The resettlement policy paradox:
Prospects for reconciling rights, risks and sustainability for people displaced by development

Susanna PRICE

Executive summary

The international policy on involuntary resettlement aims to protect and benefit people displaced by development projects. The first social policy approved by a multilateral lending agency, the World Bank, in 1980, the policy spread globally among multilateral lenders, corporate financiers and export credit agencies. Like many lenders the Bank integrated the stand-alone resettlement policy into an environmental and social framework for planning and managing development investments. This policy now has human rights elements, but changes in coverage call for careful testing of outcomes, which has been a longstanding challenge.

This thesis identifies and addresses a paradox. The resettlement policy has been successfully accepted and disseminated globally but it fails to guarantee protection for people displaced by development projects. Its own objectives cannot be confirmed to enhance, or restore, livelihoods and living standards with sustainable benefit-sharing opportunities. These findings emerge from comprehensive global reviews of resettlement outcomes and are confirmed through extensive independent research. The thesis rationale is to find out if and how the resettlement policy paradox can be resolved, whether through the policy wording, in better policy application, or in country frameworks.

Theoretical positions offer varying explanations for why resettlement fails and its prospective cures. The mainstream position attributes failure primarily to deficient laws, financing and capacity in borrower countries where the policy is implemented. The policy is intended to bridge the gaps with country frameworks. Radical views find developments that displace people for unacknowledged political reasons to be poor development in the first place. Rights based ethical approaches permit displacement only with enhanced standards for guaranteeing rights for those affected. None of these approaches has so far resolved the policy paradox that allows a successful policy to fail in achieving its own objectives.

This thesis adopts a new approach to this paradox through the anthropology of policy, which treats policy as a dynamic study in social relations and semantic meaning. Methodologically, the focus is not only the substance of the written resettlement policy text itself, and its instrumentalist performance through evidence-based testing. The policy's wider interactions are explored as it presents new logics at multiple levels: new meanings and alignments of actors, agents, institutions, and subjects in lending agencies, among borrowers,

and in project cases. The complementary anthropology of law brings analysis of the transformative value of human rights when people are displaced by development. The thesis, therefore, examines the resettlement policy through its articulation in multiple data sets of different scales across global, regional, country and project sites:

Global: The thesis identifies longstanding structural anomalies in policy application. It includes global reviews; a data base of laws and regulations; and independent research.

Asia Pacific Regional: The thesis reviews a 40-country data base of laws and regulations. It includes interviews with politicians, government officials, policy makers, practitioners and affected people in selected Asia-Pacific countries.

Project/local: A project case study of risks and rights in a model project is examined.

Research question 1: Has evidence-based feedback from resettlement policy application, when reflected in revised resettlement policy and practice, been effective in reducing or eliminating resettlement failure? This question is addressed globally and with special reference to the Asia Pacific region. **The answer is yes, in part**. The policy has produced a category of "resettler" and created an entire new set of actors and activity around it. Handbooks, sourcebooks and good practice notes disseminate accumulated experience to improve practice among lender staff and in country. Experienced practitioners draw upon past failures to suggest a model project that proposed to enhance, not just to restore, living standards and livelihoods. **There are, however, still no guaranteed safeguards nor benefits for the affected people.** Reviews demonstrate that the policy has improved resettlement outcomes over 40 years, despite incomplete data sets, but. a significant number of affected people are still not even restoring living standards and livelihoods, especially among those without legal title to their land. Benefit-sharing, after initial enthusiasm, has faded to just a handful of Bank projects, while having wider application elsewhere. Longstanding structural anomalies have impeded resettlement policy implementation. Reviews of global laws and lending data find there are still major gaps between the resettlement policy standard and country standards which undermine performance. The policy has been productive and contested but this has not resulted in consistent performance and a guaranteed outcome for the affected people in terms of its own objectives.

Research Question 2: Are the feedback links aimed at improving resettlement policy and practice obstructed by the lending culture in which resettlement policy operates? This question is addressed globally and with special reference to Asia Pacific region. The answer is **yes, with**

two key qualifications. The thesis finds structural anomalies whereby pressure to streamline the project cycle and speed up project approvals cuts into the time available for key resettlement planning steps in scoping, disaggregated impact assessment, meaningful consultation and planning for livelihoods and living standards. There is reluctance to suspend or withdraw loans due to resettlement problems in implementation. The resettlement timeline for full livelihood reconstruction usually extends beyond the project timeframe. These factors undermine the dialogic link by limiting scope for adoption of innovative models and good practices. **The two qualifications** are, first, the analysis of a model resettlement demonstrated that commercial imperatives can support a high quality approach to resettlement standards in private sector projects. Second, the Bank moved closer to human rights standards during the recent public consultations on the Environment and Social Framework (ESF), adopting statements on free, prior, informed, consent (FPIC) for indigenous peoples and a prohibition on forced eviction, but anomalies in the approved policy procedures, and provision to release stronger-performing countries from the full safeguard requirements undermine these gains.

Research Question 3: To what extent do country legal frameworks interact with wider international thinking in a possible rapprochement between sustainability, rights and risks in approaches to development in general and resettlement in particular? **Governance is increasingly globalised.** Rapprochement between rights, risks and sustainability at the country level is both possible and necessary. Countries are responsible for addressing human rights and the Sustainable Development Goals, in formulating property, expropriation and environmental laws; in supporting implementing agencies; in setting development priorities, and in selecting and regulating projects. Many countries have, to varying degrees, been productive in introducing new resettlement-related laws both globally and in the Asia Pacific 40-country data base. Performance will be determined by the extent to which these laws reflect policy and have support from the judiciary, financing, and implementing agencies. The ESF now accepts different standards for countries in addressing safeguards, with different implications for human rights and access to the World Bank Inspection Panel. The ESF reflects elements that are not necessarily in alignment: a stronger human rights lobby; and stronger national perspectives, especially from the emerging countries.

Resolving the Paradox: The combined pandemic, climate change and inequality crises may present an opportunity for adherents of different theoretical perspectives to come together to resolve the resettlement policy paradox. Some ideas are presented in Chapter 8.

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Upon joining the Asian Development Bank (ADB) in Manila as social development specialist with lead responsibility for resettlement, I was tasked with implementing the newly approved 1995 Involuntary Resettlement Policy. My rewarding job description included all aspects of resettlement policy application – reporting, compliance systems development and assessment, training, capacity building and project review throughout ADB's Asia-Pacific region.

A particular interest was a multi-year, multi-country study to enhance resettlement legal frameworks in Asia. This study was the first of its kind among international lenders and, in the years since my departure, ADB has consistently and far-sightedly assisted many countries to strengthen their regulatory and management safeguard capacity in relation to environment, resettlement and indigenous peoples.

My acknowledgements are, therefore, deep and expansive. I thank my resettlement colleagues, mentors and associated consultants at the World Bank, where the international resettlement policy originated 40 years ago: Maninder Gill, Daniel Gibson, Wang Chaogang, Pramod Agrawal, Warren Van Wicklin III, Sam Pillai, Martin ter Woort, Gordon Appleby and the policy-making pioneer, Michael Cernea.

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Prior Publications

The thesis draws upon these three peer-reviewed publications, all written solely by the author:
Chapter 4: Prologue: victims or partners? The social perspective in development-induced displacement and resettlement. *The Asia-Pacific Journal of Anthropology (TAPJA)* Volume 10 No. 4, pp.266-282.
Chapter 5: A no-displacement option? Rights, risks and negotiated settlement in development displacement in *Development in Practice*, Volume 23, Issue 5, pp. 673-685.
Chapter 6: Looking back on development and disaster-related displacement and resettlement, anticipating climate-related displacement in the Asia-Pacific region, in *Asia Pacific Viewpoint,* Volume 60 No 2, pp. 191-204.

Acronyms and abbreviations

ADB – Asian Development Bank.

AfDB – African Development Bank.

AIIB – Asian Infrastructure Investment Bank.

AMDAL – *Analisis Mengenai Dampak Lingkungan* – Integrated Environmental and Social Impact Assessment (Indonesia).

ANU – Australian National University.

BIS – Bank for International Settlement.

BP – formerly British Petroleum.

CBA – cost-benefit analysis.

COP21 – United Nations Climate Change Conference, Paris (2015).

CSR – corporate social responsibility.

DFD – development-forced displacement.

DFDR – development-forced displacement and resettlement.

DPL – development policy loans.

EBRD – European Bank for Reconstruction and Development.

EIA – Environmental Impact Assessment.

EIB – European Investment Bank.

EITI – Extractive Industries Transparency Initiative.

ESF – World Bank Environmental and Social Framework.

ESS5 – World Bank Environment and Social Standard 5.

FAO – UN Food and Agriculture Organisation.

FPIC – the right of indigenous people to give their free, prior and informed consent to resettlement (United Nations Declaration on the Rights of Indigenous Peoples 2007).

GHD – engineering and professional services company.

GP – United Nations Guiding Principles on Business and Human Rights.

HDI – Human Development Index.

HRIA – human rights impact assessment.

IADB – Inter-American Development Bank.

ICBS – Tangguh Integrated Community-Based Security Force.

IDP – internally displaced person.

IMDC – Internal Displacement Monitoring Centre.

INDR – International Network on Displacement and Resettlement.

IHA – International Hydropower Association.

IMF – International Monetary Fund.

IPCC – Intergovernmental Panel on Climate Change.

IRR model – Impoverishment Risks and Reconstruction model.

ISP – BP's Integrated Social Programme.

LARAP – BP's Land Acquisition and Resettlement Action Plan.

LARRA 2013 – India's Land Acquisition Resettlement and Rehabilitation Act.

LNG – liquefied natural gas.

MDBs – multilateral development banks.

MUTP – Mumbai Urban Transport Project.

NAPA – Solomon Islands state-level National Adaptation Program of Action.

NGO – non-governmental organisation.

OD 4.3 – World Bank Operation Directive 4.30 (1990).

OECD – Organisation for Economic Co-operation and Development.

OMS 2.33 – World Bank Operations Manual Section 2.33.

OP 4.12 – World Bank Operational Policy on Involuntary Resettlement (2001).

PAPs – project-affected persons.

PforR – Program for Results financing.

PLN – Indonesia's national electric utility.

PPP – public-private partnership.

PSAL – Papuan Special Autonomy Law.

R&R Policy – India's Resettlement and Rehabilitation Policy.

RAI Principles – Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources (2010).

RP – Resettlement Policy.

SDGs – United Nations Sustainable Development Goals.

SIA – Social Impact Assessment.

SPS – Asian Development Bank's Safeguard Policy Statement.

TAPJA – *The Asia Pacific Journal of Anthropology.*

TIAP – Tangguh Independent Advisory Panel, appointed by BP.

UDHR – United Nations Universal Declaration of Human Rights.

UEPPC – Upper Egypt Power Production Company.

UN – United Nations.

UN-Habitat – United Nations Human Settlements Programme.

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples.

UNHCR – United Nations High Commissioner for Refugees.

VGGT – United Nations Voluntary Guidelines on the Responsible Governance of Tenure.

WB – World Bank.

WCD – World Commission on Dams.

Chapter 1: A policy paradox

Introduction

This thesis explores a policy paradox whereby a 40-year old, successfully-adopted international policy, with impeccable ethnographic credentials, fails to guarantee its objectives to "do no harm" and to benefit people affected by development projects. The anthropologies of policy and law bring together a complementary methodological approach to assess this policy paradox at global, country, project, and local levels and, legally, in the context of international governance and country powers of eminent domain.

This paradox matters. The displacing dam, mine, plantation, or superhighway has for long been a polarising image that throws into sharpest relief development's disjunctures. Forty years on, these images that juxtapose wealth-creating assets against the despoiled, impoverished communities they displaced are still the images that immediately conjure up development's most difficult dilemmas, as recently stated by the United Nations Special Rapporteur for Extreme Poverty:

> In too many cases, the promised benefits of growth either don't materialize or aren't shared. Countries that experience resource booms often don't see benefits outside that sector. Natural resource extraction employs relatively few people and can actually decrease the poverty reducing impact of other sectors. Poverty gaps have increased in major hydropower states compared to non-hydropower states. Commercial agriculture, mining, and other land-intensive industries have contributed to significant displacement of communities around the world, separating people from land they depend on for food, shelter and livelihoods, and resulting in impoverishment. Industrial mining by multinationals often substantially decreases food security and displaces jobs in artisanal mining (Alston 2020:).

This Introduction sets out the key concepts and the approach that will be taken to address the resettlement policy dilemma. It charts a way through four decades, during which time development lending has diversified, with new bilateral and multilateral actors. Private sector financing has significantly increased (World Bank 2017b; ADB 2020). Lenders have introduced new lending modalities that are harder to track into implementation or are set beyond

the mandate of the resettlement policy entirely (Bugalski 2016). Since 1980 international and transnational efforts to govern activities, relationships and behaviour beyond national boundaries have multiplied, partly as a response to global challenges such as climate change, finance, and human rights – and increasing risk of displacement. These challenges engage increasingly diverse state, multilateral, private, and civil society actors (World Bank 2017b). Whether such interactions comprise binding international treaties and contracts (hard law) or non-binding voluntary standards and guiding principles (soft law), international law adds new opportunities for citizens to appeal to standards beyond their own state law. Policies and procedures of international financial institutions, development agencies and humanitarian organisations occupy an "ill-defined domain at the intersection of international private law, international public law, technical norms and soft law" (Randeria and Grunder 2011).

The World Bank approved the first policy on involuntary resettlement in 1980, for people resettled to make way for development projects. Governments applied their powers of eminent domain or other regulatory measures to obtain land for development purposes, offering "fair" "just" or "adequate" compensation, but the Bank found this failed to prevent "hardship, disruption and constraints on further development" for people displaced by lender-financed development projects (World Bank 1980: para 1).

The first policy on involuntary resettlement intended to supplement these country standards. It drew heavily on ethnographic cases of resettlement, especially of communities displaced by reservoir projects, where people are seriously affected through loss of their homes, networks, resources, and livelihoods, sometimes losing an entire way of life.

Subsequently revised, an expanded policy (World Bank 1990) refined the scope to include: "construction or establishment of (a) dams, (b) new towns or ports, (c) housing and urban infrastructure, (d) mines, (e) large industrial plants, (f) railways or highways, (g) irrigation canals, and (h) national parks or protected areas." (OD 4.30 1990: para 4). It distinguished between people affected by development with "Refugees from natural disasters, war, or civil strife (who) are also involuntary resettlers, but they are not discussed in this directive" (ibid: footnote 4). Severe long-term hardship, impoverishment and environmental damage could result if planning measures were not enacted. The refined objectives were (a) to avoid and minimise resettlement by redesign measures where feasible; (b) where unavoidable, to conceive resettlement as development programs providing resettlers sufficient investment and

opportunities to share in the project benefits. Measures included (i) compensation for losses at full replacement cost before moving; (ii) assistance with the move and support during the transition period in the resettlement site; and (iii) assistance in their efforts to improve, or restore, their former living standards, income earning capacity, and production levels. The policy encouraged consultation with resettlers; required attention to socio-cultural factors and recognition of community property. It stipulated that lack of formal legal title to land presented no bar to compensation and other assistance. The resettlement plan required details of the applicable legal framework; land tenure, acquisition and transfer; grievance procedures; the socio-economic survey of resettlers and hosts; choice of sites; valuation, compensation, livelihood assistance, shelter, services, environmental protection and management; and responsibilities for implementation, monitoring and evaluation. The Resettlement Plans were required before appraisal to check on the adequacy of the time-bound, costed measures.

Theoretically, the policy represents a mainstream position, which accepts any project and deals with the resulting resettlement as a "pathology" to be remedied with resettlement planning. Each country has its own implementation framework, with multiple different parameters. Within it the policy occupies, relatively neatly, a discrete project cycle space.

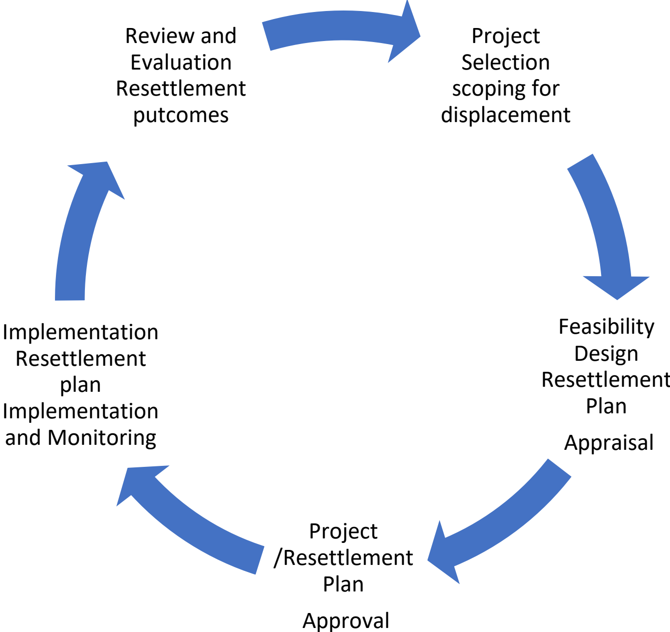


Figure 1.1: Policy on involuntary resettlement in the project cycle

A 2001 policy revision strengthened the requirements for meaningful consultation; covered losses arising from restricted access to resources; covered lost income and livelihood even if housing was unaffected; and introduced a resettlement framework in projects defining resettlement impacts only after project approval (World Bank 2001).

In 2017 a major shift turned the stand-alone resettlement policy into a standard, integrated with other social standards (social risk identification and management; community health and safety; working conditions; indigenous peoples; cultural heritage; and stakeholder engagement) into an environmental and social framework (ESF) (World Bank 2017a; Cernea and Maldonado 2018). Environmental and Social Standard (ESS) No. 5 on Land Acquisition, Restrictions on Land Use and Involuntary Resettlement prohibits forced eviction, improves housing for physically displaced people who are poor and vulnerable, anticipates policy coverage of negotiated settlements where their failure would result in involuntary expropriation, and introduces stricter safeguard measures for land tenure projects.

The policy has survived for 40 years. It has been both well accepted and well disseminated across the globe. Adopted by most major multilateral lenders, over 100 corporate financiers and 24 export credit agencies the policy, judged upon its level of acceptance and dissemination, appears very successful. Along with other elements of lender conditionality it has taken on global standard setting attributes. Paradoxically, however, the policy fails to demonstrate it is succeeding in “doing no harm”, its minimum objective for people affected by development projects. “Do no harm” means restored livelihoods and well-being in real terms compared to the pre-project situation. Nor does it demonstrate that it created development opportunity from which resettlers have benefitted, with enhanced livelihood and living standards in real terms. Some reviews and studies show that some people have been protected, and, more rarely, that some have benefitted, but, after 40 years of resettlement implementation, neither protection nor benefit is guaranteed.

This mixed record, and some reasons for it, have been documented over many years. As detailed in Chapter 1, comprehensive portfolio reviews (World Bank 2012, 2014) have failed to demonstrate even a minimum guarantee of restored livelihoods and living standards, let alone any guaranteed enhancements or benefits. The resettlement policy objectives have been achieved for some people, but by no means all. Similarly, the Bank’s own Inspection Panel

reports, going back to 1993, confirm resettlement as a major cause for complaint against the World Bank's projects, including failure to achieve the policy objectives (IEG 2016).

Research results have consistently confirmed these findings over many years. Some recent research studies have confirmed that, whereas material losses can be relatively easily replaced, difficulties recur with livelihoods and well-being (Piggott-McKellar et al 2019). Hay et al (2019) reviewed projects in a highly displacing sector – hydropower through large dams – concluding that, over the 40-year period, there has been little advance in finding workable resettlement solutions – and little chance of improvement. Fujikura and Nakayama (2019) prepared a special journal issue with reservoir resettlement case studies from Japan, Indonesia and Sri Lanka (for example, Suwartapradja et al (2019); Ariyani et al (2019)) which documented failures in livelihood reconstruction, especially failures in addressing gender perspectives, as women suffered adverse impacts of resettlement disproportionately (Manatunge et al 2019). Singer (2019) found that sustainable livelihood reconstruction in Vietnam was possible through additional benefit sharing in the form of payment for ecosystem services.

Despite some enhanced processes, failures in "meaningful consultation", participation, and negotiation are legion leading to substantive and procedural injustice (Zhao et al 2019). Governance and legal frameworks similarly demonstrate overall little responsiveness despite some brilliant country innovations (Price and Singer 2019). Social fragmentation, lost identities, extra local dynamics and power relations defy the technical-managerial solutions normally offered through mainstream resettlement policy implementation that focuses on risk assessment (Rogers and Wilmsen 2019; Wilmsen, Adjartey and van Hulten 2019). Avoiding and minimising resettlement, as advocated by mainstream resettlement policies and their critiques alike, would still appear to be good advice – advice that is observed by some cautious lenders but widely ignored by many others.

Resolving the resettlement policy paradox is increasingly urgent. First, the number of people displaced by development increases; and the frequency of projects with displacement also increases. Cernea and Maldonado (2018) raised previous estimates of 10-15 million up to more than 20 million people displaced per year. These estimates are conservative. In China alone just one form of land transfer from collective rural to urban land conversion reportedly displaced

40 million people in a 2-year period (2006-2007) (Chan 2016). The pandemic impacts have yet to be factored into those estimates.

Second, the resettlement policy, which began by drawing upon a significant body of evidence-based prior research, and several useful reviews, now suffers from what has been termed a "substantial knowledge deficit" (Cernea and Maldonado 2018:7). In this view it has fallen behind the resettlement knowledge achieved by researchers and practitioners during the last two decades. It suffers from poor practice during implementation, due to the absence of the necessary supporting financing levels and country frameworks of laws and regulations that encompass full economic and social reconstruction (ibid).

Third, the new ESF represents a radical change from earlier resettlement policies. The earlier policies were not founded in human rights law and did not provide material redress in case of failure to achieve those objectives. They did, however, set policy objectives for resettlement that conferred entitlements on affected people who could then claim those entitlements through an independent grievance mechanism, the Inspection Panel, established in 1993 (Bugalski 2016). Most multilateral lenders have since adopted some kind of inspection system.

The World Bank's four-year-long public consultation on its latest policy, the ESF, developed into a test case on human rights, advocated by a strong human rights lobby. At the same time, the Bank had to secure the approval of a wide range of interests: western donor countries, emerging powers (China, Brazil, South Africa, and India), as well as developing nations. New competitors like the Asian Infrastructure and Investment Bank (AIIB) had emerged (Dann and Riegner 2019). Reaching agreement among these disparate interests was a major challenge, and essential to the continued legitimacy of the Bank as an international norm setter. The approved ESF does not include a dedicated human rights safeguard, but it does introduce several human rights-related subjects and references the Universal Declaration of Human Rights. To reach consensus between these disparate groups the Bank adopted several strategies: less attention to appraisal; more attention to the implementation phase of the project; and a flexible approach towards the use of country systems if deemed to be "materially consistent" with the ESS. This change, targeted to emerging powers with relatively strong legal systems and administrative capacities, strengthens their flexibility and ownership – but also institutionalizes inequality between borrowing states, among whom safeguards will apply unequally (ibid). The third change, raised by Omaza and Ebert (2019), is that the wording of

the ESS weakens the original idea, decoupling the intent from the means of achieving it, which render inconsequential their human rights-related requirements. The impact on resettlement in project cases has yet to be understood. This shift in responsibilities on the part of lenders, together with the emergence of new lenders outside the safeguard altogether, creates an entirely new set of uncertainties for affected people.

Fourth, some governments use planned relocation as adaptation to climate change and look for guidance to development displacement. They may look in vain. The lessons drawn from development displacement merely repeat the same criticisms – failures of participation, negotiation and governance, resulting in lost livelihoods, well-being and identity (Azfa et al 2020; Arnall 2019; Tadgell et al 2018). Ferris and Weerasinghe (2020) found problems in national and local frameworks, community-driven decision-making, and sufficient lead times. Nightingale et al (2020) advocate ontological pluralism to open up opportunity, breaking free of divisive, risk-reducing categories to find new ways of conceptualizing society, climate and environment. Generating a different framing of socio-natural change helps break what they view as the current impasse of the current science-policy-behavioural change pathway.

Similarly stalled are the "rights" approaches to displacement by development that focus on the violation of human rights. The United Nations sponsored international deliberations on the legal contradictions which are inherent in displacement by development. Development, which is the right of all and intends to benefit many people, also displaces others in a way that potentially violates their rights – including the right to development itself, through powers of eminent domain expressed in expropriation laws and other means. This contradiction is not easily resolved but, nonetheless, remains in urgent need of resolution (Bugalski 2016).

Rights-based documents on development displacement and resettlement focus more on the context in which decisions are made to displace. The Guiding Principles on Internal Displacement (GP) prohibit arbitrary displacement for development unless it has "compelling and over-riding public interest" (United Nations 2004: Principle 6 2(c)). Assuming the public interest test is met, no project should displace people without efforts to avoid and minimise displacement, and to keep families together (ibid: Principle 7 /1). No displacement should occur without legal authority; without full information to those to be displaced on the reasons for displacement and the resettlement options available; without consultation and participation in planning and management, including with women; and without free and informed consent of

the displaced (ibid: Principle 7). Authorities must ensure the shelter, safety, nutrition, health and hygiene of the displaced; ensure the legal competence of any law enforcement agents; respect the right of the displaced to remedy, including judicial review (ibid: Principle 7); and ensure that displacement does not violate rights to life, liberty, dignity and security (ibid: Principle 8). States should make particular efforts to protect against displacement of indigenous peoples, minorities, pastoralists, peasants and others depending on and attached to their land (ibid: Principle 9); with all rights given before, during and after their displacement.

The GP make existing human rights law displacement specific. Being non-binding, they cannot be invoked in country legal proceedings, nor do they represent even typical "soft law." Soft law normally "rests on the consensus of States and thereby assumes some authority that may be taken into account in legal proceedings, but whose breach does not constitute a violation of international law in the strict sense, and thus does not entail State responsibility" (Kalin 2001:2). Because the GP are so well grounded in international human rights law, however, they are harder than they appear, and the human rights law that underlies them can always be invoked in legal proceedings at the country level. International human rights law guarantees not only freedom of movement but also the right to choose one's own residence, and thus, a right to remain (ibid). A right not to be displaced can also be found in instruments on the rights of indigenous peoples. "From this it can be inferred that a right not to be arbitrarily displaced is already implicit in international law" (ibid: 6).

The United Nations Guidelines on Forced Evictions, similarly, are based on international human rights law. The Guidelines confirm and contextualise these rights, identifying and addressing some of the underlying asymmetries in power and information between the displaced people and their displacers. Efforts to avoid displacement must proactively seek policies and strategies that do not deepen inequalities (United Nations 2007: para 29), limiting underlying displacement causes, such as real estate speculation (ibid: para 30). Disaggregated data must address inequalities (ibid: para 33). The right to prior informed consent must be guaranteed (ibid: para 56 (e)), and no infringement tolerated of the right to continuous improvement in living conditions (ibid: para 56 (d).

This approach also accords with the Declaration on the Right to Development (Resolution 41/128 1986). The General Assembly recognized development as a comprehensive economic, social, cultural and political process aimed at the constant improvement of the well-being of all

individuals and peoples, on the basis of their participation in development and in the fair distribution of its benefits. The Sustainable Development Goals require ending poverty (SDG 1), reduced inequality (10) as well as decent work and sustained economic growth (SDG 8). Under this scenario it would seem insufficient simply to restore people displaced by development to a prior situation of poverty and vulnerability.

These sets of Guidelines go well beyond the resettlement policy. The rights-based approach requires a higher standard of public interest, project selection, and rights protection than the mainstream position. Transposed into the lender project cycle, this approach adds greater attention to rights before projects are selected, and then prior to, during, and post relocation:

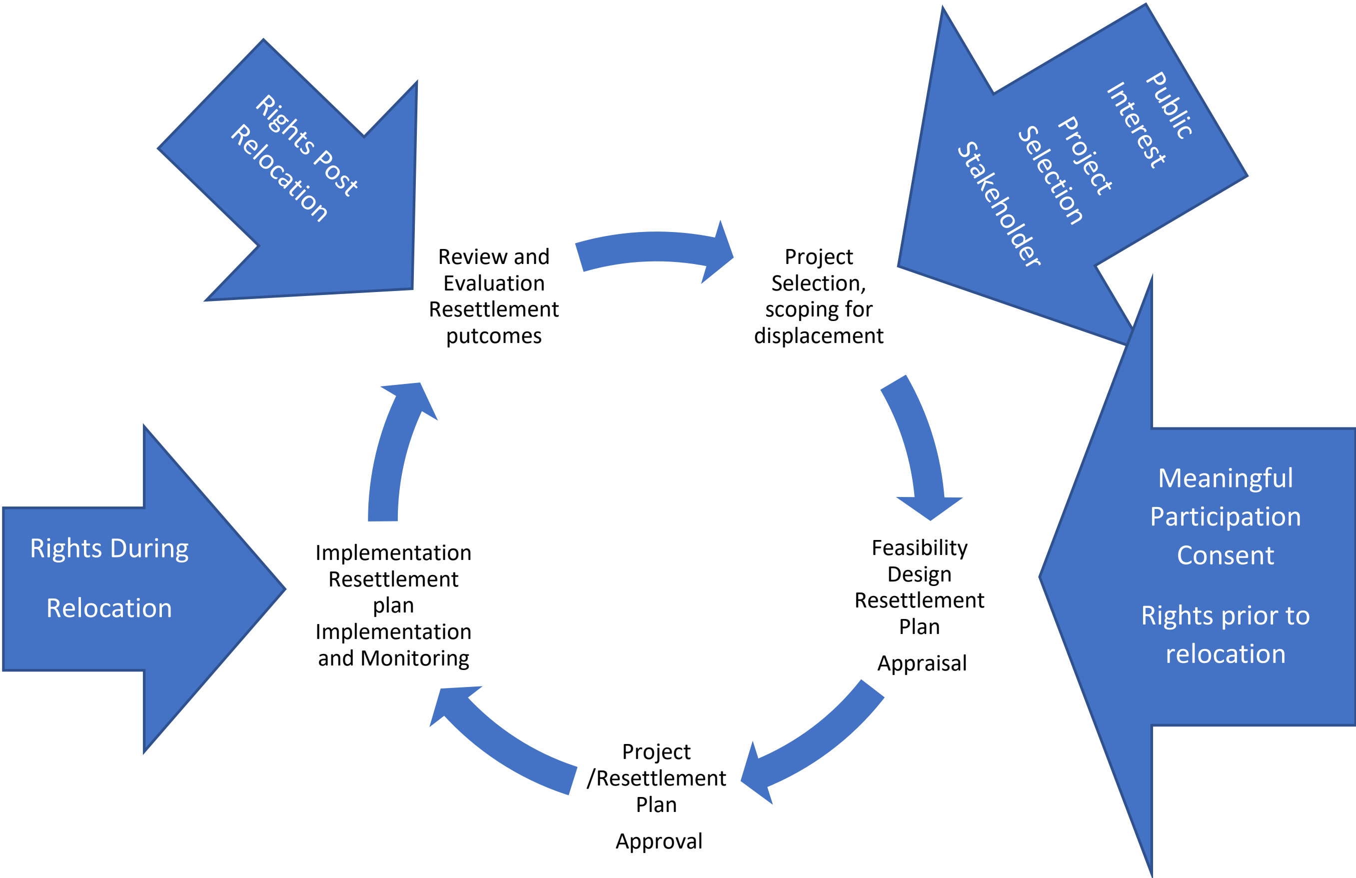


Figure 1.2: Human rights transposed into the project cycle

With the near-global endorsement of the Sustainable Development Goals (SDGs), and the adoption of the United Nations Climate Change Conference in Paris (COP21) and Sendai

Framework objectives, the question of the sustainability of project investments takes on new importance. Before the Covid-19 pandemic, global investment in the resettlement-intensive infrastructure sector was projected to need an additional US$15trn to the year 2040 above the current expenditure of US$79trn, not including the non-SDG-signatory countries (Global Infrastructure Hub n.d.). This would have meant escalating displacement. Recent projections from the United Nations (Alston 2020), International Monetary Fund, the World Bank, Asian Development Bank (ADB) and OECD point to adverse, but as yet unquantified, falls in global growth and rising poverty levels due to the Covid-19 pandemic.

Sustainability raises questions over project choices, climate-change proofing, impacts and outcomes. The Covid-19 pandemic only intensifies questions on the future shape of global "health", defined broadly to include ecological, social and economic perspectives. A recent major safeguard evaluation study leads with the thought that safeguards, including resettlement policy, face "increasingly complex social and environmental challenges including global challenges. Protecting the environment and people from widening inequalities, including increased vulnerabilities due to climate change events and acute impacts from climate induced disasters, is more important than ever" (ADB 2020: vii). This kind of thinking goes beyond reacting to the risks and impacts of specific projects, and beyond even the underlying rationale for project selection, important though that is. It raises deeper and more strategic questions on the shape of future aspirations, on the integration of environmental and social perspectives in the choice of strategies, so moving beyond the current mainstream pre-occupation with technical solutions for policy and practice that favour mitigation and adaptation, focusing especially on infrastructure (Nightingale et al 2020). Focusing on risk and its management tends to promote technical-managerial fixes for environmental and social risk, including resettlement risk. A plural ontological understanding of how environmental change is embedded in social and political-economic change, and how such knowledge is generated, may open the way for more transformative approaches.

In this increasingly challenging international context, policy has become a key organising principle of life through its classificatory logics and regulatory powers, with few populations around the globe it does not reach. This applies to the policy on involuntary resettlement, which has global reach even to the most remote parts of the globe, as Chapter 3 documents for a model project combining rights and risks in Indonesia's most isolated region.

This thesis adopts the anthropology of policy as a lens through which to explore the resettlement policy paradox. The anthropology of policy treats policy as dynamic, not static. Policy becomes a subject of study in social relations and semantic meaning. Shore, Wright and Pero's ground-breaking work defining the theoretical orientation, methodology and processes of the anthropology of policy (2011) has been adopted by the American Anthropological Association (2017).

The anthropology of policy goes well beyond written policy texts to explore the patterns and processes that shape the organisation of governance and power in the lending context. The concept resonates with Foucault's concept of the *dispositif* (1980) which can be used to define policy spaces and examine policy subjects. *Dispositif* signifies the ensemble of practices, institutions, laws, regulations, scientific statements, philosophy, and morality that frames a disciplinary space. Bourdieu's concept (1977) of *habitus* is then useful to explain the processes by which actors come to embody, internalise and become habituated to the structuring framework of the *dispositif.* The anthropology of policy complements these notions. It is the examination of the way in which policy creates links between the agents, institutions, technologies and discourses and brings these elements into alignment that makes the approach analytically productive. By encompassing both governing and governed the anthropology of policy defines a policy's "interpretive community" (Shore, Wright and Pero 2011: 17). In examining the larger concepts of policy space and policy process the anthropology of policy approach opens windows onto wider processes of political transformation (ibid).

In comparison, a traditional approach to policy analysis - "authoritarian instrumentalism" - examines the rational ways in which policy moves through purposive steps, from review of alternatives through policy selection to evidence-based evaluation and dialogical feedback to revise the policy and improve practice. This approach assumes a top-down movement of policy through a hierarchy to implementation on the ground. The evidence-based evaluation methodology that has become standardised for development projects regards monitoring and evaluation as "a powerful public management tool that can be used to improve the way governments and organisations achieve results … [through] … good performance feedback systems … one must also examine *outcomes* and *impacts*" (Kusek and Rist 2004: xi). The approach demands more than just an assessment of procedural steps – preparing, disclosing and delivering resettlement planning measures. Rather, evidence-based results are increasingly necessary for public accountability to demonstrate the outcomes of programmes and projects

in the quality of people's lives. In the case of the resettlement policy, however, part of the paradox, to be explored, is the scarcity of good outcome data.

In contrast, an anthropology of policy approach is not "an interpretive science in search of a law but an interpretive one in search of a meaning" (Shore, Wright and Pero 2011 paraphrasing Clifford Geertz 1973:5). The anthropology of policy works through challenging convention and thinking outside of the parameters of the policy box. Policy becomes a "political process involving many actors all proposing how people should relate to each other, conduct themselves and be governed" (ibid:20). Rather than using research tools instrumentally, the anthropology of policy encourages an ethnographic consciousness, that oscillates between insider and outsider perspectives, becoming a critical, questioning stance that treats the familiar as strange (ibid). This approach encourages the use of a wide range of data sources at different levels, rather than a more traditional ethnographic community. This thesis examines data at global level (the policy, its structural anomalies, its application, and review outcomes); regional level (highlighting in particular the Asia Pacific region); and, at the project level, an in-depth case study from Indonesia.

Accordingly, the thesis will examine the way in which the resettlement policy was introduced to govern displacement risks arising from development projects. Accepted at face value, however, the policy categories designed to make displacement governable through resettlement can obscure underlying realities that may point to more transformative solutions.

The new focus on the country context raises questions about the interaction of policy with multiple and differing sets of country property and expropriation laws, often in interaction with environmental laws and permitting. Such legislation is changing, partly in response to widespread protest over land grabbing; partly in response to the contrasts raised in juxtaposition with the international resettlement policy standard; and other international standards such as human rights international law and soft law guidelines and codes of conduct.

The anthropology of policy is augmented by a complementary focus on the anthropology of law, which has experienced a recent, post-Cold War renaissance. It is being re-envisaged, as stated by a leading proponent, as the critical study of "linkages between law, identity, inequality and power" (Goodale 2017: 29). Anthropology brings to the study of human rights an ethnographic concern with the production of law within and beyond the international system.

Human rights remain a “potent symbol of contemporary world making” (ibid: 116). The anthropology of law has demonstrated that human rights have transformative value for development, international politics and “the moral grammar of social conflict”, even as their impact is “tempered by counter currents of culture, capitalism, nationalism and the more mesmerising facets of religious extremism” (ibid: 116). The thesis draws upon the anthropology of law to examine a rights-based project model and the potential for rapprochement of rights and risks approaches in country frameworks. The diagram below depicts the anthropologies of policy and law in dynamic interaction through an expanded project cycle with a broader country framework.

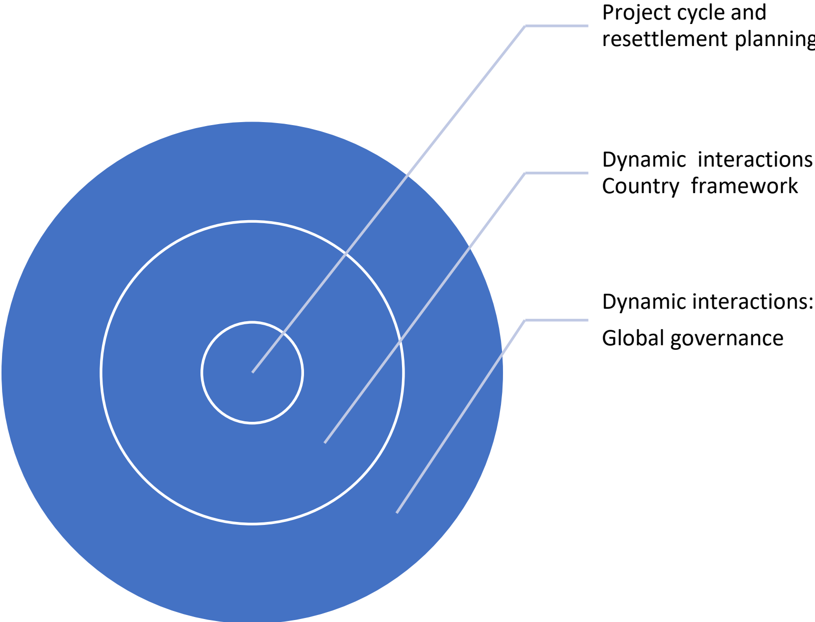


Figure 1.3: New approaches to policy implementation in country frameworks: anthropologies of policy and law

This thesis presents an analysis of a rare, positive case of resettlement policy application – a project with a resettlement plan that not only aimed to be an exemplary model of resettlement but that largely succeeded in its set objectives. It aimed to address both rights and risks.

The thesis will demonstrate, through examples, how changes in country law provide new opportunities for rapprochement between rights and risks in new country approaches, in

alignment with a focus on sustainability. Merry envisaged the anthropology of law as interrogating "law as at the centre for struggles over justice and state power, an instrument of transformation and resistance" (Merry 2017: xi) while "universal" values, such as justice and human rights, take new forms in local contexts. The thesis examines these possibilities for transformative approaches for people displaced by development.

This introduction begins with analysis of the origins, strengths and weaknesses of the resettlement policy itself, setting a foundation for the proposed methodology and research questions that follow in Chapter 2. Chapter 3 presents the case study analysis as a basis for subsequent examination, including a specific governmental technology, audit. Three chapters follow, interrogating key aspects of resettlement policy application. An analytical synthesis in Chapter 7 then precedes a brief conclusion in Chapter 8.

1.1 Policy origins and development

1.1.1 Turning social research into lender policy

Thirty years after it began lending, the World Bank approved a policy to address the risks for people displaced by the projects it financed in borrower countries. Before that, social issues barely rated a mention in development planning. Officially, development planners, assuming that benefits from building up urban-based productive enclaves on western models in developing countries would eventually trickle downwards to the population as a whole, had had no interest in local institutions, social costs or social processes (Cochrane 2019; Price 2012, 2015a and 2020a). Founding lender charters did not mention social transition or consider the people among whom development investments would unfold.

