if faithfully followed—the resettlement packages of the National Housing Authority and of the North Rail and South Rail projects will exceed pre-project or pre-relocation levels of housing, security of tenure, and access to services of informal settlers. Resettlement implementers usually count such improvements against the project’s obligations.

The critical issue is the sustainability of these resettlement sites and the ability of the resettled persons to channel these immediate improvements into lasting benefits. The track record of resettlement projects in the country is quite poor. An urban poor leader whose family was resettled way back in the early 1980s observed that it took at least 20 years before his resettled community could recover and eventually prosper. This recovery was due not to direct project interventions but to factors external to the project, such as overseas labor migration.

Resettlement areas in the Philippines usually are located in areas far from the city and lacking in resources, services, and economic opportunities found in the places of origin. The Urban Development and Housing Act sought to mitigate this problem by requiring private

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**Box 2. Standard Cost Entitlements of the National Housing Authority.**

<table>
<thead>
<tr>
<th>Entitlement per Family</th>
<th>Amount (PhP)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serviced lot.....................................................................</td>
<td>100,000</td>
</tr>
<tr>
<td>Core housing.....................................................................</td>
<td>60,000</td>
</tr>
<tr>
<td>Relocation cost (transportation and manpower assistance)....</td>
<td>6,500</td>
</tr>
<tr>
<td>Water and power connection...........................................</td>
<td>3,500</td>
</tr>
<tr>
<td>Food assistance (cash)..................................................</td>
<td>1,000</td>
</tr>
<tr>
<td>Food subsidy (from sending Local Government Unit).............</td>
<td>In-Kind</td>
</tr>
<tr>
<td>Total cash......................................................................</td>
<td>171,000</td>
</tr>
</tbody>
</table>

Livelihood assistance shall be provided subject to approval of project proposals.

*As of July 2007.
### Box 3. Entitlements for Informal Settlers in the North and South Rail Projects (Resettlement Implemented by the National Housing Authority)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Export-Import Bank of China funded North Rail Project 2004-2006 (per family)</th>
<th>Korea Eximbank-funded Rail Linkage Project (Southline) 2005-2007 (per family)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Description</td>
<td>Amount (PhP)</td>
</tr>
<tr>
<td>A: Qualified families</td>
<td>Serviced home lot</td>
<td>100,000.00</td>
</tr>
<tr>
<td></td>
<td>OR housing financial assistance</td>
<td>50,000.00</td>
</tr>
<tr>
<td></td>
<td>Housing materials loan</td>
<td>50,000.00</td>
</tr>
<tr>
<td>Food assistance</td>
<td>Cash conversion</td>
<td>1,000.00</td>
</tr>
<tr>
<td></td>
<td>Food packs from sending LGU (good for 3-5 days)</td>
<td></td>
</tr>
<tr>
<td>Rent assistance</td>
<td></td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>Power/water connection fees</td>
<td>3,500.00</td>
</tr>
<tr>
<td></td>
<td>Tent and staging area</td>
<td>1,500.00</td>
</tr>
<tr>
<td>Relocation costs</td>
<td>Trucking/manpower association; other admin. needs</td>
<td>13,000.00</td>
</tr>
<tr>
<td></td>
<td>Community facilities</td>
<td>10,000.00</td>
</tr>
<tr>
<td></td>
<td>Transport assistance</td>
<td>Free PNR ride for 3 years (For South Rail only)</td>
</tr>
<tr>
<td></td>
<td>Livelihood assistance</td>
<td>Max. Loan of PhP 25,000.00 (subject to project proposal)</td>
</tr>
<tr>
<td></td>
<td>B: Disqualified families</td>
<td></td>
</tr>
<tr>
<td>Relocation cost</td>
<td>Trucking/manpower assistance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>within 5 km. radius from point of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>origin</td>
<td></td>
</tr>
<tr>
<td>Food assistance</td>
<td>Food packs from sending LGU</td>
<td></td>
</tr>
</tbody>
</table>

Source: Data provided by the National Housing Authority.
real estate developers to set aside 20% of their projects to socialized housing. However, poor enforcement has allowed many real estate developers to escape this legal obligation. In the few cases where developers complied with the law, the urban poor still could not afford the house and lot packages because of their limited paying capacity. Building endowments and creating opportunities take time—often longer than an average project’s lifespan.

Even in the provision of basic services, the performance of government has been less than acceptable, as attested to by actual visits to the sites and by complaints from resettled persons and urban poor advocates. Roads are left unfinished. Transport costs to and from work and to school are high. Social infrastructures like day care centers are not provided. Resettled persons have to walk long distances to fetch water. Electricity is expensive. Where previously these services were cheap or obtained extra-legally, now the resettled families have to pay for them.

Government agencies start livelihood, microfinance, cooperatives, and skills training programs. However, participation dwindles after some time, as the market within the resettlement site or outside is small or non-existent for the products made or the skills imparted. A community can only accommodate only so many dressmakers, beauticians, mechanics, etc. The cost of transport and services plus the burden of amortizing the land and shelter eventually prove too much for the beneficiaries. They eventually sell their rights and move back to the city.

PROJECT MONITORING AND EVALUATION

Monitoring of involuntary resettlement is usually done by the proponent agency. For the demolition, eviction, and resettlement of informal settlers, the Presidential Commission for the Urban Poor also undertakes monitoring. There are mechanisms for external or third party monitoring.

Investment Coordination Committee guidelines direct the Secretariat to maintain a Project Evaluation Monitor of projects either cleared by the Committee or approved by the National Economic and Development Authority Board, including those in the pipeline for Committee clearance. The Project Evaluation Monitor shall also capture NEDA Board conditions on specific projects for compliance during loan negotiations.

DENR Administrative Orders created a Multipartite Monitoring Team to monitor compliance by the proponent to the conditions in the Environmental Compliance Certificate, including those relating to social impacts. It may even obtain the help of experts in doing so. In practice, Multipartite Monitoring Teams tend to focus on the environmental rather than the social impacts.

Evaluation of post-resettlement is seldom done by the project proponent or the resettlement implementing agency unless specifically required by the funding agency. Post-project completion evaluation focuses on the benefits of the project to the targeted beneficiaries and the country but rarely on the benefits received by those resettled. Conversely, if the resettled persons were made worse off by the project, this is not deducted. Determining if restoration of standard of living has been achieved or not can be difficult in the case of informal settlers. It raises issues of methodology and data integrity.

A seemingly straightforward metric like income, which can be a proxy indicator for standard of living, assumes many dimensions when applied to an urban poor community. The income of an urban poor household is the sum of the formal, the informal, and—for a number of households—the illegal. The census conducted prior to displacement already has
difficulty capturing the formal. It would be hard pressed to capture the informal and the illegal as well.

**CONCLUSION**

A first issue in the institutional framework is the non-requirement of a resettlement instrument as a condition for appraisal at the Investment Coordination Committee level, or in a limited way, at the Environmental Management Bureau. The policy bases are there for requiring such an instrument but they are not applied because resettlement raises the risk profile of the project and increases costs. The incentive is still weak for proponent agencies to prepare a resettlement instrument, since they know that the decision to either approve or disapprove might depend on this single variable. Rightly or wrongly involuntary resettlement is perceived as a project stopper. The consequence is distortion in the project

<table>
<thead>
<tr>
<th>Stage</th>
<th>Major Problems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Identification</td>
<td>A resettlement action plan is not prepared because of:</td>
</tr>
<tr>
<td></td>
<td>- Absence of a project preparation facility to shoulder part of or the entire cost of project preparation.</td>
</tr>
<tr>
<td></td>
<td>- Lack of skills in preparing a resettlement action plan.</td>
</tr>
<tr>
<td></td>
<td>- Non-requirement by the oversight or appraising agencies.</td>
</tr>
<tr>
<td></td>
<td>- Absence of an institutional resettlement or social policy. (Resettlement done on an ad-hoc basis in some agencies.)</td>
</tr>
<tr>
<td>Project Appraisal</td>
<td>- Oversight agencies (EMB and the NEDA ICC) do not require a resettlement action plan as part of the requirements that proponent agencies must submit.</td>
</tr>
<tr>
<td></td>
<td>- Some projects with involuntary resettlement do not qualify for ICC review; neither do they pass through the EMB.</td>
</tr>
<tr>
<td>Project Budgeting</td>
<td>- Budget for resettlement lodged with the project proponent not the agency mandated to do resettlement or the receiving LGU.</td>
</tr>
<tr>
<td></td>
<td>- Rigidities in auditing rules that make budget transfers difficult across agencies.</td>
</tr>
<tr>
<td></td>
<td>- Underestimation in the absence of a resettlement action plan.</td>
</tr>
<tr>
<td>Project Implementation</td>
<td>RAP preparation suffers from the following problems:</td>
</tr>
<tr>
<td></td>
<td>- Uncertainty over ownership of the land (if it is public or private).</td>
</tr>
<tr>
<td></td>
<td>- Imperfect rights documents, e.g., tax declarations.</td>
</tr>
<tr>
<td></td>
<td>- Land in the name of a deceased parent or grandparent and has not been partitioned among heirs.</td>
</tr>
<tr>
<td></td>
<td>- Adverse or overlapping claims over the same parcel of land.</td>
</tr>
<tr>
<td></td>
<td>- Multiple valuation regimes leading to different costing or budgets for property acquisition.</td>
</tr>
<tr>
<td></td>
<td>RAP implementation is delayed because of landowner resistance due to multiple valuation regimes and depreciation of his affected assets.</td>
</tr>
<tr>
<td></td>
<td>Resettlement of informal settlers is unsustainable due to the distance of the resettlement site from places of work and schooling and the absence of economic opportunities and services in the resettlement site. Resettled persons sell their rights and return to the city and squat on public or private land.</td>
</tr>
<tr>
<td>Project Monitoring and Evaluation</td>
<td>- Weak monitoring of RAP implementation.</td>
</tr>
<tr>
<td></td>
<td>- Lack of evaluation of RAP outcomes.</td>
</tr>
</tbody>
</table>
cost-benefit analyses, the underestimation of project risks, and lack of preparedness of the proponent during project implementation when these risks become reality.

A further deterrent is the lack of capacity to prepare such instruments within the proponent and to appraise them within oversight agencies. Proponent agencies are also reluctant to incur expenses in project preparation because of uncertainty over approval and the absence of a local project preparation facility that they can tap for their projects, especially the major ones.

The second issue is scope. Even if a resettlement instrument/framework were required for Investment Coordination Committee and Environmental Management Bureau clearance, a large number of projects would still fall through the cracks. There is no easy solution to this because of the many government agencies implementing projects with involuntary resettlement.

The third issue is the performance of the country’s public institutions in implementing involuntary resettlement. Practices vary, leading to mixed outcomes. In many ways, this is understandable and to be expected. Projects, their contexts, their implementers, and their affected persons are different. Total uniformity may not be possible or even desirable. However, there is a need to close the gaps across agencies and achieve consensus on the important elements of resettlement, especially with respect to mitigating measures and benefits to affected persons.

Finally, there is the less than satisfactory record of the country’s agencies in ensuring that displaced and relocated affected persons, especially the poor are not made worse off by the project. In the Philippines, the perception exists that resettlement rather than solving the problem of tenure and homelessness only seem to reinforce informality and embolden squatting syndicates. The poverty existing in many resettlement sites demonstrate that the compensation approach involving one-time payments and one-shot delivery of a resettlement package has not been effective in causing lasting improvements in the lives of project affected persons.

Source: Photo courtesy of J.I. Angeles.
Prospects for harmonizing the country’s involuntary resettlement policy and institutional framework with international best practice are good but more work remains to be done in key policy areas and stages of the project cycle, especially in ensuring that project affected persons are not made worse off by involuntary resettlement.

**How can harmonization push forward?**

The solution that immediately comes to mind is the legislation of a single, overarching law on involuntary resettlement. This law should cover the major aspects and its contents should substantially agree with international good practice. This would be similar to the passing of the Government Procurement Reform Act. This law substantially harmonized bidding procedures at the national and local levels with international standards. Unfortunately, working toward an overarching law on involuntary resettlement is the least realistic course of action because of the time it takes to pass a bill through Congress and the three-year term of legislators. The anticipation is that proponents of such a bill would have to justify the value it adds, given the presence of the Urban Development and Housing Act, and overcome the perception that introducing additional requirements in the policy and institutional framework would increase project costs and further delay project implementation with no clear compensatory benefits.

Critics would likely oppose the bill’s provisions on informal settlers, certainly anticipated to be the most controversial of all. These provisions would raise fears that such a bill would embolden squatters and professional squatting syndicates even more. It also might not be prudent to begin with a regulatory approach, as agency capacities and appreciation have yet to be developed.

**DEVELOPING CORE GUIDELINES**

A more realistic way to begin is to develop core guidelines to smoothen the variations in resettlement practice. These core guidelines can be done through ‘softer’ forms of legislation like the issuance of Executive Orders, revision of Implementing Rules and Regulations, individual Department Orders, Memorandums of Agreement, and the like. These guidelines also can be embedded in Departmental Operation Manuals. What guidelines need to be developed and what will be the order of development?

The first priority guidelines would be those themes that have bases in existing law. For various reasons, these have not been implemented owing to lack of a specific procedure or detail. For example, a case can be made that if selected sections of Executive

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37 A bill that did not pass into law during the three-year duration of one Congress would have to be re-filed when the next Congress is elected and convened.