The World Bank, like other lenders, had operated for decades without sociological knowledge, which was not deemed relevant to the core business of conceptualising, planning and managing lending activities. Social factors were not part of the dominant economic paradigm or part of the core business to be proactively addressed, mitigated or managed through the project lending cycle (Price 2012; 2015b). Local institutions, which had important knowledge of local community priorities, were dismissed as impediments to, rather than building blocks for, development. The World Bank had never appointed sociological specialists of any kind to in-house positions. "Social" or "human" factors in planning and management were, at best, treated

as residual, of little account or, at worst, as “social constraints” to economic growth transformations, which could be blamed in the case of failure (Apthorpe ed 1970; Price 2020a). The emergence of a sociologically based involuntary resettlement policy in 1980, approved by a foremost international lender, the World Bank, was, therefore, something of a breakthrough in theoretical, methodological and strategic terms.

The World Bank’s approved resettlement policy claimed an impeccable lineage in anthropological research, including classic cases such as the Gwembe Tonga resettlers displaced by the Kariba reservoir in Zambia, 57,000 of whom were displaced and moved in 1958 to a resettlement site that could not support them (Colson 1971; Scudder 1993 and 2009; Brokensha and Scudder 1968; Chambers 1969). Based on long-term anthropological research, conducted primarily among communities displaced by reservoir projects, the policy raised new questions as it challenged the theoretical and methodological orthodoxies of development planning, bringing previously overlooked social issues into the planning arena.

The first resettlement policy, Operations Manual Section (OMS) 2.33, entitled *Social Issues Associated with Involuntary Resettlement in Bank-Financed Projects* (1980), addressed the difficulties faced by those people displaced by development projects:

> Resettlement as part of a development project is generally a politically sensitive measure. It gives rise to special social and technical problems, which are different from and more severe than those encountered in cases of voluntary resettlement. A feeling of powerlessness and alienation is often engendered in those who are relocated, especially when entire communities are uprooted from familiar surroundings. To the extent that pre-existing community structure and social networks disintegrate, and tightly knit kin groups are dispersed to new locations, social cohesion is weakened, and the potential for productive group action is diminished. These problems have been the subject of recent sociological research and their economic, psychological and socio-cultural consequences are becoming better understood (World Bank 1980 paragraph 4).

In addressing these issues, the OMS 2.33 (1980) was designed to bridge the gap between the national interest for development projects in countries borrowing World Bank loans and the interests of the people in the way of those projects, who lose out as a result. Until then, borrowers were considered entirely responsible for dealing with the social risks and impacts of

any such displacement. Lenders assumed that the state's powers of eminent domain, used to access land for development purposes, were founded on what country constitutions variously described as "fair", "equitable" and/or "just" compensation for anyone in the way, while rarely defining those terms, elaborating what this meant in practical standards, or setting out the method by which such specified outcomes would be achieved. Indonesia, for example, under the Presidential Decree system, had variable compensation open to administrative and military interpretation.

The OMS 2.33 (1980) diagnosed the problem of resettlement for the affected people, identified the symptoms or risks and proposed a remedy or "cure". The resettlement policy "cure" defined a process of resettlement planning and management through agreed steps and protected by project and loan covenants. These measures turned the displaced people into a new policy category: "resettlers". Informed by close sociological understandings of the situation of affected people, and by the expert "diagnosis" of what they needed for restored "good health", the policy proposed "treatments" – improved resettlement packages of compensation and other assistance, consultative processes and sufficient financing. Subsequently refined (World Bank 1990; 2001), the state of restored "good health" was measured by an objective indicator: enhanced, or at least restored, living standards, income earning capacity, and production levels, for displaced people (World Bank 1990).

This objective indicator of success was debated – and has been debated ever since. Before its approval, Scudder, a leading contributor to the policy formulation, proposed that the wording should make the newly created category of "resettlers" into "project beneficiaries" rather than merely the recipients of compensation to "restore" their economic and social base. This would mean enhanced livelihoods and living standards, not just restored to poverty and vulnerability. The World Bank, according to Scudder, insisted instead on a compensation approach that amounted to restoration at best (2019a: 124-6). This meant the policy would likely be addressed by borrowers through their property and expropriation laws, which depended upon powers of eminent domain and the definition of the public interest. The policy, which had been formulated expressly to bridge the gap with property and expropriation law, would depend for results upon that very body of law and the country capacity in each case to implement it (World Bank 1994). This structural anomaly has dogged the policy ever since.

In 1990 a revised policy (Operational Directive (OD) 4.30) included wording on benefits but the form of benefit-sharing was not mandated:

> Where displacement is unavoidable, resettlement plans should be developed. All involuntary resettlement should be conceived and executed as development programs, with resettlers provided sufficient investment resources and opportunities to share in project benefits. Displaced persons should be (i) compensated for their losses at full replacement cost prior to the actual move; (ii) assisted with the move and supported during the transition period in the resettlement site; and (iii) assisted in their efforts to improve their former living standards, income earning capacity, and production levels, or at least to restore them. Particular attention should be paid to the needs of the poorest groups to be resettled. (World Bank, OD 4.30, 1990, paragraph 3(b)).

The original 1980 policy was adopted in World Bank projects involving displacement, with successive refinements incorporated based on the experience gained by bank staff and borrowers (1990, 2001, 2017). Throughout these updates, the main policy objectives remained consistent: avoiding or minimising involuntary displacement where feasible, designing and implementing resettlement activities as sustainable development programmes when resettlement is unavoidable, and supporting the efforts of displaced people to improve, or at least to restore, their livelihoods and living standards, at least to pre-displacement levels (World Bank 2012). Policy changes subsequently have emphasised negotiated settlements between developers and displaced people, as in the project model case, first adopted by the International Finance Corporation (IFC) for private sector projects. Negotiated settlements for land access have policy coverage if there is an underlying threat of expropriation should negotiations fail. IFC then adopted a prohibition on forced evictions, which was also adopted by the World Bank in its Environmental and Social Framework (ESF) of 2017. The term “forced eviction” was introduced by UN-Habitat and Amnesty International “to underline the systemic violation of human rights in such forceful movement” (Satiroglu and Choi 2015: 3). The original 1980 World Bank policy mentioned feelings of “powerlessness” that arise with displacement. However, power, politics and related asymmetries were omitted from subsequent policy formulations.

The 1980 policy was recast into normative World Bank lending procedures, which meant it must match the pressures of the standard project investment cycle that moved through steps of

feasibility assessment, technical design, appraisal, approval, implementation and evaluation. This meant securing sufficient time and budget to identify and address the high risks to people being displaced at key project cycle stages. At detailed technical design, for example, the intended impacts on people and their assets should be identifiable. At civil works contracting, when land would generally be cleared and project construction commenced, the compensation and relocation must be substantially complete. It required a model with sufficient visibility and importance to merit attention in verifiable compliance steps, economic and financial analysis, borrower budgets and legal and regulatory frameworks, and by implementation agencies and personnel. The loan approval culture, which measures achievement by the approval of new loans rather than by the successful implementation of projects for which loans were already approved (Shihata 1995), would, typically, put pressure on the time frames allowed for completion of the necessary resettlement steps.

1.1.2 High expectations and structural anomalies

The 1980, 1990 and subsequent resettlement policies crosscut several policy domains. A major Bank-wide resettlement review found that a "vast body of research…has documented that poorly managed resettlement can cause increased poverty" (World Bank 1994: 1/4). This primary risk – impoverishment of those affected – raised major issues for a lender such as the World Bank, which is committed to an overall objective of poverty reduction. The risk of creating new poverty through resettlement raised moral and humanitarian imperatives, as well as social justice concerns. The resettlement policy galvanised support among civil society advocates. These supporters highlighted the plight of those unfortunate enough to find themselves in the path of development investments, emphasising how the affected people faced the pain while others experienced only the gain. It seemed imperative on humanitarian grounds to relieve the pain and address its symptoms. Yet from the beginning, social justice was presented as an essential part of the case in favour of the policy. A World Bank anthropologist closely involved in the early developments wrote:

> Too frequently the thinking and actions of powerful political officials of the Bank's member countries are framed by notions of charity or relief. While charity is perhaps a universal human emotion, it can be short-lived; more important, it only deepens the debilitating and dehumanising effects of forced settlement in the long term. With Dr

> Martin Luther King, I will argue 'Don't give in charity what belongs to people in justice.' (Partridge 1989: 374)

The policy also cross-cut legal and development policy domains (World Bank 1994). The Bank's general counsel had concluded that, generally, resettlement frameworks were incomplete, and that resettlement legal issues were being treated as a subset of property and expropriation law, which do not provide an adequate framework for "development-oriented resettlement". New legislation was required, or existing legislation must be modified (World Bank 1994: 3/2). The review found legal problems arising in the wide variation in methods used to calculate compensation, which did not amount to asset replacement value and therefore amounted to less than restitution; the preference for cash compensation meant affected people could not replace their income generating assets; beyond compensation laws rarely provided for rehabilitation of livelihoods and well-being; legal coverage was absent for people without formal title to their land; institutions responsible for resettlement lacked legal mandates and skills; and effective legal grievance redress mechanisms were either absent, or not accessible by those affected.

The review report argued that carrying out resettlement in a manner that respects the rights of affected persons is not just an issue of compliance with the law, but also constitutes sound development practice. This requires not only adequate legal frameworks but also a change in mindset – towards recognising resettlers' entitlements, rights, needs and cultural identities (World Bank 1994: paragraph 19).

These issues made resettlement controversial, with opposition taking two main paths: a blanket rejection of development itself or opposition campaigns to specific projects. The World Bank's 1994 report, written by internal policy champions on the bank's staff, counter-argued strongly that to deny development itself penalised the many who needed the benefits development could bring. The Bank, it argued, had become receptive to constructive criticism from civil society – its approval of the policy, and efforts to improve its implementation, were clear evidence of that. The Bank, moreover, considered a concern for the welfare and livelihood of affected people as justified and "germane to the Bank's own mandate and policies" (ibid: paragraph 22).

Disseminated globally to other lenders, media, civil society, planning, investment, legal and financial domains, the World Bank's policy, set out in successive documented refinements

(1990, 2001 and 2017), came to serve multiple purposes. It was a unique, normative expression of sociological thought and experience in a lending agency dominated by economists. It was a means of influencing international agendas, including human rights, whereby international agencies were taking an increased interest in the process of displacement and its potential for human rights violations. Key human rights documents, such as the *Comprehensive Guidelines on Development-Based Evictions* (United Nations 2007) that focused on human rights violations before, during and after displacement, demonstrated a knowledge of the processes of livelihood loss and reconstruction that had been identified through the policy formulation process. The policy formed a basis for dialogue with borrowers, and for engaging in discourse on legal instruments of eminent domain and expropriation for projects in the public interest. It was a powerful instrument through which civil society held the World Bank accountable for mitigating the social costs and impacts of its projects and for realising its poverty reduction objectives.

International support for resettlement efforts depended upon successful outcomes for the affected people. Arising from the policy application, however, were unresolved structural anomalies:

- The resettlement policy was implemented through country property and expropriation law, those same laws it was formulated to augment. This raised the question of commitment by the borrower to the policy, particularly if the borrower has primary responsibility for the resettlement implementation. To resolve this anomaly, the legal agreements attached to project loans would be essential to setting out the intended resettlement standard because it might differ from the country legal standard. Lenders had powers to suspend loans in case of non-compliance with the legal agreement.
- The World Bank's 1994 Evaluation recommended country-level "policy" as "pivotal" to address the gaps between international policy and country law (ibid: paragraph 5). However, as the experience of Sri Lanka, for instance, would show, even policy approved at the highest level (in the Cabinet-approved 2001 National Resettlement Policy) could not overturn the requirements of the nationally enacted Land Acquisition Act (Pillai 2019). The general counsel's recommendation was for new or modified legislation to address resettlement would be necessary, anticipating a longer path to making the necessary legal changes.
- Livelihood is a central policy concern and vital to the bank's case for assuring civil society that the risks of impoverishment would be overcome and the rights of those affected would be addressed through effective policy action to ensure a sustainable living standard. This raises the

question of how country laws treated income and livelihoods, with no certainty of detailed treatment or even recognition of economic loss in country property and expropriation laws, and other regulations (Tagliarino 2018). The 1994 Bank global review had noted that countries which accepted a need for broader socio-economic reconstruction had more success in achieving enhanced or restored livelihoods.

- From 1990, the policy required that affected people receive investment and opportunity to share in projects' benefits but did not specify how this should be done. Project-specific benefit-sharing forms were never mandated in the policy, partly because projects vary in their capacity to generate additional benefits over and above the resettlers' entitlements to replacement compensation and other assistance to rebuild livelihoods – not all projects create additional employment or generate revenue during the operations phase (Price et al 2020). The policy undermined this requirement for opportunity to share in the project benefits by adopting a minimal objective of merely "restoring" livelihoods, not enhancing them.
- Efforts to "avoid and minimise resettlement" were built into the policy early on but they comprised little more than revising the technical design for pre-approved projects. They did not entail rigorous questioning on whether a different, non-displacing project could be found to meet the same purpose, or whether the project's expected benefits justified the social cost of resettlement. For example, OD 4.30 (1990: paragraph 3) required exploration of "all viable alternative project designs. For example, realignment of roads or reductions in dam height may significantly reduce resettlement needs."
- The lending imperative raised three important questions. First, it raised questions over the time frame for critical steps in resettlement planning and implementation, bearing in mind the pressure to proceed through the key steps of feasibility, detailed technical design, approval and civil works contracting. Resettlement identification, impact assessment, consultation, notification, planning and implementation had to be squeezed into these steps before the sites were cleared of settlements for project construction. Second, the lending imperative translated into an "approval culture", which rewarded numbers of loans approved rather than the quality of loan implementation. With resettlement conditions set by legal agreements, good monitoring would be necessary to determine if resettlement measures were being implemented as planned. In case of major default, the willingness of the lender to suspend loan disbursement would be one response to secure a return to the resettlement actions agreed in the plan – a response which was rarely used (Bugalski 2016). Third, resettlement, especially significant or complex resettlement, might take some years to reach its objectives for the affected people, but the

resolve for seeing this process through to completion would be difficult to maintain given pressures to finalise the project and begin another loan preparation and approval process.

- OD 4.30 (1990) highlighted "risks" to vulnerable affected people in particular. OP 4.12 subsequently strengthened references to severe social, environmental and economic risks, declaring that: "This policy includes safeguards to address and mitigate these impoverishment risks" (World Bank 2003: paragraph 1). The question of whether the policy includes sufficient risk mitigation measures; debates on the best models or frameworks to identify and address risks; and the question of whether alternative approaches would be more effective have only intensified in recent years (Cernea and Maldonado 2018; Hay et al 2019; Wilmsen et al 2020).
- The "rights" of displaced people were recognised as important early on (World Bank 1994) but they were defined as "rights in law", i.e. national legislation, which differed from country to country and offered a lesser set of entitlements than would be applicable under the policy. The justification for setting rights to a higher standard under the policy became a condition of lending. The question of human rights was not directly addressed in lender discourse until relatively recently and is discussed subsequently below.

These anomalies in policy application are summarised and set out in Table 1.1.

Table 1.1 Anomalies in policy application (World Bank, 1980; 1990) and bank-wide review (World Bank, 1994)

Issue	Structural issue	Anomaly
Responsibility for resettlement.	Resettlement policy was implemented through country property and expropriation law and related laws and regulations.	1980 policy identified gaps between interests of people affected and national interests expressed in law, requiring legal agreements between borrower and lender to formalise resettlement planning measures to address the gaps.
Strategy to address the gap between policy and law.	World Bank's 1994 Evaluation recommended country level "policy" as "pivotal" to address the gaps.	Bank General Counsel recommended new or modified country property/expropriation legislation to address resettlement as preferred option.
Livelihoods.	Livelihoods: a central policy concern, underpinning the bank's case for addressing the risks of impoverishment.	Country property and expropriation laws rarely mentioned livelihoods or set out a full range of measures to recognise income loss and its restitution.
Benefit-sharing.	From 1990 the policy required that affected people receive investment and opportunity to share in the project benefits.	Benefit-sharing was never mandated. The policy undermined this requirement by a bottom-line

		objective of merely "restoring" livelihoods, not enhancing them.
Avoid and minimise resettlement.	This policy requirement focused on revising technical design for pre-approved projects.	Question of project alternatives or whether the project's expected benefits justified the social cost of resettlement were not necessarily addressed.
Lending imperative.	Resettlement policy was subject to the lending imperative in implementation.	This raised questions on the time frame for critical steps in resettlement planning and implementation; on the extent to which lenders might act to suspend loans if necessary; and on the need to meet resettlement objectives even after loan closure.
Identify and address risks.	Successive policies emphasised risk to affected people; 1994 review identified impoverishment risks of resettlement as central to the bank's poverty reduction mission.	Successive policies have not clarified the methods to be used to identify and address risks for affected people; risks to bank reputation and management procedures often appeared to take precedence over risk to affected people.
Status of rights.	Legal rights under country laws were recognised.	Justification for policy "rights" rested with the policy conditionality. International human rights were not directly addressed.

Having set out some structural anomalies, the next section asks how effective the policy was in achieving its objectives.

1.2 Explaining policy failure

1.2.1 Policy performance – a literature review

The Introduction presented the most recent research into resettlement outcomes for the displaced people. Researchers charting the policy implementation include scholars and practitioners from around the globe. Lender evaluators documented progress in policy compliance in producing planning documents but were far less able to confirm achievement of the intended outcomes, including for poor and vulnerable groups eligible for special attention (for example, ADB 2020). The World Bank's 1994 review highlighted research findings over the previous decade presenting evidence of major impoverishment risks. Most research studies on resettlement have identified serious weakness in meeting even minimum standards for displaced people. These studies display a depth and consistency over many years. In addition to the most recent cases described above (Introduction) well known analyses have been conducted by Cernea and McDowell (2000); Scudder (2005a and b); Cernea and Mathur

(2008); Downing and Garcia-Downing (2009); de Wet (2006 and 2015); Owen and Kemp (2016); Fujikura (2017); Muggah (2011); Fujikura and Nakayama (2009, 2013, 2015 and 2017); Singer et al (2014 and 2015); Singer and Watanabe (2014); Wilmsen and Webber (2015a and b); and Bugalski (2016).

Reservoir projects have proved particularly problematic. Fujikura and Nakayama (2013) surveyed 10 completed reservoir projects in five countries some years after completion. They found very mixed results among the resettlers in terms of their livelihood restoration – this was due, partly, to inadequate cash compensation for some displaced farmers that failed to replace the livelihood base. A subsequent and expanded sample with additional countries confirmed the mixed findings (Fujikura and Nakayama 2015; Nakayama and Fujikura 2017).

Hay et al (2019) recently reviewed the hydropower literature on resettlement comprehensively, with similar results. When based upon large reservoirs, hydropower projects have intensive resettlement impacts. Such projects have been the subject of iconic civil society campaigns to stop displacement that impoverishes people, for example, the Narmada campaign in the late 1980s and early 1990s, when a transnational advocacy network had mobilised public opinion worldwide against the Sardar Sarovar dam in India, which caused the forcible displacement of nearly 200,000 people without adequate compensation measures (Randeria 2003; Fisher 2009). Noting estimates that close to 3,700 such dams are being constructed or planned globally, Hay et al (2019: 4) conclude that effective approaches to "resettlement that can achieve good outcomes" are still far off. Worse, they conclude that the advice today for better resettlement is "strikingly similar" to advice given decades ago – raising doubts, once again, about whether findings are feeding back into practice and informing policy and whether lenders, financiers and developers are listening.

Reservoirs, however, are by no means the only problematic sector with regards to livelihood reconstruction. Koenig has documented problems with urban development (2006; 2009). Downing (2002), Owen and Kemp (2016) and others have uncovered major issues in the mining sector. Schmidt-Soltau and Brockington (2007) revealed difficulties in restricting access to protected areas. Problems persist despite the comprehensive series of handbooks, guidelines and good-practice notes produced by major lenders, and publicised through capacity building work (for example, World Bank 2012, 2014; ADB 2020; IFC, 2012, 2019). These guides address the specific problems that arise in resettlement, with advice tailored to the project cycle

and to the different sectors (for example, ADB 1998; World Bank 2004; EBRD n.d.; IFC 2019). By introducing a major collection on resettlement, Satiroglu and Choi (2015) asked specifically why resettlement problems seemed to keep repeating.

A focused survey of the most recent studies finds that fully positive outcomes for people affected are still difficult to achieve. Taking a carefully selected sample of 203 resettlement cases globally, Piggott-McKellar et al (2019) deployed a livelihood approach to examine success in a set of indicators. They found that "the resettlement process overwhelmingly resulted in negative outcomes for affected people across natural, social, financial, human and cultural assets". The authors recorded improvements only in "physical outcomes including the provision of services and infrastructural improvements". Ravindran and Kumar (2019) attempted to fill the void in literature by categorising the intensities of vulnerability and impoverishment risks of each household and applying data-mining methods such as cluster analysis. Census-based baseline socio-economic surveys were carried out among 3,574 families from whom lands were acquired for four thermal power projects in Odisha, India. The findings confirmed a statistically significant inverse relationship between vulnerability and impoverishment risks during resettlement. Al Atahar (2019) confirmed a long-standing finding that, despite recent statutory increases in the compensation rate in Bangladesh, compensation alone was still insufficient to restore livelihoods. Other recent critiques include those of Cernea and Maldonado (eds) (2018) and Scudder (2019a and b).

The People's Republic of China is credited with superior resettlement performance compared with other countries in government commitment to financing resettlement and rebuilding livelihoods specifically (Picciotto et al 2001; Cernea 2016; Cernea and Maldonado 2018; Shih 2018); and to make the important decision to remediate with top-up payments in some sectors where outcomes were remiss (Chen 2018). Chen et al (2020) found benefit-sharing and long-term support through proactive government programmes had positive results, whilst gaps still exist. Others have reached different conclusions (Tilt 2014). In a recent article on a Chinese hydropower project, Zhao et al (2020) demonstrated that, in practice, power generation benefits came at the cost of the social exclusion of more than 20,000 resettlers. They experienced "distributional injustice" (unaffordable power and water supplies); "recognition injustice" (the hydropower developer and all the levels of government involved lacked fairness, transparency and accountability); "procedural injustice" (minimal participatory rights in the decision-making

process before, during and after resettlement and the lack of viable channels through which to seek redress and remedies).

Rogers and Wilmsen (2019: 13), reviewing the long history of failed projects, found a "sense of urgency to this intellectual project. The detrimental impacts of resettlement have been documented time and time again". They acknowledged the success of some efforts by resettlement specialists "in the academy, in governments, in development banks, and in consultancy firms to better design and implement resettlement so that these impacts are not endlessly reproduced" (ibid), for example, in ensuring the inclusion of impact assessment, participatory mechanisms and monitoring. These changes, however, have not been sufficient to prevent failed outcomes. Noting increasing defensiveness among lenders, cognizant of compliance claims and inspection cases, and shrinking space for academic and civil society discourse, Hay et al (2019) found little cause for optimism.

Lender evaluations confirm widespread adoption of the policy in legally covenanted resettlement plans for project implementation – but also report that this does not necessarily translate into positive outcomes for the people affected (ADB 2000, 2006 and 2016; World Bank 2011, 2012 and 2014). Lack of consistent data, particularly on resettlement outcomes has frustrated evaluators throughout. Compliance with the policy before loan approval does not necessarily translate into compliance during implementation. Problems arise with identifying impacts before appraisal, updating resettlement plans, implementing and monitoring progress (World Bank 2014). The single biggest determinant of success is still borrower commitment and capacity – but the gap between country standards and policy is still wide (ibid; Bugalski 2016; Tagliarino 2018). Despite legally covenanted resettlement plans, many development projects drop back to lower country standards during implementation (World Bank 2014). Some projects neglect agreed livelihood plans and drop back to inadequate cash compensation which is insufficient to replace income generating assets (ibid). Despite policy requirements and legal agreements to monitor outcomes for people affected, many projects fail to do so, leaving the status of resettlers unknown (ibid; ADB 2016). Inspections, which commenced in 1993, showed more than half of complaints addressed the bank's failure to comply with its own resettlement policy (World Bank 2012). In 2015, the World Bank President himself admitted "deep concern" over failures to enforce its own rules on resettlement (Schlief 2015).

The compilation of Inspection cases involving resettlement found problems in practice throughout the project cycle, from the initial scoping through meaningful consultation to the necessary transitional support for livelihoods, which should be reconstructed in a culturally appropriate manner. Resettlement was a major cause of complaint to the Inspection Panel in 21 of the 32 cases investigated since 1993 (World Bank 2016).

Table 1.2 shows progress in policy adoption yet, significantly, all the anomalies identified early on (Table 1.1) were still a cause for resettlement failure in the most recent systematic reviews of bank-wide resettlement.

Table 1.2 What it meant in practice – anomalies in application

Structural issue	Anomaly	Review findings
Borrowers were responsible for resettlement, implemented via country property / expropriation law /other regulations.	Policy bridged gaps with law, requiring legal agreements between borrower and lender to formalise resettlement planning measures to address the gaps.	• Major gaps still exist between borrower systems and management of resettlement to international standards. • Borrower responsibility and capacity are the most important determinant of successful resettlement outcomes. • Bank staff had little time to study the country legal system or offer capacity building. • Country staff knew their own laws/regulations but not the policy.
Country use of property and expropriation law /other regulations.	Preferred new or modified country property and expropriation laws.	• No country legal framework fully meets international policy. • "It is unclear how much RPs guide actual implementation. Resettlement implementation agencies, especially frontline workers, often seem to have little familiarity with OP 4.12 or the RP they are supposedly 'implementing'. In practice, most aspects of resettlement seem to revert to national laws and procedures, especially for compensation for the loss of assets" (2014: paragraph 159). • Legally agreed plans often revert to borrower standards in practice, jeopardising agreed outcomes. • Recommendations made to strengthen dialogue on country systems to enhance performance (2014).
Livelihood reconstruction a central policy focus.	Country property and expropriation laws rarely mentioned livelihoods or set out a full range of measures to recognise income loss and its restitution.	• In 41% of projects reviewed: loss of income and livelihood were not clearly recorded, perhaps not addressed, outcomes not known (2014). • Few people losing land had livelihood support and relied on cash compensation. • Livelihood indicators, if used at all, measured livelihood activities but not outcomes. Little evidence was presented on whether livelihoods were restored or improved.

		• Little data on outcomes of measures for vulnerable groups, including livelihoods.
Opportunity to share in project benefits.	Benefit-sharing not mandated. Policy undermined this requirement by a bottom-line objective of merely "restoring" livelihoods, not enhancing them.	• "Successful restoration of income occurred more often when resettlers directly participated in project-generated benefits (irrigation, fisheries, commercial opportunities)" (2012: 6). • Measures for vulnerable people include additional compensation, job hiring preferences, land donations, preferential access to natural resources, food, assistance in building houses, livelihood training, assistance in preparing and planting fields, etc. • Otherwise benefit-sharing was little discussed in the reviews.
Avoid and minimise resettlement.	Questions of project alternatives or whether the project's expected benefits justified the social cost of resettlement not necessarily addressed.	• Little data presented to address these questions. • Little mention of actions to minimise resettlement.
Resettlement policy was subject to the lending imperative in implementation.	Questions on: 1. The time frame for critical steps in resettlement planning and implementation. 2. The extent to which lenders might act to suspend loans if necessary.	• One project example showed people were displaced before being properly compensated and assisted because of pressure to contract construction works (2014). • "Bad timing and lack of synchronisation with the main project caused major cost overruns and foregone benefits" (2012: 6). • "Loan conditionalities were poor substitutes for timely resettlement plans. Legal provisions in loan covenants were insufficiently monitored. The policy framework and borrower commitment were more important than loan covenants" (2012: 5). • Little evidence of loan suspension or other measures on resettlement covenant breaches. • Little follow-through on livelihoods and well-being to ensure objectives were achieved.
Risks mentioned in later policies	Methods to address risks to affected people not specified in policy documents.	• 1994 review identified impoverishment risk mitigation in resettlement as central to the banks' mission. • Subsequent reviews highlighted risk to bank reputation in not managing resettlement. • Risk assessment should be better used in managing staffing time internally. • Grievance redress mechanisms should be used to manage risk to affected people.

Legal rights under country laws were recognised.	Justification for policy "rights" rest with policy conditionality. International human rights not addressed.	• Question raised on using human rights to support non-legal people displaced. • Otherwise human rights not discussed.

Source: Table 1.1, World Bank 1994, 2012 and 2014

1.2.2 Theoretical variations in explanations for Resettlement Failure

What explains the seeming inability to address such a consistent level of failure? In addressing this question, it is necessary to take a step back to compare the explanations of why resettlement fails.

Almost two decades ago, Dwivedi (2002) postulated that the cause of resettlement failure depended upon the underlying theoretical stance of the analyst. For those accepting the mainstream international policy model, the answer was simple: insufficient resources and poor governance explained resettlement policy failure, together with an absence of appreciation of the "development opportunity" offered by resettlement and provision for social and economic reconstruction (Cernea 1997 and 2003); and effective risk assessment and mitigation (Cernea and Maldonado 2018). The cure for overcoming resettlement failure, then, is to seek better and more informed approaches and a link between research and practice (Cernea 1999). Dwivedi labelled this link "dialogic", meaning a dialogue between research and practice based on the validity of reasoned argument, rather than a dialogue based on exercise of power. This idea may be extended to encompass also a logical, evidence-based feedback link to policymaking from research and evaluation, and back to resettlement practice. Cernea and Maldonado (2018) contended that, after a promising start, the feedback link had failed over the previous two decades.

The idea of resettlement reform through such links has been an essential part of the mainstream perspective (Cernea and Maldonado 2018). Cernea and Guggenheim (1993), for example, advocated moving beyond documenting repeated failures to formulating and adopting new policies and conceptual frameworks. More recently, Hay et al identified "new analytic frameworks with a general focus on social impacts", the adoption of which could help improve performance. Such frameworks have been developed that "address some of the conceptual flaws and gaps that weakened earlier frameworks, models and approaches" (Hay et al 2019: 6).

Yang et al (2020) proposed similar feedback links through third-party evaluation for poverty-based resettlement in China. Reformers have made numerous efforts to improve the chances for success. The variability of country legal and regulatory frameworks, the uncertainty in the methods for compensation calculation and the variability in its delivery in practice meant even "restitution" was often difficult to achieve. Knowing that this exposed resettlers to systemic risks of impoverishment, Cernea and others waged a long battle to secure sufficient financing for formal adoption for an objective of improvement (Cernea and Mathur 2008; Scudder 2005a and b; Downing and Garcia-Downing 2009). The latest World Bank policy retains the objective of the restoration fall-back: "assisting displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms…" (World Bank 2017a: paragraph 2).

By 1999 a shift had been detected in resettlement studies: from single case studies to research-based crafting of policies and applied operational research; and from descriptive models (the Scudder and Colson model) to content-oriented models that chart a way towards reconstruction. In this spirit, Michael Cernea developed the Impoverishment Risks and Reconstruction (IRR) model.

Turton, drawing upon earlier work by Scudder and Colson, raised the issue of the initial shock felt by people about to be displaced, when denial is the only response to something too painful to contemplate (2003a and b). The first news of impending displacement can trigger ill health for the unlucky people in the way of a project. Similarly, the manner of subsequent handling of the preparation for relocation can also have deep longer-term consequences for their health and well-being.

Xi et al's work (2015) on the Three Gorges Project in China confirmed that leaving the definition of risks to expert planners was injurious to those people obliged to relocate. Planners did not share their *ex ante* predictions of risk with people affected because they feared it would deepen opposition to the scheme. Xi et al found that those affected people who anticipated the risk coped much better with the trauma of displacement than those who did not. The fact that planners and implementing officials did not share their perceptions of risk meant that people who were unprepared suffered depressive symptoms as events for which they were unprepared unfolded. Xi et al recommended much stronger efforts to commit to developing mechanisms at the local level to share risk information and planning preparedness.

Anthropological research refined the theoretical questions as the experience in delivering the "cure" became apparent. De Wet, for example, focusing on spatial complexity, asked what might be expected from "externally initiated spatial and related social changes via a resettlement project that is a complex institutional process, not least because it has to deal with such changes" (de Wet 2015: 85). Based on research in southern Africa, his term "emplacement" signifies not just physical location but also the association a person or group has with a "socially-constituted place/territory that is recognised by others". He asked (ibid: 86) what happens when communities are "dis-emplaced" and endeavour to "re-emplace" themselves in a new location. This issue has not been addressed in mainstream policymaking.

Downing and Garcia-Downing similarly asked questions on how "psycho-social and cultural issues" fared in resettlement. Displacement disrupted the normal (healthy) state or routine, producing cultural dissonance until a new routine – a return to a healthy state – can be established. The explanatory model-building drew upon case study research – research that deepened and extended knowledge about resettlement policy implementation among researchers. That knowledge has not, however, been addressed systematically in subsequent policy iterations.

Another avenue for investigation was a "disciplinary alliance between economics and sociology as a means of generating better planning tools" (Dwivedi 2002: 712). A World Bank publication canvassed innovation in economic method (Cernea (ed) 1999), including new ideas such as benefit-sharing. Through benefit-sharing, affected people benefit additionally from a range of monetary and non-monetary measures, such as project revenue streams, beyond their entitlements to compensation and other assistance. Benefit-sharing recognises the original contribution of people's assets and resources to the project investment, making them, conceptually, partners in the project development (Van Wicklin III: 1999). It recognises the long-term nature of rebuilding livelihoods. The World Bank and other lenders encouraged, but did not mandate, benefit-sharing as a part of the resettlement policy. The volume challenged the "obsolete" methods used in economic analyses, which partly accounted for the "enormous difficulties and failures of such operations" (Cernea 1999: 5). The contributors called for a more sociologically informed use of economic knowledge and, on this basis, updated methods and more intensive analyses that better addressed the problems of resettlement through risk analysis, cost analysis and internalisation, poverty mapping, distributional analysis, designing safety nets,

and the rationale for financial investment in reconstruction. Cernea expanded on these themes subsequently (Cernea 2003 and 2008).

In a key chapter of the World Bank's publication on economic methods in resettlement (Cernea (ed) 1993), environmental economist David Pearce showed how the theory of cost-benefit analysis (CBA) requires only that a projected project's benefits more than allow for compensation of losses but do not require the compensation transfer to be made. The transfer is left to country laws and their aforementioned ad hoc range of methods for calculating and delivering compensation. Perhaps due to this invisibility, the calculation of project costs often omits resettlement costs entirely or understates them significantly. This means that project cost minimisation, in overlooking resettlement, fails to prevent some needless resettlement, while trade-offs between resettlement costs and project benefits are ignored. Moreover, the distributional impact of gains and losses – in which, in the interests of equity, losses of displaced people who are poor may be weighted more highly than gains to beneficiaries who are already better off – is unexplored. Such an analysis logically accompanies poverty reduction objectives. In addition, the full costs of displacement are rarely considered in CBA due to, for example, the environmental and cultural assets whose monetary value is difficult to assess; the loss of social cohesion and non-tangible mutual help networks; the difficulty of identifying and valuing psychological damage; and the loss of market access. Moreover, the lost opportunity cost to the displaced people, caused by the disruption of displacement and res-establishment, is seldom recognised (Pearce 1999).

These endeavours in the economic analysis of resettlement led to new efforts to understand compensation, emphasising that it is not new investment but is intended to repay people for what they have lost. When paid in cash, compensation transfers all the risks of replacement to the people affected. The contention is that, unless transaction costs, production foregone and start-up costs of obtaining replacement assets are included in calculating compensation payments, the compensation payment cannot even restore livelihoods, let alone improve them (World Bank 2004). Compensation, however, was routinely found to be deficient for this purpose. In sum, these theoretical questions on the nature of CBA and associated analyses did not challenge the applicability to projects with resettlement. Rather they resulted in a reformist stance, with calls for more and better economic and financial analysis that properly addresses the full costs and benefits of displacement and resettlement, and also includes better delivery of compensation to the resettlers (Cernea 2008a and b).

1.2.3 Summing up the mainstream case – can it reform?

Conceived and presented as a way of identifying and managing risk for people affected, the resettlement policy "cure" has been successfully disseminated and has galvanised enthusiasm for the cause of the displaced. Paradoxically, the policy fails to demonstrate it is succeeding in "doing no harm", its minimum objective of restored livelihoods and well-being in real terms compared to the pre-project situation. Nor does it demonstrate that it created development opportunity from which resettlers have benefitted, with enhanced livelihood and well-being in real terms. It never fully mandated its promise of a "development opportunity" that would share the "benefits of development" with resettlers. After 40 years, and despite some adjustments, and a considerable build-up of staff and consultant expertise within lenders and among borrowers, publication of good practice manuals and handbooks, it works only intermittently (Cernea and Maldonado 2018; World Bank 2012-2014; ADB 2020). It does not cover all lending modalities (Bugalski 2016). Extensive evaluations and research studies document many cases of failure to fully implement prepared resettlement plans. What is more telling, perhaps, is the absence of response to new approaches and critiques of the assumptions on which it is based. The most recent policy formulation, the ESF (2017), arguably weakens the safeguard by reducing lender responsibility for key elements: planning, implementation, monitoring and evaluation; and allows stronger borrowers to negotiate the use of their country systems (Dann and Riegner 2019).

This raises the question: is there some other logic to the continuation of the cure? Choi found that the focus on the resettlement "solution" limits the room for questioning the necessity for displacement in the first place (Choi 2015). A "placebo effect" operates to ensure that the resettlement policy, regardless of its actual performance, seems "sufficient to justify development with displacement, thereby reinforcing the strong myth that development can eventually generate positive outcomes" (ibid: 42). Her case-study research in urban Manila showed that, although people economically affected but not losing housing were entitled to assistance under international lender policy, in fact they were not well covered at all. Choi raised the possibility that the very existence of the policy itself might have depoliticised the discussion. The "cure", in this case, was really a "placebo" rather than an instrumental and effective way to treat the illness. Rogers and Wilmsen raise the possibility that, politically, the "cure" diverts and channels civil society energies while permitting projects to continue. By

ignoring the wider context in which projects are implemented, mainstream approaches "help to normalise resettlement as a necessary cost of development" (Rogers and Wilmsen 2019: 4). Legal specialists see the World Bank's deepening role as global normsetter as of central importance. Even if its role as a lender continues to retreat, the Bank still has its role as an epistemic norm setter and legal expert for the globe, in which:

> …. the first generation of Safeguards, introduced since the late 1980s, as an element of incremental legalization in the emerging global governance regime, a regime characterized by unipolar multilateralism and geopolitical dominance of 'the West'. The 2016 reform not only reflects the increased politicization of global governance by civil society but also the emergence of a more competitive multilateralism, characterized by counter-institutionalization on the part of emerging powers like China. A comparison of the old and new Safeguards thus allows us to analyse different forms of contestation and resulting normative evolution in the key area of global governance of development and finance. (Dann and Riegner 2019: 537).

Table 1.2 above demonstrated the persistence of problems arising from anomalies in policy application through the lending imperative. The review record confirmed the structural weakness of resettlement as a lender policy. The borrower has the primary responsibility for resettlement, addressing it through a legal framework that provides for displaced people at a lesser standard, the details of which depend on the country context. The requirement for people affected to share in the project benefits is undermined by an objective that sets the bottom line as restoration, rather than enhancement, of their livelihoods. The legal agreements covering each loan with resettlement are not sufficiently robust to enforce the pre-approval resettlement agreements, and many projects revert to the lower country standard during implementation. Insufficient data on resettlement progress hampers the ability of lender missions to supervise the agreed resettlement measures, even if they have the time, expertise and willingness to do so. The loan default remedy, loan suspension or even cancellation appears to be seldom utilised for breach of resettlement agreements during project and loan implementation. The incentive for borrowers to ensure the agreed outcomes is minimal.

The search for better resettlement, which would address the causes of failure, went in new directions – including to an ethical focus. De Wet, for example, concluded that "in spite of policy and best efforts, resettlement continues to hurt many people and brings us to the many

vexing ethical issues confronting us in [development-induced displacement and resettlement], which … relate substantially to the nature of the spatial dimension in resettlement, rather than to the conflicted nature of development" (de Wet 2015: 85). These spatial dimensions were simply too complicated for resolution by resettlement staff and confounded attempts to plan and manage them – the "pathology" was not responding to the "cure". Resettlement, he argued, inevitably imposing spatial and social change and exclusion that could not be feasibly addressed, raised ethical issues (ibid: 94) – in effect, proposing reform of an unresolvable contradiction through application of ethical approaches.

1.2.4 Theoretical critiques of mainstream resettlement

Dwivedi, in his seminal stocktaking of 2002, positioned the mainstream "techno-managerial approach" at one end of a spectrum. On the other end of the spectrum, radical "movementism" positioned resettlement – or, rather, the displacement that underpinned it – as an unfair and inequitable distribution of costs and benefits, a consequence of a crisis in development. This latter group focused on its causes and structures, manifesting in "legislative definitions, executive practices and judicial interpretations that deny people the right to protect their lands, livelihoods and social ecology … [raising issues of] … rights, governance and negotiation" (Dwivedi 2002: 712). The choice of the word "resettlement" in the policy title, and the word "resettler", provided a category for administrative purposes but could not represent the "trials and tribulations of those people displaced nor the subjectivity of their agency" (ibid).