38 These are Sections 2 and 8. Section 2 requires the conduct of feasibility studies for all major projects, and in addition to the usual technical, economic and operation aspects, the studies should include the social, political, cultural and environmental impact of the project. Section 8 states that the Investment Coordination Committee shall determine the extent/stage of property acquisition that may be required as condition for project approval or for negotiation of a foreign loan to finance the project. It also states that prior to negotiation for foreign loans to finance specific construction and other projects requiring acquisition of private real property or rights thereon, the negotiation for such acquisition with the property owner/s have been completed or the expropriation proceedings have been initiated.
Order 1035 and Investment Coordination Committee guidelines themselves are interpreted holistically, a resettlement instrument can be required for all those projects that require Committee approval, and—extending this logic further—to all other major government infrastructure projects. A resettlement action plan is a necessary part of the project appraisal. This would give a comprehensive and more accurate picture of all the risks, costs, and more importantly, benefits that a project can bring.

If the argument is accepted, the next step would be the revision of the Investment Coordination Committee guidelines and forms. The lead agency for doing this would be the Housing and Urban Development Coordinating Council working with the National Economic and Development Authority, and the Social Development Committee of the Cabinet consisting of the National Anti-Poverty Commission, National Housing Authority, and Department of Social Welfare and Development.

A major question is what the major and minor projects are (and what should be the criteria for making this classification). The Investment Coordination Committee uses total project cost, regardless of source of financing, as a threshold to determine which projects should undergo its appraisal and approval and which should not. The problem is how to deal with those projects that do not hurdle the threshold. There is no reviewing and approving authority for this, except if the projects are foreign assisted. They are also less likely to be monitored for resettlement issues.

Many of these projects are national government projects financed from the General Appropriations Act. A possible entry point here is the clearance process of the Presidential Commission for the Urban Poor. The guideline can be the development of a checklist that all applicants to the Commission should fill up, evaluate, and comply with. The Commission will also monitor and evaluate agency compliance to the conditions stipulated in the clearance.

Locally funded projects remain a problem as the clearance process has been devolved to the as-yet-to-be-established Housing Boards in LGUs. Introducing a resettlement instrument for these projects will require amendment of the Local Government Code. What can be done in the meantime is advocacy and capability building on the Local Housing Boards and in the Urban Poor Offices that some LGUs have. The core guidelines for appraising involuntary resettlement aspects in projects as well as the checklist can be shared and their adoption encouraged through local ordinances or revisions of procedures and operating manuals.

The second set of guidelines to be developed would be those standards not addressed by the country’s policy framework. The most serious impediments to harmonization are a) the restoration of standard of living, especially in cases of offsite resettlement; b) the inclusion (or perhaps, the exclusion) and treatment of informal vendors, renters, and employees specially of small and micro enterprises; and, c) compensation for informal mixed use or informal commercial structures in the urban areas.

The question of rural resettlement is also a major one. This is because assumptions on land abundance in rural areas and the purely agricultural foundation of the rural economy no longer hold. Issues of access restriction caused by the collision of socioeconomic objectives with efforts to adapt to climate change are expected to gain more prominence. Guidelines for resettlement triggered by resource extractive industries fall under this category. Work on this will involve rural development and natural resource management agencies like the Department of Agriculture, Department of Agrarian Reform, and the Department of Environment and Natural Resources. The entry point is the
Philippine Environmental Impact Statement System managed by the Environmental Management Bureau. For urban issues dealing with relocation and restoration of standard of living, the lead agencies would be the National Anti-Poverty Commission in cooperation with the Social Development Staff of the National Economic and Development Authority and the Housing and Urban Development Coordinating Council.

The third and last set of guidelines pertains to the most difficult areas to resolve. Some of these might require the amendment of existing laws. These have to do with the valuation of affected private land and structures, and issues dealing with titling. The strategy here is to collaborate with other initiatives like the Land Administration and Management Project, which is studying the valuation of land and working to harmonize the country system with international standards.

MOVING FROM COMPENSATION TO BENEFIT-SHARING

At present, the policy and institutional framework is oriented toward compensation or a one-time valuation and payment for affected land, structures and other assets, and incomes or in the case of informal settlers, a one-shot delivery of a standard resettlement package. Experience in the Philippines shows that this approach has been ineffective in preventing impoverishment, much less improving the lives of poor affected persons. The compensation approach assumes a higher socioeconomic base, relative equality across sectors, a strong property rights and formal tenure system, functioning land/property markets, a stable policy environment, and strong governance institutions. These conditions are absent or lacking in the Philippines. Compensation and standard resettlement packages generally fail to sustain themselves because of the
strong incentives toward informality, weak institutional capacity, and susceptibility of programs to elite capture.

How then can the country move forward? The Philippine National Oil Company experience in Mt. Kanlaon shows a possible way out of the impoverishment trap: sustainable benefit sharing. In the Northern Negros Geothermal Project, this was achieved through the employment of individuals from the surrounding communities. There are other models that involve whole communities and organized groups rather than individuals.

Some examples are community work gangs, especially in road projects, community maintenance contracts, preferential access to stalls and booths in railway stations for the more entrepreneurial poor, and varieties of revenue sharing. Unlike compensation, these schemes directly involve project affected persons, or at least, give them an important stake in the success of project implementation and operations. Project affected persons are treated less as an external risk whose cooperation has to be secured by cash or external livelihood schemes and more as active project partners.

The policy environment is ripe for sustainable benefit sharing with the revival of the mining industry, the renewed interest on public-private partnerships, and the relative success of community driven development operations. Combined with transparency, corporate social responsibility, and institutional accountability, benefit sharing can assist the Philippines escape the so-called ‘resource curse’ that has been the fate of economies endowed with rich natural resources. The potentials are enormous but much work lies ahead.

For one, benefit sharing requires a strong public institutional framework that can craft, enforce, and monitor different schemes. This is a generic prerequisite for sustainable development but it assumes greater importance in benefit sharing where the State, instead of directly delivering services, functions more like an arbiter, regulator, and enabler for interactions between community and the private sector.

On the ground, benefit sharing requires more intensive social preparation and community organizing to empower communities to participate. The quality and quantity of benefits that the community can obtain from projects will depend on the degree of leverage it can muster in its relationship with the major actors. Social preparation can build this leverage along with the trust and respect vital to the success of public-private-community partnerships.

Finally, there remains the challenge of crafting benefit sharing schemes in so-called public goods that have no revenue streams (a highway is one example). This will require innovative thinking and out-of-the-box solutions.
Case Study 4. Benefit Sharing: The Northern Negros Geothermal Project Resettlement Program

This 49-Megawatt Geothermal Power Project is located in Mt. Kanlaon and financed by the Japan Bank for International Cooperation. The first exploratory drillings in the area were undertaken in 1994. An initial occupancy survey took place in 1996, resulting in a preliminary resettlement action plan. Subjected to a series of consultations among the potentially affected families, the RAP was revised accordingly.