Significantly, the title of that first policy did not refer to "involuntary displacement". Rather, it addressed a pre-ordained decision to resettle people in the way of development projects – reflected in the title "involuntary resettlement". Intended to ensure that countries took responsibility for solutions (the resettlement) as well as the problems (the displacement), the choice of this word had significant impact. It presented a *fait accompli* in diagnosis – resettlement as the right "cure" for the abnormality of displacement, foreclosing other diagnoses and alternative prescriptions. Resettlement presented a ready solution and a compliant subject – the "resettler" – compared with a more unsettling, marginal subject – "evictee", "oustee", "displaced person" – for whose liminality a solution must be found. This constitution of the subject disregarded the "historical truth that millions of people have been displaced worldwide in different development projects but have never been resettled" (Dwivedi 2002:716). By "denying them any subjectivity in research, the term also blunts the forced nature of eviction,

conceals the obliteration of a rights regime and the socio-cultural uprooting experienced in displacement”.

The terms also implied perfect acquiescence to the right of the state and development sponsors to displace people. Certainly, the policy enjoined “avoid and minimise resettlement” as the first step – but only in terms of modifying the project design to avoid or reduce the extent of population displacement, not to question the rationale for the project itself (formalised in World Bank policy 1990: paragraph 3). It drew a veil over the murky politics, protests and struggles about rights that characterise displacement, presenting instead a ready solution to this cauldron of contradictions. Dwivedi (2002: 716) termed this move a “subtle form of conceptual gerrymandering, to accord centrality to resettlement and present it as the prime sector of problem analysis and policy intervention”.

Dwivedi characterised the IRR model as a top-down mechanism with limited diagnostic potential, which ignored essential elements of “consent, terms of participation and dispute resolution” (2002: 718). The limited structural space for participation from the subjects matters even more when losses cannot be valued readily, for example, networks, identity, sacred or ritual attachments to sites. So underfinancing, which exaggerates the “ill effects of projects”, becomes more likely. The very agencies that create resettlement are asked to mitigate it – but without analysis of the causal dimensions, the structures of power and the global political processes (ibid). In its mitigative capacity, the model does not distinguish between “risks that can be prevented and losses that must be cured” (ibid: 713). The positions taken in Dwivedi’s spectrum are elaborated below in terms of the questions they raise on theoretical framing.

For those critiquing the mainstream policy model from a political economy, political ecology or radical movementist position, the reasons for failure lay elsewhere: unjust development resulting in loss of the peoples’ rights (Dwivedi 2002). Structural flaws in development meant that people were wrongly deprived of rights and re-integrated back into society on disadvantageous terms. Dwivedi summarised the radical view as neglecting underlying political dimensions. This meant the standard strategies and methods are incapable of resolving the power and information asymmetries inherent in displacement, so preventing procedural justice for those displaced. Since Dwivedi’s 2002 analysis, others have expanded upon these ideas, including Mariotti (2012) and Wilmsen and Webber (2015a and b). Most recently, Rogers and Wilmsen (2019) confirmed the polarised nature of the resettlement literature. Broadly

confirming Dwivedi's distinction between mainstream and radical approaches, they found, along more radical lines, a "disparate collection of studies that critique resettlement largely through political-economic and/or Foucauldian lenses" (Rogers and Wilmsen 2019: 13).

A political economy perspective looks beyond the planning cycle of mainstream resettlement to the state's broader interest in sponsoring projects that displace, and the terms under which displaced people are resettled. Here we have another explanation for failure of the technologies of resettlement planning to achieve the intended outcomes: the state, engaged in modernisation, "seeks to expand the cause of capitalist development at the expense of non-market forms of valuation and non-capitalist ways of life" (Wilmsen and Weber 2015a:83). For this reason the state reduces concerns about livelihood into compensation alone, reduces social groups to "bundles of individuals with physical assets"; and treats those groups located "outside the capitalist market economy as lesser beings whose way of life must be transformed" (ibid). Resettlement specialist, and their associated "industry", in this view, must look beyond the resettlement cure to the fact that "states do not merely resettle people, they actively advance an agenda associated with the capitalist market, with modernisation, or even nationalism"(ibid: 84).

If it is assumed that such a historic necessity is a genuine necessity, then the focus shifts entirely to the remedy and to the questions: through what strategies do states implement those responsibilities and what are the outcomes? The political economy approach, in contrast, argues for a much greater questioning of development and of the project justification.

If, as Dwivedi proposed, the underlying theoretical stance explains resettlement failure so differently, then the respective solutions to the continued failure of the resettlement policy cure in practice are, logically, irreconcilable. For mainstream policy model supporters, the solution to resettlement weaknesses lies in perfecting the governance context in which the policy model is implemented and improving dialogic links from research to policy and practice. This entails more congruent laws and regulations; reformed use of the economic method and compensation principle in clarifying costs; more financing; better livelihood plans and stronger implementing agencies (Cernea and Mathur 2008; Cernea and Maldonado 2018).

For radicals, the range of solutions lies elsewhere – separating displacement from development entirely. Because it is so risky and so destructive, in this view, displacement should not be

equated with development but rather calls for "new ways of imagining and doing development" (Dwivedi 2002: 713). Subsequent calls include jettisoning theoretically flawed welfare economics entirely (Mariotti 2012). Most recently, Rogers and Wilmsen (2019: 13) concluded that "resettlement is not perfectable at all, since it is, fundamentally, an exercise in power rather than management. Resettlement works by reducing a profoundly political phenomenon to teleological models and the logic of state planning". Ethicists and political economists converge in the view that the mainstream reformist-managerial discourse offers a weak understanding of displacement itself and of the reasons for the failure of resettlement. The attempt to theorise displacement and resettlement and to manage and control it at the international level can be interpreted as a means to avoid ethical and moral issues. Primarily, it neglects the dynamics underpinning the development process, which is responsible for triggering displacement in the first place and determines the terms of the incorporation of the resettled population into that very same process. It neglects the power relations that underpin poverty and the terms under which displacement and resettlement produce and reproduce poverty.

From a political-economy perspective, displaced people are impoverished through the *terms* with which they are incorporated, which are "adverse to the extent that they are underpinned by a disadvantageous power relation" – thereby pointing to the importance of using the concept of adverse incorporation (Mariotti 2012: 101). The political economy overview may be summed up as ensuring that the true costs of mega-projects are externalised and unfairly borne by local populations. Structurally "resettlement facilitates land dispossession, enables capital accumulation, increases the availability of cheap labour, and produces new forms of commodification and consumption" (Rogers and Wilmsen 2019: 5). Green and Baird (2016) show how compensation facilitates the expansion of capitalist social relations in Laos by producing new commodified relationships to land, assets and some natural resources, while simultaneously decommodifying other resources. Rather than protecting the rights of the displaced, these arrangements favour the interests of elites by keeping costs to a minimum, while ensuring that resettlement is done just well enough so as not to impede construction (ibid). By ignoring the wider context in which projects are implemented, mainstream approaches help to "normalise resettlement" as a necessary cost of development (Rogers and Wilmsen 2019: 4).

A Foucauldian approach also looks beyond the space and time dimensions of resettlement sites and communities to the terms under which such displacing projects are conceived and implemented. Whereas political economy describes the "logic (s) of resettlement (the why of

resettlement)", the Foucauldian approach focuses on "discourse, subject-making, practices, and the production of space (the how of resettlement)" (Rogers and Wilmsen (2019:). Foucauldian analyses focus on the framing of questions of governmentality to which resettlement is conjured up as the solution; and the ways in which resettlement produces distinct kinds of subjects and spaces, together with the role of discourse in that subject-making (ibid).

For scholars of Foucault, governmentality refers to the conduct of conduct, especially the technologies that govern individuals. Governmentality captures the way governments and other actors draw on knowledge to make policies that regulate and create subjectivities. An episteme, or set of structural relationships between concepts (Foucault, 1970), structure intentionality and agency, defining what people can say and how they can say it. Foucault's focus on epistemes and neglect of agency result in "synchronic snapshots, with little attention being given to the diachronic processes by which one episteme gives way to another" (Bevir 2010:424). Rejecting concepts of power defined through social relations based on classes or other social groups, Foucault contended instead that people construct their understanding of their interests through particular and contingent discourses. As Foucault emphasized, however, there are other ways of thinking about power, through tradition's constitutive roles, for example, power as contestable beliefs that emerge out of contingent historical contexts. Power can also mean the "restrictive consequences of the actions of others in defining what we can and cannot do. Restrictive power works across intricate webs" (ibid:433) and can be a means of resisting policy actors.

Following the widespread public sector reforms of the 1980s, and the shift from a state hierarchical bureaucracy towards neo-classical models, policies and public services have been increasingly delivered by markets, quasi-markets, and networks. Whereas narratives of contemporary governance stress power-dependence, the relationship of the size of networks to policy outcomes, and the strategies the centre might use to steer networks, governmental technology focuses on disaggregated patterns of meaning in action, highlighting the creation and modification of policies in response to conflicting beliefs.

Foucauldian analyses have focussed on several relevant levels: firstly, on development agencies. For FAO, for example, Muller (2011), examined the institution and its processes as a *dispositif* - assemblage or apparatus – to discover how it rendered technical contested areas, by ordering space that contained behaviour to address certain objectives. She found that, in the process of

rendering controversial issues technical, FAO delimits the possibilities for democratic process and recognition of the real nature of the problems thereby oversimplifying complex issues.

Randeria and Grunder (2011) examined the resettlement policy working at multiple levels. Following Foucault's idea of the 'governmentalization of the state', and Chatterjee's idea of democracy as the 'politics of the governed', Randeria and Grunder find that, whereas representative democracy voting rights are still tied to a world of territorial nation-states, the right to "inspect and to judge, the right to evaluate or denounce, have not merely gained significance but are also being exercised both within and beyond state boundaries" (Randeria and Grunder 2011). In this case, the Mumbai Urban Transport Project (MUTP), affected people took their appeals beyond the boundaries of the nation-state to the new transnational arena of the Inspection Panel of the World Bank.

This case reflects the growth of juridification - the blurring between hard law enacted by legal bodies, and policies, in creating rules for ever-expanding domains of human activity. Juridification encompasses the creation and interpretation of "rules, regulations and new soft law instruments by a range of actors – public and private, national and international" (ibid:193). These policies and procedures of international financial institutions, development agencies and humanitarian organisations occupy an:

> "ill-defined domain at the intersection of international private law, public international law, technical norms and soft law. The policies lack legislative basis but acquire nonetheless law-like qualities and produce effects similar to the workings of law in the everyday life of individuals and communities in the South. This new architecture of governance has important implications for sovereignty and citizenship rights" (ibid:193).

Instead of participating in elections or mobilizing politically, the authors found that Mumbai citizens were shifting to the use of courts at all levels and the international arena to seek government accountability. Four international and national players (the World Bank, the MUTP project authority/ the Maharashtra government, NGOs and private firms of real estate developers) made it a complex case, but neither the joint formulation of policy by the World Bank and the regional government nor its execution by NGOs and the private sector contribute to "good governance". Rather, the proliferation of policy actors only diluted and dispersed

accountability to the people with complaints – they sought in vain for accountability for their problems in resettlement, as the "cunning state" divested itself of responsibility.

At another level Gommersall (2018) examined a relocation site in China with a Foucauldian lens, uncovering the power embedded in the practices of daily life. Foucault had described the urbanising techniques that enhance circulations of ideas, wills and orders to increase supervision by authorities and govern the behavioural norms of the population. She found new settlements reflecting a neoliberal vision embedding "micro politics of power" in the "techniques of organising the built environment into streets and buildings and connecting these with alternative spaces to increase circulations of goods and people". These techniques brought comfort, convenience and security of living in the new village, but the cost was the intensification of the commodification of daily life. She found that the very process of compensation served to reinforce the politics of power and diminish the importance of cultural value:

> During infrastructure resettlement land, labour, assets and income-related activities are commoditised in order calculate replacement compensation. However, this process of commodification deepens capitalist social relations and renders some resources visible and valuable while others are decommodified and invisible…. Cultural assets, sense of place, social networks and sociocultural livelihood practices not amenable to monetary compensation are rendered invisible through this process….During resettlement, commodification naturalises a neoliberal rationale that renders some subjectivities visible due to their contribution to domestic demand, while marginalising local economic identities that serve alternative functions and relations …(Gommersall 2018:53).

Gommersall contends that the objective of the resettlement process, in this case proactively initiated for poverty reduction purposes, is intended as a stepping-stone in a process of urbanisation:

> This model economic subject aligns with a Chinese sociocultural valuation of human quality that represents an ideal urban middle-class lifestyle (suzhi). However, in rural villages, local people assume a number of strategies to contest this process and in doing so redefine space in terms of a continuum between two idealised poles of rural and urban. Each new village represents a point along this development trajectory and hence the physical site of where a

multiplicity of power relations converge in a process of cultural hybridisation (Gommersall 2018: 59).

1.3 Rights perspectives

1.3.1 Reconciliation through consent?

Dwivedi (2002) attempted to reconcile these seemingly irreconcilable explanations of failure and their recommended solutions. All parties agreed on the high risk of failure. In the medium term, therefore, he proposed that people should be displaced only with their consent. This solution entailed reworking policy interventions directed at "balancing interests" and introducing institutional arrangements that permitted, indeed mandated, the prior consent of those to be displaced.

The World Commission on Dams (2000) report attempted to offer a practical way forward that respected rights and addressed risks, acknowledging the agency of displaced people and addressing power asymmetries through shared decision-making. This method would:

- Screen out unfavourable alternatives at an early stage.
- Limit the amount of superfluous land that could be acquired through the public interest.
- Safeguard the rights of all stakeholders at an early stage by involving them in decision-making.
- Reduce the risk of conflicts emerging by offering a forum for discussion.
- Lower overall project costs by selecting the right alternative and ensuring the benefits outweigh the full costs (including social and environmental costs).
- Utilise benefit-sharing where possible.
- Ensure better knowledge and greater public acceptance of a project.
- Improve the effectiveness and outcomes for the resettled people.

This integrated framework satisfied neither side of the spectrum and was rejected by the "risk" side (key country borrowers from the World Bank) and also the "rights" side, through Patkar's famous disclaimer. Dwivedi's longer-term solution separated displacement from resettlement entirely so "policy actions that have displacement as an outcome cannot qualify as developmental" (Dwivedi 2002: 730). Dwivedi's solution outlined above resonated with the

World Commission on Dams (2000) model, which endeavoured to integrate both risks- and rights-based approaches by offering greater opportunity to a wider range of stakeholders to determine the development trajectory and the selection of projects, beginning at the earliest point. This approach aimed to reduce power asymmetries that often resulted in vulnerable people bearing the development pain.

Dwivedi's solution also intersected, to some degree, with stalled international human rights deliberations involving civil society and United Nations agencies, which found displacement raised difficult issues. This development trajectory, designed for the good of all, risked violating the human rights of those displaced (Penz et al 2011).

This attempted reconciliation differs quite markedly and substantively from the mainstream approach. Consent has never featured in the World Bank resettlement policy as such. For example, Cernea in 1999 invoked the rhetoric of powerlessness, not to canvas the possibility of devolving more power to the powerless, or even to offer a consent option, but to achieve better economic analysis by recording social costs designed to achieve a technical solution. When projects externalise the social costs of displacement and fail to finance them, the burden falls upon the displaced people – or "victimised groups" (Cernea 1999: 6). Characterising this as an "unethical, unjust practice" that "exploited the political powerlessness" of the displaced and their access to information, he highlighted a huge responsibility for social research. Social research must "conceptualise theoretically the social and cost issues and craft methodologies to measure and internalise these costs into the routine economic analysis of development investments" (Cernea 1999: 7). In this masterly few sentences, Cernea conjured up and captured all the indignant moral outrage over the plight of the neglected displaced, channelled it into a sacred duty for social researchers, and pinned the ultimate responsibility for action upon project economists and welfare economic approaches.

Through the ESF (World Bank 2017a) the World Bank has joined other lenders in requiring free, prior informed consent (FPIC) under ESS 7 on Indigenous Peoples in cases of relocation and loss of habitat and resources for indigenous peoples, but not more generally. The FPIC requirement, however, has been carefully written in the ESF and its supporting Guidance Notes as "collective support", which permits projects to proceed without the consent of indigenous peoples provided that the borrower state ensures that no adverse impact results on such

indigenous peoples or traditional communities during the implementation of the project. This means that:

> By re-articulating certain elements of the requirement of consultation with indigenous peoples and by defining FPIC according to its own logic, the Bank may dilute the burden imposed on borrowers with respect to indigenous peoples, compared to what is required under ILO Convention No. 169 and the UNDRIP. This could have as a result a manipulated form of consultation involving actors that are strategically selected, thereby undermining the element of good faith. Under ESS7, consultation with (indigenous peoples) and FPIC could, thus, turn out to be legitimation tools to validate Bank-sponsored projects and not primarily consensus building (Ormaza and Ebert 2019: 495).

1.3.2 Rights approaches

The 1948 Declaration of Human Rights post-dated the founding of the World Bank (Bradlow 2017). The risk-based international lender policies on resettlement did not include a position on human rights until relatively recently, when, following several other lenders, IFC adopted a prohibition on forced eviction for its Performance Standard 5 (IFC 2012). A human rights perspective finds that a failure to achieve the core objective of avoiding or mitigating the adverse impacts of displacement constitutes more than just a failure of policy, it constitutes a violation of human rights (Bugalski and Pred 2013).

Bugalski and Pred (2013) expanded these criteria, critiquing World Bank 2001. First, the policy scope was deemed too narrow, excluding ways in which people could lose access to land without land acquisition. Second, the policy did not prohibit forced evictions or ensure that displacement was a last resort and in the public interest. Third, the policy did not require a human rights impact assessment or human rights due diligence. Fourth, the steps ensuring information and active participation in decision-making were too limited. Fifth, there were insufficient guarantees of the human right to adequate housing. Sixth, the policy did not make enhanced livelihoods and benefits-sharing a mandatory requirement. Seventh, entitlements, supervision, monitoring and evaluation needed to be mandatory so actions could be taken if livelihoods were not being enhanced. Finally, the policy needed to include effective measures to ensure remedy for people affected in the case of their complaint or the violation of their human rights. An important focus of human rights critique of the resettlement policy is the

prohibition of forced evictions. Bugalski and Pred (ibid), for example, recommended a set of steps to prevent forced evictions and ensure that displacement is a last resort. Key steps are:

- Projects must meet the “general welfare threshold” through affirming its public purpose through a democratic process, including meaningful consultation with all expected beneficiaries and affected persons about their development priorities, with an emphasis on poor and marginalised groups. Projects must not violate affected people’s human rights; nor may displacement exceed what is reasonable and proportional to the project’s public value.
- Projects in which a private company has a substantial stake should be subject to additional scrutiny and more extensive consultation processes. If the “general welfare threshold”, is not met, only resettlement that occurs on a genuinely voluntary basis predicated on free, prior and informed negotiations under conditions that establish a fair and level playing field can proceed, in which case the policy still applies.
- Alternative project designs and options, including a “no project option”, should be explored thoroughly. Where displacement is significant, legal specialists should assist in this process. assessment should be based on the views of a variety of stakeholders, with meaningful opportunities to propose alternatives to the people expected to be affected.

The World Bank’s ESF (2017) includes, for the first time, a prohibition on forced eviction. This includes informal settlers, who are accorded important entitlements, including arrangements to allow them to obtain adequate housing with security of tenure (Inclusive Development International nd). However, the ESF has disappointed human rights advocates, who lobbied hard over a four-year period of public consultation for a stronger human rights position and concluded that the ESF does not “affirm respect for human rights as the non-negotiable minimum floor for the treatment of project-affected people” (ibid). Most recently, the United Nations outgoing Special Rapporteur for Extreme Poverty reported that the International Poverty Line is set at a level so low that it cannot guarantee basic human rights. This gives a false sense that poverty is almost eradicated and a misleading view that almost any economic policy – and any choice of project – will contribute to poverty reduction (Alston 2020).

1.3.3 Ethics: preventing “maldevelopment”

Ethical analysis goes beyond project failures to a broader field of “maldevelopment” (which undermines human well-being) as opposed to “worthwhile development” (which enhances

human well-being) (Drydyk 2015: 98). Ethicists may evaluate project outcomes by an additional set of criteria: improved well-being; equity; empowerment of those displaced; and environmental sustainability. “Worthwhile development” has advantages through additional criteria: it strengthens human rights, enhances cultural freedom and is not corrupt (ibid) – all advantages that foster successful resettlement. Together, these seven criteria encompass the ethical approach to resettlement, as set out in Table 1.3 below.

Maldevelopment, in contrast, may compromise resettlement by disempowering affected people – a significant risk raised in the 1980 policy but not subsequently. Maldevelopment may also compromise the public interest that justifies the state’s use of powers of eminent domain, so raising questions about the selection of the project in the first place. From an ethical perspective, CBA is held to be insufficient as a decision-making tool for resettlement because it does not take account of distributive justice (Penz et al 2011).

Ethical approaches emerged as a possible circuit breaker, also taking up the question of the underlying quality of development itself. Maldevelopment results from repeated mistakes that go uncorrected in development practice. The ethicists’ seven development ethical values set out in Table 1.3 below enrich any assessment of development worth. Maldevelopment, conversely, may disempower people. The concept of maldevelopment defines what may go wrong with development and is broader than displacement and resettlement, but its presence may compromise the entire spectrum that leads to resettlement: definition of the public purpose, project selection and the way in which displacement is managed and resettlement is accomplished. Table 1.3 defines the ethicists’ seven developmental ethical values in relation to displacement by development.

Table 1.3 Seven development ethical values in relation to displacement by development

	Definitions	**Maldevelopment that will compromise resettlement**
Well-being	The United Nations (1986) defined well-being in development as a "comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom … [and] in which all human rights and fundamental freedoms can be fully realised". Amartya Sen found that well-being freedom is "capability to function in those ways that people have reason to value" (Penz et al 2011).	A problem arises. Displacement compromises the well-being of the displaced, but the well-being of others may be compromised also if they cannot access the benefits brought about by displacing projects (Penz et al 2011). **Maldevelopment** Development that does not enhance the well-being of all affected, especially those who endure greatest hardship.
Equity	Equitable economic growth is widely preferred, including by economists. Ethical (including gender) equity approach encompasses: 1. Equal sharing in benefits 2. Hardship removed and not sustained. 3. Sustained social equality Ethicists question welfare economics and cost benefit on grounds they do not take account of distributive justice.	**Maldevelopment** Not in raising life expectancies for the rich but in failing to match them for everyone else.
Empower-ment	People are entitled to become agents, not merely beneficiaries, of their own development (Goulet 1971) whereby they influence or control key events. Declaration on the Right to Development: "The human person is the central subject of development and should be the active participant and beneficiary of the right to development" … "development must take place on the basis of their active, free and meaningful participation in development" (UN General Assembly 1986: Art. 2).	**Maldevelopment** No active inclusion in economic, social, cultural and political empowerment.
Sustain-ability	Use of Sustainable Development Goals (SDGs): poverty and other deprivations together with strategies that improve health and education, reduce inequality and spur economic growth – while tackling climate change and working to preserve our oceans and forests. Brundtland Commission: unsustainability means either failing to meet the needs of the present or, through environmental degradation, future generations. Human development approach targeted levels of environmental damage restricting choices of future generations. Capability approach highlights acting with concern for the	**Environmental maldevelopment** Growth and expansion are conducted without respect or care for the environment – including the criterion of sustainability – especially if this lack of respect or care for the environment results in capability shortfalls for present or future generations (Penz et al 2011:159).

	environment as a valuable functioning capability; it calls for removing shortfalls in this along with other capabilities people value (Penz et al 2011: 159).	
Human rights	Does human rights conflict with development? 1. Sen argues no conflict if information flows rapidly through a free press, governments seeking re-election respond more quickly to life-threatening crises, such as potential famines (Sen 1999b). 2. Common-sense recognition of harm and hardships from failing to protect people's hold on substance of these rights – on health, shelter, education, employment, an adequate standard of living, non-discriminatory treatment, rule of law, free speech and participation in civil and political life (Drydyk 1999 in Penz 2011). Development as human right.	**Maldevelopment** 1. Development without human rights is maldevelopment. 2. Additional ethical demand for system of international cooperation and action to avoid maldevelopment and to meet global development goals. Declaration on Right to Development (UN Gen Assembly 1986). Economic expansion by means that diminish people's enjoyment of human rights is maldevelopment; this includes maldevelopment that proceeds by means of discrimination.
Cultural freedom	UN Draft Declaration on the Rights of Indigenous Peoples: the principle that "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (UN and UN High Commissioner for Human Rights 1994: Art. 3) with entitlement to self-government (Art. 31) and control over resources (Art. 26).	**Maldevelopment** "Denial of indigenous peoples' rights to land, resources and self-determination has inevitably subjected them to violations of the values of human well-being and security, equity, empowerment and cultural freedom. Denial of land, resource control and self-determination is the specific modus of maldevelopment" (Penz et al 2011: 157).
Integrity on corruption	Commission on Global Governance likened corruption to theft: "Vast sums that should have been in government treasuries to be spent on national objectives were siphoned off to be invested or banked abroad. The people of these countries were effectively robbed" (Commission on Global Governance 1995: 63-4).	**Maldevelopment** Corruption is inefficient as well as inequitable, impeding growth (Mauro 2002), undermining state legitimacy (Rose-Ackerman 2002) and democratic politics (Johnston 2005) and disproportionately harming the poor (Thomas et al 2000).

This seven-fold set of criteria defines the fundamental conditions for worthwhile development that will also impact the rationale for selecting displacing projects, the reasons for displacement, the way displacement occurs, the manner in which resettlement is provided as a solution and the likely outcomes. In this way, it sets displacement and resettlement into a much broader field of decision-making and wider time frame than the mainstream approach of resettlement policy, which deals only with resettlement as a project-specific solution to displacement. The ethical approach sets out an agenda, linked closely to specific human rights declarations, which addresses issues that are either not found or, if found, are minimally addressed, in mainstream

resettlement policy formulations. Importantly, maldevelopment and worthwhile development exist entirely independently of, but can be applied to, displacing developments. This independence contrasts with the resettlement policy, to which the focus now turns.

The resettlement policy starts to take more shape and form in relation to these other approaches – and differs in important ways. Both radical theoretical and ethical approaches, from different standpoints, look beyond the core mainstream position, which depends for its existence entirely upon the displacing event, to which it responds as a resettlement cure which is shown not to guarantee outcomes. Both radical theoretical and ethical approaches bring new dimensions to the subject of development that displaces people by bringing to the decision-making centre the displaced people themselves. Recognising the high risks of failure to the people affected, these perspectives highlight the importance of empowerment and consent, but in different ways. For the radical preferred approach, informed prior approval equates, in effect, to a veto on any displacing development. Projects cannot proceed without the affected people's consent to displacement. The rights based ethical approach seeks a more middle-ground position. It explores the consent dilemma: a veto on displacement by those to be displaced can open up possibilities for exploitation by some of the more unscrupulous among them and jeopardise the right of others to vital developments they may need.

For this reason, the rights-based ethical approach proposes stages, from the earliest point of development strategy, that open up decision-making to a wider group of stakeholders, including the potentially displaced. It includes this wider group in subsequent decision-making, while also ensuring that any remaining displaced people have strong legal protection (Penz et al 2011). This brings the potentially displaced into decision-making at a much earlier point, democratising project selection processes in a "preventive" rather than a curative strategy. This contrasts with the mainstream approach where governments and related elites make all the decisions on planning and project selection.

From an ethical perspective, Penz et al (2011: 20) find that the mainstream approach, exemplified by the IRR model, does not address the power questions in displacement and resettlement, and why "developers, political agents and beneficiary groups are powerful enough to initiate development projects that will displace people, and why the oustees are comparatively powerless to resist". The analysis also omits the state's role. Complex processes

of change in rural and urban land use increasingly feature land regularisation, agrarian transformation, monocropping and conservation (Hall et al 2011).

This analysis has found a resettlement policy paradox. The seemingly well accepted resettlement policy has been strongly justified on grounds of social justice, poverty reduction, social equity, smooth economic development, risk mitigation both for people affected and for the lender’s reputation, human rights and ethics. Paradoxically, however, the policy fails to demonstrate it is succeeding in “doing no harm”, its minimum objective for people affected by development projects, let alone benefitting them. Looking inward, the analysis has uncovered unresolved structural anomalies in the lending framework. Looking outward, the analysis has found a range of new ideas, generated internationally, that appear superficially to resonate with policy principles but that appear to resist closer integration. Some observers noted shrinking space both internationally and nationally for public debate and discussion on these issues.

This thesis addresses this paradox. Chapter 2 takes up these points, formulating the research problems, questions and methodology for this thesis. The chapter sets out the methodology, informed by the theoretical perspectives that engage the anthropologies of policy and law to formulate the central research questions.

Chapter 2: Research problems, research questions and methodology

2.1 Thesis rationale, research problems and research questions

This chapter sets out the research problems, formulates the research questions and introduces the methodology for addressing them. Chapter 1 identified a resettlement policy paradox in which a successfully accepted policy does not guarantee its objectives. In the lending context in which the resettlement policy is applied, Chapter 1 found unresolved structural anomalies. The rationale for this thesis is to find out if and how the resettlement policy paradox can be resolved in terms of better practice, at the level of the policy itself or in country frameworks – or all three.

Chapter 1 delineated three theoretical positions that offer different explanations for the causes of resettlement failure and the prospective cures. Dwivedi (2002) had differentiated between the adherents of the risk-based mainstream reformist-managerial position, to whom displacement was inevitable and to be fixed by “proper” resettlement; and adherents of the radical theoretical position, to whom displacement was a political process rather than a developmental one. He proposed a possible medium-term resolution by redefining the WCD (2000) approach that prioritised inclusive decision-making through consultation, participation, and negotiation. Chapter 1 elaborated upon several radical perspectives: political economy and Foucauldian theoretical positions. It expanded upon this possible resolution by adding a stronger focus on human rights and sustainable development as exemplified in the seven-point ethical approach (Penz et al 2011).

Table 2.1 below elaborates the differences between these three positions: risk-based reformist managerial mainstream; radical political economy/Foucauldian; and rights-based ethical. The table extends the three-way theoretical differentiation to address project decision-making leading to displacement in a country context. It shows how the theoretical orientation may have far-reaching consequences for the way projects that displace people are conceptualised, planned and managed – and the process and outcomes for the people who are affected.

Table 2.1 Mainstream, radical and ethical approaches to development planning and decision-making for displacement for development

	Reformist managerial – mainstream resettlement policy cure	**Radical – political economy; Foucauldian**	**Rights-based seven-point ethical approach**
Cause of displacement	Displacement is an inevitable by-product – a "pathology" of development that is addressed through proper resettlement. Development is necessary and inevitable to better the human condition through growth and welfare.	Displacement reflects power asymmetries and governmental technologies to render people and space more governable through multiple logics. Expanding market forms of governance at the expense of pre-capitalist forms.	Development may be "worthwhile" development or "maldevelopment". Displacement results from top-down decision-making on development priorities and, if based on maldevelopment, entails violation of rights, eg use of forced eviction.
Who decides to displace?	Governments, developers, lenders decide on development strategies that may displace.	Governments, developers and lenders decide, currently.	Top-down decision-making as at present is not optimal. All stakeholders, government, developers, lenders and people to be displaced should decide.
What analytical tools apply to economics of displacement?	Analysis of social costs as an input to routine economic analysis. A "disciplinary alliance between economic and social planning tools".	Political economy approach finds routine economic analysis, including cost-benefit analysis, fails theoretically and practically to address displacement costs.	Routine economic analysis cannot deal with distributive justice, which is necessary to understand displacement.
What laws or regulations apply?	Government together with special interests – lenders, financiers, developers, etc – decides on the use of eminent domain and defines the public purpose.	Eminent domain powers that reflect asymmetries in development.	Once wider stakeholders, including those to be displaced, have decided on projects, legal framework must guarantee rights to people who are to be displaced.
Should legal regulatory framework be enhanced?	Introduce new laws or change existing ones to address social and economic reconstruction. Expropriation laws typically deal with individual losses, not community-based losses that include a range of social intangibles and communal resources.	Institutionalise a veto as standard procedure for any project that is likely to displace people without their consent.	Correct repeated mistakes that contribute to maldevelopment and its impact in legal regulatory framework.
What orientation applies?	Projects are assumed to be essential to improve human well-being, so project rationale	Resettlement is governmental program with multiple logics, one that seeks to render	Responsible development within a framework of development ethics – rights recognised but within ethical

	is unquestioned even if displacement results.	people and space more governable.	values.
Is power recognised?	OMS 2.33 (1980): "Feelings of powerlessness" among people displaced was dropped from OD4.30 (1990) and from subsequent policy formulations.	Power asymmetries that cause displacement – and unsuccessful resettlement – to be recognised and addressed. Governmental programs reflected in overlapping modalities of power to be explored further.	Sharing power earlier through decision-making process on public interest and project selection gives more equitable and effective outcomes.
What safeguard checks apply?	The check was until recently borrower compliance through a resettlement plan or framework satisfactory to the lender before appraisal when leverage was high, and lender poverty reduction policy. Inspection function could back this up should policy fail.	Not specified.	Middle ground changes. Challenges projects that are "maldevelopment" ie unjust, unethical or unsustainable, which should not be financed, including those which include displacement. International poverty line is insufficient to meet human rights.
Who is the policy? subject?	The "resettler".	The "displaced person".	The "displaced person" – affected directly and indirectly.
Why does resettlement fail?	Poor governance, laws, capacity, and financing on part of the lender	Structural asymmetries, political processes lead to the wrong development strategy.	Maldevelopment, unjust, unethical or unsustainable investments, poor resettlement practice.
What are the potential solutions?	Improve governance and financing to implement the resettlement "cure"; activate evidenced-based links to policy and practice.	Resettlement projects cannot be perfected. Re- settlement is an exercise of power relying on a broad apparatus, reproducing power relations, with multiple intended and unintended effects.	Find a middle way by using ethical, sustainable and justice principles.
What is the decision-making model?	• Governments, developers and lenders set priorities that include displacement. • Resettlement policy cure planned and implemented.	• Potentially displaced people require informed consent to displacement – veto powers. • Separate displacement from development.	• All stakeholders set priorities from the beginning. • Those potentially displaced participate. • Guarantee legal rights for the displaced but not veto powers.
To whom are projects accountable?	Accountability to the state. The lender is accountable to affected people though Inspection function.	Accountability should be to the people, but currently is not.	Value of agency makes accountability to the subjects of development imperative.

Table 2.1 has set out the three distinct theoretical approaches, contrasting the conceptualisations of development and its relationship to displacement. Mainstream actors question only the "pathology", not the underlying definition of development. In contrast, both radical and rights/ethical positions question the decision makers and the decision-making processes that result in displacement but, for rights/ethical actors, development is not always "maldevelopment". With informed participation and strong legal safeguards, displacement is acceptable. In a political economy /Foucauldian perspective, resettlement can never be perfected because it is an exercise in the application and reproduction of power.

Against this background the research questions are now refined.

2.2 Thesis research questions

The three research questions are set out below with, in each case, an explanation for their inclusion. Each question addresses an important aspect of resettlement failure and endeavours to chart a way forward.

Research question 1: Has evidence-based feedback from resettlement policy application, when reflected in revised resettlement policy and practice, been effective in reducing or eliminating resettlement failure? This question is considered globally, and with special reference to Asia-Pacific.

Forty years ago the policy was crafted drawing from an evidence base of resettlement cases. The policy paradox highlights high failure rates in terms of outcomes for the displaced people. Preliminary global analysis revealed unresolved structural anomalies in the lending environment. Some observers believe the dialogic feedback link failed over the last 20 years (Introduction). Underlying reasons for failure are theoretically determined, at least to some degree. The intention, then, is to understand more about the process of policy renewal and better resettlement practice. Examining this question bypasses stalled analyses of failure based on theoretical positions and elevates the resettlement policy itself to a central position as a research subject. This allows an assessment of the way the policy is conceptualised and applied in different circumstances, together with its translation and its agency. The starting point is the instrumentalist top-down evaluation approach. The aim, beyond that, is to open up a deeper understanding of the way the policy works in practice: in creating new fields of semantic meaning and institutional practice; and the efficacy or otherwise with which it opens up new

social spaces through new sets of relations, new political subjects and new webs of meaning. This analysis permits the inclusion of a political dimension, which had been initially accepted but then written out of the resettlement policy.

These evidence-based links between resettlement research and practice may come in several ways. Lenders formally gain evidence-based feedback through monitoring, reviews and evaluations and through inspection cases that address resettlement. This information is critical to lenders in producing verified outcomes data. Lenders provide guidance to practitioners through good practice in handbooks, notes, guidelines etc. Lenders also undertake consultations on policy revisions, which present an opportunity for learning from independent research case studies, and from civil society advocacy.

Research question 2: Are the feedback links aimed at improving resettlement policy and practice obstructed by the lending culture in which resettlement policy operates? This question is addressed globally and with special reference to Asia Pacific region.

The lending culture is risky for resettlement policy implementation. First, the loan approval imperative may favour loan processing rules and procedures designed to speed up lending. This pressure has been evident for decades and is still evident with emerging lenders (Bugalski 2016), some without safeguards at international standards and/or poverty reduction objectives. Lenders with resettlement policies may avoid resettlement-intensive projects leaving those to other financiers with lesser standards (ADB 2020). Second, the focus on approval rather than loan implementation may mean less emphasis on compliance action during implementation and less attention to evidence-based outcomes. Third, the need for speed in approvals exempts some lending modalities from meeting the safeguard requirements (World Bank 2017a); and some newer lending modalities prepare their subprojects only after loan approval, when lender leverage is lower. This includes projects through financial intermediaries (ADB 2020). Commercial pressures associated with lending may, among others, lead to the ethical notion of "maldevelopment".

Chapter 1 identified structural anomalies arising from these pressures in the lending environment governing projects with resettlement. The lending culture can overwhelm efforts to ensure project quality at entry, while efforts to speed up loan processing undermine "proper" resettlement planning. "Proper" resettlement requires critical planning and management steps

in alignment with the project's final technical design and project approval before civil works clear the site for construction. Rushing these critical resettlement steps might lead to forced eviction; and makes it less likely benefit sharing and sustainable livelihood opportunities can be developed. Prioritising loan approval at the expense of loan implementation further undermines remedial actions where necessary and outcomes assessment. The policy paradox – both the simultaneous survival and recurring failure of resettlement policy – become clearer in this context. The policy permits continued loan approvals – but the absence of quality implementation continues to permit failure in practice.

Research question 3: To what extent do country legal frameworks interact with wider international thinking in a possible rapprochement between sustainability, rights and risks in approaches to development in general and resettlement in particular? This question is addressed globally and with special reference to Asia Pacific region.

As lenders relinquish more oversight responsibility for resettlement to borrowers, the responsibility for links between research, policy and practice devolves to country frameworks. The ESF permits some countries to negotiate less Bank intervention and a greater role for country frameworks. Laws and regulations on the use of land for development purposes, institutional capacities and governance structures – indeed, the underlying development thinking, strategies and trajectories – all differ between countries. An analysis of country frameworks may examine both reformist mainstream-related research questions and the wider participation of displaced people in decision-making, taking account of sustainable development and human rights (Tagliarino 2016, 2018). The ESF moves the Bank resettlement policy towards the rights agenda – but the appearance may be closer than the realisation. The third question, therefore, shifts attention to the interacting fields of law and policy in country context; and opens space to consider the wider issues of human rights and sustainable development, for which many countries are also signatories to international agreements. The comparative country assessments form the evidence base for this analysis.

2.3 New approaches: anthropologies of policy and law

To address these questions, new dimensions are introduced: the anthropologies of policy and law. An anthropology of policy treats the resettlement policy not as a static text but as a dynamic subject in its own right. An anthropology of policy views the resettlement policy as "productive,

performative and continually contested" (Shore et al 2011: 1) so creating "new social spaces and semantic meanings, new sets of relations, new political subjects and new webs of meaning". Of special relevance to the thesis is the way international resettlement policies potentially redefine certain people as subjects, endow country actors with reformulated roles, and introduce mechanisms for accountability that redefine roles and relationships, with outcomes that make sense according to new sets of meanings.

"Juridification", for example, denotes the "creation and interpretation of rules, regulations and new soft law instruments by a range of actors – public and private, national and international" (Randeria and Grunder 2011: 187). Juridification allows analysis of complementary "soft law" international norms that bring human rights standards and the SDGs into policy spaces in country context, interacting in new social spaces.

The anthropology of policy can illuminate the way in which policies, as organising principles, allow agencies to classify and regulate the people they manage or govern. Changing the social relations around which people structure their social realities in turn triggers social change (Shore et al 2011). Anthropological theory and method help to "deconstruct policy" so as to reveal "patterns and processes in the organisation of power and governance in society" (ibid: 4).

The anthropology of law brings to the study of human rights an ethnographic concern with the production of law within and beyond the international system. The anthropology of law has demonstrated that human rights have transformative value for development that is applicable to the analysis of development displacement (Goodale 2017). This process becomes relevant in the treatment of country-based laws on eminent domain, which, as a trigger for decisions relating to expropriation of land for development purposes, becomes a new field for resettlement policy engagement and human rights assessment in each unique country context . Civil society also becomes a significant actor, depending on the degree of government tolerance of its activity.

The thesis also draws upon the complementary field of forced migration studies, especially the notion of policy categories, which, in academic research, are often privileged in order to focus quickly upon a trouble spot to minimise the human suffering arising from forced displacement. These good intentions may act as a barrier to understanding the underlying phenomenon as

Turton noted (2003a) when he advocated looking beyond policy categories. Relying on policy categories to guide research may "obscure and render invisible some population groups, causal relationships, and questions that are methodologically difficult to capture" (Bakewell 2008: 433).