In 2000, a second survey was conducted and the RAP was updated. It was found that the project would affect a total of 38 residential houses that were within 500 meters of the planned facility. The affected families consisted of squatters, tenants/caretakers and 14 beneficiaries of the government’s Comprehensive Agrarian Reform Program. Only agrarian reform beneficiaries had legal titles to the land in the form of a communal Certificate of Land Ownership Award. They had not paid any amortization to the Land Bank since 1990. After further consultations, the RAP was finalized and forwarded to JBIC.

The resettlement package contained two options: relocation to a resettlement site or a cash payment. The resettlement site was selected by the resettlers who opted for relocation in Sitio Napatagan, Mailum, Bago City. Activities began with signing of individual household memorandum of agreements, which specified the entitlements under each option. The compensation packages were as follows:

**Option 1: Relocation to a resettlement site**

1. Allocation of a 200-square meter residential lot in the resettlement site;
2. A house measuring not less than 25 square meters in floor area, complete toilet facility and electrical installations subject to the availability of power in the chosen site;
3. Transportation assistance for personal belongings and salvageable materials from the original residence to the resettlement site;
4. Cash compensation for properties other than the house, crops and land improvements (if any) which are lost, damaged or rendered unusable;
5. Cash, equivalent to the difference between the cost of his new house and the assessed value of his/her house in case the assessed value of his/her old house exceeds the cost of the new house;
6. Access to a communal water system;
7. Priority employment in the geothermal project subject to skill and other qualifications; and,
8. Livelihood development assistance, including replacement farms of one hectare per family.

**Option 2: Cash payment and self relocation**

1. Cash equivalent to the actual cost (materials and labor) of rebuilding a structure similar to their original residence plus a dislocation premium equivalent to one month of the combined household income of the dislocated family;
2. Transportation assistance for personal belongings to Bacolod City or nearer destinations;
3. Property and crop damage compensations if any; and,
4. Priority employment in the geothermal project subject to skill and other qualifications.

Twenty-five of the 38 families chose to get the resettlement package (Option 1). After signing memorandums of agreement for Option 1, relocatees organized into a farmers association and underwent training and livelihood projects while construction was going on at the site. The civil works on home lots, roads, and drainage systems were completed in 2002. In 2003, all structures were completed, including the water system. The resettlers transferred to their new homes in May 2003.

Since the transfer, the Philippine National Oil Company has continued to provide livelihood assistance to the resettlement community. It also conducts annual monitoring of the resettlement site and the socioeconomic conditions of the households. An evaluation conducted in 2006 found that the 13 who opted for cash payment have since been paid and already left the area. The 25 households who chose the resettlement package were resettled at the resettlement site. It was also noted that the income level of the resettled households actually increased by about 70% compared with the pre-relocation level.

<table>
<thead>
<tr>
<th>Requirements</th>
<th>IBRD(^a)</th>
<th>IFC(^b)</th>
<th>ADB(^c)</th>
<th>JBIC(^d)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Policy of avoidance where feasible or, if not, minimization of dislocation</td>
<td>Avoid or minimize IR by exploring all viable alternatives. Otherwise, resettlement should be conceived and executed as sustainable development programs. Displaced persons should be assisted to restore/improve their standard of living.</td>
<td>IR should be avoided or at least minimized. Where it is unavoidable, appropriate measures to mitigate adverse impacts on displaced persons and host communities should be carefully planned and implemented.</td>
<td>Avoid or minimize IR by exploring all viable project options. If communities must lose their land, means of livelihood, social support systems, or way of life, then they should be compensated.</td>
<td>Must explore all viable alternatives to avoid IR, if not apply measures to mitigate and compensate losses.</td>
</tr>
<tr>
<td><strong>Coverage</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Projects</td>
<td>National gov’t-sponsored projects only</td>
<td>Projects that might result to expropriation</td>
<td>Gov’t-sponsored projects</td>
<td>ODA projects</td>
</tr>
<tr>
<td>Affected People</td>
<td>People affected by: (a) involuntary taking of land resulting in relocation or loss of shelter; loss of assets or access to assets; or loss of income sources or means of livelihood, and (b) involuntary restriction of access to protected areas resulting in adverse impacts on livelihoods.</td>
<td>People physically (i.e., relocation or loss of shelter) and/or economically displaced (i.e., loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition.</td>
<td>People/community who will lose housing and possibly entire community structures, systems and services; Those who will lose productive assets, e.g., land, income and livelihood, and other assets; and those who will lose community resources, habitat, cultural sites and goods.</td>
<td>People to be resettled involuntarily and those whose means of livelihood will be hindered or lost.</td>
</tr>
<tr>
<td>No legal rights or claims (e.g., informal settlers)</td>
<td>Included but are entitled only to resettlement assistance and compensation for structure and other assets that may be lost.</td>
<td>Included and offered with options for secure housing; entitled to compensation for loss of assets (e.g., dwellings), land improvements, and relocation help</td>
<td>Included but clarified that they are entitled only to assistance and compensation for structure and other assets that may be lost.</td>
<td>Not specified</td>
</tr>
</tbody>
</table>
### Annex 1-cont’d.

<table>
<thead>
<tr>
<th>Requirements</th>
<th>IBRD&lt;sup&gt;a&lt;/sup&gt;</th>
<th>IFC&lt;sup&gt;b&lt;/sup&gt;</th>
<th>ADB&lt;sup&gt;c&lt;/sup&gt;</th>
<th>JBiC&lt;sup&gt;d&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Process</strong></td>
<td>Full Resettlement Action Plan (RAP) for 200 or more affected people; Abbreviated RAP for less than 200 affected people; RPF for multiple subprojects under an intermediary agency; a process framework for projects involving restriction of access to livelihood sources.</td>
<td>RAP or Resettlement Framework based on Social and Environmental Assessment, regardless of the number of people affected.</td>
<td>Full Resettlement Plan is required for Category &quot;A&quot; IR which has at least 200 affected persons experiencing major impacts; short Resettlement Plan for Category &quot;B&quot; less than 200 project-affected persons; none for Category &quot;C&quot;.</td>
<td>Basic Resettlement Plan for large-scale involuntary resettlement; should be based on socioeconomic studies</td>
</tr>
<tr>
<td><strong>Consultations</strong></td>
<td>Affected persons and communities, local authorities and NGOs as appropriate on resettlement options and eligibility criteria for compensation and assistance; displaced persons, their communities, host communities are offered opportunities to participate in planning, implementing and monitoring the resettlement; grievance mechanisms established.</td>
<td>Disclosure of relevant information; consultation with affected persons and communities, including host communities; consultation must continue during implementation.</td>
<td>Affected persons should be fully informed and closely consulted on resettlement and compensation options.</td>
<td>Participation of affected people and their communities in planning, implementation and monitoring of IR Plans; agreements with affected persons and communities secured prior to resettlement.</td>
</tr>
</tbody>
</table>

Sources: <sup>a</sup>World Bank OP/BP4.12; <sup>b</sup>IFC Performance Standards 5 - Land Acquisition and Involuntary Resettlement, April 2006; <sup>c</sup>Asian Development Bank; <sup>d</sup>Japan Bank for International Cooperation Guidelines for Confirmation of Environmental and Social Considerations.

<table>
<thead>
<tr>
<th>Compensation</th>
<th>IBRD&lt;sup&gt;a&lt;/sup&gt;</th>
<th>IFC&lt;sup&gt;b&lt;/sup&gt;</th>
<th>ADB&lt;sup&gt;c&lt;/sup&gt;</th>
<th>JBIC&lt;sup&gt;d&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing</td>
<td>Replacement houses; or full replacement cost</td>
<td>Replacement property of equal or higher value, equivalent or better characteristics or cash compensation at full replacement cost.</td>
<td>Compensation for lost housing and associated assets at replacement rates.</td>
<td>Monetary or in kind</td>
</tr>
<tr>
<td>Lands</td>
<td>Replacement lands or cash compensation plus non-land based self-employment livelihood support</td>
<td>Replacement sites or cash compensation at full replacement cost</td>
<td>Provided appropriate lands comparable to without-the-project situation</td>
<td>Monetary or in kind</td>
</tr>
<tr>
<td>Other properties, assets</td>
<td>Cash compensation at full replacement costs in local markets</td>
<td>Replacement or cash compensation at full replacement cost</td>
<td>Compensation at replacement rates</td>
<td>Not specified</td>
</tr>
<tr>
<td>Resettlement site, community infrastructure and public services</td>
<td>Provided infrastructure and public services as necessary</td>
<td>New settlement site will offer improved living conditions</td>
<td>Relocation options including relocation site development if required</td>
<td>Provided infrastructure and public services</td>
</tr>
<tr>
<td>Replacement of community resources (habitat, cultural resources)</td>
<td>Provided alternative or similar resources</td>
<td>Not specified</td>
<td>Replacement, if possible, or compensation at replacement rates; restoration measures</td>
<td>Not specified</td>
</tr>
<tr>
<td>Transport assistance or moving allowances during transfer</td>
<td>Moving allowance and assistance during transfer</td>
<td>Not specified</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>Social and cultural institutions; patterns of organizations</td>
<td>Preserved preexisting social and cultural institutions; patterns of organizations are based on choices made by the displaced persons.</td>
<td>Not specified</td>
<td>Promoted appropriate patterns of social organization and supported existing social and cultural institution</td>
<td>Not specified</td>
</tr>
</tbody>
</table>
Annex 2—cont’d.

<table>
<thead>
<tr>
<th>Compensation</th>
<th>IBRD(^a)</th>
<th>IFC(^b)</th>
<th>ADB(^c)</th>
<th>JBIC(^d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation for lost incomes during transfer</td>
<td>Offered support during transition period</td>
<td>Compensated lost income during transition</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>Livelihood support and restoration of income and living standards comparable to pre-existing levels</td>
<td>Provided development assistance such as land preparation, credit facilities, training or job opportunities</td>
<td>Provided targeted assistance such as credit facilities, training or job opportunities</td>
<td>Assisted so that their economic and social future will generally be at pre displacement level; plus measures to restore living standards</td>
<td>Made efforts to improve standard of living of PAP, e.g., provision of alternative sustainable livelihood</td>
</tr>
</tbody>
</table>

Sources: \(^a\)World Bank OP/BP4.12; \(^b\)IFC Performance Standards 5 - Land Acquisition and Involuntary Resettlement, April 2006; \(^c\)Asian Development Bank; \(^d\)Japan Bank for International Cooperation Guidelines for Confirmation of Environmental and Social Considerations.

The following may be considered in the determination of the value of land subject to expropriation proceedings or in the determination of fair market value in the case of negotiated sale:

a) The classification and use for which the property is suited

b) The development costs for improving the land

c) The value declared by the owners

d) The current selling price of similar lands in the vicinity based on the Deed of Sale at the Registry of Deeds

e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;

f) The size, shape or location, tax declaration and zonal valuation of the land

g) The price of land as manifested in the ocular findings, oral as well as documentary evidence presented; and,

h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government and thereby rehabilitate themselves as early as possible.

The replacement cost of the improvements/structures is defined as the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor’s profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures. In the valuation of the affected improvements/structures, the Implementing Agency shall consider, among other things, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices.

The Implementing Agency may, if it deems necessary, engage the services of government financing institutions and/or private appraisers duly accredited by the said institutions to undertake the appraisal of the property, i.e., the land and/or improvements/structures, and to determine its fair market value. The Implementing Agency concerned shall consider the recommendations of the said appraisers in deciding on the purchase price of or just compensation for the property.

The law discourages speculation by prohibiting purchase of the land based on its post-project value or value due to the project.

<table>
<thead>
<tr>
<th>Ownership Title/ Tenure Arrangement</th>
<th>Source Law</th>
<th>Rights, Restrictions and Encumbrances or Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Title(a)</td>
<td>Act 496, Act 2259</td>
<td>Full ownership title subject to specific notations/ encumbrances on the title</td>
</tr>
</tbody>
</table>
| Free Patent and Homestead Patent            | Act 926, Act 2874, CA 141 as amended | Prohibition of transfer/conveyance/encumbrance within 5 years, thereafter any conveyances are subject to approval of DENR Secretary until 25 years;  
Original owners have the right to repurchase the property within 5 years after any sale;  
Not entitled to compensation for rights of way of government projects (GR 114348). |
| Certificate of Leasehold                    | PD 27      | Provides the issuance of Emancipation Patents to amortizing tenants                                                                                                                                                                     |
| Special Patent                              | -          | Land Management Bureau                                                                                                                                                                                                                  |
| Emancipation Patent                         | PD 27      | Restriction of transfer                                                                                                                                                      |
| Collective CLOA                             | RA 6657 as amended | Collective title, not formally subdivided  
No conveyance until after 10 years                                                                                                                                       |
| Individual CLOA                             | RA 6657 as amended | No conveyance until after 10 years                                                                                                                                           |
| Friar Lands                                 | Act 1120; CA 32 | Should not be transferred, conveyed or encumbered within 5 years from the issuance of titles  
All conveyances are subject to repurchase by the owner or his heirs within 5 years                                                                                 |
| CAL-C                                       | DENR A.O.  | Should already be converted to CAL-T                                                                                                                                                                                                  |
| CAL-T                                       | RA 8371 (IPRA) | Full ownership rights  
Transfer of land or property only to members of the same IP/ICC                                                                                                             |
| CAD-T                                       | RA 8371 (IPRA) | Territorial rights vested on indigenous community to which the title is issued:  
- Right of ownership to lands and bodies of water  
- Right to develop, control, use lands and natural resources and to free and prior informed consent to any development intervention  
- Right to stay in the territory  
- Right to regulate entry of migrants  
- Right to resolve conflict within the territory |
### Annex 5-cont’d.