Applying these notions to the resettlement policy brings new organising principles to the methodological approach. For a start, the resettlement policy focuses on people who are in the way of projects. Whatever their status on the land and whatever their losses, the policy re-categorises them so they will no longer be "displaced" people. Rather, they are reclassified in a new category as "resettlers" under the policy – entitled, depending on their losses, to impact assessment, social survey, consultation, resettlement planning, compensation and other assistance, relocation, livelihood assistance, an opportunity to share the project benefits, monitoring and evaluation. In each project case, the resettler category is constructed according to the people to be displaced, the specific mix of their losses and a range of local conditions that are all reflected in a resettlement plan.

The resettlement plan, in turn, is covered – however imperfectly – by a project legal agreement between the lender and each borrower. The "resettler" policy category differs from the unique mix of country legal categories, which may apply in these circumstances under country property and expropriation law, such as "legal landowner", "legalisable land owner", "illegal land user", "customary land user" or "person with an interest in the land". The way the policy constructs the category of "resettler" relates to country legal categories and can shift in temporal and semantic terms. For example, some countries have increased the importance of the "legalisable" category because of the resettlement policy principle that lack of legal title to land is not a bar to policy coverage.

Methodologically, the focus is not the substance of the written text itself but its wider interactions: the organisation and new alignments of actors, agents, institutions and subjects in policy space. This is a vital feature of this thesis. Once created, policies can take on new meanings and migrate into new settings. However, this may not necessarily follow an evidence-based process where evaluations of policy effectiveness inform evidence-based feedback to adjust the text and its practice to achieve better outcomes – the aforementioned dialogic link. The resettlement policy categories were developed for specific investment circumstances and translated into normative lender procedures and practices. Each country has a unique legal and

regulatory framework that was formulated for the country as a whole – the country framework is not "projectised" through the filter of any one project, although it is used to address resettlement when it arises on projects.

Table 2.2 below sets out some areas for interaction and the formation of new semantic meanings as the resettlement policy resonates in new country contexts.

Table 2.2 The international resettlement policy in a country context

International resettlement policy	Application in country contexts
Policy disseminated globally to lenders, financiers and private corporations and through country frameworks.	Policy working in unique country and local spaces through different country categories of affected people.
Policy principles apply universally	Principles operate differently according to unique country framework/reinterpretations of principle.
Legal agreements between borrower and lender bind the borrower to implement the policy in lender-financed projects.	Legal agreements may be neglected by both borrower and lender in practice.
Policy will mediate any problems with eminent domain and other legal instruments.	Legal instruments may be compromised in practice.
Policy subject category is "resettler" and the endeavour is "resettlement".	Legal categories change. For example: India's Land Acquisition Resettlement and Rehabilitation Act (LARRA 2013) uses the terms "owners of the land" and "other affected families". China uses a range of terms in various laws/regulations, eg "village collective", "owner of house", "expropriatee". Bangladesh Immovable Property Ordinance 1982 updated 2016 uses the term "owner", "person interested" "occupier" etc. Indonesia Law 2/2012 uses the term "entitled party".
Monitoring and reporting required for "resettlers".	"Resettlers" may not be a meaningful category in most country frameworks – dynamic interaction produces varying new meanings. Most countries monitor and record only changes in land ownership, not the outcome for people using that land or being resettled elsewhere.

The resettlement policy sets non-mandatory benefit-sharing opportunities as aspirational objective.	Benefit-sharing goes beyond compensation to development, from short term planning to long term sharing of development opportunities. Country frameworks help determine the definition of benefits, when they apply, whether they reach the displaced people directly or are area based. Benefits may depend upon revenue-generation capacity of projects, which varies. Many projects generate no revenue. The direct link to resettlers also varies. Evidence is mixed on whether this form of assistance benefits resettlers.
Outcomes reporting, for example, through audit, required to close out policy in each project case.	Reporting on policy outcomes is minimal at project level. See above.
Appeals through lender accountability mechanism are permitted.	Accountability mechanism provides a new avenue for people displaced to exercise juridical power, but it is limited to lender procedures. A successful appeal does not guarantee redress.

Table 2.2 sets out some of the differences between policy categories and legal categories that determine the policy treatment in a country context. Chapters 4 and 6 also refer to – and Chapter 7 will synthesise – these points.

Forty years of resettlement policy and its application have created and consolidated certain categories of meaning: loss, resettlement, resettler, entitled person. Countries differ in property and expropriation laws, regulations and administrative practice. Powers of eminent domain, reflected in laws on land acquisition or expropriation for the public purpose, trigger the kinds of losses that will be addressed through the resettlement policy. The category “resettler”, however, may extend more broadly than the legal boundaries. It may extend to people restricted from access to their land through regulatory rights of way, or through certain environmental regulations designed to protect its use. Resettlers may include people losing land that is transferred or resumed or rendered unusable for some reason. There are other circumstances in which people may be displaced: private owners may evict people; people may be pressured, coerced, threatened or harmed if they do not move off land for a range of reasons. Resettlement policy categories and legal categories overlap but are not identical. Both categories may have ambiguous boundaries in different circumstances.

The recognition of claims to land and other resources also varies between resettlement policy and law. The policy requires that the category “resettler” must include those displaced without legal title to land, whereas country property and expropriation law may categorise such people as “illegal” and not eligible for compensation. There are different shades in land claims, however, that are particularly evident in the category “legalisable” – a category that often emerging because of the interaction between the law and the policy. Under what circumstances are people to be treated as “legalisable” in law as distinct from “eligible” in resettlement policy terms? The policy, for example, recognises common property resources as a valid and recognisable asset. Common property may be owned by government or private owners even though essential to community identity, social organisation, environmental practice and economy. This kind of close, ethnographic policy study requires both insider (emic) and outsider (etic) perspectives and an oscillation between the two standpoints that enables a critical reflexive method.

2.4 Research methods and data sources

The thesis method draws upon a range of data sources: policy analysis, secondary data review, first-hand, original research at the level of national laws in country frameworks and on-site for project cases. It includes interviews and focus groups with displaced people.

Global: The subject global policy requires a global dimension in data analysis. Chapter 1 draws upon global estimates of numbers of people affected; a global analysis of structural anomalies; global review findings; and a global literature review. Chapter 7 includes a global data base of country laws and policies.

At country level. This work draws upon a first-hand study of legal frameworks in 11 Asian countries in total. This included 8 countries: China, Indonesia, the Philippines, Cambodia, Vietnam, Pakistan, Nepal and Bangladesh – first initiated while the writer was on the staff at the Asian Development Bank (ADB). These countries were selected because they had more people affected by resettlement under ADB projects. The study was informed by first-hand project visits in Asia-Pacific to compare project-related performance and associated laws and regulations at country level. First-hand research was conducted through interviews and focus groups with key informants, including resettlers, host villagers where relevant, resettlement staff and non-governmental organisations (NGOs). Recently, additional first-hand site visits

and interviews in two additional Asian countries: Kyrgyz Republic and Sri Lanka, were conducted, partially while on short-term consultancies for ADB. Additionally, in-country visits to Timor Leste, Solomon Islands Vanuatu and PNG (2016, 2019) were added, with an additional country, Kiribati, subject to desk review. Independently, the writer conducted a review of the legal and regulatory policy base, including selected laws and regulations of 40 Asia-Pacific countries.

Project case study. The in-depth case study analysis of a private sector liquefied natural gas (LNG) project in West Papua Province, Indonesia, was financed by several international banks, including ADB. The writer conducted independent resettlement monitoring over the period 2007-2010 inclusive. The project has been rated as an innovative model for its treatment of environment and social issues, including resettlement, and the transparency adopted for monitoring and publicly reporting upon those issues. Table 2.3 sets out the parameters of the investigation disaggregated by the chapters, showing how the data collection methods inform broader research questions, chapter by chapter.

Table 2.3 Research questions, methods and data sources by chapter

Research questions by chapter

Chapter 3	Chapter 4	Chapter 5	Chapter 6
• Research questions 1 and 2. • Can feedback from past failure enhance resettlement policy and practice?	• Research questions 1 and 3. • Can social analysis and legal change improve resettlement policy and practice and country frameworks?	• Research questions 1, 2 and 3. • Can negotiated agreements and consent overcome the problems of power and information asymmetries?	• Research questions 1 and 3. • Did 40 years of resettlement improve policy and country frameworks?

Methods by chapter

Chapter 3	Chapter 4	Chapter 5	Chapter 6
• Project case sudy using project design, monitoring and resettlement audit data; analysis of rights and risks approaches.	• Analysis of policy formulation process, policy delivery, legal and governance frameworks.	• Analysis of resettlement research questions in theory and policy prescriptions plus one case study.	• Changing legal instruments in 40 Asia-Pacific countries, plus follow-up research in four Pacific and four Asian countries (2016-2019).

Data sources by chapter

Chapter 3	Chapter 4	Chapter 5	Chapter 6
• Secondary data. • First-hand monitoring and audit work on site.	• Secondary data. • First-hand multi-country analysis of project cases.	• Review of policy approaches for rights and risks. • Project cases.	Review of legal and regulatory policy base, including selected laws and regulations of 40 Asia-Pacific countries.

2.5 Structure of the remaining chapters

Chapters 3 to 6 focus on research in policy development, application and model building in specific locations in Asia; human rights documentation on displacement by development; and more detailed analysis of examples of resettlement failure. Chapter 3 comprises a single project case study of enhanced objectives, rights and risks analysis and benefit-sharing, and the role of a risk model in planning and monitoring.

Chapter 4 examines social research, social capacity building and explanatory model building, with special emphasis on the theorisation of the transition from routine to dissonant culture and back to routine culture. With lenders moving to give oversight responsibility to country governance (Price and Singer 2019), Chapter 4 introduces the country legal frameworks for development displacement.

Chapter 5 discusses the state's role in land transformations. It takes up the questions of consent to displacement, the empowerment of the displaced, and negotiation on the asymmetric terms under which people are displaced, which have assumed importance in relation to ethical and human rights perspectives. Chapter 5 addresses the global spread of negotiated settlements, which take on added impetus with burgeoning global finance flows and increased multilateral finance channelled through the private sector. Power asymmetries between displacers and those displaced raise the question: can such negotiations be conducted freely and without duress? The third research question asks how far country legal frameworks interact with wider international thinking, as exemplified by the seven development values of the ethical approach, to support new project initiatives.

Chapter 6 presents analysis of a comprehensive database of 40 Asia-Pacific countries, to ascertain the uptake of the building blocks of the resettlement policy cure and the extent to which this supports the evidenced-based links between research, policy and practice. The 40-country analysis in Chapter 6 is extended to include additional measures that arise from the ethical seven-point agenda in terms of equity, well-being, sustainable development, empowerment, human rights, cultural freedom and anti-corruption measures. Chapter 6 addresses briefly the ethical and legal interface in country laws, identifying also several empowering and disempowering legal measures.

Focusing primarily on the country elements of the resettlement policy cure, this analysis is extended in Chapter 7 to include several upstream indicators: the definition of (and limits to) the public purpose, land tenure and participation. Chapter 8 presents the conclusions, anticipating stronger actions for achieving more equitable environmental and social synergies in project selection, planning and management.

Chapter 7 analyses the substantive research questions: first, the reasons for the ineffective links between research, policy and practice and the failure to provide a safeguard to displaced people; and, second, the question of the lending culture's influence on the prospects for policy reform.

Chapter 3: A model project

3.1 The Tangguh project case

3.1.1 Introducing the project case study

This chapter addresses research question 1, which asks: are the evidence-based feedback links from resettlement policy application back to resettlement policy renewal and to better resettlement practice effective in reducing or eliminating resettlement failure? This chapter addresses this question by examining the record of a model project, which was designed to a higher resettlement standard than the minimum "restoration" permitted by resettlement policy and aimed to address the risks of impoverishment so often associated with policy failure.

This chapter also addresses research question 2, which asks: can the lending culture in which the resettlement policy operates be re-oriented to strengthen the feedback links to support resettlement policy renewal and better resettlement practice? It does this by examining the lending and commercial impacts of this resettlement case.

The resettlement model contributed to the achievement of an "excellent" project rating from ADB (2012). This case unfolded in most unlikely terrain – Papua, one of the less governed margins of Indonesia's periphery, which had virtually nothing to show from decades of New Order rule, despite longstanding extractive mining in its territory. For the purposes of this thesis, the term "Papua" refers to the region encompassing both Papua province and West Papua province ("Papua Barat"). The term "Papua province" refers to the province of Papua following its split from Papua Barat province. The term "Papua Barat" refers to the province of Papua Barat (previously known as Irian Jaya Barat) following its establishment in 2004. Scattered communities, organised in clan groups, depended on their customary terrestrial and marine resources, with few social and economic services reaching the area from a remote *kabupaten* (regency or district) centre in Manokwari. With little infrastructure or utilities, the primary mode of travel through the low-lying swampy terrain was by boat along the slow-moving rivers. The proposed project area was barely integrated into the political networks of the Indonesian state. It had been commercially exploited over some decades: extensive forest concessions had brought logging and oil palm development; Javanese transmigrant areas had opened up; and a commercial prawning industry had operated before collapsing.

Situated in this unlikely background, the Tangguh project, as the first integrated liquefied natural gas (LNG) operation in Indonesia, aimed to develop a "world-class model" that aspired to achieve transparency, good governance and a rigorous and systematic approach to operational integrity, safety and risk management (ADB 2012). This was also the first oil and gas sector project in Indonesia that aimed to conduct public consultations with a range of stakeholders, including local people, to ascertain their priorities and aspirations (ibid).

This chapter explores the resettlement approach: the negotiations between project staff, local government and the villagers; the use of the Impoverishment Risk and Reconstruction (IRR) model in planning and monitoring; the "resettlement with development" strategy; its implementation and its results in the form of a resettlement audit. This project case study informs several of the chapters that follow, including the final synthesis in Chapter 7.

There is no public access to Papua or Papua Barat provinces. This chapter is based on the writer's own twice-annual visits to Tangguh, in Papua Barat, during the period 2007 to 2011 after the resettlement had been planned and during its implementation. The writer was largely dependent on the project staff for information, travel and logistics. This meant flying to Babo and then gaining access to the resettlement villages and their host villages, and across Bintuni Bay to Teluk Bintuni, the new *kabupaten* capital, by project boat. Poor weather conditions on Bintuni Bay could mean no boat access to Green Camp, the centre of resettlement activities in New Tanah Merah Baru village. As an independent resettlement monitoring consultant engaged by the lenders, however, the writer was able to conduct interviews with project staff, resettled and host villagers while on site. Subsequent reports have been compared with the writer's experience on the ground among the resettled communities to complete this analysis.

3.1.2 Brief project description

BP's Tangguh LNG project is located in Berau and Bintuni Bays on the Bird's Head Peninsula of Papua Barat, some 3,200km east of Indonesia's capital, Jakarta. The project extracts natural gas from two large offshore reservoirs and pipes it to an onshore plant for conversion to LNG, which is shipped to markets in the Asia-Pacific region. The project constructed offshore drilling and production platforms, submarine gas transmission pipelines and an onshore LNG processing plant with associated support facilities (port, airstrip and accommodation) in the period 2004 to 2008. The Asian Development Bank (ADB) approved in 2004 a direct loan of

up to US$350m for the Tangguh LNG project. The project was co-financed by Japan Bank for International Cooperation and international commercial banks.

The project comprised two LNG liquefaction and purification trains, processing 3.8 million metric tons per annum (mtpa) of LNG, which is shipped and sold to buyers in Indonesia, China, Japan, Korea and the USA. Indonesia approved an expansion plan in 2012 for developing new facilities. The Tangguh Expansion consists of a third 3.8 mtpa LNG train, linked offshore and onshore production facilities and supporting infrastructure. Train 3 has committed 40 per cent of production to PLN (Indonesia's national electric utility) via a long-term sales and purchase agreement catering to rising demands for domestic energy. The maps below present the project location. The photograph gives an impression of the scale of operation in Bintuni Bay.

Source: Mitsui Co Ltd

Figure 3.1 Tangguh project location

Source: Mitsubishi

Figure 3.2 Bird's Head Peninsula and project location

Source: MJ Technical Consultancy

Figure 3.3 Tangguh LNG plant and dock

Source: Bentley Systems

Figure 3.4 Offshore drilling rigs

This project brought together a large extractive project investment – with its full onshore LNG processing plant and international shipping facilities – with indigenous inhabitants in coastal village communities, who, in stark contrast, fulfilled most of their subsistence needs and generated small incomes mainly from the harvesting and sale of marine products caught in simple nets and using small wooden canoes. Their utilised ecosystems included shoreline mudflats, mangroves, swamp forests, extensive nipa and sago palm stands, lowland dipterocarp forest and extensive melaleuca savannahs. Nipa palm is widely used as a building material; while sago, when processed, forms the traditional dietary staple. Social organisation, based on patrilineal clan membership, includes strong attachment to resources, expressed in *hak ulayat* or communally held customary rights that allowed households to negotiate with clan leaders to practise shifting cultivation of tubers and cultivation of fruit trees in specific locations. Cultivation, however, did not establish individual land ownership rights. The clan managed the access to the resource bases while the Department of Forestry held formal legal title to the land. Identity in this area is strongly expressed in relation to land, forest and marine resources, and the management of *hak ulayat* claims over them.

A negotiated settlement between the developer and the people affected in such circumstances could have proved very risky for the weaker party. Livelihoods often present particular risks in such cases (Reddy et al 2015). An offer for a land site that ignored the associated risks of lost access to shoreline and marine resources would endanger community food security, income sources, well-being and prospects. An offer neglecting the costs of lost social bonds and coping strategies, lost cultural networks and lost sacred sites could risk producing a traumatised, sick, psychologically scarred and scattered remnant of the once stable and productive community.

This example of negotiation with indigenous Papuan people pre-dated the United Nations' Declaration on the Rights of Indigenous Peoples, which set forth requirements for their free, prior and informed consent (FPIC) to resettlement (2008). It also pre-dated the UN's Guiding Principles on Business and Human Rights (2011). This chapter documents how good practices by a responsible international resource company can reduce the dangers of an asymmetric encounter and make it more likely that affected people can also benefit from project investments that transform their world. However, even an enlightened project model appears to have limited capacity to achieve long-term transformative change.

This project case study reflects the period of planning and managing the resettlement, including some of the early negotiations during the exploratory phase (1999 to 2011). Chapter 5 compares this case with the Freeport mine case and situates the case in a broader context of FPIC. Subsequent project expansion has not involved displacement of local inhabitants, so the resettlement model had no need for replication at Tangguh. The question of the sustainability of the original resettlement with development model is a longer-term consideration of its effectiveness and impact, however. Secondary sources have been used to verify where possible and understand subsequent developments. This includes several visit reports, for example, that of award-winning UK investigative journalist Michael Gillard, who visited West Papua posing as a doctor to investigate BP's operations in Bintuni Bay in 2018. He did this because journalists are banned from the Indonesian-occupied territory – even the UN cannot gain access. The findings from the various research reports and such eyewitness accounts inform the subsequent analysis, presented in section 3.7.3 below.

3.2 An inauspicious place for resettlement

3.2.1 Resettlement in resource extraction projects

Resource extraction projects are notoriously difficult to assess in terms of resettlement outcomes for the people they displace. Owen and Kemp tried to construct a mining sector database of real cases in resettlement scope, processes and outcomes, but found the remoteness of many mining projects and the lack of transparency of many mining companies militated against reaching a plausible global estimate (Owen and Kemp 2016). Where records of mining projects do exist, they often document the impoverishment and marginalisation of displaced people (Downing 2002; Ballard 2001; Ballard and Banks 2009; Bebbington et al 2008; Ross 2008).

The case presented here is exceptional in resource extraction for several reasons. First, it is an extensively and publicly documented case from initial negotiation to the final resettlement audit. The private-sector, non-sovereign project case negotiated a long-lease arrangement with land users rather than using powers of eminent domain to acquire land in perpetuity. Negotiated agreements are often treated as commercial-in-confidence – which was not the case here. Its remote location, which, for security reasons, was difficult to access without special permits, might have favoured secrecy but, in fact, the reverse applied. The indigenous inhabitants, without formal, legal title to their resource base – including the land on which their village stood – could easily have been overlooked, as had been the case in other resource projects in Papua.

3.2.2 A remote and disadvantaged location

The setting posed a number of reputational risks for the project operator that went beyond the immediate problem of resettlement. First, extraction in the resource-rich provinces of Papua has been problematic and accompanied by many of the factors that are likely to escalate inequalities and lead to conflict. The region is the poorest in Indonesia, mountainous in part, certainly peripheral, and populated by indigenous minorities, with a troubled recent history, who contested Papua's inclusion into the Indonesian state. Land issues exacerbated tensions because of customary and, therefore, less secure land tenure. Ballard (2001: 12) found that in Indonesia, issues relating to expropriation of land, without recognition of traditional land rights

and without sufficient compensation for land and livelihoods, accounted for “much of the conflict and abuse of human rights in the context of mining projects”.

In contrast to the officially required environmental assessments, processes for social impact assessment were less developed, despite the critical social issues arising from the negotiation of land access for miners. It had been too easy for government and industry to evict communities with traditional land rights, while ignoring their forms of representation and social organisation. “The appropriation of land, often accompanied by either the threat or the actual use of force, and forced resettlement of residents, often with inadequate consultation or compensation, are commonplace … particularly … in the more remote and less developed provinces of eastern Indonesia” (ibid: 14-15).

Second, in Papua as well as Indonesia generally, security posed a major problem that exacerbated tension with communities. The government required large mineral firms to make regular payments to military forces stationed nearby. Ross concluded that “much of the time their presence is simply a pretext for extortion” (Ross 2008: 201). Third, revenues extracted from resource projects were not being returned to local people. A leading Indonesian analyst found that rents from the profitable Freeport mine, for example, went straight to Jakarta and did little to benefit indigenous Papuans (Resosudarmo and Jotzo 2009). Sparsely populated and furthest from the capital, Papua had the highest poverty level of any province in Indonesia – almost half (46 per cent) of the population being below the poverty line in 2002 (ibid), with rural poverty rates at more than 50 per cent (Resosudarmo and Jotzo 2009). Papua ranked second to last among all Indonesian provinces in the Human Development Index (HDI) 2002 (ibid). HDI measures life expectancy, adult literacy, mean years of schooling and adjusted per capita expenditure.

The area, which would shortly become the new *kabupaten* of Teluk Bintuni in the Bintuni Bay region of the newly created province of Papua Barat, would be found to have the second lowest HDI rating in the entire province. Corruption and poor governance were rated as high compared with other provinces. In short, “the central government has been unable to support a level of social and economic development in Papua commensurate with the value of the rents generated from natural resource exploitation in the province” (Resosudarmo and Jotzo, 2009: 23).

The context was about to change, however. The approval of the Papuan Special Autonomy Law in 2001 aimed to quiet separatist sentiment. It gave sweeping new powers to provincial governments; required the government of Papua to acknowledge and develop the rights of customary communities, guided by the provisions of Indonesia's statutory regulations; and gave Papua 80 per cent of the revenues from its forestry, fishery and mining sectors, and 70 per cent of the revenues from its oil and gas sector until 2026. This, added to existing central transfers and a new special autonomy fund, were intended to boost development opportunities for the people of Papua (BP 2006). Papua and Papua Barat were both to benefit from their massive mining ventures: the Soeharto-era Freeport mine, in the case of Papua, and the future LNG revenue from Tangguh in the case of Papua Barat.

The Special Autonomy Law specifically addressed the protection of the status of traditional resource management rights (*hak ulayat)* in Papua, within the existing Indonesian statutory framework. This protection formed the basis for future development in Papua. It defined *hak ulayat* as the "right of association controlled by a specific *adat* community over a specific area, covering the right to utilise the land, forest and water, and their contents, in accordance with statutory regulations". It required the government of Papua to acknowledge and develop the rights of customary communities, guided by the provisions of statutory regulations (BP 2006).

3.2.3 The corporate response to displacement

The intended displacement of 127 households from the proposed LNG processing site and associated seaport may have seemed small but it was to be conducted in a complex, risky and rapidly changing environment. BP approached this challenge cautiously. Christine Bader, a key staffer, later wrote of John Browne, the chief executive of BP from 1995-2007:

> Browne accepted the necessity of the resettlement but instructed us to start the consultation process and make sure it was done to the highest international standards, bringing in whatever experts were needed to get it right. (Bader 2014: 22-23)

Browne himself wrote:

> BP had painful experiences with security and human rights in Colombia. We were determined not to repeat our mistakes in other similarly difficult countries. We worked out how we could apply the UN Declaration of Human Rights to our activities and so got involved with the UK Foreign Office, the US Department of State, NGOs and our industry colleagues to develop what became the Voluntary Principles on Security and Human Rights. These we subsequently applied … at the Tangguh field in Indonesia. (Browne 2010: 107-108)
>
> When we acquired ARCO, one of its assets was the massive natural gas field, Tangguh, near the Bintuni Bay region of West Papua in Indonesia. The fields had the potential to become one of the world's premier natural gas supplies but, looking beyond those reserves, I could foresee many problems and ways that people could easily misinterpret our activities.
>
> Formerly known as Irian Jaya, Papua is Indonesia's largest and most-eastern province, on the western half of the island of New Guinea. Annexed by Indonesia in 1969, for years the province had been unsettled with claims for independence and a promise of autonomy, which was not followed through, plus land rights issues, human rights abuse and military intervention. (ibid, 106-107)

Arco was the exploratory company that discovered the natural gas field. In acquiring Arco, BP became the developer and operator of a massive new LNG project. The technical dimensions of the project appeared, at the beginning, relatively straightforward, according to Bader (2014). A rocky outcrop had been chosen as the site of the LNG processing plant; the only feasible spot identified in the generally low-lying mudflats of Bintuni Bay. The complication was the displacement. Some 127 rural households making up one coastal community – a village named Tanah Merah Baru – would lose their housing, community facilities, customary land holdings, valuable nipa and sago palms and forest products plus their productive mudflats, shores and fishing grounds, all managed under *hak ulayat* customary rights.

This small displacement raised sensitive issues – the resettlement of the coastal community of Tanah Merah Baru and the treatment of its *hak ulayat* claims. Bader later described the situation:

> There was little documentation of any consultation with the people of Tanah Merah, just a 1999 agreement in which ARCO agreed to pay the communities fifteen to thirty Indonesian rupiah (a fraction of a penny) per square meter for their land, a price that the villagers now considered unfair. There was no analogous situation in Papua to provide a benchmark for land values; the central government had given Freeport the land for its mine without compensating the local population, which was part of why company-community relations were so bad there. The national government expressed no concerns with the ARCO arrangement and were eager to get BP to build the plant and get the revenues flowing in. But they wouldn't have to live with angry communities on their doorstep. (Bader 2014: 17)

The next section examines the approach to resettlement.

3.3 Rights and risks

3.3.1 Integrating rights into a risk framework

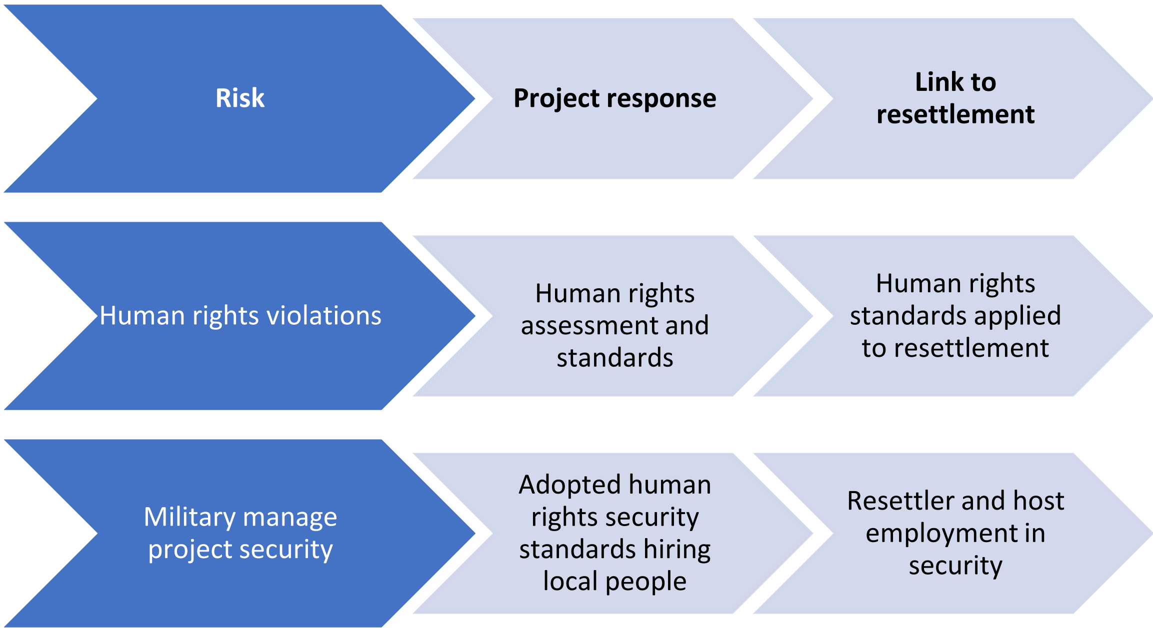
The project adopted a traditional resettlement scheme within a rights framework, documented in the Land Acquisition and Resettlement Action Plan (LARAP) (BP 2006) and elsewhere. Assuming that human rights violations could be reduced through the use of transparent reporting, open communication and general development strategies, the Tangguh model comprised several key rights features. These were: careful security arrangements that would avoid the use of military personnel to interact with local people on behalf of the project; promotion of greater transparency in resource revenue-sharing arrangements; recognition of the value of local culture; and general economic and social development in the bay-wide region as a whole.

Resettlement with development, as set out in the LARAP, formed an integral part of the operator's wider aspiration for a "world-class model". The achievement of the LARAP objectives, therefore, depended upon external factors: the success of the project workforce and security strategies; the return of a significantly greater portion of project-generated revenue to the project area for social and economic investment and capacity building than previously; and, in a closed province with long-running security problems, voluminous public reporting by teams appointed by BP and by the lenders.

The rights framework began with an early human rights assessment (Gare and Bennett 2002). As a result, BP appointed a Tangguh Independent Advisory Panel (TIAP) with an explicit mandate:

> In recognition of the work of the Tangguh Lenders Group and the different issues that arise between construction and operations, TIAP will focus its advice to BP on matters relating to non-commercial aspects of the Project while not duplicating the work of the Tangguh Lenders Group. Accordingly, TIAP will focus its attention on matters relating to security, human rights, governance, revenue management, the political environment and the broader issues relating to how Tangguh affects the people of Papua and how the Project is perceived by them. These perceptions relate directly to whether Tangguh can achieve BP's goal of becoming a world-class model for development. (TIAP report 2012).

The Tangguh Lenders Group (representing ADB, Japan Bank for International Cooperation and Mizuho Corporate Bank) established an External Environmental and Social Monitoring Panel of independent experts, who visited Tangguh regularly and published their reviews of compliance on the ADB website. The review focused on issues of safety, environment, resettlement and social programmes. The elements of this framework are set out in Figure 3.5.



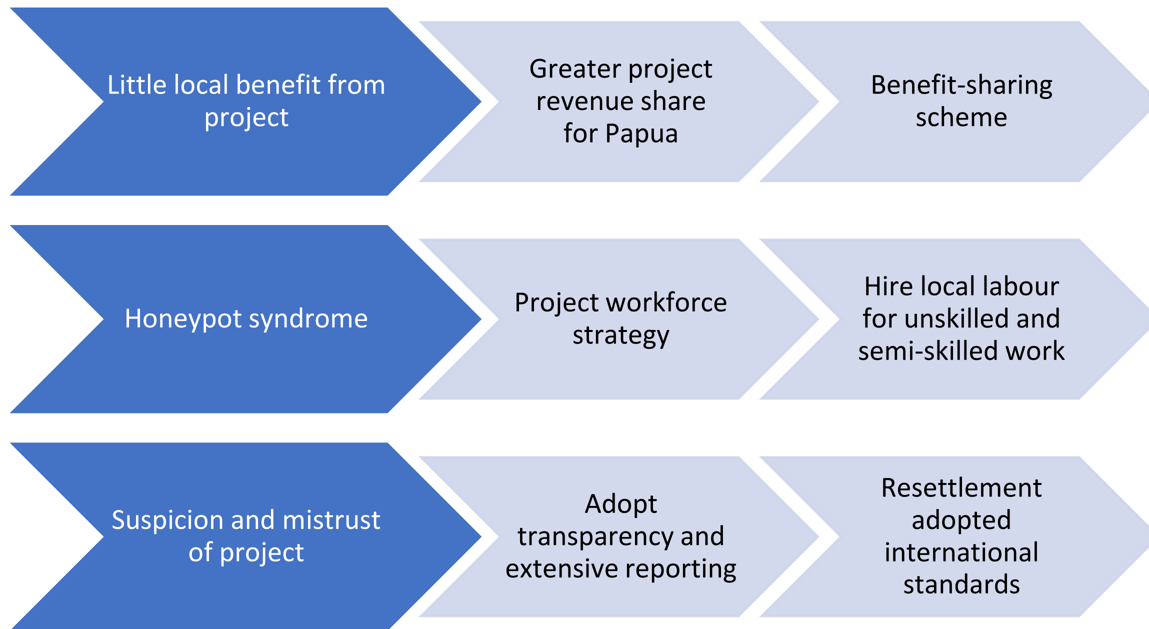


Figure 3.5 A framework for rights and risks applied to a project case

To elaborate, human rights violations presented a major risk. Associated with, or attributed to, the project, any rights violations would invoke international civil concern and reputational risk for the project operator. Stakeholders, for example, company board members, retirement fund operators and investors, were concerned initially that the project had potential to stir up human rights tensions among shareholders. To counter the risk, the project operator adopted the Universal Declaration of Human Rights plus several other rights-based standards: the Responsibilities of Transnational Corporations and Other Business Enterprises for Human Rights; the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; the International Labour Organization's Convention Concerning Indigenous and Tribal Peoples in Independent Countries; and the US-UK Voluntary Principles on Security and Human Rights (the "Voluntary Principles"). The first human rights impact assessment (HRIA) was conducted by a resource company in Indonesia. This study highlighted plant security as critical. It recommended that human rights – as indigenous, labour and security issues – were to be recognised and addressed in all policies, management guidelines and implementation plans that educated affected stakeholders regarding their rights and enforced respect for those rights, including rights in the context of existing customary *adat* structures and systems (Smith 2002). The human rights framework applied also to resettlement through the LARAP (resettlement plan), which recognised customary *adat* systems for compensation purposes.

Based on experience with other mining projects, several risks emerged in relation to the role of the Indonesian Armed Forces and police in providing security for Tangguh. First, they might place "financial demands" on the project (TIAP 2002: 20-21). Second, there was considerable Papuan anxiety about the role of the military managing security. To counter this risk, the Tangguh Integrated Community-Based Security Force (ICBS) was trained in human rights principles and approaches. Its workers were partly recruited from among the local people in the resettled and host villages, giving them a stake in the outcome. The ICBS was mandated to link only to the local police, not the military. TIAP reports publicised any cases that could represent predatory behaviour. Bader (2008: 32) stated that: "We employed local residents as security guards, hiring qualified trainers to instruct them in human rights standards, and implemented the Voluntary Principles on Security and Human Rights, a set of guidelines written by companies, governments and human rights organisations in 2000. We wrote those standards into our government contracts so that all parties were legally bound to implement them." Resettlement and host villages were also secured by the local security forces, providing employment for some people and giving them greater confidence in the security programme.

Based also on past experience, there was a strong risk that project benefits would bypass local people. However, this risk was reduced by the passage of Indonesia's Law No. 21 of 2001, On Special Autonomy for the Papua Province, which boosted the local revenue share significantly. Production-sharing contracts and the Papuan Special Autonomy Law (PSAL) divide government project-derived revenue between Papua (70 per cent) and the Indonesian central government (30 per cent) for the first 25 years, after which it will be shared equally. Papua will receive a significant and continuous flow of production-sharing revenue for the operating life of the project. The LARAP also included some benefit-sharing measures.

The risk of lost "social licence to operate" became very real if there was no tangible improvement in continued and unalleviated poverty and disadvantage among the local people. In addition to the LARAP for the resettlement villages, the project also initiated wider socio-economic development programmes to benefit the resettlement villages during and after the LARAP resettlement phase. They included a scheme to accelerate the wider socio-economic development of Bird's Head Peninsula; a Diversified Growth Strategy linked to various stakeholders, including the UN Development Programme and USAID; help for the local economy through the purchase of local goods and hiring of local labour during plant construction and operation; a boost for the regional economy via revenue for reinvestment and

the establishment of a forum for dialogue and development; and benefits for the sustainable, long-term expansion and diversification of the Papuan economy.

There was the risk of a “honeypot syndrome” developing at the project sites, which could inundate the resettlement villages with migrants seeking employment and benefits, risking marginalisation of local people and loss of their culture. The project initiated a workforce strategy specifically to prevent such migration by hiring project workers from far-off urban centres to minimise the risk of migrants flooding to Tangguh resettlement villages and other nearby villages seeking local recruitment for the Tangguh project. Construction jobs, vital to the LARAP livelihood strategy during the post-displacement period, were offered until the core livelihoods programme could become sustainable. This programme gave one construction job – unskilled or semi-skilled – to each household affected by resettlement and more widely in other villages around Bintuni Bay classed as “directly affected villages”.

Another risk to the project operation arose from the lack of knowledge of project activities by observers, whether national or international, which could give rise to mistrust and suspicion. The project’s funding submission to international lenders meant the Tangguh project had to meet the lenders’ international policy standards on both involuntary resettlement and indigenous peoples, so affording a level of international recognition and acceptance. Transparent, public reporting mechanisms, including the TIAP and regular external social and environmental monitoring teams (including for resettlement), were posted publicly on a financier’s website.

3.3.2 Risk analysis and planning

International resettlement policy applied to the project because it had international financiers. An Impoverishment Risk and Reconstruction (IRR) model had been prepared as part of the LARAP. The IRR is an analytical and planning tool designed to facilitate the identification and prevention of impoverishment risks faced by resettlers (Cernea 1997). This resettlement model was a rare case of using the IRR to develop the resettlement plan and its specific measures, and was the basis for implementation, monitoring and audit. The IRR model identifies the main poverty risks generally faced by displaced communities in relation to criteria of loss. Using those criteria, the resettlement plan contextualised them as follows:

Table 3.1 Project Impoverishment Risk and Reconstruction (IRR) model

Criteria of loss and risk	Project impact	Reconstruction
Landlessness	Loss of residential and customarily owned productive land.	Natural resource use-based income restoration through access and support for new proactive lands and marine fishing and prawning areas.
Loss of housing and shelter/ homelessness	Loss of village housing, infrastructure and public facilities.	Physical village reconstruction with social services and utilities (power and water) to a higher standard.
Joblessness	Loss of jobs and of access to job markets in situations where people have wage employment.	Employment-related income restoration through project, co-operative and business development.
Food insecurity	Lost opportunities to gather wild food, loss of food production, access to markets or reduced capacity to purchase food.	Food production restoration through tree and garden cultivation, shoreline and marine resources. Plus, development of village co-operatives.
Increased morbidity	Decline in health status.	Construction of health clinics with health programmes.
Community disarticulation	Disruption or loss of community social systems, changes in clan or kin system patterns or the breakdown of mutual help networks.	Establishment of and capacity-building for the village resettlement committee. Village participation in new village design and construction of new village and homes. Support ceremonies for move from Tanah Merah and arrival in new locations. Provision of community development training, capacity-building and the opportunity for community participation in all development activities.
Marginalisation	A measurable drop in economic and/or social standing with competition from an influx of migrant workers.	Business-related income restoration. Special access to non-skilled and semi-skilled project work.

At the outset of planning for the LARAP, the project used the IRR framework to make an initial diagnostic estimate of the differential intensities of the basic poverty risks faced by the resettlement-affected communities. This analysis helped the project to allocate resources proportionately in relation to pre-assessed risk intensity but, nonetheless, allowed flexibility for

adjustment in response to changing circumstances. The IRR framework was also used as a basis for monitoring and audit (BP 2006).

3.4 Resettlement with development model

3.4.1 Rationale for resettlement with development

The project model represents a rare, documented case of resettlement with development. The sponsor developed a corporate aspiration for the project to become a well publicised "world-class model" of its type. In this inauspicious setting, the model aimed for the highest standard. Resettlement with development meant the displaced people would not only restore their economic and social base but would improve it through the project's benefit-sharing measures.

For this last reason, the model marks a significant point in the history of resettlement policy development and application. This model's objective aimed for an outcome that was higher than the international policy standard, which aims to enhance livelihoods or at least restore them to pre-project levels. The bottom line is mere restoration, albeit with special measures to lift poor and vulnerable affected people out of poverty, according to the then applicable policy standard (ADB 1995).

Mere restoration through compensation alone has long been controversial. It risks impoverishment of the people affected because it fails to recognise a wide range of non-tangible, social losses and psychological stresses; and also fails to recompense those affected for lost opportunity even before, and certainly during, their displacement. Inefficiencies in delivery of compensation compound these problems. Mainstream resettlement scholars such as Cernea (2003); Scudder (2005a, b); Downing (2002); and Cernea and Mathur (2008) have all examined these issues. Pearce (1999), an environmental economist, contributed a close examination of economic factors. For Tangguh, the resettlement planners aimed for a higher standard from the beginning by eliminating the fallback "restoration" position. Resettlement with development has most recently been defined as a "new paradigm that is inclusive of the social, economic, and cultural dimensions of sound resettlement and is grounded in the recognition and protection of human rights" (Cernea and Maldonado 2018: 8).