<table>
<thead>
<tr>
<th>Ownership Title/ Tenure Arrangement</th>
<th>Source Law</th>
<th>Rights, Restrictions and Encumbrances or Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanish Title</td>
<td>-</td>
<td>Rendered illegal, insecure rights</td>
</tr>
<tr>
<td>Imperfect Titles - Continuous</td>
<td>CA 141</td>
<td>Insecure property rights, subject to judicial or administrative legalization process</td>
</tr>
<tr>
<td>Occupation of Public Land</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax Declaration - A&amp;D Public Lands</td>
<td>-</td>
<td>Insecure property rights, subject to judicial or administrative legalization process</td>
</tr>
<tr>
<td>Tax Declaration - Forest Land</td>
<td>-</td>
<td>Illegal</td>
</tr>
<tr>
<td>Special Land Use Permits</td>
<td>Forestry Code</td>
<td>Usufruct rights</td>
</tr>
<tr>
<td>Formal Lease</td>
<td>Civil Code</td>
<td>Usufruct rights</td>
</tr>
<tr>
<td>Stewardship Contracts</td>
<td>Forestry Code</td>
<td>Usufruct rights</td>
</tr>
<tr>
<td>CBFMA</td>
<td>Forestry Code</td>
<td>Usufruct rights</td>
</tr>
<tr>
<td>Other contractual arrangements</td>
<td>Civil Code</td>
<td>Depends on the contract</td>
</tr>
<tr>
<td>Leasehold Tenants</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Share Tenants</td>
<td>Agricultural Tenancy Act</td>
<td>Rendered illegal, converted to leasehold</td>
</tr>
<tr>
<td>Caretakers/Informal Tenants</td>
<td>Informal arrangement</td>
<td>Not recognized</td>
</tr>
<tr>
<td>Informal Occupants or Squatters in Urban Lands</td>
<td>UDHA</td>
<td>Illegal</td>
</tr>
<tr>
<td>Informal Occupants of Public Forests/ Protected Areas</td>
<td>Forestry Code; NIPAS</td>
<td>Illegal</td>
</tr>
</tbody>
</table>

A. Pre-relocation Phase

1. Identification of resettlement site
2. Pre-census requirements, which includes documentary requirements and information campaign among the affected families
3. Census, which includes physical survey, tagging of the affected structures for identification, inventory and control of illegal construction
4. Issuance of 30-day notice
5. Consultation proper
6. Completion of relocation document requirements
7. Voluntary relocation and resettlement

B. Relocation Phase

1. Preparations before dismantling of the structures
2. Dismantling of the structures
3. Issuance of entry passes
4. Loading and transporting
5. Monitoring and documentation
6. Processing of documents and lot assignment
7. Transfer to assigned lots

C. Post Relocation Phase

1. At the vacated site, the LGU or government agency should require the owner of the property to verify and document the area cleared and secure and develop the property.
2. At the resettlement site, the resettled families shall be organized or existing organization strengthened to facilitate the delivery of services. Adequate social services should be provided jointly by concerned government agencies. Training and livelihood programs shall also be provided.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Involuntary Resettlement-related Functions and Roles</th>
</tr>
</thead>
<tbody>
<tr>
<td>NEDA</td>
<td>Approves government infrastructure projects</td>
</tr>
</tbody>
</table>
| Government Agencies and GOCCs (e.g., DPWH, DOE, Napocor, NIA, PNOC-EDC, etc.) | - Consistent with their mandates, implement infrastructure projects and programs
- Acquire lots, rights of way or easements for infrastructure projects and programs
- Implement resettlement programs
| Local government units (Provinces, Cities, and Municipalities) | - Provides public infrastructure and services (RA 7160)
- Acquires lots, rights of way or easements for infrastructure projects and programs (RA 7160)
- Implements resettlement sites (RA 7279)
- Provides basic services (RA 7279)
- Implements livelihood programs (RA 7279)
- Undertakes assessment of fair market value of real property (for the purpose of taxation; RA 7160)
- Maintain assessment rolls for real property
- Undertakes appraisal of structures/improvements                                                                                                                                                                                                                                               |
| Presidential Commission for the Urban Poor  | - Issue clearances for demolition and eviction activities in national government projects
- Monitor all evictions and demolitions involving homeless and underprivileged citizens                                                                                                                                                                                                                                  |
| Bureau of Internal Revenue                  | - Provides zonal valuation as basis for determination of just compensation                                                                                                                                                                                                                                                                                                |
| Department of Environment and Natural Resources | - Issues environmental compliance certificates which includes the social aspects
- Helps find resettlement sites for squatters                                                                                                                                                                                                                                                                                                      |
| National Housing Authority                  | - Acquires, develops and establishes relocation sites in anticipation of informal settlers potential displacement from future projects (RA 8974-IRR Sec. 17)                                                                                                                                                      |
| The Courts                                  | - Issue Writ of Demolition to informal settlers (RA 8974-IRR, Sec. 17, p2)
- Issue Writ of Possession of expropriated lands (RA 8974)
- Determine “just compensation” to land/property owners (RA 8974-IRR, Sec. 13)                                                                                                                                                                                                                           |
| Department of the Interior and Local Government | - Extend full cooperation and assistance to the Implementing Agency (RA 8974-IRR, Sec. 17)                                                                                                                                                                                                                     |
| Philippine National Police                 | - Extend full cooperation and assistance to the Implementing Agency (RA 8974-IRR, Sec. 17)                                                                                                                                                                                                                      |
| HUDCC                                       | - Overall coordination of agencies in the resettlement of informal settlers (RA 8974-IRR, Sec. 17)                                                                                                                                                                                                               |
| Housing and Land Use Regulatory Board       | - Provides development permits and regulates private housing developers which includes resettlement areas.                                                                                                                                                                                                       |
| Provincial or City Register of Deeds        | - Records any right-of-way agreement, grant, sale or expropriation decisions on the property (RA 8974-IRR Sec. 15)                                                                                                                                                                                          |
| Government Banks                           | - Depository of initial payments of just compensation
- Undertakes appraisal of affected properties at the request of government agencies
- Accredits private sector appraisers that government agencies can tap to value affected properties                                                                                                                                                                                                 |

The following have been formulated to guide the ICC and its clients in the context of investment planning and financing and balance of payments (BOP) monitoring. It will be updated, as and when necessary, to enable the ICC to perform its mandate more effectively considering new policies/developments, and changes in the institutional structures and mandates among agencies and in government as a whole.

I. Functions of the Investment Coordination Committee (ICC)²

1. Review the fiscal, monetary and BOP implications of major capital projects³ (MCPs) and recommend to the President the timetable of the implementation of these projects and programs on a regular basis. In this regard, the following will be taken into account, among others:
   
a. Peso requirements of the program/project in terms of the current and capital outlays needing financial support, directly or indirectly, from the national government (NG) and/or government financial institutions (GFIs);
   
b. Foreign exchange requirements of the program/project in terms of the current and capital outlays needing financial support, directly or indirectly, from bilateral and/or multilateral sources;
   
c. Sources of funds;
   
d. Terms and conditions of the proposed financing;
   
e. Where applicable, compliance to foreign debt ceiling under RA. 4860 or the Foreign Borrowings Act of 1966, as amended, per certification of the Bureau of Treasury; and,
   
f. Other pertinent legislative and administrative issuances of Government.

2. Submit to the President a status of the fiscal (budgetary), monetary (credit), and BOP implications of MCPs.

3. Review/evaluate specific MCPs with respect to technical, financial, economic, social, and institutional development, feasibility/viability as well as from the context of sectoral plans and geographical strategies, and submit to the NEDA Board (NB) for confirmation of ICC action.

II. Organizational Structure of the ICC

ICC Cabinet Committee (ICC-CC). EO 230 assigns the ICC-CC as the highest decision-making body in the Executive Branch that approves MCPs. However, since it is a Committee of the NB, its decision on projects is presented to the NB for a formal confirmation. A certification of ICC approval is a prerequisite for inclusion of the project resource requirement in the annual budget program over the medium-term, or congressional appropriations of NG guarantees or negotiation with creditors.
Annex 8-cont’d.

The ICC-CC is composed of the following members:

- Secretary of Finance - Chairperson
- Secretary of Socioeconomic Planning (NEDA) - Co-Chairperson
- Executive Secretary - Member
- Secretary of Budget and Management - Member
- Secretary of Trade and Industry - Member
- Secretary of Agriculture - Member
- Secretary of Energy - Member
- Governor of the Bangko Sentral ng Pilipinas - Member
- Executive Director of the BOT Center - Member

The members of the ICC-CC may be represented by designated alternates. The above members (except for the BOT Center Executive Director) are Cabinet members or equivalent rank who also serve as members of the NB. Other government agencies will be invited to Committee deliberations, as and when necessary.

**ICC Technical Board (ICC-TB).** The ICC-TB deliberates on program/project proposals and endorses meritorious ones to the ICC-CC for approval. In particular, the ICC-TB focuses on the various options available to proponents in implementing and financing a program/project. Towards this end, the ICC-TB provides direct advice to the proponent on how proposals can be improved upon before they are elevated to the ICC-CC for approval. Programs/projects presented for ICC-TB deliberations are evaluated by the ICC Secretariat and other concerned agencies, as applicable, whose findings/recommendations are contained in a Project Evaluation Report (PER).

The ICC-TB is composed of senior representatives from the following agencies:

- NEDA - Chairperson
- Department of Finance - Co-Chairperson
  - International Finance Group
  - Corporate Affairs Group - Member
- Office of the President - Member
- Department of Budget and Management - Member
- Department of Trade and Industry - Member
- Department of Agriculture - Member
- Bangko Sentral ng Pilipinas - Member
- Department of Environment and Natural Resources - Member
- Department of Energy - Member
- BOT Center - Member

Other government agencies will be invited to participate in ICC-TB deliberations, as and when necessary.

**ICC Secretariat.** The NEDA Secretariat serves as the Secretariat of the ICC. The ICC Secretariat provides technical staff support to the Technical Board and Cabinet Committee, in coordination with other government agencies. The ICC Secretariat performs the following functions:
a. Undertake the evaluation of all program/project documents submitted to the ICC with respect to technical, financial, economic, social, environmental, institutional development, feasibility/viability as well as policy aspects, and come up with comments/recommendations for consideration by the ICC;

b. Review the overall sectoral and spatial context of a specific program/project including the relative priority accorded to the program/project by the proponent;

c. Undertake continuing improvements on existing methods and guidelines for program/project evaluation for dissemination to proponent agencies (refer to ICC Project Evaluation Procedures and Guidelines);

d. Maintain an ICC Project Appraisal Monitor (IPAM) which is a guide/tool in the generation/identification of programs/projects requiring review and approval by the ICC. The IPAM also contains information on programs/projects cleared by the ICC and/or approved by the NEDA Board, including the conditions for approval;

e. Conduct studies supportive of the tasks of the ICC, including drawing out policy implications from ICC-TB and CC discussions, as deemed necessary;

f. Perform administrative tasks such as:
   - preparing agenda, minutes and other documents requiring action by the Technical Board and/or Cabinet Committee;
   - undertaking follow-up actions in support of ICC decisions;
   - providing secretariat support to the ICC-Technical Working Group (TWG) on BOT contract review;
   - serving as the liaison between the Technical Board and the Cabinet Committee;
   - providing feedback information to proponent agencies on the status of programs/projects reviewed by the ICC; and,
   - arranging the meetings of the Technical Board and the Cabinet Committee and coordinating the provision of the necessary logistics for the meetings.

III. Scope of ICC Review/Decisions

In general, ICC review and approval is undertaken for programs/projects requiring ICC clearance and/or NEDA Board approval as a pre-conditions for:

a. Securing loans and guarantees by the National Government agencies and corporations;

b. Facilitating private sector participation in National Government projects under the RA 7718 (The Philippine BOT Law) as amended as well as access to external financing which requires National Government guarantees;
c. Obtaining Monetary Board and other authorization, as required by law, to negotiate foreign loans and approve foreign borrowing;

d. Programming forward budgetary obligation requirements; and,

e. Processing any other expenditure decisions the NEDA Board and its Committees may require the ICC to act on. In certain cases, as may be defined under these guidelines or by the ICC, programs/projects reviewed by the ICC Secretariat may be submitted to the ICC to note for its information (i.e., ICC notation).

**ICC review/decisions cover:**

1. Programs/projects of national line agencies with total cost of PhP500 million and above, regardless of financing;

2. New activities of government-owned and controlled corporations (GOCCs) and government financial institutions (GFIs) requiring investments above PhP500 million that has to be financed by NG-guaranteed loan;

3. For projects of national line agencies and GOCCs implemented through the BOT and its variant schemes.
   a. Those costing up to PhP300 million shall be submitted to the ICC for its approval; and
   b. Those costing more than PhP300 million shall be submitted to the NEDA Board for its approval, upon recommendation of the ICC;

4. For local BOT projects to be implemented by local government units (LGUs) costing above PhP200 million;

5. Programs/projects costing PhP500 million and above of private sector companies, private foundations and nongovernment organizations (NGOs) that are intending to tap concessional ODA loan financing through on-lending arrangements and/or NG financing guarantees;

6. Ongoing ICC-approved programs/projects involving changes in scope; change in cost above established sensitivity parameters and budgetary allocation relative to original/prior ICC approval; or, extension in implementation period or loan validity of more than 12 months; and,

7. Other programs/projects not defined above will be considered on a case-to-case basis as may be defined by the ICC and the ICC Secretariat.