3.4.2 The legal context

The model objective was also higher than the applicable country standard when negotiations with land users began in the late 1990s. The Indonesian Constitution, unlike those of many other countries, does not include the right of eminent domain, that is, the state's right to expropriate land and objects on land from its rightful holder(s) for public purposes and against payment of compensation. Powers of eminent domain in Indonesia are embedded in article 18 of the Basic Regulations on Agrarian Affairs, Law No. 5 of 1960 and Law No. 20 of 1961 on the Revocation of Rights on Land and the Objects Thereon. Powers of eminent domain were, at the time, further regulated by government regulations and several instructions of the Indonesian president. These meant, in effect, that the definitions of the "public interest" and "fair compensation" were determined by government officials, with compensation initially based on assessed tax value. There was no guarantee that displaced people would not be worse off and no guarantee of legal recourse for appeal by landowners or users. Poorly kept title records made it difficult to establish proof of ownership. Guild (2019: 2) described how "Landowners often felt compelled to accept whatever compensation the government offered under fear of coercion from the police or military." The negotiation directly with land users in this project case offered an opportunity to negotiate at a higher standard than the country standard.

3.4.3 Planning for resettlement with development

The LARAP conceptualised resettlement with development as "plans outlined in this document (which) include a combination of mitigation measures and development initiatives that together aim to balance the adverse impacts of resettlement, to ensure the reconstruction of livelihoods in the … resettlement-affected communities [the originally displaced village was resettled in two new villages affecting two additional host villages] and to secure standards of living higher than those attained prior to Project entry" (BP 2006: 22). In planning terms, this meant:

> Resettlement with development occurs when the economically and physically displaced population sees significant improvement over previous standards of living. This includes restoration of previous levels of living but goes further by deliberately using the opportunities of change and development created through resettlement to enhance the conditions of resettlers at their new habitat. Resettlement with development takes

time and does not occur suddenly and simultaneously with the act of physical relocation to the new location. However, to ensure success, the basic premises for resettlement with development must be established and planned for before the displacement process. (LARAP 2006: 25)

The "resettlement" included the creation of two brand-new villages and one host village with architect-designed housing and full community facilities – all of a higher standard than those they replaced. A second host village was improved rather than totally reconstructed. The "development" activities, delivered through a core livelihoods programme, were conceptualised as additional efforts to build livelihood and income streams that were higher than the affected people enjoyed in their pre-project lives.

Livelihood reconstruction relied on increased productivity (and income) in traditional livelihood activities (agriculture, fisheries) and/or diversification of income-earning opportunities (such as through small-business development, vocational training, etc). Following an initial focus on restoration of the productive basis (after relocation) of the traditional livelihood activities, ongoing livelihood reconstruction for the resettlement-affected communities addressed: (a) agriculture; (b) fisheries; (c) savings/loans; (d) small-enterprise development; (e) vocational training; and (f) wage employment (BP 2006: 169). The LARAP conceptualised this process in a graph:

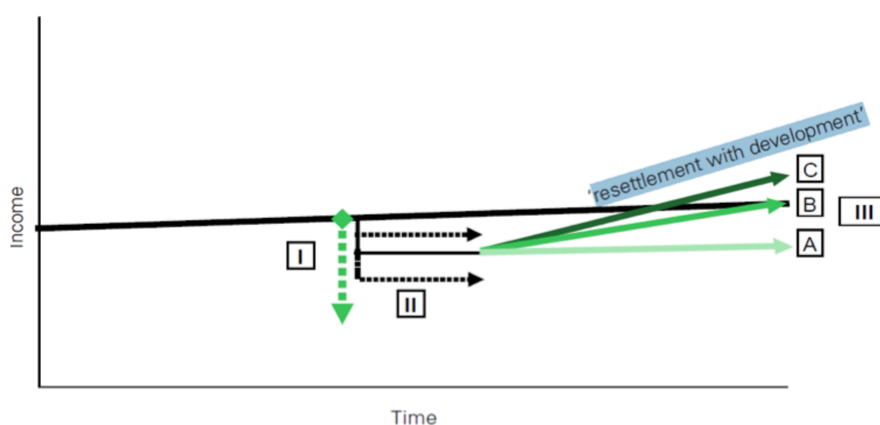


Figure 3.6 Income curve from displacement to reconstruction

In this graph, the LARAP explains how time and income crucially interact to determine the opportunity for development – and the risks of impoverishment. Once displaced, household income and well-being plunge (Phase 1) unless remedial action is taken. Option A will not suffice to replace income because the households, once displaced, resume income growth at the same rate as experienced before relocation and, as such, experience an absolute loss of income because they do not re-join or exceed the original income growth curve. Under Option B, those households experience more rapid income growth that allows them to catch up to the income growth curve that existed before project entry, allowing them to reach but not necessarily exceed the original income growth curve. Under Option C, however, displaced households experience an enhanced rate of income growth that enables them to bypass the original income growth curve, thus achieving higher incomes, which may subsequently (a) level out and continue to grow at the same rate achieved before project entry, or (b) continue to grow more rapidly. Thus, Option C represents "resettlement with development", regardless of the final rate of income growth achieved. The LARAP expressed confidence that Option C could be achieved broadly but did not quantify specific targets, since it anticipated the biophysical environment and the socio-economic characteristics of the resettlement villages, and the scope of the development assistance provided, would be important determinants. In fact, the proposed livelihood schemes contained several elements that were new to the pre-project, semi-subsistence lifestyle of the displaced: for example, regular project unskilled construction work; agriculture for cash production; microfinance, skills training and a co-operative to sell agricultural produce – none of these formed major features of the pre-project lifestyle. The pre-existing ecological limits and skill-sets of the displaced people, and the extent to which the displaced people would embrace these programmes, would determine the pace of re-establishment and development, including the duration of the transitional phase (Phase II), the rate at which livelihood reconstruction would take place (Phase III), and the long-term income growth rates that could be sustained.

Waged employment of unskilled/semi-skilled workers during the project construction phase provided the most significant source of household income in the period 2002 to 2008. It provided a vital supplement during the period of displacement and relocation and employed effective preferential policies. But this work would decline dramatically once construction ceased and operations began. It was, therefore, imperative for the longer-term livelihood programme to develop feasible and acceptable alternative options for income generation.

The LARAP budget clearly distinguished between restoration and development. Over and above the compensation and resettlement activities that comprised 70 per cent of the LARAP budget, the LARAP allocated an additional 10 per cent to "resettlement with development activities" (BP 2006: xxiv). These included the "core livelihood" combination of technology and skills development as well as capacity-building support in the form of post-resettlement social support, village committees support, agricultural development, fisheries access and development, savings/loan and small enterprise development and vocational training (BP 2006: Table 12.1).

3.5 Governance and negotiation

The anthropology of policy envisages that policy will create new meanings, actors and institutional spaces in relations between the state, multilateral lenders, implementers and people affected. In the Tangguh case, the private sector operator took responsibility for the resettlement model's development and implementation, in alignment with Indonesia's AMDAL requirements, against a background of significant change. AMDAL, the then required government documentation for investment projects, translates as the *Analisis Mengenai Dampak Lingkungan* – Integrated Environmental and Social Impact Assessment. At national level, the project's "world-class model" meant a leadership role in transparent governance, for example, support to address the agenda of the Extractive Industries Transparency Initiative (EITI) among others. The project was being implemented in the context of project-initiated and radically restructured revenue-sharing arrangements under the Special Autonomy Law in Papua.

At the provincial and lower levels of local government in Papua, the lenders perceived significant value from an inclusive model promoting consultation towards sustainable development. For example:

> The project was conceptualized as a long-term business catalyzing social development in Papua. The design of its solid social programs builds on five pillars: consultation, empowerment, participation, partnership, and sustainability. The project has made successful progress under a strong partnership and with mutual trust among the stakeholders, including local communities and government. Recently, the project has redirected its process of "development for communities" to "development with communities" in order to foster a stronger sense of ownership of the development

> process in the communities, counteract the community dependency culture and, with the end goal of moving towards "development by the community," to ensure that the project's pioneering efforts will be sustained over the longer term. (ADB 2012: paragraph 48)

The creation of a new province of Papua Barat upgraded the former *kabupaten* (regency or district) capital of Manokwari to a provincial capital, inaugurated in 2003. The same year, the creation of the entirely new *kabupaten* of Teluk Bintuni, about 90 minutes by boat across Bintuni Bay, had far-reaching consequences for the Tangguh project impact area, the inhabitants of which had previously faced a long trip to Manokwari on the northeast coastline. This was part of an Indonesia-wide trend in administrative *pemekaran* (blossoming) – a proliferation of local government entities under decentralisation – in marked contrast to the preceding Soeharto decades, when local governments had remained frozen. For Indonesia as a whole, the number of *kabupaten* practically doubled between 1996 and 2007, with those in several sparsely populated outer islands, including Papua, more than doubling (McWilliam 2011). The number of *kabupaten* in Papua Barat Province increased from three in 2000 to 10 by the 2010 census, at the end of the LARAP implementation period, and has increased again to number 12 *kabupaten* at present. Sorong City forms an additional administrative entity within the province. Over the same period, the number of *kecamatan* (sub-districts) increased from 10 to 24 and the *kampung* (villages) from 95 to 265. The population was about 60,000 at the 2010 census. The driving force for the proliferation of administrative entities under *pemekaran* appears to be the need for local elites to consolidate their position and to access funding – which increased significantly as a result of revenue redirection under the Special Autonomy Law. However, it appears many of these new administrative units form a symbolic function only. McWilliam writes:

> Formal government on the margins … appears to be as much about the projection and regulatory intent of state power as it is about its practical implementation and tangible benefits. Another shared feature is the evident enthusiasm among influential local elites and powerbrokers for promoting the momentum of *pemekaran* at the local level. Many support an increasing number of administrative units with diminishing numbers of constituent residents for the benefits that flow from central government subsidies and the absence of effectively audited development funding. While these strategies represent opportunities for greater financial investment in remote areas, the lack of transparency

> and accountability in their distribution can give rise to inter-communal tensions and disputes over the perception that benefits are unevenly distributed. (McWilliam 2011: 165)

The official purpose of *pemekaran* was two-fold: to improve the welfare of citizens in the new areas and, complementarily, to foster development to reduce the economic disparities between regions, partly as an aid to consolidating the unitary state. The founding legal instrument referred to increased services, the growth of democracy, improving peace and social order and facilitating the "harmonious" (*serasi*) connections between the centre and regions (ibid). This was especially the case in Papua, which had a continuing low-level insurgency movement, based on the asymmetric terms of its original integration into Indonesia, fuelled by the religious and ethnic differences with Indonesia's Islamic, Javanese-dominated majority population, significant in-migration, continued racism and human rights violations. The difficulty of access, remote locations, poor water quality, discomfort of long journeys and absence of medical facilities in places with a range of health risks from vector-borne and infectious diseases all predisposed government officials to favour some closer and more developed locations over others – leading to distorted development.

At the resettlement site, the project established a team of resettlement workers, specialised in aspects of LARAP implementation, and maintained their presence for the duration of the LARAP implementation phase. The project established a campsite for the resettlement workers on the periphery of one of the villages. Green Camp housed the LARAP workers and provided training rooms for LARAP programmes. Each of these levels of project operations necessitated the establishment of staff, working relations and administrative realignments, as illustrated in Table 3.2.

Against this increasingly complex administrative background, the project initiated the negotiation with the community to be displaced and the host villages.

Table 3.2 Key phases in land acquisition and resettlement: Tangguh LNG project

Year	Activity	Responsibility
1996-1998	Exploration work and transect lines, compensation for forest trees and sago palms.	Arco (gas exploratory company), British Gas, various affected households.
1998-1999	Negotiated agreements on land relinquishment for Tanah Merah Baru community and its resettlement site at Saengga host village.	Arco, Pertamina, residents of Tanah Merah Baru (TMB) and Saengga host villages, witnessed by local government.
2001-2002	Detailed census and socio-economic survey; detailed agreements regarding entitlement to resettlement and host villages; addition of Onar host village; first TIAP report.	BP and LARAP consultants; TMB relocatees; plus Saengga and Onar host villages. TIAP Panel.
2003-2004	Construction of replacement settlements and reconstruction of Saengga and Onar host villages.	BP and LARAP team; TMB relocatees; plus Saengga and Onar villages.
2004	Physical relocation of community.	BP and LARAP team; TMB relocatees; plus Saengga and Onar villages.
2004-2009	Implementation of livelihood restoration programmes, capacity-building programmes; intended handover of community facilities.	BP and LARAP team; TMB relocatees; plus Saengga and Onar villages.

These points are analysed through a framework developed by Penz et al (2011) to identify seven factors that might potentially contribute to increased agency, even empowerment, of people facing asymmetric power relations in displacement. The seven factors do not necessarily cause empowerment but can contribute towards it (Penz et al 2011). These are addressed below in the context of the Tangguh LARAP (BP 2006). An eighth factor – benefit-sharing – has been added.

3.5.1 Early identification of stakeholders

Following a review of alternative LNG sites, which selected Tanah Merah Baru village, oil companies Arco and Pertamina (Perusahaan Pertambangan Minyak dan Gas Bumi Negara, the former Indonesian state oil and gas company) conducted meetings among Tanah Merah Baru villagers between 1998 and 1999 "to gauge the community's willingness to be resettled", reporting that "the community indicated a willingness to be relocated" (BP 2006: 17). These key negotiations took place before BP's involvement and the formulation of the Tangguh model for human rights and "resettlement with development". Subsequently, non-governmental organisations have claimed that the original agreements did not represent free, prior and informed consent, and were opposed by some of the villagers, who also contested the low compensation payments (NGO Forum 2006).

BP's detailed census and socio-economic survey, which formed a basis for relocation and livelihood planning, was completed later (in 2001-2) and discussed and agreed in village-level meetings. Subsequently, north shore communities also claimed to be stakeholders as the customary owners of the seabed of the LNG resource. They were later deemed to be "affected" and TIAP reports of 2004 and 2005 recommended tangible benefits be extended to them.

3.5.2 Timely dissemination of project information

It is not clear on what information base the affected people negotiated the initial, formative and contested agreements of 1999. Later, in addition to regular meetings and documented agreements, BP's LARAP team distributed an Indonesian summary of the implementation LARAP to all affected households, informing them of compensation entitlements and the grievance process for making a complaint. The key documents (LARAP and the subsequent monitoring reports) were posted on one of the financier's websites (BP 2006). They were not available publicly in Bahasa Indonesia.

3.5.3 Facilitation

BP's LARAP (BP 2006: 60) describes the extended process of negotiation and consultation as having "empowered" the communities to express their views and, in turn, allowed the project to understand local people's views. While it is difficult to assess this statement, it does appear that the extended negotiations allowed more flexibility in planning and implementation than would have been possible using national legal instruments. The LARAP was prepared and implemented over the period 2001 to 2009 with a relatively generous budget estimate of US$31m (ibid: 244). There is no public report on the final expenditure figure.

The LARAP describes an extended process of consultation and negotiation with the people affected. The project team set up a base camp on the edge of the newly relocated village of Tanah Merah Baru – bringing the team close to the resettled community and its host village of Saengga. This meant closer ties were possible between the project staff and the communities.

3.5.4 Negotiation/arbitration, compensation and benefit-sharing

The first, pre-BP agreement recorded that heads of three local clans – the customary owners of approximately 3,266 hectares of land required for the LNG site – would be paid Rp482m in compensation for the resettlement of 127 Tanah Merah Baru households. This amount was subsequently contested by some of the affected people as being far too low. One clan at Saengga village agreed to release 200 hectares for the resettlement of 127 Tanah Merah Baru households, in return for compensation in cash (Rp30m) plus the reconstruction of Saengga village and formal land title. A Deed of Relinquishment in (July 1999) claims that the agreements were made "voluntarily" and "without duress" (ibid) but some local people have contested this claim, pointing to the absence of FPIC (NGO Forum 2006).

Without changing the original agreements, which BP believed conformed to Indonesian law, BP decided to supplement resettlement provisions to meet international standards (BP 2006: 61). Instead of moving to Saengga, the project gave 26 of the 127 households permission to move to Onar village. This meant developing another resettlement village at Onar Baru, while working to improve the old Onar Lama settlement, albeit to a lesser standard than that of Saengga.

The two resettled villages and Saengga host village were provided with a high standard of housing and infrastructure – with the result that the TIAP regularly found other communities around the bay expressing "envy" that had to be placated with "tangible benefits". The resettled villagers, however, when faced with these manifestations of envy plus inward migration to their village environs, began to fear they would lose their housing and be driven into the bush. They talked to me of these fears in a meeting after dinner one night, the fears were deeply held and tangible.

Later consultations and agreements covered house and village relocations; village facility developments; livelihood programmes; and the handover of village facilities from project staff to local government, NGOs and the community. In recognising customary traditions, the project identified sacred sites on affected land. It helped to relocate the sacred sites and negotiated continued cemetery access through a maintenance agreement for the LNG site.

To avoid becoming a magnet or "honey pot" for migrants seeking work and other benefits, Tangguh workforce staff recruited skilled labour at centres away from the project site and favoured locals in employment for unskilled and low-skilled work during construction. These

measures were designed to protect local people from being overwhelmed and potentially marginalised by migrants, risking consequent downward mobility and social disarticulation. As various TIAP reports stated, these provisions were not entirely successful in screening out migrants from the workforce, which caused continuing friction with local people.

To boost the livelihoods of affected people, especially after construction employment ended, the LARAP proposed a range of livelihood options: introducing agricultural systems; developing fisheries; and diversifying income generation opportunities through cooperatives and small businesses. Recognising the difficulty of assigning an economic benefit to land and marine resources, Tangguh management financed a foundation for the resource-losing clans to generate a revenue-sharing stream in perpetuity.

3.5.5 Accountable resettlement management

Tangguh's formal grievance procedure, introduced after the negotiations had largely concluded, could accommodate both written and verbal grievances, and regularly reported its actions. The LARAP staff maintained a permanent field presence in Green Camp at the reconstructed Tanah Merah Baru relocation site and community members could approach with complaints. However, regular surveys and research by a range of well-intentioned programme teams had a "fishbowl effect" on the affected communities, who began to feel increasingly scrutinised in their carefully surveyed streets and beautifully constructed buildings. Despite my questions on it, few of the resulting reports have been available to them in Bahasa Indonesia. Teams, including myself, came and went, trying to establish meaningful contact and engagement. After establishing that I would work from Green Camp rather than depend on variable tides and weather to come from Babo Base Camp, Tanah Merah Baru and Saengga villages were within a short walk. Onar was more remote, again the boat trip depending on the weather.

3.5.6 Good governance

The UN Development Programme's concept of "good governance" includes participation, rule of law, transparency of information, responsiveness, consensus orientation, equity, efficiency, accountability and strategic vision (Penz et al 2011). Cognisant of the need for good governance to ensure effective and equitable use of revenue streams, Tangguh staff conceptualised the LARAP as one element within a broader programme, the Integrated Social Programme (ISP),

which reached the resettlement affected villages and beyond to many more communities. The ISP encompassed multi-level activities in health, education, women's empowerment, leadership, micro-finance, strengthening of village governance, in-migration control and other programmes that took into account the capabilities of the emerging new *kabupaten* administration of Teluk Bintuni district.

3.5.7 Agreement/dispute resolution before decision point

The World Commission on Dams (2000) had recommended independent checks at key points in identification, selection and preparation of reservoir projects. This would enable affected people to stop the planning process if dissatisfied with their treatment – as, indeed, some were in this case. The original agreements did not include such check points for stopping the planning process while complaints were addressed.

The question of impact on the lending profile is an important one in negotiations of this kind. Would taking the time for careful discussion, including awaiting agreement, penalise the operator's commercial prospects?

Bader described how the operator's executives, who focused on technical and financial matters, found this open-ended community process daunting. "Such a vague, open-ended process was antithetical to the usual operation of a company driven by Gantt charts and budgets" (Bader 2014: 31). Bader and her colleagues realised, however, that getting local support was essential to building trust with the community. It was essential that the people believe the operator staff meant what they said:

> As we could see at Freeport's Grasberg mine and ExxonMobil's Arun field in Aceh, antagonizing communities was not just ill-advised but expensive: Exxon-Mobil's 2001 four-month shutdown of its Aceh plant because of the surrounding social unrest was reported to have cost the company anywhere from $100 million to $350 million. A Forbes article said Freeport spent $28 million in 2010 on security at Grasberg, up from $22 million in 2009.
>
> In August 2002, Tangguh lost a bid to sell its gas to a terminal being built in Guangdong, China … one of the many rumours I heard was that the Chinese government officials

> had considered more than price in deciding against Tangguh; they believed that the social and environmental risks in Papua were so great that they doubted Tangguh would be up and running when promised. Not only had we won more time for doing consultation at Tangguh but our case for doing so was strengthened. (Bader 2014: 31)

Research question 2 asked: Are the feedback links aimed at improving resettlement policy and practice obstructed by the lending culture in which resettlement policy operates? This case would seem to offer a rare example of better practice seeming to provide a better commercial longer-term solution despite short-term losses.

3.5.8 Benefit-sharing

A 10 per cent benefit-sharing supplement, designated for educational purposes, was accessible to all project affected people. This supplemented the foundation, which was established as part of the compensation in perpetuity for the resource-losing clans in proportion to the loss of their land and marine resources. The LARAP envisaged the foundation as a legal entity under Indonesian law, established by a deed of establishment executed before a notary. The basic structure of the foundation was set out in applicable law and required the setting up of boards of trustees, supervisors and managers, each of which had specific duties and obligations with respect to the running of the foundation. The foundation was endowed with an initial sum of US$750,000 to which five annual increments of US$250,000 were added to make a total base fund of US$2m, which was handled by a fund manager. Ninety per cent of the foundation's assets were conceptualised as compensation rather than benefit-sharing.

Benefit-sharing also included: preferential purchase of local goods and hiring of local staff during the project construction and operation phases; additional livelihood development activities for project affected people; and a women's leadership and business programme. An area-wide social programme and diversified growth strategy included the project affected people, among others, and was intended to build capacity to utilise the significantly boosted project revenue that would flow back to the province from the central government. This programme included, but did not target, the resettled communities specifically.

3.6 Resettlement audit

A resettlement audit is an important part of resettlement planning. It is an independent check of the completion of the agreed resettlement plan, including the assessment of the status of livelihoods. Based upon quantitative data collection, it also includes qualitative data analysis, for example, interviews with key informants and focus group discussions. Providing feedback primarily to government, the project operator and project financiers, as well as civil society and resettlers, a resettlement audit recommends remedial actions where necessary to complete any unfinished resettlement measures. It marks an important milestone: the end of a project's responsibility for resettlement once all remedial recommendations are completed.

For the audit in this case, the pre-project resettlement plan – which had been officially agreed between the government, the private developer and the lender – was compared with the changes observed upon completion, drawing on household census work and satisfaction surveys among people affected. The resettlement audit assessed whether the proposed inputs were provided as scheduled, the planned outputs were achieved, whether social processes of transition were correctly predicted, and any emerging problems addressed to ensure the objectives were realised. In this case, it was possible to assess the outcome objectives, which often prove difficult. The outcome objectives were pre-set as to whether the resettlers improved their living standards and livelihoods, as required by resettlement with development. The audit socio-economic household assessment compares post-resettlement income achieved compared with the baseline prior to resettlement, and assesses well-being and satisfaction, using pre-determined indicators through census or survey of the resettled people and backed up by participant observation and key person focus groups. The methods focus on assessing the achievement or otherwise of what was planned and are less directed towards what might emerge unexpectedly.

An independent resettlement audit in 2009 (GHD 2009) found that, in sum, four resettlement villages had been established to a high standard of design and construction in relation to housing, layout and facilities; that project-defined entitlements had been delivered to people affected; and that, by and large, the project had responded flexibly to ongoing community adjustments. The expected timeframe for handover to government and communities had, however, proved optimistic. Remaining challenges included, among others, the sustainable operation of water and electricity services, the operation of the cooperatives and the staffing of schools and health

clinics. The process of proliferating administrative units (*pemekaran*) described above had complicated service delivery. The new administrative entities would need time to develop the necessary skills and expertise. Low local government capacities in the new administrative units, formed to take responsibility for operating and staffing project assets, meant targets were not being met, reflecting delayed progress in capacity-building and raising questions over the sustainability of the initial design standards.

The LARAP income targets for project work were not reached, partly due to an influx of migrants, despite all precautions. Starting from a base of virtually zero in 2002, a survey in 2009 found migrants comprised 41 per cent of the population of the smallest village, and 22 per cent of the larger villages. TIAP migration data from 2009 are significantly higher still. This complicated the social reconstruction process, with periodic reports of tensions erupting between migrants and locals. Migrants managed most of the new business activities – involving marketing, motorised village transport, sale of mobile phones, and so forth. Many former local fisherfolk had found it hard to adjust to the formal workforce and either left or were fired early – and migrants with more experience and posing as locals were ready to take their place. Despite a workforce audit by management, the migration continued. The vital "core livelihood" alternatives, cooperative development and local marketing opportunities needed extensive additional time and project support to reach a self-sustaining basis. Again, the original targets appeared optimistic, given the length of time generally required to renegotiate the social relationships of production in a new context (Downing and Garcia-Downing 2009).

Mixed results emerged from the villagers' own views of their situation. While the accuracy of income data cannot necessarily be relied upon for comparative purposes, the project survey team found some distinct trends emerging between the villages, as shown in Table 3.3.

Table 3.3 Resettlement audit – affected people's perception of change

Change 2002-2009	Main resettled village (Tanah Merah Baru) and the first rebuilt host village (Saengga)	Small, resettled village and host village improved in situ
Living standards.	Two thirds of respondents reported improvements; education especially was valued.	One third of respondents affirmed that living standards had improved; half stated no deteriorations in conditions.
Livelihoods.	Diversification from fisheries into agriculture, trading and other public/private sector jobs. Almost ¼ of jobs were in the project operations workforce, which peaked in 2007. Respondents took part in Tangguh programmes, education rating highest and economics lowest in usefulness.	Households reported overwhelmingly remaining in fisheries (78 per cent) with very little movement into the other sectors. While most had participated in Tangguh programmes, none were doing so at time of survey and ¼ had never taken part. Education programmes were ranked most useful, economics least.
Income.	Household incomes reportedly increased substantially; non-fisheries household income more than doubled, making up for slight falls in fisheries income.	Income drop over the same period, with marked falls in non-fisheries income sources compared with 2002.
Expenditure.	Increased; ratio of food to non-food expenditure fell slightly. Per capita expenditure rose but less than *kabupaten* average.	Increased; ratio of food to non-food expenditure increased. Per capita expenditure was still below *kabupaten* average.

Source: Tangguh resettlement audit (GHD 2009); Universitas Gadjah Mada survey 2009

Comparing the resettlement villages with 13 other nearby ISP-participant villages (2009 survey) showed a similar pattern. All 16 villages had improved since 2003. Despite the displacement, Tanah Merah Baru and Saengga were, by 2009, well above the average on economic, education, health and well-being indicators, while Onar lagged on all but health. Of the 10 villages for which data were available, all but Onar had increased their monthly household income in real terms between 2003 and 2009. Onar's lower participation in project programmes appears to have been a factor contributing to these results (shown in Table 3.4).

Table 3.4 Tangguh project audit – results for income and livelihoods

Villages: resettlement vs other affected	Economic index	Education index	Health index	Well-being index	Well-being rank of 16	Participation in programmes
Tanah Merah	77.88	78.01	88.02	83.30	2	0.64
Saengga	61.07	76.21	90.32	76.55	5	0.65
Onar	33.17	68.20	94.02	63.20	9	0.56
Average 16 villages	44.46	69.57	83.04	65.69	—	—

Source: Universitas Gadjah Mada survey 2009

Civil society concerns had significantly abated by 2010 and some aspects of the Tangguh model have garnered praise. However, there has been criticism of the lack of opportunity for the resource-losing clans to give their free, prior and informed consent to relocation and some support for the return of the lost *hak ulayat* resources upon completion of the project.

3.7 Analysis of outcomes

3.7.1 Summing up

The positive elements of this resettlement case in an inauspicious project environment may be summarised as follows.

- **Political will at a high level of operator management** for setting and delivering a resettlement model at an unambiguously high standard with a development objective.
- **A coherent resettlement planning process** and resettlement plan supporting the objective.
- **A time-bound, costed set of measures** specifically addressing resettlement with development and identifying additional benefit-sharing measures.
- Recognition of – and compensation for – all **customary sources of subsistence and income generation** on which affected people depended, whether legally titled or not.
- **Close consultation with those affected** on all aspects of loss identification, compensation, relocation, social and cultural measures and livelihood enhancement; and willingness to take action on avoiding, preserving and/or moving sacred sites in consultation with communities. This included ongoing consultation and follow-up action during implementation.

- **Replacement compensation** including land and marine resources to the extent possible, with permanent title for house and garden sites for most, but not all, of the affected and host villagers.
- **Livelihood development intended to enhance income levels and livelihoods** through specific programmes, especially in agriculture and small business development, that offered the choice of a range of alternatives to fisheries and project work.
- **A women's empowerment programme that offered strategic mainstreaming** of gender into project activities, extending land title to women and expanding women's skills base and leadership through training.
- **Transparency, including public release** of all resettlement, planning and monitoring reports.
- Attention to establish and maintain a **responsive grievance redress mechanism accessible to affected people.**
- Consideration of resettlement as a complex process of social transformation, in which income generation cannot be treated in isolation from social factors, necessitating a **long-term commitment to ensuring sound community outcomes**.
- **Willingness to resolve problems**, for example, to bring in additional resources, to take remedial action and to contemplate alternative options during the implementation phase.

Table 3.5 sets out some of the main ways in which the project addressed the structural anomalies identified in Chapter 1 of this thesis. Principally, the project was able to set a relatively high standard through the "resettlement with development" concept and it negotiated settlement directly with affected land users. Benefit-sharing with the resource losers through the foundation's 10 per cent supplement for education purposes made a marginal contribution. However, the other benefit-sharing measures contributed, as described in Section 3.5.8.

Table 3.5 Anomalies in policy application addressed in Tangguh project

Issue	Structural issue	Anomaly	Tangguh
Responsibility for resettlement.	Resettlement policy was implemented through country property and expropriation law.	Gaps addressed through legal agreements.	Legal agreements covered the LARAP resettlement with development standard negotiated with land users and witnessed by local government.

Strategy to address the gap between policy and law.	World Bank's 1994 evaluation recommended country-level "policy" as "pivotal" to address gaps.	Recommendation for revised or new property/expropriation legislation to address resettlement as preferred option.	As above – project precedent raised the standard for resettlement above country law. Broader country issue beyond the project's scope.
Livelihoods.	Livelihoods: a central policy concern, underpinned the bank's case for addressing impoverishment risks.	Country property and expropriation laws rarely mentioned livelihoods or set out a full range of measures to recognise income loss and its restitution.	Resettlement with development required improved, not just restored, livelihoods.
Benefit-sharing.	From 1990, the policy required that affected people receive investment and opportunity to share in the project benefits.	Benefit-sharing was never mandated. The policy undermined this requirement by a bottom-line objective of merely "restoring" livelihoods, not enhancing them.	Resettlement with development required improved livelihoods and included the foundation's benefit-sharing mechanism with the resource-losing clans in proportion to their loss.
Avoid and minimise resettlement.	This policy requirement focused on revising technical design for pre-approved projects.	Question of project alternatives or whether the project's expected benefits justified the social cost of resettlement not necessarily addressed.	Extensive work to compare sites for least environmental and social damage. Combo dock moved/ redesigned to avoid sacred rocks. IRR identified risks and strategy/measures to avoid and minimise or to remediate risks set out in LARAP.
Lending imperative.	Resettlement policy was subject to the lending imperative in implementation.	This raised questions about the time frame for critical steps in resettlement planning and implementation; and about the extent to which lenders might act to suspend loans if necessary.	Operator controlled resettlement planning and implementation schedule and cost via negotiated settlement and approved LARAP. Uptake problems with local government for social service and operation of utilities during implementation.
Status of rights.	Legal rights under country laws were recognised but considered of lesser standard than policy.	Justification for policy "rights" rested with the policy conditionality. International human rights not directly addressed.	The project model included some measures to address human rights, eg initial human rights study, TIAP reports, security issues in ICBS, etc.

Source: Compiled from earlier tables, the Tangguh LARAP and BP 2006

Source: Papuaweb

Figure 3.7 Tanah Merah Baru new planned village

Source: author

Figure 3.8 Tangguh monitoring rounds 2010: author speaking to a trader in the resettlement village

3.7.2 One important missed factor

Understanding, from an insider perspective, the standard lender approach at key points in the project cycle reveals much about the way the project constructed the resettlement policy categories and used them to check productivity, performance and compliance with the policy.

From an outsider perspective, however, the policy categories may only confuse, screen out or distort the underlying realities for the affected people. The "resettler" category, drawn up in the context of resettlement plans, defines those people in a particular, officially sanctioned relationship to their resource base and the project. The IRR requires a definition of social articulation, the loss of which – social disarticulation – must be addressed through mitigative measures.

The most fundamental organising element of social relations, namely of the customary resource base, was screened out of the IRR. The IRR was constructed without the full conceptualisation of the category "community articulation", which gave it meaning in the eyes of the displaced people. This was perfectly acceptable to the insider resettlement planners preparing the IRR. Simply using that schedule for the basis of the audit would have screened out this problematic issue. However, an outside view, with awareness of comparative ethnography, is informed differently, and is described here because it clarifies the approach informing Chapter 5 and is an example of the emic/etic (inside/outside) dichotomy that is central to the thesis methodology.

Based on the IRR and resettlement plan, the people had been compensated for lost assets and incomes and received replacement housing, services and livelihood support. Although not legally theirs, the people's customary resources were recognised and compensated for, in accordance with the resettlement policy. They had, for the most part, improved their livelihoods and well-being and were satisfied with their replacement villages – an outcome normally taken as excellent and a signal for successful audit sign-off of responsibility by the developer. Unexpectedly in this case, however, the displaced people, indigenous to the area, reported missing one essential element that was fundamental to organising their society: their *hak ulayat* (customary right) to their resource base.

Under customary management, the *hak ulayat* resource base comprised marine fishing and prawning grounds, which had supported the resettlers for generations. It encompassed shorelines rich in shellfish; sago palms for traditional subsistence; nipa palms for thatching roofs; various medicinal and subsistence plants; and sacred sites for rituals around graves and rocks. Individuals and clan groups could negotiate *hak ulayat* claims to sites for making small gardens for growing family vegetables, but this kind of cultivation did not establish rights to permanent use and had to be renegotiated at the start of a new season.

Hak ulayat involves much more than livelihood, however, because it embodies social organising principles. *Hak ulayat* symbolises the principles of clan membership, manifest in physical form through socially sanctioned borders and boundaries and passed down the generations through socially sanctioned inheritance rules. For generations, *hak ulayat* had, in this way, sustained the clan groups by ordering their relationships to each other and to their environment. The IRR in this case, and the resettlement plan it informed, recognised an important part of the value of *hak ulayat* to the resettlers. It recognised the livelihood value of *hak ulayat* resources – the land, trees, palms, shores and marine zones – for which the project compensated the resource losers. This included the establishment of a foundation in perpetuity for the resource-losing clans in proportion to their loss of land and marine resources. This, in itself, was an important step because earlier practice had been to ignore customary rights – but it was an incomplete step. It did not recognise, value or compensate the underlying social organising principles and environmental relationships. Although not legally theirs, the resettlers' customary right to their resources had sustained them over generations. It was indivisible from their identity, essential to their security and fundamental to their sense of belonging and well-being. In conversations with me, many resettlers raised this issue as one of fundamental concern. The IRR, in this case, provided an incomplete summary of losses and hence its recommended plan was deficient.

The resettlers conceptualised their resource base as inseparable from themselves – and yet, through the project lease, it had been separated. They could no longer physically access it. They had been told, incomprehensibly in their view, that upon expiry of the project lease it would no longer be theirs. Then whose would it be? They faced tangible physical barriers: a marine exclusion zone around huge loading and combination docks that blocked their customary fishing and prawning grounds; a massive LNG processing plant on their former village site; and a high fence that kept them out.

Forced migration theory posits that, to understand a phenomenon in forced population movement – in this case, displacement of people by development – it is necessary to look beyond the policy categories that have been carefully constructed to manage it (Turton 2003a). Only by deconstructing those policy categories can we see the phenomenon for what it is, and how displaced people understand and experience their own situation. It is the exploration of this alternative, experiential perspective, combined with comparative theoretical analysis, that begins to offer a basis for a different kind of enquiry – one that takes a more informed approach

to the challenge of population displacement for development purposes and the role of the resettlement cure in that process.

Cracks in the standard approach and the expectations surrounding it trigger new understandings of old problems, opening up a better appreciation of the phenomenon of displacement itself and how it is experienced by the displaced people. In this case, the policy-constructed category of "resettler" was set at a high standard – requiring the enhancement, not merely restoration, of livelihood and well-being – but it did not recognise nor explicitly arrange a replacement organising social principle. That notion was a key driver for local expectations, ideas and more nuanced understandings of success and how to achieve it. In the resettlers' view, the project resettlement plan was fundamentally flawed. Chapter 8 takes up this issue.

Transcending international policy standards and, to a greater degree, the country standard of the time, the project resettlement model achieved a high level of successful outcomes in a very risky environment. Yet even this outstanding resettlement model did not fully recognise or address a key social issue as it was experienced by the displaced people. The issues of customary land and its place in the social and cultural lives of displaced people is particularly important in Pacific cultures, including Melanesian cultures, which have adapted customary resource use over centuries to ensure environmental and social continuation of the customary groups. The postscript below explains how the tensions arising from this central issue continue to drive separatist sentiment in Papua today.

To conclude, this chapter addressed research question 1, which asks: Has evidence-based feedback from resettlement policy application, when reflected in revised resettlement policy and practice, been effective in reducing or eliminating resettlement failure? This chapter addressed this question by examining the record of a model project designed to a higher resettlement standard, which aimed to address the risks of impoverishment among the displaced so often associated with policy failure. This chapter concludes that, in almost every respect, other than this important issue of the sustainability and social dimensions of resource use, the Tangguh resettlement with development model represents better resettlement practice. Its objective of improved livelihood and well-being, backed up by a comprehensive range of measures and actions, was demonstrated to be effective in achieving the stated outcomes. This resettlement demonstrates, therefore, in terms of research question 1, that feedback links from past failure can offer a major incentive for work towards achieving better resettlement practice

and better outcomes for the displaced in new projects. The adoption of this model into widespread resettlement policy renewal, however, has yet to be demonstrated.

This chapter also addressed research question 2, which asks: Are the feedback links aimed at improving resettlement policy and practice obstructed by the lending culture in which resettlement policy operates? To this end, the chapter examined the lending and commercial impacts of this resettlement case. This private sector project produced an important conclusion with respect to research question 2. This case would seem to offer a rare example of evidence that better practice can influence the lending imperative and related commercial rewards. The high costs of delay that arose in several similar nearby projects due to community unrest, appeared to have encouraged open-ended communication in the Tangguh case. Thus, this model seemed to provide a better commercial longer-term solution despite one short-term loss. While the negotiation process was considered open-ended and empowering for local people, and improved significantly on the earlier negotiations, however, it pre-dated the requirement for free, prior and informed consent. Including an FPIC requirement might have helped to reach a different conclusion on the retention of customary land by the local people – assuming that government policy would be receptive.

3.7.3 Postscript

The continuing news embargo on Papua and Papua Barat make it difficult to obtain accurate and reliable information to assess developments. However, recent reports have raised questions about the longer-term sustainability of key initiatives envisaged in the original model. The Special Autonomy Law is widely considered to have failed because, first, the law was not the product of negotiation but a solution imposed by central government; second, Papuans remained divided on its utility and, ultimately, failed to seize the opportunity provided; third, the central government undermined the law in its attempts to curb secessionism, ultimately failing to make it credible (Bertrand 2014).