**IV. Procedures**

The ICC Business Process is attached as Annex A. The business process is elaborated hereunder:

a. Programs/projects that will be lined up for ICC discussions/deliberations should be drawn primarily from the Medium-Term Public Investment Program (MTPIP) of the proponent government unit in the order of their relative priority and target commencement schedule. First priority will be given to programs/projects whose implementation is targeted for the first and second years of the
MTPIP and whose loan negotiations are forthcoming. Concerned proponent agencies will ensure that MTPIP projects scheduled for implementation in the current year are cleared by the ICC, as necessary.

b. A tentative two-month rolling agenda calendar of such programs/projects based on IPAM will be predetermined by the ICC Secretariat to systematize the scheduling of ICC meetings. Said agenda calendar will nevertheless be flexible to accommodate other well prepared and priority programs/projects of proponent agencies (including those with major policy issues) requiring ICC clearance and/or NEDA Board approval.

c. The ICC Secretariat will ensure the completeness of submission of ICC requisite documents (complete list in Annex B) which will be the basis of project evaluation, findings of which are shared with the proponent prior to ICC deliberation of the project. The proponent agency will submit to the ICC Secretariat, copy furnished DBM, DOF-CAG and BSP, pertinent documents/information on the program/project to facilitate simultaneous evaluation of financing terms/options and external financing requirements by oversight agencies.

d. The ICC Core Secretariat of the Public Investment Staff of NEDA will facilitate that both the ICC Secretariat and the DOF-CAG’s evaluation reports are available during the ICC-TB presentation of GOCC/GFI-proposed programs/projects. Both reports will be integrated in the ICC Secretariat PER during ICC-CC presentation of projects.

e. Proponents should secure a DBM certification of the availability of budget cover for new proposals or requests related to ongoing programs/projects before submitting such for ICC action. However, should the ICC Secretariat technical evaluation be completed and that the only pending information is the DBM certification, for which the proponent has already officially submitted to DBM such budget strategy, then the program/project may be presented for ICC-TB deliberation. To this end, the ICC-TB PER should include a copy of the proponent’s budget strategy as already submitted officially to DBM. The DBM representative in the ICC-TB meeting will be requested to update the Board on the Department’s action on the proponent’s request for certification. The DBM certification will be subsequently integrated in the PER to be presented to the ICC-CC.

f. National Credit Council (NCC) endorsement will only be required for onlending/relending programs/projects proposed by agencies/institutions not classified as GFIs. For GFIs, NCC comments may be solicited, if any; however, NCC positive action for requested comments will not be a prior condition for continuing ICC Secretariat action on proposals for ICC review.

g. Programs/projects under BOT and its variant schemes should adhere to the ICC review and approval process provided in RA 7718 (The Philippine BOT Law) and its Implementing Rules and Regulations, as amended.

h. Programs/projects that involve local government units (LGUs) should adhere to the 6 October 2004 ICC directive on “Financing of Activities Devolved to LGUs”. The National Government shall not provide grant/subsidy to LGU-devolved programs, activities and projects (PAPs). In cases, however, where the LGUs may need additional or supplemental resources in implementing the devolved PAPs, such LGUs can avail of loans from the National Government through the Municipal Finance Corporation (MFC) or other government financial institutions (GFIs).
i. The ICC Secretariat presents the project and the results of its evaluation to the ICC. The proponents, represented by the Project Implementation Officer (PIO), his/her alternate or a duly-authorized representative/s, are invited to respond to the issues raised by the TB and/or CC during the meeting.

j. ICC clearance should be secured before the program/project appraisal by foreign funding agencies, and always prior to the issuance of approval-in-principle by the Monetary Board as well as negotiation of program/project funding/signing of financial commitment.

k. ICC re-evaluation is required for:

(1) A proposed program/project that incurs at least 10 percent change in total cost arising from changing the design, price updating and change in financing mix, among others, following the appraisal by the foreign financing institution.

(2) An ongoing program/project involving changes in cost, scope or implementation period as well as extension of loan validity beyond 12 months that result to more than 20 percent cost/time overruns.

If the change in cost and scope have been sufficiently captured in the earlier sensitivity analysis and the program/project remains viable, the re-evaluation may focus on measuring the proponent’s capacity to absorb the cost requirements within its multi-year budget program. The proponent should be able to justify the basis for the revised cost figures.

ICC notation/information after earlier ICC approval is applied to:

(1) A proposed program/project that incurs less than 10 percent change in total cost arising from changing the design, price updating and change in financing mix, among others, following the appraisal by the foreign financing institution.

(2) An ongoing program/project with request for extension of validity of loans and grants of less than 12 months and/or incurring zero or minimal additional budget from the national government within the agency budget ceiling. This is applied to requests for final extensions only and that further requests thereafter are automatically denied.

In both situations, the ICC Secretariat will evaluate the projects, the results of which will be reported to the ICC. The proponents should submit the justification for the revised cost figures as input to the ICC Secretariat evaluation.

l. Projects for which ICC endorsement/approval was deferred will be remanded to the ICC Secretariat for re-evaluation.

m. To avoid the problems associated with delayed implementation and to encourage agencies to present well-prepared project proposals, the current ICC review and approval of a program/project has an application of 18 months. Should the program/project not be implemented within this period, it will need ICC review anew.

n. Programs/projects approved by the ICC will be elevated to the NEDA Board for confirmation as required under existing rules and regulations. The ICC-approved cost and other NEDA Board
conditions on programs/projects will be reflected in the NEDA Board resolution as the basis for
loan negotiations, the compliance of which will be monitored and reported to the ICC by the
Secretariat.

V. Schedule of Meetings

The ICC-TB and CC, respectively, will meet twice per month provided the required quorum is
confirmed by the ICC Core Secretariat. Special meetings may likewise be called, when deemed
necessary by the ICC and as recommended by the ICC Secretariat, to accommodate programs/
projects and other agenda items requiring immediate action, or when a quorum is not available
during regular meetings. In case of the latter, the agenda set for the canceled regular meeting will
be discussed during the special meeting.

Notes:

1. Revised as of 4 March 2005 based on the 4 August 2004 updates approved by the ICC-Technical Board and Cabinet
   Committee. The 4 March 2005 revisions made are in Section III (Scope of ICC Review Decisions) and Section IV
   (m) (Procedures) pursuant to ICC policy issuance dated 4 March 2005 raising the ICC project cost floor to PhP500
   million.

2. Executive Order No. 230 (Reorganizing the National Economic and Development Authority, 22 July 1987).

3. An MCP is a program costing at least PhP500 million and involves investments in physical and human capital through
   expenditures or transfers by the National Government. As a rule, MCPs can be evaluated, specifically in terms of
   financial and economic viability.


5. Detailed engineering (D/E) studies are considered part of project implementation and require prior ICC approval for
   funding and project start. Corollary to this, D/E studies require completed feasibility study (FS). Evaluation of the
   proposal is done on the entire project rather than on the D/E investment alone.

6. Project is considered under implementation once project document or loan/grant agreement is signed and made
effective.