Pemekaran may be seen as a slow but credible model for enhanced services through representative democracy. Or it may be seen as:

> simply a newly packaged version of the long term territorial project of the state; one that seeks to bring its ‘backward’ (*tertinggal)* and potentially subversive margins under

> stronger regulatory control … Under the previous authoritarian New Order government, the logic of Indonesian development policy was also directed to the margins, but in ways that proved either ineffective or destructive. As Tania Murray Li has noted, these policies were often self confirming, "as development projects failed to reach their objectives due to the combined effects of corruption, mismanagement and local forms of resistance" (1999), they confirmed stereotypes of the periphery as a primitive and backward region in need of stronger government 'guidance' (*pembinaan*) and paternalistic control. This is especially the case for its more remote 'indigenous' tribal populations defined as *masyarakat terasing* (isolated communities) with their connotations of backwardness, poverty and 'primitive' practices. (McWilliam 2011: 164-165)

Recently questions have been raised on the integrity of the Tangguh Integrated Community-Based Security Force and its capacity to protect local people; the effectiveness of wider area development to benefit the original inhabitants; and the achievement of targets for local participation in the Tangguh workforce. A recent Lowy Institute Report states:

> Since 1969, Indonesia's response to West Papuan nationalism has combined a Suharto-era military approach with an increasing emphasis on economic development in the republic's remote and impoverished far eastern region. Neither approach has succeeded in containing West Papuan nationalist sentiment. Exploitation of West Papua's abundant natural resources such as forests, minerals and gas – by foreign and national corporations, with assistance from Indonesian political and military interests – has alienated West Papuans from the traditional sources of their livelihoods. Together with a heavy Indonesian military presence, it has fuelled West Papuan resentment and helped West Papuan independence leaders galvanise broader support
>
> The new administrative delineations have disproportionately benefited local elites who have co-opted the district structures for their own direct access to government subsidies. The Special Autonomy Law and partitioning of West Papua have failed to address the plight of many West Papuan communities, who live in remote, rugged areas beyond government reach. Opening up the region to economic development therefore became a chief preoccupation of Indonesia's government of Susilo Bambang Yudhoyono and continues to this day. Building transport links and improving access to electricity has

helped transform West Papuan cities such as Jayapura and Sorong into bustling ports. Non-indigenous migrants have come to dominate the urban economy in a pattern previously formalised in the Indonesia Transmigration Program (*Transmigrasi)*, which has entrenched migrants in seats of power and business. The official program may have ended, but transmigration has continued of its own accord. Migrant numbers are growing in these cities while the ration of indigenous Papuans in the population shrinks. The percentage of indigenous Papuans as a proportion of West Papua's overall population has been steadily falling, and in some urban areas such as Jayapura, non-indigenous migrants already constitute a majority of the population and dominate the economy. Marginalised indigenous young Papuans have played their part in the big independence demonstrations over the past decade in West Papua. Mass arrests and heavy-handed security forces' responses to demonstrations have become a persistent pattern. A new generation of indigenous Papuans agitates for basic rights in the context of the national government rhetoric about economic development. (Blades 2020)

Source: Michael Gillard

Figure 3.9 Wooden shacks in Bintuni on the north shore of the bay

The following is an extract from **'BP in West Papua – slow motion genocide, high speed profit'**, a special investigation by award-winning journalist Michael Gillard, published in *The New Matilda* on 5 November 2018. He writes:

> - BP security guards are spying on the local community and passing intelligence on 'disruptive individuals' to the military.
> - Well-armed Indonesian security forces are now secretly stationed inside the oil company's base; and
> - Retired senior Indonesian police and military officers are running an 'elite cadre' of BP guards armed with stun guns and rubber bullets who are given 'behaviour profiling' training in how to spot agitators …
>
> Yan Christian Warinussy [is a] director of LP3BH, a local human rights organisation who BP asked to train its security guards between 2006 and 2008 as part of its 'community based' approach for Tangguh. Since BP's arrival, Warinussy said his organisation has logged a marked increase in reported incidents of violence in the Bintuni Bay area associated with disputes between BP security guards, other employees and contractors. The disputes are over land, the environment and domestic violence. "We have data. The increase is 30% to 40%," he said. By contrast, BP says it has not self-reported any human rights abuse allegations.
>
> There are also labour rights problems inside the BP base, including racism by Indonesian contractors towards Melanesians. Contractors are expected to hire only indigenous people for unskilled labour, 93% for semi-skilled and 12% for skilled jobs.
>
> The panel's latest report and BP's response to it accepts that the oil company is nowhere near meeting its target of a skilled Papuan workforce by 2029. The current level is just over 50% and the term 'Papuan' is not confined to Melanesians but migrants who have been living in the colony for 10 years. Recruitment programmes have all failed, the panel revealed, and after 15 years Melanesians are almost totally absent from higher skilled or supervisory roles.

This case is analysed further in chapters 5, 6, and 7 which follow.

Chapter 4: Victims or partners? The social perspective in development-forced displacement and resettlement

Introduction

This chapter addresses research questions 1 and 3. Research question 1 asks whether the evidence-based feedback from resettlement policy application, when reflected in revised resettlement policy and practice, has been effective in reducing or eliminating resettlement failure.

It addresses the extent to which anthropological insights and approaches, including model-building, can renew resettlement policy and improve resettlement practice. Research question 3 asks to what extent do country legal frameworks interact with wider international thinking in a possible rapprochement between sustainability, rights and risks in approaches to development in general and resettlement in particular? The chapter examines some early steps in the preparedness or otherwise of country legal frameworks to address rights, risks and sustainability.

Anthropology is claimed to be the foundation discipline of development-forced displacement and resettlement research (Oliver-Smith 2009: 6). Starting by examining the intrusion of development-forced displacement into almost every domain of social life, anthropologists analysed the social consequences of displacement – and the complexity of the resettlement process.

Beyond this, anthropologists turned their attention to advocacy on the part of those displaced, in articulating the policy and practical changes necessary to mitigate the damage, to achieve resettlement with development, and to support local perspectives in the process of policy change. In the field of development-forced displacement specifically, it is argued that

> anthropology has made the single strongest, tangible and internationally documented and recognized contribution to development policy and practice over the past quarter century … anthropologists have helped to frame current … debates concerning human and environmental rights, policy frameworks and guidelines, implementation, evaluation, the limits of state sovereignty and the agendas of international capital. (Oliver-Smith 2009: 6)

This chapter is a literature review of anthropologically informed discussion of development-forced displacement and resettlement. This chapter tracks some key points in that interface, notably, in the development of models to explain the processes of development-forced displacement and the challenges of resettlement; in questioning the laws that govern land acquisition; in the formulation of international standards on involuntary resettlement; and in advocacy on behalf of communities faced with displacement. The starting point for anthropological engagement has been field research, which offers a continuous, rich source of experience on the effects of displacement and demands of resettlement, forming an essential basis for articulating policies and theories, and, in turn, for challenging and refining them.

4.1 Analysing the impacts of development-forced displacement

Great anthropological questions emerge more clearly when conducting fieldwork. Early ethnographic case studies of displacement dating from the 1950s onwards (Colson 1971) introduced a grim picture of the "victims" of forced displacement. The victims found themselves summarily removed, with insufficient compensation to restore their losses, to make way for projects that were imposed ostensibly in the wider "public purpose" for a state they might have little prior knowledge of or allegiance to.

Rural people were losing land, livelihoods and access to resources. The loss of farmland, forests, grazing lands, fishing grounds or water sources undermined or destroyed the means of subsistence, of livelihood and the socio-cultural features of rural communities. In urban areas, the urban poor seemed more vulnerable to displacement than better-off urban communities, with high population densities magnifying the impacts of acquiring even small parcels of urban land for development (Koenig 2009). While the parameters of impact may differ, both urban and rural displacement could undermine or destroy community assets, social services, social status and social networks. Loss of income bases and social networks led to impoverishment and lost identity.

Perhaps most invasive were the intensive areal projects, such as mines and reservoirs, which displaced entire communities. Reservoir case studies featured prominently in early social analyses of development-forced displacement, for example Brokensha and Scudder (1968) and

Chambers (1969). Colson began her analysis of the impact of the Kariba hydro-electric dam on the Gwembe Tonga in Central Africa with the words:

> Massive technological development hurts. This is a fact largely ignored by economic planners, technicians and political leaders. In planning drastic alterations in environment that uproot populations or make old adjustments impossible, they count the engineering costs but not the social costs. (Colson 1971: 1)

A seemingly uncaring state, through planners and developers, was imposing "forced change" on the Gwembe Tonga "victims" (Colson 1971: 1). The intensive fieldwork, conducted before and after the displacement and resettlement on which this study was based, found that the Gwembe Tonga opposed the dam, not simply because it represented change, but because it represented unacceptable change: it threatened their basic securities; they did not understand its rationale; they were expected to make major sacrifices on behalf of a nation state with which they did not identify; and it came to them as a command from outside (Colson 1971: 3). Scudder (2009: 45) recently reported that the Gwembe Tonga had slid backwards "into an impoverished state of existence that continues today". Through displacement, development projects that intended positive benefits could, it appeared, have very counter-developmental consequences for some people who had to bear the costs.

Deepening social research over subsequent decades showed how development-forced displacement could arise in a range of circumstances: from acquisition of land through regulatory measures such as compulsory acquisition or eminent domain; to changes in the use of land as in slum clearance, urban renewal, or re-zoning for development or putative development purposes. More recently, environmental conservation projects that aim to preserve areas of environmental value may exclude small communities dependent upon the newly restricted resources, often through common property arrangements (Cernea 2006; Seymour 2008; Oliver-Smith 2009). Other projects result in more selective impacts, such as power transmission or transport corridors that cut across communities – some people were are severely affected by loss of a significant part of their land, housing or access to their social and economic networks. Yet others might be less affected, losing access ways or strips of land frontage but, if not bought out by stronger market interests, gaining advantage from transport corridor frontage.

Alexander's work (2008) on the Lahanan of the Batang Balui, a small longhouse ethnic group impacted by logging and displaced to a distant place by state construction of a reservoir in Sarawak, presents a post-resettlement picture of disruption. Attachments to land and place were severed irrevocably. Minimal consultation had resulted in inappropriate longhouse design, confusing compensation payments, and failed livelihood programmes that forced many of those displaced to urban centres in search of income. The Lahanan lost their transport and fishing mainstay – the river – and their diet-enriching forays into the forest. They experienced profound social and economic disarticulation, especially among the elderly. Over time, the Lahanan began to reassert their identity through their housing arrangements. The re-emphasis of elements of their shared group identity may have helped them to tackle the severe livelihood, housing and transport challenges that confronted them.

> After the early days of bewilderment in the new settlement and a profound sense of displacement, disorientation and lack of control, the Lahanan gradually relearned to exert some control over their own lives. One of the things all the longhouse communities on the Balui valued was their independence as small-scale communities to a large degree autonomous and in control of their own lives. In a move towards exerting independence and individualization, people are making fairly extensive renovations to their new longhouses. (Alexander 2008: 122-123)

Despite state policy pressures for all ethnic groups to enter the mainstream of Malaysian society, the Lahanan have registered their own official association. They

> … want to maintain a separate ethnic and, even more importantly, community identity. Numerous individuals stress their unique cultural values, such as their willingness to work together for mutual benefits, specific cultural artifacts such as dances and games, and wish to retain their own language even though they recognize that it continues to be influenced by other languages around them. They, like many communities before them, wish to promote difference. (Alexander 2008: 124-125)

As in the case of the Lahanan, changes arising from displacement are generally irrevocable, with little prospect for people to return to their pre-displacement life. It is this irrevocability, together with the fact that the losses are, mostly, deliberately planned and executed in the wider "public interest" as defined by the state, that differentiates development-forced displacement

from other types of displacement that arise from conflict, environmental degradation, debilitating climate change and natural disaster. In contrast, displacement forced by development projects is deliberate, intending beneficial outcomes – yet while the nation gains, the displaced losers must bear the pain.

While such displacements, conducted in the name of the "public interest", might allow people affected some scope for selection among a limited range of relocation options, they have no choice about the fundamental reality of their displacement – they have no choice to remain. While researchers have taken issue with the voluntary/involuntary dichotomy, the terms "forced displacement" or "involuntary resettlement" are widely used to reflect the lack of choice to remain in situ. Researchers recognise the potential for coercion to be used in a range of "voluntary" and "involuntary" resettlements (McDowell and Morrell 2007). This is particularly so in the context of resource natural resource extraction (Vandergeest, Idahosa and Bost (eds) 2006).

Detailed case studies of forced displacements revealed that the state exposed displaced people to a series of impoverishment risks which those responsible have failed to mitigate effectively (McDowell 1996; Cernea and McDowell 2000).

Some argue that this coercion is a violation of human rights (Johnson and Garcia-Downing n.d.). Violation of rights has in some cases invoked comparison with international human rights law. Article 12 of the Universal Declaration of Human Rights (UDHR) proscribes arbitrary interference with an individual's home, while Article 17 proscribes depriving people arbitrarily of property. The United Nations' 2004 Guiding Principles on Internal Displacement,[1] while not explicitly listing development-forced displacement in the scope of application, state, in Principle 6, that the prohibition of arbitrary displacement includes "cases of large-scale development projects that are not justified by compelling and overriding public interest". McDowell and Morrell (2007: 30-31) attribute this anomaly to the controversy of applying the Guiding Principles to development displacement – this is still being debated, particularly in terms of the definition of "arbitrary" and "public interest". Which ultimate authority should decide what is "arbitrary" and "compelling and overriding public interest"? Would the state ever contemplate giving up this role to an international body?

4.2 From research to model-building

Given its distinct feature of forced change, anthropologists began to theorise development-forced displacement as an issue in social transition. In that development projects are deliberate and pre-meditated, Scudder contends that they facilitate long-term comparative research, starting with a pre-displacement benchmark, so offering a "quasilaboratory setting of great potential for advancing significant, policy-relevant theory in the behavioral and social sciences" (2009: 25). Scudder and Colson developed a model based on the concept of stress, in which three forms of stress – physiological, psychological and sociocultural – arise as people pass through the process of forced displacement and resettlement (Scudder and Colson 1982; Scudder 2005). The process has four stages: recruitment, transition, potential development and incorporation, but, as in the case of the Gwembe Tonga, inappropriate policy and implementation arrangements frequently trap people into perpetual transition.

Scudder (2009) identified four dimensions of development-forced displacement and resettlement that underpin theory building: first, the resulting increased rate of social change in some behaviour patterns, institutions and belief systems; second, the involuntary nature of resettlement, in which there is no going back. Third, resettlement generally suffers from second-rate planning, inadequate consultation and insufficient financing because it is a by-product of a different development initiative. Fourth, it is difficult to achieve an equitable outcome in addressing displacement, given the wide-ranging impacts on the lives of those affected.

Cernea developed a model based on the notion that deconstructing impoverishment reveals "cumulated deprivation" that must be approached from a combination of economic, social, cultural and psychological perspectives (Cernea 1997). His Impoverishment Risks and Reconstruction (IRR) model identifies and highlights the dynamic process that emphasises the multidimensional risks that, unless proper mitigation is taken, threaten to impoverish those displaced. Proper mitigation requires ways to counteract those risks. Of these eight risks – landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity, loss of access to common property resources and community disarticulation – community disarticulation is recognised as the most complex. Its main elements are the scattering of kinship groups and informal networks of mutual help, social interaction and reciprocity, as community patterns of organisation unravel in spatial and cultural terms. This represents a loss of social capital (Cernea and McDowell 2000: 363-364). In this sense the IRR model puts social losses

squarely into the process of impoverishment and calls for systematic efforts to counter those social losses. The model "directs research beyond the narrowly economistic" (McDowell and Morrell 2007: 86) and requires consistent measures to address social loss.

More recently, and building on the rich legacy of research, Downing and Garcia-Downing (2009) have developed a theory about the psycho-socio-cultural disruptions, focusing on the regular shift from what they call routine and dissonant culture (Downing and Garcia-Downing 2009). The starting point is based on certain primary questions, the answers to which are codified in language, symbols, places endowed with meaning, kinship categories, ritual, dance, music, humour and other socio-cultural expressions, within which institutions, individuals and families redefine their constructed spaces, their times and their personages. Forced displacement is depicted as drastically destabilising this routine culture by threatening it or rendering it meaningless. Social life becomes chaotic, as routine culture gives way to dissonant culture, which, "like unharmonious music, cries out for resolution" (Downing and Garcia-Downing 2009: 230).

Four patterns of dissonant culture may be identified: first, ephemeral dissonance norms may emerge, which have their own situational logic. Second, dissonance overload may strain traditional coping and support mechanisms. Third, redefinition of access to routinely allocated resources may begin a process of impoverishment for those displaced. Fourth, those displaced may increase the frequency of rituals as they try to reaffirm and to re-establish their identity. The emergence of a new routine culture is not well understood and depends on the degree of disruption, "as if different 'articulation clocks' are ticking in different places for different groups" (Downing and Garcia-Downing 2009: 235).

Can anything be done to limit cultural dissonance and facilitate the smooth re-emergence of new routine culture? Seven practical steps may be taken (ibid): recognise the fallacies that excuse inaction; put supportive laws and policies in place; establish clear objectives; strengthen baseline studies; protect vulnerable people; provide procedures that encourage participation; and promote socio-cultural innovations that directly contribute to rebuilding new routine culture. By focusing on the psycho-socio-cultural realm, the model attempts to highlight the importance of, and to dispel misunderstandings about, the socio-cultural changes arising from displacement.

4.3 Questioning the laws that govern land acquisition

Anthropological research focused attention on the heightened power of the state, directly and irrevocably, to displace specific communities in the wider “public interest”, a power exercised largely, but not exclusively, through application of eminent domain, compulsory acquisition and other regulatory measures to acquire land. Legal instruments enable land to be acquired for the “public purpose”, generally focusing on compensation for land, where land has legally recognised title, together with assets on that land. The legal instruments aim to provide land free of encumbrances for public or private sector developments, generally as part of property or expropriation law (Price 2008: 154). Private sector investors could rely either on the state’s regulatory powers of acquisition, or forms of “willing buyer willing seller” negotiations. National and sub-national bureaucracies administer these laws and regulations.

Each nation has its own framework of laws and regulations that apply to land acquisition and compensation, which are often strongly influenced by the pedigree of their legal system. Research studies (Price 2008) found that national frameworks in almost all cases provide insufficient protection to those displaced, provide insufficient compensation to make good the losses, and neglect social aspects of loss. Typically, they compensate only a limited range of physical assets, do not ensure effective valuation methods to fully replace lost assets, do not replace lost livelihoods, do not fully recognise the claims of those land users without legal title to the land, do not incorporate participative processes, do not recognise impoverishment risks, and may be poorly implemented at various levels of government (Price 2008). Late payments, for example, could wreak havoc on efforts to restore assets and living standards. Corruption could reduce or do away with payments altogether. To address these issues, ADB in 1998 began a series of studies to open up channels for dialogue with governments of a range of Asian countries and civil society on enhancing national policy, legal and regulatory frameworks (Price 2008).

Influenced by external investors, some governments in Asia have recently developed new policies and laws on land acquisition. China introduced a new national Land Administration Law in 1998. The Lao People’s Democratic Republic in 2005 adopted a national policy on involuntary resettlement for major projects, together with implementing regulations, consistent with international best practices. This was issued as a prime ministerial decree and also as

ministerial regulations and guidelines on involuntary resettlement for major projects in energy and road sectors. Initiatives are being developed in Indonesia and Cambodia.

South Asian countries generally preserve long-held laws. Land Acquisition Acts in most South Asian countries, including India, are based on a modifications of, and supplements to, a colonial era (1894) legal instrument that enables the state to acquire property for the "public purpose" – which is not generally defined. An anthropologist practitioner working for the Asian Development Bank, Jayewardene (2008), contends that, under the guise of compensating for the assets lost, these laws externalise much of the costs on those displaced while limiting the legal responsibility of the state to cash compensation for a limited set of assets. "Cash alone cannot provide or compensate for the inherent limitations of finite resources, the loss of productive assets in perpetuity, the dislocated social networks, the lack of skills and abilities, and the increased social vulnerability" (Jayewardene 2008: 237). Cash compensation, calculated at generally less than asset replacement rates, can easily be spent or used to repay debts; and replacement land may not be available for purchase. In addition, in most cases the Land Acquisition Acts do not recognise the losses of those displacees without formal title to the land they occupy. The Acts do not define social losses, do not recognise any form of social disarticulation that might arise from the acquisition, do not require an understanding of the social and cultural dimensions of loss and disruption, or the temporal and the structural context in which people are forced to give up their lands and assets. The legal provision thus "dehumanizes the responsibility of the state to a set of principles for valuing assets but takes no responsibility for the consequences" (Jayewardene 2008: 242-3).

In May 2001, in a landmark development based on consultation, the Sri Lanka Cabinet approved the first National Involuntary Resettlement Policy in South Asia (ADB 2001). This Policy aims to re-establish livelihoods and, importantly, improve – not just to restore – the standard of living of those affected. It requires replacement value for assets lost. It aims to ensure no impoverishment results, requiring measures to assist people affected to deal with social, cultural and psychological distress. It requires the participation of those affected in planning for livelihood and development opportunities, making the process of involuntary resettlement consultative, transparent and accountable. It espouses the principles of justice, equity and gender equality (Jayewardene 2008: 238). This admirable policy, however, is not yet enacted in law. Changing national and sub-national laws is, generally, a long, complicated and deeply political process.

Changes in legal frameworks have been slow to provide protection for those displaced – and also scant opportunity for local voices to be heard (Price 2008; Fernandes 2008; Jayewardene 2008). There are variations according to country and sector. Cernea (2009: 54) highlighted the mindset of decision-makers and financial planners, who believe that compensation is all that is necessary for recovery, and who, accordingly, allocate compensation financing at the lowest possible level. The conceptualisation of people on the land as "encumbrances" opens up power differentials in access to information and participation in decision-making in resettlement options (Clark 2009: 193) – as "encumbrances", local people have less power in negotiations than government or business.

The cases of India and China illustrate how the challenge of better protection for affected people was addressed.

In India, Fernandes (2008) and others showed how a coalition of non-government organisations, community organisers, and social researchers from the 1980s onwards led the way by demonstrating how to prepare a national Resettlement and Rehabilitation (R&R) Policy, which incorporated selected internationally recognised principles. From this basis they were able to critique successive government drafts of R&R Policies. The government issued its own draft as the National Involuntary Resettlement Policy in 2007. In addition, the government also presented two legislative bills, one to convert the policy into law and the other to amend the existing Land Acquisition Act of 1894. Non-government organisations were opposed both to the policy as well as the two legislative bills and fought for changes: first, that the Land Acquisition Act 1894 be scrapped; second, the two proposed bills be withdrawn, and third, the earlier draft of 2006 be reintroduced (Hari Mohan Mathur, pers comm, 2009). The 2007 Policy was described as "a letdown" (Dharmadhikary 2007). This led to the passage of the new Land Acquisition, Resettlement and Rehabilitation Act (2013) described in subsequent chapters.

In China a series of revised laws and guidelines, including a law on land management (1998), have been formulated over the past few decades in response to rapid industrialisation and infrastructure expansion. Nonetheless, a Chinese study on land acquisition from 1993 to 2003 found that, in China, the core elements of the current legal framework for acquisition were created during the planned economy and were unsuitable for a market economy. Farmers were still subject to expropriation by local governments with little recourse. Acquisition was

exercised on a grand scale in ways that often disregarded the real public interest; valuation methods resulted in inadequate compensation for lost assets; and the legal framework did not guarantee replacement livelihoods for those farmers displaced (The China Land Survey and Planning Institute 2006). A Decision No. 28 of the State Council (December 2004) contained measures to combat criminal corruption of compensation payments and for local governments to offer additional measures to increase asset valuation and to improve the livelihoods of displaced people. Further developments are discussed in subsequent chapters.

4.4 Formulating international standards

Highlighting the contradiction whereby development projects – supposedly benefitting the nation as a whole – resulted in disproportionate, unacceptable pain for those displaced, some anthropologists began to articulate protective policy standards by introducing the concept of involuntary resettlement.

Decades of case studies by anthropologists and other social researchers lay on shelves, unused in development work. Cernea, attributing this neglect to "aggressive cognitive dissonance (which) delegitimized this knowledge" together with weak civil society interest in the issue, concluded that knowledge supply alone was not sufficient to trigger new social policy (Cernea 2005: 76).

What changed things? The World Bank experienced several public relations disasters with reservoir displacement. Surging opposition by those displaced and civil society spokespersons created opportunities within the World Bank for social science input to the theoretical debate about the bank's development paradigm and about social policy standards (Cernea 2005: 72-77). Anthropologists and other social science advocates within the World Bank, led by Cernea, drew upon the body of case studies documenting displacement disasters to develop guidelines for the bank's operational manual. These were to be used from 1980 onwards to address social issues in involuntary resettlement.

The guidelines conceptualised those displaced people as a group temporarily victimised by development – to be treated with special measures that recognised their losses, and the importance of their social organisation and identity, in the form of involuntary resettlement. First, the policies required efforts to avoid and minimise displacement wherever possible.

Second, if, despite such efforts, displacement occurred, then the policies required mitigative effects through time-bound action plans designed to address the full range of social and economic losses, using baseline social census and survey work. The mitigative fall-back position was included because the proponents considered it was "not a solution" to give up soundly based development projects entirely (Cernea 2008a: 4). Subsequent refinements to the World Bank's policy on involuntary resettlement (in 1990 and 2001) required all displacement to be conceived and executed as development programmes with time-bound action plans, detailing how those displaced would be provided with sufficient investment resources and opportunities to share in the project benefits (World Bank 2001: paragraph 2). This is stronger wording than the earlier formulation, but still the bottom-line objective is "at least restore" not "must improve" the economic and social base of those displaced.

These standards on involuntary resettlement, originating in the World Bank, have "rippled" around the world (Cernea 2005). Member countries of the Organisation for Economic Development (OECD) in 1992 adopted very similar policy principles, followed by regional banks, including the Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD) and African Development Bank (AfDB). The International Finance Corporation (IFC) had initially declined to follow the World Bank's policy on involuntary resettlement. Then, a major anthropological evaluation study by Downing (1996) revealed a displacement disaster in the IFC's Bio Dam project in Chile with disastrous, and unmitigated, impact on the Pehuenche indigenous peoples. IFC has subsequently developed a Performance Standard for Land Acquisition and Involuntary Resettlement (IFC 2006). Involuntary resettlement policy principles spread to the private sector with the adoption of the Equator Principles by 10 major investment banks in 2003 – these principles are based on the IFC's environmental and social safeguard performance standards, including on involuntary resettlement. This is a voluntary code that depends upon the commitment and transparency of each signatory financial institution.

As publicly available policy standards, these principles on involuntary resettlement have widely influenced perceptions of displacement. They may be invoked by local groups, together with human rights standards, to oppose flawed developments (Oliver-Smith 2009).

The modus operandi of the business of international financial institutions, influenced also by emerging transnational efforts to promote accountability, has created new openings for local

perspectives. Social researchers, barely acknowledged a decade ago, have been hired. Participation is envisaged as an integral part of resettlement planning – even though local procedures may favour restricted use of simple questionnaires. Disclosure is required in a form and language that local people understand – even if these requirements sit uneasily with local planning procedures that discourage information sharing until the technical parameters are well advanced. Grievance mechanisms are required. Resettlement plans abound – even though they may not be closely monitored or supervised once they are approved. Evaluations may be hurried, but they are regularly conducted and sometimes they yield rich feedback. Increased use is made of independent monitoring panels. Inspection functions that provide a means of redress have been set in place. Policy updates are accompanied by a process of public consultation, even if to many it appears that the end result is a backward step.

These international policy standards have served to supplement national laws for those projects utilising international financing. They move the focus of planning beyond compensation to restoration or improvement of the economic and social base of those displaced. Their application resulted in project-specific supplementary measures being designed to top up national legal and regulatory frameworks and not, as yet, a substantive revision of the legal normativity of a member county.

The involuntary resettlement policies are applied through the policy and legal frameworks of the borrower – developing countries – with their focus on limited forms of compensation and neglect of wider social losses. This brought certain international policy principles into contention with national laws. For example, the policy principle that lack of formal title to land is not a bar to compensation has been resisted by certain national governments opposing this provision if it runs counter to national law. This contention has led to negotiated, project-specific agreements topping up provisions for those lacking formal title. Alternatively, negotiated project-specific agreements might specify that those displaced who have a "legalisable" land title can be compensated, assisted and "legalised" under a process set forth in the resettlement plan. The requirement that social organisation should be respected in resettlement arrangements took most resettlement plans well beyond the limits of the national laws. Similarly, it was to be difficult to integrate a policy-mandated participative process into displacement and resettlement when national laws provided, at best, for only certain limited types of public notifications.

The bottom-line objective of international policy standards was to “restore” the economic and social base of those displaced, with improvements in that base being largely an aspirational addition. For example, the World Bank’s Operational Policy on Involuntary Resettlement (OP) 4.12 (2001, updated 2007, paragraph 2c) states that: “Displaced persons should be assisted in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.”

ADB’s original Policy on Involuntary Resettlement (1995: 33) had similar wording, requiring that “that displaced people receive assistance … so that they would be at least as well-off as they would have been in the absence of the project”. Only in the case of the poorest affected persons did ADB’s policy specifically require improvements in “particular attention … to the needs of the poorest affected persons including those without legal title to assets, female-headed households and other vulnerable groups, such as indigenous peoples” (ADB 1995: paragraph 34 (vii)). ADB’s recently approved Safeguard Policy Update (ADB 2009: 17) contains similar wording, “to enhance, or at least restore, the livelihoods of all displaced persons in real terms relative to pre-project levels; and to improve the standards of living of the displaced poor and other vulnerable groups”. These points, the result of careful wording necessary to ensure approval by boards of directors of development institutions and policy adoption by governments, would limit the reach of the international policies.

Cernea called for basic reform of policies on involuntary resettlement. “Successful resettlement” is treated as much more than just “replacement” or “restoration”, but as achieving a significant improvement in the livelihoods of the displacees compared with their pre-project situation (Cernea 2008a: 3). Compensation alone is insufficient just to replace or restore losses, and certainly insufficient to achieve the policy objective of improving the livelihoods of those displaced (Cernea 2008a: 9). That objective requires reconstruction and calls for new resources from various types of benefit-sharing schemes to be directed, as a priority, to supplement compensation for the people losing out as a result of development projects (Cernea 2008a, 2009). These calls for reform of the policy principles apply not just to international policy standards for involuntary resettlement but to the national legal and regulatory frameworks through which they are implemented.

Evaluations have shown that internationally financed project outcomes are compromised by the limitations of national legal frameworks (Price 2008). Jayewardene (2008: 254) contends that: "Even if international financial institutions are present, it is now evident that they cannot compensate for the absence of essential legal frameworks, lack of transparency, cumbersome bureaucratic procedures, lack of commitment to funding, little or no institutional capacity, and, above all, absence of political will and commitment to the principles of equity and justice".

Moreover, projects financed by international financiers may use international standards – but a huge number of nationally financed projects continue to operate on the old laws and regulations. For a vast number of projects not financed by international financiers, the national legal frameworks apply.

4.5 Advocacy on behalf of communities faced with displacement

Globalising influences have changed local lives, creating new social networks and social fields that link local with national and international interests – this works through new communications such as the internet. With such intensified social relations, distant events can now have a rapid and major impact on local events, and vice versa. With the emergence of an "international civil society" (Fisher 1997) non-government organisations have demonstrated the ability to empower local lives and to create alternative discourses of development. The explosion of coalitions of transnational non-government organisations, especially in Asia, for example with Asia Forum, has been supported by the internet and international conferences. This meant that coalitions of community organisations with the support of transnational networks could make a difference – for example, the well-known international campaign against the World Bank-funded Sardar Sarovar project on the Narmada River in India (Fisher 1997: 484; 2009: 165-167).

Transnational advocacy is accelerating through non-government organisations and other social groups engaged in efforts to develop better policies and accountability mechanisms addressing development-forced displacement. Fisher (2009: 174) contended that contemporary studies of displacement also need to examine these evolving transnational dimensions: "At stake is an accurate perception of the relationships among local lives, local social movements, and global processes: how do studies of activists and their transnational connections, flows, and alliances contribute to contemporary understandings of interrelatedness between globalizing processes

and lives lived locally?" Evolving forms of transnational politics offer benefits but also pose dangers for local people, through four key trends. First, people threatened with displacement are increasingly forced to develop new alliances and political forms to resist or mitigate the likely negative impacts. Second, advocacy alliances increasingly change the information environment to influence policy and to alter power relationships. Third, engaging in such activities can be difficult to sustain and can have unintended effects on displaced people. Fourth, there may be tension between advocates' desires for democratic participation and the need for efficiency and effectiveness in improving policy outcomes. Fisher (2009) concludes that changing policies and laws requires more than best practices and new guidelines; it requires an understanding of these evolving transnational political processes.

4.6 Recognising social perspectives and local voices

Starting from the field-based perspective, anthropologists have, over decades, worked closely with non-government organisations, social justice advocates, staff of international organisations and others to introduce internationally recognised standards on involuntary resettlement. They have comfortably moved from fieldwork to policy work, making substantive contributions to both arenas. These efforts have begun to enhance national and subnational legal and regulatory frameworks.

As research deepens, anthropologists have engaged in building models to show how critical social and cultural factors are in the process of resettlement with development. Yet framing socio-cultural concerns in this arena dominated by international policy formulations and national laws is still a challenge. National laws rarely recognise social issues. Resettlement plans are generally cursory in their analysis of social and cultural parameters. In the context of their theory on routine and dissonant culture, Downing and Garcia-Downing have called for new concepts and objectives, an anthropological challenge with on-the-ground consequences for powerless peoples. Beyond the language of compensation, restoration and recovery, they call for new policy formulations to articulate the socio-cultural concerns, and the spatial and temporal organisation of those displaced. "An objective more attuned to the social dynamics of involuntary resettlement would be that meaningful, new articulation occurs when displaced persons can once more answer their primary questions: Who are we? Where are we? Where are we going?" (Downing and Garcia-Downing 2009: 244). This may be difficult, since those displaced have lost control of many aspects of their lives.

For those people who have been or are about to be displaced, disrupted and disoriented, meaningful participation may be the key to their survival and renewal. Meaningful participation increases the chances that those displaced will come to perceive themselves not as victims but as beneficiaries, proactively negotiating opportunities for benefit-sharing rather than disproportionately bearing the loss. Ultimately, the prospect of achieving negotiated settlements between public and private sector investors and local people, that reflect the development priorities of affected people in specific localities, may lead to more acceptable, equitable and socially sustainable projects.

Endnote

1. *The Guiding Principles on Internal Displacement* (United Nations 2004) were developed by the United Nations' Representative on Internally Displaced Persons (IDPs), Francis Deng, in 1998 in response to the fact that, by 1995, there were an estimated 20-25 million IDPs in more than 40 countries. Because they had not crossed an international border, these people were not benefitting from the specialised protection of international refugee law. The Guiding Principles focus primarily on people uprooted within their own countries by armed conflict, ethnic strife and human rights abuses (IDMC 2009).

Chapter 5: A no-displacement option? Rights, risks and negotiated settlement in development displacement

Introduction

The chapter addresses research question 1, which tests whether evidence-based feedback from resettlement policy application, when reflected in revised resettlement policy and practice, has been effective in reducing or eliminating resettlement failure. The chapter explores the extent to which the experience with negotiated settlements between developers and affected people draws on past experience of failure and produces usable lessons learned on addressing asymmetries of information and power. The chapter also peripherally addresses research questions 2 and 3 on lending culture and country frameworks respectively through asymmetric negotiated settlements and the notion of "consent" to displacement.

The concept of "voluntary" – as opposed to "involuntary" – displacement and resettlement is finding growing support. Choice is certainly preferable to displacement by force – it is buttressed by ethical perspectives and by the discourse on the "empowerment" and "participation" of development-affected people. Taking an ethical perspective, for example, Drydyk (2015) distinguishes between "voluntary" and "forcible" displacement in considering whether people should give up their land for development projects. Penz, Drydyk, and Bose (2011: 233) contend that the consent of people displaced is essential for private development – which, they argue, should not be backed by the state with its sovereign rights to act in the public interest.

Negotiated settlements between "willing buyers and willing sellers" of land avoid the often inflexible, cumbersome processes of development-forced displacement and resettlement (DFDR) using eminent domain and other state-sponsored legal and regulatory instruments to acquire, expropriate, or convert land for developments "in the public interest". Most forced displacement and associated planned group resettlement is considered to be spatially complex and intrusive (de Wet 2015); under-resourced and essentially disempowering (Scudder 2005a); disruptive of routine culture (Downing and Garcia-Downing 2009); and creating multi-faceted impoverishment risks (Cernea 2003). The negotiated agreement intends, in effect, to avoid such risks by rendering involuntary resettlement voluntary.

The concept of consent-based voluntary negotiated settlements finds support in international DFDR policy guidelines in different ways. Some international financial institutions encourage – but do not mandate – private developers to avoid forced displacement by negotiating settlements directly with potentially affected people. This means gaining the informed consent of willing sellers, even if the willing buyers have the legal means to obtain land without the sellers' consent (for example, European Bank for Reconstruction and Development (EBRD) 2008). With certain provisos met, such settlements excise the displacement from the DFDR policy coverage. The negotiations must be genuinely voluntary land transactions in which the buyer offers the seller compensation at replacement rate; the seller gives informed consent and is not obliged to sell, while the buyer cannot resort to forced expropriation or other compulsory procedures sanctioned by the legal system of the host country if negotiations fail (International Finance Corporation (IFC) 2012). In other words, no threat should undermine the negotiations. This article characterises such approaches as "risk-based" approaches because the guidelines address the risks of displacement and impoverishment as potential costs to be weighed against the benefits of investment.

"Consent" resonates also with the human rights perspective, particularly with the concept of free, prior and informed consent (FPIC), which bestows on indigenous peoples a choice to give or withhold consent over developments affecting them (UN 2005: 15).[1] Article 10 of the United Nations Declaration on the Rights of Indigenous Peoples (UN 2007), stating that no relocation shall take place without the free and informed consent of the indigenous peoples concerned, applies to both public and private projects. This extends the concept of consent more generally so that it is integrally part of two key UN guidelines which articulate strong protective normative standards[2] for anyone affected by DFDR.[3] While offering no specific view on private sector negotiated settlements, nonetheless "project managers and personnel … transnational and other corporations … should take note" (UN 2005: 5) and "respect the human right to adequate housing, including the prohibition on forced evictions" (ibid 73). The subsequent passage of the UN's Guiding Principles on Business and Human Rights (UN Global Compact 2011) confirms the application of human rights to business. This article characterises such approaches as "rights-based" approaches because they treat the potential harms of displacement and impoverishment as human rights violations.

This chapter explores the central question, with reference to private sector developing country investments that entail land transactions: do voluntary negotiated agreements succeed in

avoiding the risks of involuntary displacement and resettlement? The answer appears to be "no, except care is taken". The chapter is structured as follows. Voluntary negotiated agreements are contextualised in a rapidly changing global investment terrain with raised stakes on land transfers. Examining the distinction between voluntary and involuntary finds a continuum rather than a rigid dichotomy, confirming that negotiations should take place without any pressure or duress. Then, case study analysis suggests strongly that asymmetries between buyers and sellers compromise negotiation outcomes unless they are effectively addressed.

The search for strategies that help to address unequal power relations in negotiation and give the people affected a meaningful "no-displacement" option compares and contrasts rights-based and risk-based approaches. The chapter concludes that it is no easy task to ensure that voluntary agreements are truly voluntary and avoid the problems of DFDR.

5.1 Land agreements in complex terrain

Negotiations on land take place amid escalating pressures: rapid development, population growth, threatened food security, and escalating ecological imperatives, for example, biodiversity protection and the search for land for biofuel production. In the absence of any recognised globally mandated monitoring and reporting mechanism, there are only educated guesses for the number of people forcibly displaced. The number of people engaging in negotiated agreements on land transfers, under whatever terms, is not known – it may be even more difficult to estimate given the commercial confidentiality of many transactions involving land.

Complex processes of change in rural and urban land uses increasingly feature land regularisation, agrarian transformation, mono-cropping and conservation, which all affect land use (Hall et al 2011). Land transfers involve a multiplicity of actors – public, private, national, international, corporate, and individual – encompassing multiple land use and ownership forms including contracting, leasing, and purchase. The transfers may be arranged through central or local governments or negotiated directly with landholders, if state law permits (in some countries it does not). Rapid land transformations occur through complex interactions between market, regulation, and coercion in specific sites, often pitting small landholders and users against powerful developers (ibid).

Land expropriation laws vary between countries, but the end results often appear similar – and raise controversial issues. The most vulnerable, including those without legal or legalisable title to land, often lose out first and lack alternative livelihood means, while customary rights to land are often lost permanently, with limited or no compensation. Weak consultation processes have led to uncompensated loss of land rights, especially by those without documented title to their land (World Bank 2011). In some cases investors have exploited local governments and communities to co-opt local leaders or in other ways strengthen their negotiating position (ibid).

From the perspective of both rights-based and risk-based approaches, the plight of the relatively powerless, land-dependent, displaced land users has prompted responses that endeavour to protect them. Both rights and risk-based approaches promote greater efforts at consultation, including transparent negotiations, community consultations, and binding agreements on land transfer, with mechanisms for monitoring and grievance redress. From the risk perspective, several international institutions prepared a set of guidelines for voluntary adoption by agricultural industry corporations (the RAI Principles).[4] These call for, among others, recognition and respect of existing users, transparent land governance, consultation with all users with agreements being recorded and enforced, and for projects to generate desirable social and distributional impacts and not to increase vulnerability.

While international human rights law does not codify a right to land specifically, nonetheless access to land becomes a pre-condition for realising a range of other rights. Rights-based recommendations focus on protecting food security, recognising land rights, legalising land rights, and recognising both use and ownership rights, as well as customary and collective rights. This entails anti-eviction laws and clear procedural safeguards for landowners, including subsistence herders, fisher folk, and farmers, including women. Preferring development models that do not lead to eviction, disruptive shifts in land rights or increased land concentration, the recommendations protect against encroachment by foreign and domestic private parties (de Shutter 2011). Principles safeguarding transparent investment negotiations prior to any shifts in land use require FPIC from the land users for any investment project.

The sensitivities surrounding land issues, and these widespread risks for land-dependent rural poor in particular, confirm the need for caution in undertaking voluntary negotiated agreements, as shown in the next sections.

5.2 When is resettlement voluntary?

Different understandings distilled from research findings have blurred the distinction between involuntary and voluntary displacement in migration studies – and in DFDR studies (McDowell and Morrell 2010). Arguably, any migration occurs due to some deficiency or involuntary trigger in the locus of origin; while any completed resettlement might be considered "voluntary" if people affected had agreed to cooperate, however unwillingly, with resettlement planners, even to exercise certain "voluntary" housing or livelihood choices despite an overall "involuntary" resettlement frame (ibid). Turton (2003a) felt that that "involuntary" should not be taken to mean removing human agency altogether.

Cognisant of the risks to the living standards of those people forcibly displaced, some conservationists have been willing to accept voluntary, but not involuntary, displacement and resettlement for parks and other protected areas. Digging deeper into negotiated agreements, however, has undermined claims of voluntarism in a number of conservation cases. Schmidt-Soltau and Brockington (2007: 2185), among others, proposed a range of categorisations, or typologies, of migration, arguing that consent to movement "is won by diverse mixtures of force, argument, and appeal to self-interest or higher moral values".

If we assume a similar spectrum for private investments, one end of the spectrum is involuntary displacement, for example, where private developers ask the state forcibly to clear land prior to their involvement (Oliver-Smith 2010; Hall et al 2011). At the other end of the spectrum, and even where permitted by law, good practice for voluntary resettlement is still emerging. The continuum encompasses cases of displacement using various forms of disinformation, persuasion, coercion, threat, or force. Basic conditions for good faith negotiations between potential displacers and displacees may be less than fully developed, permitting loopholes in the timely dissemination of information, in the consultation process, in negotiations, and in the preparation of the contract documents.

Private sector resettlement may appear outwardly and ostensibly voluntary, the people displaced "having accepted a sum of money in exchange for their land" (Oliver-Smith 2010: 32). But contracts covering land transactions that appear to be freely and voluntarily adopted by "autonomous and equal economic actors" (ibid: 154) may mask various kinds of pressure and coercion. Protests erupting after the conclusion of negotiations indicate that the resettlement

may have been less than fully voluntary. Such protests have delayed new investments and risked the closure of established ones around the globe (ibid).

Corporate statements may stand in stark contrast to the situation among affected communities. Padel and Das, for example, have highlighted the "glaring discrepancies" that often occur in India between even generalised corporate statements of good intent, carefully packaged by public relations firms in London, and the impacts on communities, including tribal people, that demonstrate impoverishment and devastating cultural disruption (Padel and Das 2011: 157).

The next sections explore the extent to which asymmetries in information and bargaining power between "willing buyers and willing sellers" may intensify difficulties and undermine the fairness of the negotiation process, before turning to what might be done about it.

5.3 Asymmetries between buyers and sellers

Several international financial institutions, supporting the use of negotiated settlements for land transfers, recognise the potential inequality, for example:

> Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. (EBRD 2008: paragraph 5)

Instructions require timely information disclosure to people potentially affected before negotiations begin. IFC's Guidance Notes (2012), for example, require the developer to provide sellers with information on current property values and methods of value appraisal, plus a supplemental resettlement plan to meet IFC standards if the sellers are to lose their houses; or a compensation framework when livelihoods are at risk.[5] Another key multinational development bank requires the project proponent to "develop procedures in a transparent, consistent, and equitable manner" to ensure willing sellers "will maintain the same or better income and livelihood status" (ADB 2009: 17). It also requires developers to "address the risks of asymmetry of information and bargaining power of the parties" by engaging an independent external party to document the negotiation and settlement processes; and by meeting the

lender's consultation requirements, using third-party validation; mechanisms for calculating the replacement costs of land and other assets affected; and record-keeping requirements (ibid: 5).

A World Bank (2011: xl) study noted the preconditions for genuinely voluntary settlements: the sellers should be "aware of their rights, the value of their land, and ways to contract and have assistance in analysing investment proposals, negotiating with investors, monitoring performance, and ensuring compliance". The same study, however, found investors actively seeking out states marked by weak governance and weak protection of vulnerable landholders. Several studies of the negotiation process and its outcomes provide valuable findings on the extent to which this is – or is not – happening.

A study of 41 agreements negotiated between indigenous Australian communities and mining developers found that negotiated agreements potentially protect indigenous cultural heritage more effectively than do government regulatory instruments, but only if the negotiations recognise indigenous land rights and, additionally, address underlying weaknesses in the bargaining position of indigenous peoples (O'Faircheallaigh 2008). The author offered Environmental Impact Assessment (EIA) and Social Impact Assessment (SIA) as ways of clarifying longer term likely impacts in the landholders' environment and ways of life; as well as offering a framework requiring documented and transparent consultation and public hearings. Yet, even if required, EIA and SIA offer little protection if they are conducted without reference to land-holder possessory rights, limited in scope, routinely ignored in decision-making or conducted only after the project has been approved.

Surveying a wide range of land transfer agreements for burgeoning agriculture projects in the developing world, Narula (2013: 40; 114ff) concluded that negotiations between investors and land users "lack transparency, disregard land users' rights and are concluded without meaningful consultation". Since in many cases states do not formally recognise customary use rights of people occupying the land, there is no formal need for local discussion and consent – nor any compensation to land users for their loss. When they do occur, negotiations are often "plagued with procedural flaws that taint the actual terms of the agreements". Consultation with communities utilising the land to be taken may be non-existent or limited in time and scope to some members of a land-owning group at the expense of other members. Contracts, if they exist, may be vague and lack accountability or pre-defined sanctions in case of non-compliance. Impacts may fall disproportionately on the most vulnerable families, those without land title

who depend on subsistence farming, herding, forest products or fishing for their food supplies (ibid). Compensatory benefits – jobs, revenue generation, food supplies – often fail to materialise, while environmental damage, conflict and loss of water supplies may increase.

Even where country legal frameworks explicitly recognise customary rights, those rights may be ignored in practice. In Cambodia, for example, the 2001 Land Law sets out the rights to collective land ownership of indigenous peoples through a set of steps that involve community consultation and land registration. Subedi (United Nations 2012) and others have documented a rush of land concessions and large-scale development projects on indigenous lands that have, however, meant that, in practice, "there is little or no land left for the indigenous peoples to register". The introduction of new farming techniques on indigenous lands without meaningful consultation with indigenous peoples, let alone their consent, has threatened their traditional farming systems and their food security, pressuring them to negotiate unfamiliar labouring jobs with foreign companies. Those jobs are not well monitored to ensure they meet domestic and international standards in the terms of engagement or working conditions, putting vulnerable people, many whom are not able to communicate in Khmer, at significant disadvantage in asymmetric labour negotiations (ibid). Land-related dispute resolution mechanisms, whether judicial or non-judicial, provide little hope for consistent, fair resolution free from political influence (ibid).

"Negotiation between unequals" results from the underlying asymmetries between developers and people in the way (Oliver-Smith 2010: 191). Reviewing a range of case studies around the globe Oliver-Smith (ibid) described the "cultural gaps among the parties entering into negotiations" in which participants are not mutually familiar with the cultures, values, norms, or conventions of ordinary behaviour regarding issues of conflict and communication. Such gaps can reduce the possibility of fair and just outcomes. The balance of power and relative power status of the participants are crucial variables in negotiations, seriously affecting the possibility of establishing fair and equitable interactions and outcomes among them (ibid).

Hall et al (2011: 140) found, across Southeast Asia, that even smallholders willing to sell up to developers face market conditions biased against them by regulatory decisions and unequal market power – and use of underlying threat of force for those unwilling to sell. The alignment of political elites with private developers to open up new zones for investment presents a powerful combination that may overwhelm the negotiation with people in the way. In the

resources sector, states may align with security forces and developers to enforce local submission to uncompensated or undercompensated resource loss (Ross 2008).

Attempting to measure and value assets according to their own perspective, elites may simplify complex domains of identity, belief and tradition by assigning unnaturally low monetary values to land and other assets. For example, the concept of FPIC recognises the rights of indigenous communities to collective, rather than individual, decision-making. Community members may take different positions in the negotiation process, reflecting a range of perspectives on the value of community land and the desirability of keeping it. If the resource developers assume that certain individuals can, as autonomous actors, speak for the resource-owning collective, this assumption may lead to distorted decisions that exclude some legitimate members of the collective and foster community conflict (UN 2005: 12). Unregistered customary land and other resource claims may further complicate the process of valuing entitlements among the affected people, as negotiators scramble to record all of the customary landowners and users, including those who may have moved away.

Project models may offer little protection for the intended willing sellers. Whereas international trade and investment arrangements legally protect corporations, state law may offer limited protection to its own land users, especially smallholders without legal land title; while pro-business investment frameworks limit state revenue generation-supporting expenditure for the public good. Baker (2011) contends that it is the very nature of the project finance form, which serves to offload risk to investors through high amounts of non-recourse debt,[6] low initial equity contributions, and the use of a special purpose vehicle to manage the project. Through this structure, investors control the terms of their investment via private contracts, replete with the checks and balances necessary to work in less well-developed regulatory regimes. This means that, while the private management of risks yields substantial rewards for developers, it has "effectively excluded the public from meaningful, consensual, participation in large-scale projects" (Baker 2011: 311). In a case study, Baker showed how using private land contracts to set out the terms of engagement between indigenous individuals and private entities means overriding traditional decision-making mechanisms, weakening connections with the state, and severing spiritual, physical and historical connections to the land (Baker 2011: 298).

New financiers from emerging economies may accentuate some of these problems by prioritising cost competitiveness and completion time, in frameworks in which EIA and SIA

have been less frequently required or practiced. Such projects tend to have shorter approval times, with less scope for local consultation processes, feasibility studies, and social and environmental safeguard application (Mwase and Yang 2012).

In the absence of a no-displacement option, resistance by people about to be displaced may be the only path left, as key actors make strategic and tactical choices about whether to engage in advocacy or to craft paths of avoidance and resistance (Lustig and Kingsbury 2006: 406). Outcomes from these choices depend upon the configuration of circumstances, including the level of openness in society to allowing contemplation of alternative development strategies. The next section discusses the strategies on offer to address asymmetries in information and bargaining power on negotiated land deals.

5.4 Strategies for enhancing the bargaining power of "willing sellers"

The World Commission on Dams (WCD) (2000) addressed asymmetric power relations in DFDR by recommending a process of inclusive negotiation it hoped could essentially render involuntary resettlement voluntary, through a series of carefully executed steps, with independent checks at key points in the identification, selection, and preparation of reservoir projects. Penz, Drydyk and Bose (2011: 304) suggested a similar process of power transfer from displacers to displacees, such that "the displaced engage with and become power holders themselves in order to overcome the contrary resistance of current power holders". Are power relations amenable to such ideas? As Lustig and Kingsbury noted, a WCD member, Patkar, dissented from the WCD recommendations because:

> Even with rights recognized, risks assessed, and stakeholders identified, existing iniquitous power relations would easily allow developers to dominate and distort such processes … understanding this takes us beyond a faith in negotiations. (World Commission on Dams 2000: 349-50)

Is Patkar right, that neither rights-based nor risk-based approaches provide protection against the exercise of asymmetric power relations in negotiation? From the ethical perspective Drydyk (2015) responded that, while the WCD was on the right track, treating all stakeholders equally gives more powerful stakeholders an opportunity to steer results in their own direction. Priority, therefore, should be given to strategies for reducing poverty and social inequalities – in effect,

the need to address underlying asymmetries that disadvantage the weaker party in negotiation. Next, this chapter asks what rights and risk-based standards offer in answer to this question, before examining a case study in more detail.

Both rights-based and some risk-based standards emphasise the importance of timely consultation, the consent of the “willing sellers” and the governance framework that can ensure fair play and redress mechanisms for them. Addressing asymmetries between the bargaining parties requires attention to various factors. These include governance and regulatory frameworks that can manage “inclusive and participatory consultations that result in clear and enforceable agreements” (World Bank 2011: xxxiii); backed by a level of transparency and openness on alternative development strategies. Power-sharing arrangements, transparent legal procedures and contracting arrangements may provide stronger protection to willing sellers as well as to corporations. But there are significant differences in approach between rights and risks on the purpose of these arrangements.

Risk-based analyses tend to articulate the problems of land deals in terms of weak land governance that neither protects land users nor compensates them properly. This failure entails denying land users inclusive consultations, voluntary and informed agreement that results in enforceable settlements, with consequent resource conflicts, gender and distributional problems. These risks are to be overcome through land transfers that are based on good information to users on land prices and plans; and good land governance that assists users to be aware of their rights, the value of their land, and contracting methods, and to develop skills in negotiation, performance monitoring, and ensuring compliance (ibid). The deals should not involve expropriation for private purposes. All of this should ensure a good investment climate, so that, for example, in the agricultural sector, the “rising global interest in farmland contributes to results that are sustainable and equitable” (World Bank 2011: xv). This approach leads to a focus on procedures for information sharing and consultation (Narula 2013), rather than on addressing asymmetries in bargaining power.

In contrast, the rights-based approach focuses on consultation as a means to value land as a rights-fulfilling asset. This approach places great emphasis on the identification and confirmation of entitlements among land users in order to secure their livelihoods and greater social security. This extends to envisaging alternatives to large-scale land transfers, calling for legal reforms to strengthen tenure security – which would strengthen the bargaining power of

the willing sellers. In the agriculture sector, rights-based approaches promote state-led agrarian reforms to support small-scale farming and to achieve more equitable land distribution (de Shutter 2011).

5.5 Asymmetries in bargaining power: an example

Chapter 3 explained how a "model" project integrated both the risk-based concept of "resettlement with development" and human rights approaches into a new project model. The chapter explained the complex situation that challenges outcomes. Observers have praised the introduction of the Voluntary Principles on Security and Human Rights into the model project operations, although they are "distinct from any grounded in international law" (McDowell and Morrell 2010: 72). Chapter 3 explained how the company endeavoured to take a neutral security stance by developing independent security protocols and hiring staff locally, while also boosting local social and governance capacities, and supporting new revenue-sharing arrangements.

This project model was developed partly to differentiate the new project from the Freeport McMoran Grasberg mine in neighbouring Papua province; and partly to demonstrate to apprehensive home country board members, investors and international civil society more widely that it was possible to work successfully in such a polarised situation, despite the legacy of intense controversy over the Grasberg mine. The sense of dispossession and violation for indigenous communities around the Grasberg mine and its heavily despoiled surrounds was magnified by its historical entry point, chronologically and thematically linked with the contested act of incorporating the former Dutch East Indies into the Indonesian state (McKenna and Braithwaite 2011). For the company, partnership with the state was more important than community relations, with the mining company building relations with the highest levels of political and military state power during the Suharto era. The company's blank cheque approach of financing local security forces resulted in numerous human rights violations (Ballard and Banks 2009). Although Freeport McMoran has subsequently adopted a CSR policy, its response to criticism has been "through more and more distribution of material benefits, which again fails to resolve the underlying grievances in its political context" (McKenna and Braithwaite 2011: 325).[7]

The Grasberg mine's hugely profitable rents went straight to Jakarta and did little to benefit the indigenous people (Resosudarmo and Jotzo 2009). This is the most undeveloped region in Indonesia, with high levels of poverty, corruption, and weak governance structures. In short, "the central government has been unable to support a level of social and economic development in Papua commensurate with the value of the rents generated from natural resource exploitation in the province" (ibid: 23).

The liquefied natural gas (LNG) project, in contrast, endeavoured to adopt a different approach. Bader (2014: 32) described how, in 2000-02, in order to address the concern of stakeholders that working in Papua would "stir up human rights tensions", the project operator commissioned a human rights report that recommended recognising and addressing human rights through indigenous peoples' protection, labour and, of critical importance, security issues. This called for policies, management guidelines, and implementation plans that educated affected stakeholders regarding their rights and enforced respect for those rights – including customary resource ownership rights.

The public posting of a number of project documents, monitoring reports, and the negotiated original agreements with people displaced to make way for the LNG plant in the appendices of the resettlement plan represents a relatively rare example of private sector transparency on the issue of negotiation. These original negotiations took place under an earlier operator prior to the formulation of the project's rights and risks model and were based on national compensation standards. For the LNG project, the claim of "resettlement with development" meant supplementing the initial set of agreements negotiated with the land-losing clans around the LNG processing plant, with additional entitlements to reach and exceed both national and international resettlement standards. The resettlement plan articulated an objective to "improve" rather than simply to "restore" living standards and livelihoods.

This project has been commended by many Papuans for its efforts to avoid the mistakes of Freeport and to recognise the rights of local people through engaging in a number of community initiatives which "do not directly set out to challenge or engage with recommendations for a historical review of the Act of Free Choice that integrated Papua region into Indonesia" (McKenna and Braithwaite 2011: 325-6). Rating the community initiatives as "practical strategies, which indicate awareness on the part of the company of the injustices that Papuans have experienced as a result of resource development in the hands of the Indonesian government"

(ibid) the authors praise the initiative to undertake the "first human rights impact assessment to ever be conducted by a resource company in Indonesia" (ibid). They recognise, however, that it is always possible for military forces to infiltrate the local security service (ibid: 329).

Despite its complex and polarised operating environment, this project has escaped the local and international notoriety of the Grasberg mine, allowing the LNG extraction and processing to proceed as expected. Yet, despite a model that endeavoured to establish a high standard of both rights and risks, some affected people have still contested the agreements on the grounds that they did not reflect either fair compensation for the loss of customary clan land or the principle of FPIC (NGO Forum 2006). In addition, NGOs and researchers have queried whether the revenue distribution would meet local expectations for balanced economic and social development, and raised the possibility that this is a case of investors actively seeking out a situation of deeper asymmetries to secure a favourable deal with little opposition from local people. This two-part negotiation demonstrates the difficulties of addressing asymmetries in practice. The first stage of negotiation did not offer a no-displacement option and worked within domestic law. The second stage was intended to offer complementary contributions from rights-based and risk-based approaches to demonstrate a more enlightened way of proceeding than had hitherto marked resource extraction in this region. This included the rights-based recognition and protection of key groups, including women, linked to improved living conditions and recognition of customary resource use. It was intended to avoid human rights violations such as forced evictions. It also included risk-based objective-setting, entitlements setting that took account of customary claims, and detailed planning tools, including extensive consultation and, later, a grievance redress mechanism for people affected. The final package of entitlements added some important elements: compensation for additional tree crops; a higher standard of housing and resettlement site facilities; compensation for loss of marine resources with larger boats, outboard motors, and a foundation offering annual payments to resource losers; development of a seasonal fishing and sago outpost with land access to it; unskilled labour opportunities in the project construction phase; and a full programme of training opportunities for the people affected.

Both approaches in this case contributed to starting processes that helped to improve the information flows to the people affected, and to boost their entitlements above the original levels contemplated. These affected people have, generally, received a higher-level package in total than they would have received if involuntary legal instruments had been applied. That the

negotiation was subsequently contested confirms the difficulty of satisfying all parties that the negotiation has been fair and has offered a genuine no-displacement option.

The LNG negotiations were clearly project-led, and focused on how to conduct the resettlement, not on whether the resettlement should be conducted. Could such negotiations become a "real test of the social justice credentials" in which "it is indigenous people who set the framework for negotiations, as opposed to the developers leading and convening consultations with indigenous peoples?" (McKenna and Braithwaite 2011: 235). Turning this around to give greater power sharing – even the lead to local people – in setting priorities and selecting projects would constitute a major further step towards increased agency, and empowerment, for people affected.

5.6 Conclusion

Land transfers take place in countries marked by significant power differentials between the actors. Host governments do not necessarily act to protect weaker parties. Rights-based documents (for example, UN 2004 Principle 6 (2c)) accept development displacement if it is "justified by compelling and overriding public interests". But states can readily claim, virtually unchallenged, a public interest rationale for almost any investment on grounds of economic development, including investments that benefit narrow interests rather than wider society and vulnerable groups in particular.

Several rare initiatives may herald the beginnings of a move towards enhanced state governance on this issue, as explained in Chapter 6. Information sharing – the timing, quality, distribution and coverage of the information as a basis for consultation – is important but by no means sufficient to address the power plays that are integral to decisions on land use. Policies, laws and strategies to set standards that protect and empower the poor and vulnerable are essential. Social and environmental impact assessments, together with the growing use of human rights impact assessment (Kemp and Vanclay 2013), may offer additional strategies that clarify the full range of impacts for negotiating parties. These frameworks may offer more hope of becoming integral to decision-making if the parties become "rightsholders" rather than simply "stakeholders" (ibid), with supportive laws with robust grievance redress mechanisms, clear procedural checkpoints for consultation and third party monitoring of negotiations. These and

other strategies to address bargaining asymmetries directly and offer willing sellers a no-displacement option urgently need application, testing and refinement.

Endnotes

1. FPIC was adopted by the Human Rights Council in the draft UN Declaration on the Rights of Indigenous Peoples.
2. The standards, founded on human rights obligations, are non-binding in themselves unless adopted into state law.
3. First, Guiding Principles on Internal Displacement (United Nations 2004) highlight the plight of forced internal migrants from conflict, natural disasters, climate change and DFD. The Guiding Principles aim to protect all internally displaced persons by identifying their rights and guarantees in all phases of displacement. DFD is acceptable providing that it is justified by "compelling and overriding public interests" (ibid Principle 6 (c)). Protection against arbitrary displacement requires exploring all feasible alternatives to avoid or minimise displacement. FPIC must be sought before any remaining displacement occurs. Second, the UN's Basic Principles and Guidelines on Development-based Evictions and Displacement require efforts to eliminate evictions that result from speculation in land and real estate, after which "unavoidable" evictions may still be necessary for the general welfare.
4. World Bank Group, UN Food and Agriculture Organization (FAO), the International Fund for Agricultural Development (IFAD) and the UN Conference on Trade and Development (UNCTAD) 2010 Principles for Responsible Agricultural Investment that Respects Rights, Livelihoods and Resources ("RAI Principles").
5. The Supplemental Resettlement Plan is required where government standards do not meet IFC's Performance Standard 5. It includes at a minimum: (i) identification of affected people and impacts; (ii) a description of regulated activities, including the entitlements of displaced persons provided under applicable national laws and regulations; (iii) the supplemental measures to achieve the requirements of this Performance Standard. The Compensation Framework identifies all affected people and affected assets and describes the methods proposed for valuing assets at full replacement cost, the compensation rates, scheduled land take, compensation payments and their delivery, together with avenues for appeal.
6. If the borrower defaults, the lender/issuer can seize the collateral which secures the loan but the lender's recovery is limited to the collateral.
7. After riots in 1996 that closed production, the company began dedicating 1 per cent of its takings to local social development activities.

Chapter 6: Looking back on development and disaster-related displacement and resettlement, anticipating climate-related displacement in the Asia-Pacific region

Introduction

The realisation that climate change will likely result in population displacement[1] sparked analyses of what this might mean and triggered a spate of international meetings and reports.[2] Of particular interest to policy makers, practitioners and researchers, initially, was the relatively long-standing experience of development-forced displacement and resettlement (DFDR) as it may apply to various emerging climate change scenarios, especially slow onset change, mitigation and adaptation projects, where there is lead-in time for planning (de Sherbinin et al 2011). DFDR approaches were already being adopted into resettlement as disaster prevention strategies to protect lives and assets of people at risk of disasters. The method proposed for planning, implementing and monitoring disaster-related resettlement was very similar to that proposed by the World Bank for DFDR (Correa 2011: x).

It was expected, initially, that any such resettlement "will be managed within the existing national and international policy and legal frameworks that currently determine land acquisition and resettlement policy and practice in both the public and the private spheres" (McDowell 2011: 11). On closer scrutiny, however, specialists decided that this prospect held no guarantee of just and fair outcomes for people affected. McDowell concluded that research globally "has catalogued the multiple impoverishment risks generated by failures in involuntary resettlement and the weaknesses in the legal and policy frameworks to protect affected populations against both legal and illegal displacement and resettlement" (McDowell 2011: 12). These failures included resettlement resulting from public interest expropriation laws and from private sector projects and public-private partnerships regulated by governments (McDowell 2011: 12).

Beyond the legal frameworks lay procedural problems also. Wilmsen and Webber, in a political economy analysis, attributed DFDR's all-too-frequent outcomes of impoverishment for people affected to the failures of development practice, which barely recognises affected people as capable; fails to question development as an approach to improving resettlement outcomes; fails to recognise the politics at play in identifying people affected and the remediation strategies; and perpetuates a simplistic understanding of community dynamics and livelihoods (Wilmsen and Webber 2015a). Among others, complementary explanations for failure cite

overly complex and unrealisable resettlement plans (de Wet 2006); insufficient participation of people affected in risk analysis (Xi et al 2015); or, from an ethical perspective, their insufficient empowerment (Drydyk 2015). These assertions also raise questions not just about the original assumption that planning could resolve displacement risks, but about two related assumptions: (i) that substantive legal frameworks could be formulated and (ii) that they could be implemented through effective procedures in interaction with the people displaced. This chapter focuses particularly on substantive and procedural issues from an ethical perspective, based originally on work on state legal frameworks as a DFDR practitioner in the Asia-Pacific region and, more recently, as an observer.

Managing climate change fears is a delicate balancing act between hope and responsibility, in which anticipating impacts may not only be premature, unnecessary or misplaced, but may result in foregoing action to counter climate change. This balancing act applies particularly in the case of climate change displacement and planned relocation. Anticipating climate change displacement may undermine possibly successful adaptation measures (Barnett 2017). It may mean people are moved under a climate change banner to meet other agendas entirely (Arnall 2018). It may also raise false confidence in planned relocation as an easy option that is risk free for people displaced. But without forethought, desperate people, who in some cases are already attempting to move, could be left unprotected by law, without options and without support (McAdam and Ferris 2015).

The original World Bank involuntary resettlement policy of 1980 had been approved to fill gaps with state and substate compensation arrangements that left people displaced by bank-financed projects exposed to risk. Subsequent evaluation studies demonstrated repeatedly that the borrower legal and institutional frameworks, budgets and capacities were critical determinants of success or failure (World Bank 2012: 2014). The World Bank recently shifted its responsibility for its safeguards, including oversight resettlement, to its borrowers, raising the question of whether those borrower frameworks for DFDR are ready (Cernea and Maldonado 2018). Despite the significant increase in climate change state legislation generally, no state, developed or developing, has "institutionalized a governance framework, or enacted legislation, to set out whether, when, and how climate-induced relocation processes are to be carried out in a manner that would protect the human rights of those compelled by circumstances to relocate themselves or to be relocated" (Bronen 2018: 210). Without proactive countermeasures, climate change relocation may be unjustly promoted for other agendas, or the "unjust relocation policies"

of other forms of displacement may be replicated (ibid). Such concerns serve to reinforce attention on substantive and procedural changes and ethical issues in DFDR frameworks, as discussed further below.

Climate change specialists have now, more cautiously, differentiated between “resettlement as adaptation”, which encompasses voluntary migration in response to climate change, and “planned relocation” referring to state-led programmes (Arnall 2018). Cautious because the state’s role in past relocations can leave a legacy that perpetuates past injustices in addressing “resettlement as adaptation”. Planned relocation is considered more likely to succeed where governments are relatively transparent and trusted by the people, than if they are not trusted to uphold people’s rights (United Nations High Commissioner for Refugees (UNHCR) Brookings Institute and Georgetown University and International Organisation for Migration 2015 and n.d.). Trust levels may be assessed by observing government attitudes to rural people and the track record in state-led responses to climate shocks and stresses (Arnall 2018). This chapter assumes that DFDR legal frameworks and procedures may also be taken as indicators of likely official attitudes towards climate change relocation. Arnall has advanced three principles for resettlement as adaptation. First, it should be undertaken only as a last resort, both to see how climate change impacts occur to prevent unnecessary relocations and to reduce the risk of relocation under climate change pretexts for other political and economic agendas. Second, resettlement should be voluntary. Third, resettlement should be developmental, that is, aiming for enhanced socio-economic outcomes for those people resettling, rather than simply restoring them to their pre-existing vulnerabilities (Arnall 2018).

These principles echo those of the scholarly research based on policies on involuntary resettlement, but also differ in emphasis. This chapter, therefore, also assumes the DFDR legal frameworks will offer some insight into how these principles are addressed.

This chapter first compares policy prescriptions with research perspectives on the causes and remedies for displacement. Some similarities and differences are drawn out, primarily between development displacement and climate change displacement, based on which key variables are identified that are important to both DFDR and climate change displacement. Given the now heightened prominence of these state frameworks, a database of 40 Asia-Pacific state legal and regulatory frameworks for DFDR is presented and analysed to find out how each of the states perceives displacement in the context of land governance and whether, and, if so how, any of

these issues have been addressed in the legal framework.

Displacement often means powerlessness for the people displaced. Strong laws backed by state powers may mediate or exacerbate the powerlessness that people experience. Powerlessness results from loss of access, and access is influenced by rights (whether legal, legalisable or customary) and norms (Kabra and Drydyk 2018). From an ethical perspective, some of the ways in which legal and administrative frameworks mediate those processes are examined to determine the outcomes substantively and procedurally. As calls mount for climate change laws, the chapter concludes with some suggestions from DFDR experience for addressing climate change displacement, should it occur.

6.1 The origins of DFDR policy and procedures

The World Bank in 1980 first approved an operations manual statement on involuntary resettlement. That early formulation is taken as a baseline for this analytical update close to 40 years later. The original World Bank policy introduced a set of steps and procedures that were intended to work within the project cycle for lending purposes, designed to fill recognised gaps with state and sub-state compensation arrangements to address intangible losses; to ensure replacement compensation; and to ensure sustainable livelihoods and well-being (World Bank 1980). This reflected the World Bank's Charter that lending, intended for economic development purposes, must be directed to a government or guaranteed by the government concerned.

Subsequent policy refinements built upon these ideas (World Bank 1990). The overall aim was, after efforts to avoid and minimise displacement, to recognise social perspectives, to compensate through replacement, and to treat resettlement as a development opportunity through which the people affected could share the benefits. Resettlement planning and implementation procedures included key points for disclosure, consultation and grievance redress (World Bank 1990). The original policy was refined over time and has since spread through most international development banks, bilateral agencies and a key voluntary code for international project financiers, becoming, in the process, a well-recognised standard that aims to protect those in development's path (Cernea and Maldonado 2018).

Four key points from DFDR that are also now being echoed in environment and climate change

policy making and planning are selected and explored to learn from experience with DFDR implementation since 1980. DFDR expectations are compared with those of climate change planned relocations. The DFDR-related legal and regulatory database of 40 Asia-Pacific countries is then reviewed to establish how the points are addressed.[3] These four key points are: avoiding and minimising displacement; and, where unavoidable, analysing social perspectives; enhancing socio economic conditions of people affected, including the vulnerable; and enhancing participation together with free, prior and informed consent (FPIC). Ethical perspectives are highlighted throughout. Themes that are common to DFDR and climate change displacement are selected for more attention.

6.1.1 Avoiding and minimising displacement

The World Bank's 1980 policy recognised "the human suffering and hardship caused by involuntary resettlement, and therefore tries to avoid or minimize such resettlement whenever feasible" by reducing its scope to the minimum compatible with the project purpose (paragraph 17). Resettlement was conceptualised from its beginnings in 1980 as a social cost to be dealt with through technical re-design and mitigation, no matter the project rationale. It was not a factor expected to drive project decision-making but, rather, was a response and reaction to it. The subsequent "consultation" with affected persons was intended to address a range of technical choices. The policy acknowledged a political dimension with "a feeling of powerlessness and alienation" (paragraph 4) – this feeling was to be addressed through a planning process which avoided "welfare" approaches which might perpetuate that powerlessness.

Avoiding and minimising displacement is important also for climate change planned relocation. It takes account of risks for those displaced, but in different contexts. UNHCR's Guidance on Planned Relocations (2015), for example, is designed for several displacement types: disasters and environmental change, including climate change. While seemingly emulating DFDR policies and procedures in key steps – avoiding and minimising displacement, consultation and resettlement planning, displacement and rebuilding, monitoring and evaluation – yet the guidance includes subtle differences. Recognising the diverse origins of climate change activities, it starts with pre-set criteria for determining whether planned relocation is necessary. Adaptation and mitigation projects may displace people through infrastructure construction or land clearing for plantations and other purposes in ways that resemble DFDR projects; while

planned relocation may itself constitute a form of adaptation, as people need to move out of harm's way (UNHCR 2015). Governments may decide to relocate people without resources to migrate – "trapped" groups (Black et al 2011) – who are at risk of slow onset climate change effects or affected communities may themselves request planned relocation. Sudden onset events and disasters may necessitate planned relocation of populations already displaced. Those people are more likely to be poor or otherwise vulnerable, assetless, with few options, as others with more resources and choice will migrate out. The drivers of planned relocation overlap with DFDR drivers but are not identical.

Turning to the Asia-Pacific legal database, only six out of the 40 states examined have legislated measures to avoid or minimise displacement in their expropriation and land laws and other relevant laws and regulations. Cambodia's Ministry of Economy and Finance calls all ministries and institutions implementing physical infrastructure projects to cooperate with its Resettlement Department to examine ways to avoid resettlement impact during the project feasibility studies.[4] The Solomon Islands Environment Act 1998 specifically names resettlement and requires avoidance and minimisation of impacts. These deeper questions concerning the rationale for projects and questions over the public purpose have sparked public protests and official reflection in many states. Such protests have escalated with proliferation of new forms of financing compared with the situation of 1980. In China, for example, many "letters of complaint" are written when urban private sector interests emerge as the ultimate beneficiaries of relatively cheap rural collective land conversion to urban land; and in Vietnam protests result for similar reasons (Lindsay et al 2017). After much popular protest over expropriations, India's Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (LARRA) presents a remarkable model for determining the public purpose, requiring specific justification that the social benefits outweigh the social costs of displacement as defined through social impact assessment; ensuring the barest minimum of land is expropriated and requiring an act of free choice by those affected if private sector involvement is contemplated (Lindsay et al 2017). These requirements are, however, implemented unevenly at the level of India's states.

Most Pacific states have responded to public protest differently (Papua New Guinea excepted for public infrastructure projects), preferring to ignore their legal powers of eminent domain, which were largely inherited from the colonial era, in favour of negotiated leases with customary landowners for public infrastructure projects that give land access but do not

extinguish customary title in perpetuity. These approaches, in a sense, also reflect a more inclusionary notion of setting the public purpose as customary landowning groups in the Pacific, whose constitutional position is mostly strong, also must agree to negotiate on access to their own land. Timor-Leste, in contrast, does not yet formally recognise its extensive customary land holdings in law. Its newly approved, but not yet operational, Expropriation Law (2017) is innovative also in including strong limits on the public purpose for which the law can be invoked.

Ethically, avoidance and minimisation raise deeper issues on the decision-making around the public interest that states use to justify project proposals. The human right to development, based on "active, free and meaningful participation" (United Nations 1986) may require consent from those to be displaced (Kabra and Drydyk 2018). Public interest questions often merit wider public consultation and debate – over risky projects that cannot guarantee outcomes for people affected; over public interest projects that ultimately benefit private companies; or if projects add to global warming, for example.

6.1.2 Analysing social perspectives

In Vanuatu recently a *nemele* leaf was left on a small construction site near Port Vila. The international construction contractor reacted with alarm, knowing just enough about local custom to know that this was a sign to stop work immediately, not to enter the site, but to seek out the representatives of the customary landowning group to discuss the situation. The contractor turned to project managers who were able to reach the customary landowner representatives. The landowners were unhappy with progress on their land. They had not been informed about the main steps in construction work. They wanted to hear of the plans, see construction drawings, and negotiate a final stage of the lease payment before work advanced further. The negotiation and payment took two weeks – then, the original customary group representative returned to remove the *nemele* leaf and construction work resumed.

This example was not a case of compulsory acquisition of land for the project construction work. Vanuatu has compulsory acquisition legislation, inherited from the Condominium French-British colonial era which ended with Independence in 1980, but chooses not to use it. Rather this was a long lease negotiated with customary landowners who would not expect to relinquish their interest in the land. As in the Solomon Islands and elsewhere in most Pacific states,

customary land ownership has strong legal protection and comprises the lion's share of the land ownership in Vanuatu. Most independent states of the Pacific increasingly view powers of eminent domain as a politically risky and divisive tool of past colonial administrations that they would rather not use.

Connell and Tabucannon compared cases of inter-island compulsory expropriation that were possible under the common administration of British rule, for reasons of environmental change, disasters, mining and resource development. This intergenerational study, which spans up to 70 years, finds still unresolved issues around land tenure claims and intergenerational social legacies, no matter which type of displacement initially triggered the resettlement programme (Connell and Tabucannon 2015). The authors concluded that the closer the resettlement to the home location the better; the more preparation time and consultation the better; and that land tenure issues must be resolved at the outset. These resettlements were not isolated, once-off events but had impacts on sovereignty, identity, employment, land tenure and access to services, which all had a bearing on their ultimate success (Connell and Tabucannon 2015: 105). Resettlement was equated with disempowerment and loss of autonomy, which can be overcome by the consent of both parties, trust and "benevolent leadership" (Connell and Tabucannon 2015).

Adger et al (2011: 7) contend that climate change approaches and economics tend to "globalise" at the expense of valuing place and identity, which instead highlights the "local material and symbolic contexts in which people create their lives, and through which those lives derive meaning" (Adger et al 2011: 7). Moving beyond welfare and instrumental notions they consider also the neglected psychological and symbolic aspects of climate change resettlement, defined through social processes and relations, which have been neglected in climate change considerations to date. Such issues have pre-occupied DFDR researchers and model builders also – but are little reflected in DFDR legal frameworks and procedures.

From the DFDR model builders, Downing (2015) highlighted the multiple, historical, often forgotten negotiations between household members and among community groups and others that underpin production and social organisation, entire negotiated landscapes under threat; the challenge, with forced displacement, being to link in new, fast-paced resettlement negotiations with the pre-existing community negotiation framework to allow for choice. De Wet emphasised the complications of large DFDR resettlements – which, in their spatial complexity

may jeopardise policy goals, but also present often unexpected opportunities for the displaced to exercise their agency (de Wet 2006). Both approaches open up new perspectives on displaced people's agency and resilience (see also Oliver-Smith and de Sherbinin 2014a, b; and Weerasinghe 2014 for analyses of DFDR models and their application). All DFDR theoretical frameworks acknowledge that most forced displacement and resettlement results in impoverishment; all anticipate a resolution through recognising and addressing, in different ways, social, cultural, psychological and/or economic perspectives (Oliver-Smith and de Sherbinin 2014a, b; Weerasinghe 2014).

Alternative views seek, broadly, to widen the objectives to: give greater weight to social processes and poverty reduction aims (Downing and Garcia-Downing 2009); call for greater recognition of community resilience and agency (Singer et al 2015; Wilmsen and Webber 2015a); to address gender issues (Salcedo-La Vina and Morarji 2018) and psychological dimensions (Xi et al 2015). Such calls may align with calls for greater accountability, equity, and well-being, with stronger ethical positions, freedom from corruption; advocating empowerment and human rights approaches (Drydyk 2015).

The Asia-Pacific-wide database of legal frameworks offers glimpses on how sociological concepts translate – or stubbornly resist translation – into state frameworks, both substantively and procedurally.

The review of 40 Asia-Pacific laws and regulations for development displacement finds only a few countries requiring detailed social risk and impact analysis with census and survey; and only one requiring a gender analysis to determine risks and impacts for women specifically and how they might participate in planning and benefit from resettlement. Among those countries, Indonesia's Law 2/2012 requires socio-economic study and social impact analysis as part of the Feasibility Study (Article 15(2); it also, importantly, recognises non-tangible assets for compensation purposes (Article 33). Lao PDR's Prime Ministerial Decree no. 84 of 2016 requires similar studies. Timor-Leste's approved, but not yet operational, Expropriation Law (2017) requires detailed ex ante Social Impact Assessment (SIA), and negotiation. Sri Lanka's National Involuntary Resettlement Policy (2001) requires social analysis and is explicitly gender equitable but not legally binding. Finally, India's LARRA (2013) requires SIA for determining whether the project costs outweigh the benefits, as well as a comprehensive basis for planning compensation and other assistance. Many countries have an Environmental Impact

Assessment framework but, in most cases, these deal with social issues only in general terms, and do not require social assessments for different groups of risks and impacts arising through displacement.

6.1.3 Why enhance, not just restore, socio-economic conditions of those displaced, including for the vulnerable?

Climate change researchers highlight the importance of enhanced, not merely restored, socioeconomic conditions, including livelihoods, of those displaced (Arnall 2018). This position draws upon a longstanding DFDR debate. International involuntary resettlement policy objectives are usually expressed as to "enhance, or at least restore" the livelihoods and, in some cases, the living standards of people affected by development projects. Researchers, drawing upon case studies, contend that "restoration" is not enough to prevent impoverishment, and that livelihood enhancement is the only just objective that matches the overall development context (Scudder 2005b; Cernea and Mathur 2008).

Restoration, in this view, translates into impoverishment for several reasons. Planning lead times reduce the value of affected assets, while re-establishing after displacement is expensive (Scudder 2005b). The displaced people fall behind economically during the period of reconstruction – so they are "restored" to a lower starting point than that of their unaffected peers. In addition, standard economic analysis neglects the full range of difficult to quantify, non-tangible losses to their livelihoods and well-being (Scudder 2005b; Cernea and Mathur 2008). Scudder and Koenig have documented the failure of livelihood programmes for reservoir and urban sectors respectively (Scudder 2005a; Koenig 2006).

Livelihood objectives may seem overly narrow, particularly if reduced to measurement of income. Broadly defined, "livelihood" would encompass the knowledge and skills of production and marketing; the access to necessary services; and more know-how and resources to sustain livelihoods. From this perspective, livelihoods can be affected by the prevailing social and political scene; social relations (including work and production relations in households and communities); and governance, services, policy and institutions (Scoones 1999). Evaluation of other measures, such as living standards, well-being, quality of life and levels of satisfaction, would provide a richer and more rounded view of life after resettlement.

The line between public and private purpose is increasingly blurred, as new forms of financing, including public-private partnerships, appear. The pace of development and its need for unused land renders certain policy injunctions also unworkable – the requirement to provide replacement land for land dependent rural producers becomes increasingly difficult but, without land, livelihoods for producers without alternate skills become difficult to find. Human rights pose new challenges, including the right of indigenous peoples to refuse relocation for development purposes (UNDRIP 2008). This refusal might have been unthinkable in 1980.

International policy on involuntary resettlement carries an injunction to "conceive and execute resettlement activities as sustainable development programs, providing sufficient investment resources to enable displaced persons to benefit directly from the project" (World Bank 2017a: 54), raising questions over the nature of the development that is contemplated. In Wilmsen and Webber's words (Wilmsen and Webber 2015a: 79) "embodied in the many examples of DFDR are the issues that plague the theory and process of development: Western ideals of modernisation are forced onto the affected people with limited place for agency". This view prioritises agency of affected people and their opportunity to choose their own development path. The UN Guidelines on Internal Displacement (2004) call for development displacement only for compelling public purpose – but who decides what is "compelling" and how is this defined?

The development-oriented perspective, driving government agendas, may appear manipulative (Wilmsen and Webber 2015a, b). Risk to people arising from climate change may be exaggerated and manipulated for political reasons. People may be moved from their land as a "protective measure" that actually masks ulterior motives – land grabbing, a desire to control certain groups of people, a wish to build up a docile base of domestic consumers who can be policed and serviced more easily and cheaply in urban centres than in far flung, remote locations (Oliver-Smith and de Sherbinin 2014b; Wilmsen and Webber 2015b).

In this space, coalescing around the meaning of development itself, we find a major difference with climate change displacement, which, as processes arising through anthropogenic action, is not beholden to support a development objective. The international involuntary resettlement (DFDR) policies that originated with the World Bank's 1980 operational guideline subsequently drew upon a vision for an unquestioned development trajectory that would extend "development opportunity" and share "project benefits" also with the affected people. These

ideas need greater elaboration of the definitions of development, recognising social dynamics and power relations and the way these determine rights.

In contrast, climate change displacement is emerging now in a rights-conscious era that questions the terms of that very definition and trajectory of development that fuelled and sustained DFDR. Forced displacement intersects with the discourse on "land grabbing" or, more recently, "land rush". This basically disseminates a capitalist model of development (Alden Wily 2014) whereby it is possible to credit government "landlordism" with using the threat of disaster and climate change to target the vulnerable (Kita 2017) or control the undesirable or politically marginalised through resettlement, rather than addressing underlying inequalities (Rogers and Tao 2015). Climate change displacement holds a more diffuse set of origins than does DFDR, has less certainty over the financing responsibilities and may be more prone to manipulation and distortion. Comparing the UNHCR's 2015 Guidance on Planned Relocations with the new World Bank resettlement standard (2017) we see in UNHCR a heightened concern with underlying principles and human rights, and less concern with "development opportunity" for the displaced that may be misinterpreted by states or developers.

The original 1980 policy explained why pre-existing compensation alone rarely resolved the different interests of states and people in development's way: neglect of sociological intangibles, opportunity foregone, while problems with cash compensation and its delivery on time meant compensation rarely replaced losses (World Bank 1980). Policy responses, drawing extensively on research evidence, emphasise the importance of replacement of lost assets and income flows; the use of fair market value with transaction, transition and other relevant costs added; and the need for additional resources to rebuild livelihoods. These painstakingly spelt-out measures, based on many case studies, are largely lacking in Asia-Pacific laws and procedures.

Of the 40 Asia-Pacific cases reviewed, 12 made firm arrangements in law for replacement land; fewer spelt out replacement principles and only three provided explicit transitional support while another three countries required explicit livelihood strategies. Few laws mention livelihoods. Others left these important decisions to the discretion of the administrators or to be determined in the courts. Some left uncertainties between different legal and regulatory instruments and their application to pre-existing jurisdictions. Many laws specified the use of fair market rate for tangible asset compensation, and some also specified additional percentage loadings recognising the compulsory nature of expropriation. These uncertainties compound

problems in emerging contexts: land markets may not function; tenure, even for many long-established communities with forms of customary usage, is often unrecognised in law; re-building of livelihoods is often of critical importance to household well-being, food security, health and income, where there are no safety nets and governance is weak. Very few frameworks unambiguously guaranteed people without formal title an opportunity to benefit, even if not from land compensation payments, from other forms of assistance that would rebuild livelihoods and well-being elsewhere.

Only a few legal frameworks articulated a livelihood enhancement objective as necessary to prevent impoverishment while even fewer set special measures recognising needs of the affected poor and vulnerable, including those without formal title to land. China's innovative requirements for the reservoir sector in resettlement planning and additional resources through benefit-sharing (Cernea and Maldonado 2018) do not extend fully to other sectors. India's LARRA again pioneers remarkable new approaches, articulating an explicit livelihood objective, advocating a range of measures, including annuities, and recognising livelihood needs of many non-titled but land dependent land users, although the delivery of compensation depends upon India's states, which might not align fully with the LARRA. Indonesia's Law 2/2012, while lacking any livelihood measures, makes an important start in using independent fair market valuers. Vietnam and Cambodia have both recently improved their laws. Azerbaijan's Law on Acquisition of Land for State Needs (2010) sagely provides supplemental housing assistance in case of need and resettlement assistance, rather than compensation, for people lacking recognisable legal claims to land. It also provides livelihood support in terms of income, work options and housing standards. However, the procedures for determining the extent of loss and necessary quantum of supplements to ensure rehabilitation, for deciding on eligibility to be considered "poor" and "vulnerable" among those affected in ways that did not clash with pre-existing social security programmes, and for finding budget lines under which expenditure could be made, were undeveloped.

Overall, however, many state laws do not mention the livelihoods or well-being of people post-resettlement. Many leave vulnerable, land-dependent people – many lacking formal titles to their land – little certainty of their status, rights and entitlements if they are displaced and resettled. Very few frameworks included arrangements for monitoring the condition of the people affected after their resettlement, even fewer required remediation in case of a shortfall with stated objectives. Where the substantive requirements are in place, procedurally there may

be difficulties in defining, budgeting and delivering to displaced people.

6.1.4 Public participation in key decisions; FPIC

Consultation, planning and disclosure have long formed key elements in international policy formulations. The World Bank's new Environment and Social Framework 2017, for example, links this element with greater respect for human rights, envisaging that:

> inclusion means empowering all people to participate in, and benefit from, the development process. Inclusion encompasses policies to promote equality and non-discrimination by improving the access of all people, including the poor and disadvantaged, to services and benefits such as education, health, social protection, infrastructure, affordable energy, employment, financial services and productive assets. It also embraces action to remove barriers against those who are often excluded from the development process, such as women, children, persons with disabilities, youth and minorities, and to ensure that the voice of all can be heard … the World Bank's activities support the realisation of human rights expressed in the Universal Declaration of Human Rights. Through the projects it finances, and in a manner consistent with its Articles of Agreement, the World Bank seeks to avoid adverse impacts and will continue to support its member countries as they strive to progressively achieve their human rights commitments. (World Bank 2017a: paragraph 5)

Several Asia-Pacific legal and regulatory frameworks for land acquisition now directly mention human rights, including Timor-Leste and Indonesia. The Indonesia Law 2/2012 elucidates in Article 2 that: "Acquisition of land must proportionally protect and honor the human rights, dignity, and degrees of every citizen and residents of Indonesia." The procedures for implementation are not specified beyond the composition of the land acquisition team, which may include a nominee with human rights knowledge.

The vexed question of consent to laws on compulsory acquisition or expropriation involving powers of eminent domain is one that may be less relevant to climate change displacement. Consent to relocation requires clear procedures: for disseminating information to all potentially affected people so that they are fully informed prior to the decision and enabled through a transparent process to communicate their decision to the decision-makers and have it respected. The requirement for consent or, alternatively, for meaningful consultation, may be reflected in

the legal framework, but the procedures for carrying it out may be less than fully developed. The analysis of 40 legal frameworks reveals that just one quarter of states surveyed required meaningful or systematic consultations with potential relocatees. Most states lack arrangements for consultation with people potentially affected both procedurally and substantively; only India has arrangements for achieving consent where projects involved the private sector but these requirements must be implemented through India's states, which hold differing perspectives on the need for consent.

Twelve out of 14 Pacific countries are pioneering new approaches to negotiated short-term and long-term leases, and land swaps with customary landholder groups, which pre-empt or bypass the use of compulsory acquisition. The impacts of these agreements on all members of the customary landowner groups, and the distribution of any negotiated gains among them, have yet to be assessed. Among the remaining 26 Asian countries, one third are opening opportunities for negotiation instead of and/or as part of eminent domain procedures. Only two countries, however, use a legal framework with negotiation to ensure sharp negotiation practices do not leave people worse off. Only eight countries had instituted formal project-based grievance procedures, but some others had in place procedures for legal appeals under pre-existing laws.

In summary, then, an analysis of 40 Asia-Pacific cases finds some highly innovative legal changes and new negotiation approaches, which have yet to be fully assessed in their impacts and outcomes on displaced people but, overall, only modest congruence with international DFDR policies on key variables. Sometimes procedures may extend the reach, as in cost-reducing efforts to avoid resettlement effects used often in practice in feasibility studies. But central concepts such as "replacement", "livelihoods", "vulnerability", "poverty", "consultation" and "consent" have been difficult to follow through into effective procedures and delivery to people affected. Planning cycles, which bring together a range of perspectives as projects are prepared and implemented, together with financing and contracting arrangements, even under best conditions present problems in synchronisation with involuntary resettlement planning and implementation. The pressures to approve projects and commence civil works diminish effective resettlement preparation before people are displaced. Civil works generally finish long before reconstruction of the people's economic and social base. Emergency provisions may be used as a standard means to undercut due process in compensation as in some South Asian states. While many state constitutions require "just" or "fair" compensation for expropriated property, states rarely monitor this requirement or check the condition of affected people at the

end of the process (IDMC 2017), much less remediate where the outcomes are deficient. Evaluations regularly note similar deficiencies in staff quality, documentation, monitoring and reporting systems; and the failure of budget systems to provide for enough funds on time, for example, for compensation (World Bank 2012, 2014).

Project practice reflects these problems. The author has found cases of infrastructure agencies which, even if well intentioned, may not have the skills in-house to manage meaningful consultations nor livelihood programmes. Emergency clauses may be invoked to bypass consultations and to delay compensation payments, as in much of South Asia. Even with a good resettlement plan and a well-motivated developer, local government capacities may preclude them supporting livelihood development and public infrastructure and, as in Indonesia's more remote provinces, preconceptions and stereotypes about local culture may compromise outreach and support.

There are compelling reasons for new normative standards for addressing displacement as the numbers of people affected rise. Clear and unambiguous laws and regulations – matched with enabling procedures, which provide more priority, time and resources for human rights-linked pathways to sociologically and economically proven solutions for enhanced livelihood and well-being among displaced people – are well overdue.

6.2 Responsibility for climate change planned relocations

The International Sustainable Development Goals and disaster and climate change initiatives focus only peripherally on displacement and its management. Initiatives such as the Nansen Initiative on Disaster-Induced Cross-Border Displacement and its successor, the Platform on Disaster Displacement, focus on cross-border rather than internal displacement. This may reflect the ambiguities of the "balancing act" with which we opened this chapter. Concerned practitioners call for more specific arrangements in "anticipating" climate change displacement and determining what kind of "protection" is called for, by whom and where (UNHCR 2017). In policy terms, McAdam and Ferris (2015) identify ambiguities in deciding when an area is uninhabitable; securing trust that a decision to move made by authorities is genuine; and determining eligibility for a move.

Procedurally, researchers are concluding that justice demands new approaches. In a post-

typhoon disaster displacement case from Taiwan, Hsu et al (2015) found that state intervention in recovery entrenched past patterns of prejudice, injustice and disadvantage through contemporary political dynamics. In Indigenous Australian communities, climate change adaptation risks perpetuating the legacies of paternalistic and top-down measures that are symptomatic of dysfunctional indigenous-settler relations, rather than achieving progress towards equity (Veland et al 2013).

Climate change in Asia-Pacific is already occurring. In the Pacific, low-lying communities, not just those on coral atolls, are already experiencing weather and tidal phenomena that they attribute to climate change. Community-led, adaptive climate change resettlements are possible without the state and are already occurring, highlighting the question of who should decide when to move. Monson and Fitzpatrick (2016) describe one such case in the Solomon Islands, where inhabitants of low-lying atolls, artificial islands and coastal zones report what they believe to be climate change related phenomena – changing wind and tidal patterns causing land erosion and saltwater intrusion. The Solomon Islands' State-level National Adaptation Program of Action (NAPA), funded through the UN Convention on Climate Change, unusually anticipates community resettlement as an adaptive measure – but, in the case of customary land, the state would arrange the relocation. Customary land ownership – which is linked to underlying social and spiritual belief systems – raises particularly sensitive issues in moving outside the original customary land holding and on to the land of another customary group. Nonetheless, this study found small groups of people from low-lying land could relocate to join affines or cognates in different landowning groups, crafting a seemingly enduring solution to climate change pressures through kin-based negotiations.

6.3 Conclusion

This chapter has looked backwards to review the experience of forced displacement arising from development (DFDR) to draw out specific lessons that may, anticipating climate change displacement, apply to planned relocations. The chapter has focused on DFDR legal and regulatory frameworks for three reasons, with findings in each case as follows:

1. The opening assumptions were twofold: that substantive DFDR legal frameworks could be formulated effectively and could be implemented effectively through procedures in interaction with the people displaced. The foregoing analysis supports neither assumption although a

handful of states have approved innovative new laws that address key DFDR policy principles in novel ways; while Pacific countries have largely abandoned expropriation for public infrastructure purposes, favouring negotiations with customary landowners instead.

2. These frameworks provide insight into state attitudes and perceptions on resettlement, of direct relevance for climate change displacement and the formulation of needed legal protections for people displaced. The absence of response from many states substantively on key points of replacement, livelihoods, vulnerability, poverty, consent and remediation does not augur well for climate change displacement; while procedures for ensuring delivery to the displaced people may be weak even when the legal requirements are in place.

3. The original 1980 World Bank policy aimed to bridge the gap between compensation procedures and the social and economic costs of displacement – but, despite the bank's recent abrogation of its safeguards oversight responsibility, this gap remains, substantively and procedurally, for most states in Asia-Pacific, for all key elements that researchers have highlighted as necessary for consistently positive resettlement outcomes. Neither the feedback link to policy nor to state and sub-state legal frameworks has been robust over 40 years of involuntary resettlement policy implementation. A handful of innovative new laws constitute a promising sign but also need effective procedures for their implementation.

Calls continue to recognise people displaced by climate change in law (UNHCR 2017, 2018) because: first, legal frameworks can offer greater continuity when planned relocations span multiple generations; second, a coherent and comprehensive legal framework, incorporating human rights principles, helps to guard against any changes or co-option of the original relocation agenda for other purposes; and, third, laws and procedures should not be rushed into place in a disaster timeframe. But efforts must continue to counter climate change, and to ensure the state role does not undermine community leadership and initiatives.

Whether arising through development, disasters or climate change, the conclusions are similar: avoid displacement; compelling and overriding remaining displacement should recognise the distinct social characteristics and aspirations of peoples in the context of their human rights; while planned relocations must only be undertaken transparently with their informed consent, and with enhanced lives and livelihood outcomes. This analysis finds these issues are, despite some innovative new laws, for DFDR under-represented substantively and procedurally in

Asia-Pacific frameworks.

Promising new elements of some legal frameworks include strengthening limits to the public interest rationale for developments on potentially climate change grounds; consent procedures; human rights recognition; livelihood enhancement; and measures for poverty and vulnerability. Because the innovative legal elements identified here have yet to be evaluated in terms of their outcomes for people's lives, this analysis highlights the importance of an experiential feedback link from praxis back to policy formulation; and matching legal and governance frameworks in each state, with clear and sufficient objectives to ensure unambiguous procedures. Achieving recognition and space in legislation, management and financing arrangements for enhanced economic and social outcomes – which also recognise political, cultural and psychological dynamics and ensure rights and consent, empowering communities to lead – is now the challenge.

Endnotes

1. The Intergovernmental Panel on Climate Change (IPCC 2007) has always envisaged the possibility of forced displacement.
2. One of the first meetings was in Bellagio in 2010 (Preparing for Population Displacement and Resettlement Associated with Large Climate Change Adaptation Projects) followed by another in 2011 (de Sherbinin et al 2011).
3. The database covers 14 Pacific states and 25 Asian states, including eight former Soviet Union states. It is drawn from various sources including the Land Portal website, ADB website, World Bank website and other sources, including the author's collected laws and regulations.
4. Royal Government of Cambodia, Ministry of Economy and Finance 2016, Circular on the Resettlement Implementation Procedure for Development Projects, No. 006 MEF,

Chapter 7: Discussion

7.1 Structure of the chapter

7.1.1 Recap

This thesis has explored the policy paradox whereby a 40 year old, successfully-adopted international policy, with impeccable ethnographic credentials, fails to guarantee its objectives to "do no harm" and to benefit people affected by development projects. The anthropologies of policy and law bring together a complementary methodological approach. This enables an assessment of this policy paradox at international, national and local levels and, legally, in the context of international soft law and country powers of eminent domain.

The Introduction canvassed three theoretical approaches, two of which challenge and present alternatives to the dominant mainstream theoretical approach. The mainstream approach endeavours to reform from within, publicising lessons learned through handbooks and guidance notes, and hoping country frameworks will reform to adopt responsibility for full social and economic reconstruction. The Foucauldian /political economy streams, while having different emphases, see this as a pointless task, since resettlement cannot be perfected, being a political exercise undertaken through multiple technical logics to render people governable in the context of the market economy. The human rights based ethical stream was boosted by the ESF negotiation of 2012-2016 which adopted some human rights terminology, despite a strong counter-lobby from emerging economies to reduce the strings of loan conditionality. However, the procedures adopted in the ESF may undermine achievement of these new objectives.

The thesis rationale, articulated in Chapter 2, is to find out if and how the resettlement policy paradox can be resolved, whether in terms of better practice, or at the level of the policy itself, or through country frameworks, or all three. This discussion chapter now takes up the three research questions to examine the articulation of these three theoretical perspectives. Methodologies, drawn from the anthropologies of policy and law, focused attention on the way the policy works dynamically in its application in projects, mediated through the lending environment. The anthropology of law focused attention on the potential transformative role of country frameworks in reaching rapprochement between rights, risks and sustainability.

7.1.2 Chapter plan

This chapter now synthesises these findings, beginning with an analysis of the results arising from investigating the three research questions, identifying barriers to substantive change in policy and practice. An analysis of procedural versus substantive change follows. The final section examines the possibilities for substantive, transformative change through country frameworks. Anticipating future recommendations, this synthesising analysis examines each of the three research questions in turn.

7.2 Research question 1

Has evidence-based feedback from resettlement policy application, when reflected in revised resettlement policy and practice, been effective in reducing or eliminating resettlement failure? This question is addressed globally and with special reference to Asia Pacific region.

The answer to this question is that, whilst good practice endeavours have secured some improved outcomes over 40 years, there is no resettlement safeguard guarantee, and little evidence of resettlement benefits. Reviews have consistently presented these findings (World Bank 1994, 2012, 2014). Reviews and research cases over the years had identified failure and made recommendations for overcoming failure but these, cumulatively, had made little difference to resettlement outcomes, particularly, it was argued, over the last 20 years (Cernea and Maldonado 2018). Exceptional practice models, such as the one set out in Chapter 3, had successfully learned from past experience in order to achieve better outcomes, but questions arose over the longer term sustainability of those outcomes in a complex and contested environment. The resettlement with development model showed significant promise for people affected, for wider stakeholders and company shareholders. It had some influence on other oil and gas sector projects (ADB 2012) but has not become standard policy or practice for any lender or financier.

Based upon the anthropology of policy framework, the methodology assumed the policy would be productive, performative and contested, and would create new social spaces and semantic meanings, new sets of relations, new political subjects, new actors and new webs of meaning.

These points are examined below, followed by an analysis of the prospects for achieving substantive change.

7.2.1 Policy as productive

The word “productive” connotes something creative, prolific, dynamic. The policy, as the first ever social policy among multilateral lenders, successfully created a social policy field out of nothing, since social parameters in development were for decades unacknowledged, invisible and unremarked upon unless invoked as a blanket pejorative or as an unexplored scapegoat for failure. The policy has been prolific, spawning thousands of resettlement plans and related documents. For example, in just 20 years (1990 to 2010) or half of the policy’s life, the World Bank produced 1,423 projects that triggered the resettlement policy and necessitated resettlement documentation. This constituted 29 per cent of all active bank projects.

The resettlement policy has been widely disseminated among international lenders and has been largely adopted by lenders and borrowers in the public and private sectors, as summarised in Figure 7.1 below. The number of resettlement specialists also increased significantly. For example, ADB increased total safeguard specialists from 65 in 2009 to 124 in 2018, more than one third of whom focus on resettlement (ADB 2020). This does not include the numerous resettlement specialists hired in-country to address resettlement on lender-financed projects.

Table 7.1 Global dissemination of the World Bank resettlement policy

1991: 24 OECD countries’ bilateral aid agencies adopted a non-mandatory guideline. **1995 to date: Policies were adopted by multilateral lending agencies:** 1995: Asian Development Bank (ADB) 1998: Inter-American Development Bank (IADB) 2003: African Development Bank (AfDB) 2001: European Bank for Reconstruction and Development (EBRD) 2004: International Finance Corporation (IFC) 2013: European Investment Bank (EIB) 2016: Asian Infrastructure Investment Bank (AIIB).

2004: Private sector equator banks – equator commercial investment banks adopted a safeguard policy (IFC Performance Standards) in 2004. 105 financial institutions in 38 countries have adopted the Equator Principles, which include a risk-management framework (adopted by financial institutions for determining, assessing and managing environmental and social risk in projects) that is primarily intended to provide a minimum standard for due diligence and monitoring to support responsible risk decision-making.
2005: The export credit agencies in 24 OECD countries adopted safeguard policies in a document entitled *Common Approaches* (see OECD 2005, 2016).

Sources: Complied from several sources, including Gransow and Price (2018); Cernea and Maldonado (2018)

The recasting of the resettlement policy since the 1990s, along with other Safeguards, as a global normative standard, signifies another layer of productivity. The Bank expanded its productive role from its traditional focus on the economic arena into the legal and governance arena by means of the safeguard conditionalities. The early resettlement policy conditions on lending reflected norm-setting from the Westerns powers, in co-operation with civil society. The ESF, in contrast, reflects a much stronger role from the emerging economies, in negotiating potential release from the ESF conditions on the basis of their safeguard governance. Dann and Riegner (2019:557) contend that this strengthens member state sovereignty where the country safeguard framework is used: "international standards retreat and national law takes centre stage". Since countries can negotiate a lesser safeguard if they are stronger, this constitutes an unequal position for member countries. Sovereignty is judged, in this sense, not on the traditional indicator of economic performance but on legal and governance capacity for safeguards, in which international standards give way to national law. It puts the Bank, therefore, in the position of global arbiter on sovereignty (Dann and Riegner 2019).

7.2.2 Policy as performative

"Performative" means the ability to achieve, accomplish, complete or realise something. Here the resettlement policy shows weakness because of limits to its effectiveness in achieving its own objectives. As currently formulated, the policy cannot guarantee the minimum "do no harm" protection from impoverishment of people displaced by development, let alone meet other policy objectives of benefit-sharing and a sustainable development opportunity.

Chapter 1 found general consensus on the absence of evidence confirming that the policy objectives are being met. Research case studies found a relatively high rate of failure – but the reasons offered to explain the failure and, therefore, the potential cure, differed according to the theoretical orientation. The dimensions of failure encountered so far are set out below, followed by an exploration of their theoretical and methodological implications.

The notion that a policy requirement simply to restore the economic and social base of those displaced is insufficient, identified at the earliest stages of policy formulation (Chapter 1) to prevent impoverishment, has gained traction amongst researchers. The project model of "resettlement with development" (Chapter 3) explicitly called for the higher standard, enhanced livelihood and well-being – and largely succeeded in achieving it. Benefit-sharing elements were built into the resettlement plan.

Resettlement specialists contend that compensation must be supplemented with additional resources, which include "development-oriented investments, and introducing legislation for benefit-sharing". Together, these hold "the promise of achieving much more equitable results" (Cernea and Mathur 2008: xxvii), thus turning resettlement into a development opportunity. This may avoid the risks of costly project delay and minimise productivity losses for affected people. Moreover, benefitting a community at the time of their displacement may well result in overall savings in the future and so avoid a high opportunity cost on the development process itself. This thinking gave rise to the resettlement with development model of the Tangguh project (Chapter 3).

The opportunity resettlement presents for betterment of economic and social conditions among the affected people constitutes a key issue interweaving the chapters of this thesis, but betterment remains largely aspirational in resettlement policy implementation. Price et al 2020b found the promising concept of benefit-sharing with displaced people was not a mandatory requirement from multilateral lenders. Defined narrowly to signify revenue generated during a project operational phase, benefit-sharing applies only to revenue-generating projects, thereby excluding a wide range of infrastructure and service projects. Defined broadly to include monetary and non-monetary benefits, such as project employment, benefit-sharing can be used more flexibly to negotiate consent with affected people. It can be used to achieve environmental as well as livelihood goals for displaced people (Singer 2019). Because it is broadly defined, however, it may become confused with compensation entitlements. This leaves an ambiguity,

which may become a critical gap. Restoring the economic and social base of the displaced people cannot necessarily guard against their impoverishment. Neither can it ensure that they will be able to benefit from the development that has displaced them, particularly if the displacement is severely disruptive. These two factors may amount to an egregious double inequity suffered by displaced people relative to their unaffected peers.

The example of the Tangguh resettlement with development model (Chapter 3) is illustrative. The basic rationale for this approach is that even if expropriation leaves affected people demonstrably "no worse off", their unaffected neighbours are expecting, meanwhile, to benefit from the expropriating project. It then logically follows that investment that tolerates a lesser standard for those displaced is inequitable and, furthermore, counter to the broadly based human right to development for all (UNHCR 2016).

Policy making at the World Bank has responded to these research findings only by requiring that the affected poor who are physically displaced receive housing assistance, access to services and security of tenure (World Bank 2017a). Enhanced livelihoods and living standards are not required. Benefit-sharing is included but not mandated, the latest policy (2017a) requiring "sufficient investment resources to enable displaced persons to benefit directly from the project, as the nature of the project may warrant". Several regional banks have responded more specifically. An Asia-Pacific regional response, for example, has required "improvement" in the status or living standards of the poor and vulnerable in two successive policy statements (ADB 1995, 2009). It has also proposed, but not mandated, benefit-sharing in the form of "additional revenue and services through benefit-sharing schemes where possible" (ADB 2009).

People only marginally affected by land acquisition or land transfer for development purposes, for example, along a pre-existing road alignment under repair, generally find that compensation at replacement rate will not impoverish them. More often, the impacts are significant. Chapters in this thesis have emphasised that displacement represents far more than an economic transaction. Rather it can alter the embedded socio-cultural foundations of an economy, with implications for reconstruction of livelihoods and living standards (Downing 2015). The concept of impoverishment is multi-faceted. Chapter 4 presented the sociological case upon which the resettlement policy was originally founded. The Chapter 3 model project case showed how a framework of repeated negotiations was necessary for success in building alternative

livelihoods, and this required a flexible approach both to the livelihood activities and to the timetable.

Researchers from different disciplines have, therefore, called for greater recognition of community dynamics in the processes of resettlement planning and strategy building. Sustainable livelihood approaches argue that foreshadowing inelasticity in land and population growth would increase the demand for livelihoods. They and others (for example, Scoones 1999) demonstrate that sustainable livelihoods require: know-how and skills, built up over time, to provide services others want or to turn materials into income-generating products; marketing knowledge to sell those products; access to necessary services; and more know-how and resources to sustain them. Through this perspective, livelihoods can be profoundly affected by the prevailing social and political organisation; social relations, including work and production relations in households and communities; and governance, services, policy and institutions, especially in relation to the resource base, as in Chapter 3.

Development displacement can have complicated impacts on people affected. Non-tangible variables, which underlie well-being, income and livelihoods are, almost universally, difficult to identify, value and compensate for in country laws and regulations. These approaches require a greater understanding of political dimensions and the way they shape community dynamics. They also require a greater understanding of the way planning itself can foster or discourage community resilience, which can play a major role in reconstruction after displacement (Singer 2015). In terms of de Wet's spatial complexity model, community decision-making should not just happen accidentally. This can be a result of the overly complex planning process which, by default, breaks down, leaving scope for affected people to step into the gap (de Wet 2006). The question "Who defines the development – and how?" raises political issues. For this reason, it has been recommended that the definition of development must encompass a more inclusive formulation process that addresses social and environmental costs, with meaningful input from people potentially displaced in key points of decision-making (WCD 2000; Wilmsen and Webber 2015a). Such an approach would also be in closer alignment to rights-based approaches, especially if the people affected have a greater voice in project selection processes. This would mean, at the very least, choices between options that displace people more and those that displace people less, if not a power of veto. Chapter 5 explored options for consent in asymmetric negotiations with displaced people.

The absence of such fundamental policy guarantees to meet the resettlement policy objectives raises ethical and political dilemmas. Resettlement outcomes are not guaranteed – and this is the case no matter what kind of project is proposed. People can be displaced by "worthwhile" projects that enshrine the highest notions of sustainable development and the public good. People can also be displaced by unsuitable, unsustainable or non-viable projects that may intend to enrich a few at the expense of many – in the ethical view, "maldevelopment". This dilemma does not form part of the resettlement policy mandate, which does not query the rationale for the project. The policy requires only that the project design be modified to avoid or minimise resettlement.

The policy does not canvas the possibility of a good project in inauspicious surroundings or, the reverse, a maldeveloped project in auspicious surroundings. Neither does the policy deal with the possibility of a good resettlement model in a maldeveloped project nor a poor resettlement model in a good project. Chapter 3 raised the example of a relatively good resettlement model in a relatively good project in inauspicious surroundings. The Tangguh project coincided with the changes brought by the Special Autonomy Law and the process of *pemekaran* – the proliferation of local government units. This has been doubled-edged. Special Autonomy in Papua is widely considered to have failed (Prabowo et al 2020). Two decades of funding have succeeded neither in promoting economic growth nor in ending separatist sentiment (Malik 2020), widely attributed to the marginalisation and discrimination experienced by indigenous Papuans, the general failure of development, a fundamental contradiction between history and political identity, and lack of accountability for past state violence against local people (ibid; Budiatri 2019). The "Papuan Lives Matter" campaign has identified a long history of racism and injustice towards indigenous Papuans that fuels separatist sentiment (Sutrisno 2020). The politics of *pemekaran* have both positive and negative outcomes. *Pemekaran* has brought new opportunities and political aspirations to many Indonesian communities in far-flung and marginal areas at the nation's periphery. However, the process raised major questions about the distortions in development patterns that have arisen, the viability of some of the weaker administrative jurisdictions, and the extent to which they can effectively support local economic empowerment and prosperity (McWilliam 2011: 151). The Tangguh model's transformative promise was, against this background, curtailed. The people have lost their *hak ulayat* resource rights, without realisation of the promise of wider participation in revenue benefits to the province and *kabupaten* more broadly.

7.2.3 Policy as contested

"Contest" connotes challenge, competition, fighting, disputes and opposition to the policy. Chapter 1 found a series of challenges from both inside and outside lender agencies. From within the lending agencies, pressures arising from greater fiduciary and lending concerns, rather than from any perceived policy failure, have led to periodic challenges to the policy's scope – and sometimes its very existence. Cernea described one such unsuccessful challenge to the safeguards in the World Bank (Cernea 2005).

From within the lending agencies, the policy defenders have fought back. The repeated challenges, the constant need to defend institutional space and preserve a place on project teams may have helped to sharpen the policy terrain within lending institutions. The possibility of inspection sharpened sensitivities. Internally, the succession of challenges within the lender agencies may have led inadvertently to an institutional resistance to change, even a rigidification – appearing too ready to renew the policy principles might appear to undermine it.

Challenges also come externally, for example, from civil society. From the beginning, civil society's challenging of lenders has played a major role in helping to create the institutional space and policy momentum, as noted in Chapters 1, 4 and elsewhere. Randeria and Grunder (2011) found it ironic that the World Bank's policy, which was pressed upon a reluctant government in Mumbai for urban development, was formulated partly from civil society ideas, including those from civil society representatives in India. As Chapter 1 anticipated, the recent World Bank safeguard policy review and update encompassed "the most extensive consultation ever conducted by the World Bank. It concludes nearly four years of analysis and engagement around the world with governments, development experts, and civil society groups, reaching nearly 8,000 stakeholders in 63 countries" (World Bank 2016). The "engagement" was robust but the final policy approved has had a mixed reception. For example, Tables 7.2 and 7.3 (Appendix 1) show first support and then criticism of the Environment and Social Framework (ESF) (World Bank 2017a). Table 7.2 primarily strengthens and extends the safeguard for people affected by land titling projects and prohibits forced evictions. Table 7.2 highlights the absence of an overall human rights safeguard, limitations on the public interest, protections against land grabbing, measures to ensure benefits outweigh costs, and weakening of the appraisal checkpoint for approval of resettlement plans.

The nature of the contests, and the way in which policy defenders respond, demonstrate new social actors, sets of relations and administrative realignments in globalised and localised space. In borrower countries, Chapter 4 showed how the policy itself has come to represent new principles that apply in displacement that can take on local agency, so providing a firmer basis for resistance from displaced people. As described in several chapters, contests arise over displacing projects – between the people to be displaced, local officials and, often, national and international civil society (see also Oliver-Smith 2009; 2010). These contests may reflect dissatisfaction with lower country standards for compensation and other assistance for those displaced compared with those set out under the policy. The higher standard of the policy may become a negotiation point or protective device deployed by the people to be displaced.

Contests take a wide range of forms before, during or after displacement. Contests find different channels, whether traditionally or legally sanctioned or in the form of intimidation, coercion or pressure. Displacement, perceived as an impending threat, often produces extreme acts of protest. Some methods are country specific. China, for example, uses methods such as mobilisation of networks to press people into compliance (Fang and Li 2017), as in the case of the celebrated holdouts known as "nail houses" – homes of people who refuse to relocate and reject compensation (Shin 2017). There have been cases of self-immolation by homeowners refusing to see their houses destroyed (Fang and Li 2017). Or, in China, protest may be in the traditionally sanctioned form of letters of complaint (ibid).

In the case of Tangguh, there has been long-term, low-level opposition from those who are unhappy at losing their customary land in perpetuity, and the related belief that there should have been an opportunity for free, prior and informed consent (Chapter 3). A parallel may be drawn with Gommersall's resettlers in the Chinese case of poverty reduction resettlement from Chapter 1. Those resettlers were assigned their built environment and an urban cultural model to replace the loss of unquantifiable social and cultural assets; they chose several ways of expressing their own identities during this process. In the Tangguh case the project made a major effort to consult the resettlers on the design of the replacement houses and other structures, but still the new planned villages and built environment were also, in political micro-processes, an exercise in integrating semi-subsistence producers into the market economy. The power and water supplies would need to be paid for through tariffs. The final shift from sago to rice as a staple would need funds and an accessible store. The project offered income opportunities: a

few unskilled project jobs during the operations phase; contracts to supply fresh foods through the village co-operatives; micro-credit opportunities; and a program of skills training. For this uncertain new life they had lost their "inseparable" socio-cultural link to the resource base.

Popular protest and lobbying around policy principles can shift power towards the resettlement policy change, as has been seen in certain country cases (China and India have both experienced this phenomenon to some degree). Some recent cases have influenced the formulation of new expropriation law in India and Indonesia (Chapter 5). Elsewhere, protest has been ineffectual, for example, Sri Lanka's forward-looking resettlement policy was not adopted into law (Chapter 5). These issues are discussed further in Section 7.5 below.

7.2.4 Creation of semantic meanings, new sets of relations, new political subjects and new webs of meaning

The resettlement policy application presents a challenge restructuring the relations between borrowers, multilateral lenders, developers and the people affected. Section 7.5 takes up this question in the context of country frameworks.

As the resettlement policy model gained traction as a legitimate instrument in a lending institution, it took on new semantic meanings and performative power. It became a cure for the pathology of displacement (Cernea 1997; 2003). Treating the symptoms of loss and impoverishment that arise through practical diagnosis, the cure defined and addressed the pathology – an abnormality on an otherwise acceptable development strategy. Conceptualised as a temporary malaise, lacking only the administration of the right medicine, the displacement pathology is curable, in this view, and the cure itself is efficacious given the correct medicinal formula and dosage. The rationale claimed for administering the cure promotes a benign and positive idea of good, responsible development that avoids poverty and dispenses social justice. This conceptualisation located the problem squarely within the project's responsibility. Once treated and cured, more projects could roll out uncontested.

The Impoverishment Risk and Reconstruction (IRR) model uses similar terminology. The IRR described the "major pathology of development" (Cernea 1997: 1569; see also Chapter 3) and clarified its elements as "material loss, lack of social justice, cultural and psychological loss". The IRR focused on the "symptoms" of the pathology that would help to shape the "cure" –

that is, through reversing those symptoms to achieve good health as measured in terms of enhanced, or at least restored, livelihoods and living standards. As a "cognitive and explanatory tool, the model diagnoses the pathologies of forced displacement" (ibid: 1571), identifying the major economic and social impoverishment hazards, which are both symptoms and results of inadequate resettlement. The IRR privileges specialist knowledge as essential in recognising and understanding the way these hazards unfold adversely in people's lives. Specialists frame the diagnosis of risks and the definitions of good and ill health which may, through absence of consultation with the affected people, omit or distort their perception of social realities and aspirations. Countermeasures to these hazards then become the building blocks of the affected people's post-displacement recovery. The exploration of the pathology and its diagnosis has determined the formulation of measures designed to counteract and cure the ill health, requiring the necessary resources to do so. The example in Chapter 3 of the Tangguh IRR, used as the basis for a resettlement audit, demonstrates how the perception of the analysts can limit the effectiveness of this tool in accurately representing the experience of the people subjected to it.

In the Tangguh case, the resettlement policy led to activity at multiple levels as the resettlement with development model formed part of a wider model of "world-class development". Chapter 3 showed how the successive rounds of negotiation with the displaced people and the host villages deepened in their impact and penetration of the lives of the affected people. From the relatively modest changes of the initial compensations for lost trees and other assets during the drilling process, the affected people found themselves recategorised and transformed into "resettlers", while nearby villages became their "hosts". Green Camp, on the edge of the newly constructed village, became the site for a procession of resettlement planners; trainers; programme managers; co-operative staff; gender, agricultural, tree-crop, fishery and microcredit specialists; survey and monitoring teams (BP 2006). The resettled villagers told me they appreciated what had been done for them, obviously impressed by the architect-designed village and the comfortable houses built for them and supplied with schools, religious buildings, markets, and offices. They would have to pay, however, for the functioning power and water systems, reinforcing the new commodification of their lives that were being transformed through livelihood training programs in credit and small business development, agricultural and tree-crop skills, fisheries and cooperative development . They had been transformed into objects of envy in the eyes of the north shore villagers, who lacked such novel settlements and facilities at this level. Yet, at another level, the resettled people also admitted to feeling like birds with clipped wings, trapped in a gilded cage, who had lost their freedom, being constantly scrutinised,

monitored, trained and organised by teams passing through Green Camp. At some deep level, the affected people wondered if they could live up to the new expectations imposed on them by the resettlement specialists. They worried that they might “fail” in some new standard or test that they had not sought and be jettisoned to go out and live in the bush, leaving the new model village for other people entirely.

Within lender agencies, the resettlement policy has created a new social space for its practitioners. Outside, scholars and civil society supporters, both in lender and borrower countries – drawn by consulting fees and also other types of recognition, such as being seen as a “champion of displaced people”. This requires an accumulation of effective performance credentials. Academic support is mixed. The creation of a useful base of informed people, who could knowledgeably support the policy during public submissions from the banks, has been a major development in lender politics. The existence of such groups, however, has created expectations that the policy and practice would respond to the research evidence base and be improved – which has happened only partially. For example, a leading academic ethicist attested to receiving scant attention at World Bank public consultation meetings on the drafting of a new version of the safeguard policy, including resettlement, when he presented ideas for widening stakeholder consultations. It is precisely in these interactions that the resettlement policy’s limitations in its response to new ideas become apparent.

Staff of implementing agencies may be required to become – at least temporarily while the project is being implemented – “resettlement experts” as well as legal and compensation specialists (Rew et al 2006). Review results (World Bank 2012) show that this temporary assumption of new identity and roles may be short lived and ineffective. Or the mantle of resettlement responsibility for those affected may be rejected by a “cunning state”, using the excuse of sovereign integrity to avoid following through on onerous loan conditionalities from the lender to which they had already agreed, as in the aforementioned Mumbai case (Randeria and Grunder 2011). The safeguards imposed requirements on the way in which member states designed and implemented projects – for example, a project with affected people required a resettlement plan before appraisal. Safeguards become binding on borrowers through the loan agreements. If the loan is approved, the conditions become treaties under international law. By signing the agreements, the borrower agrees to implement the attached resettlement plan. If the borrower fails to do this the loan may be

suspended or called in. This limited the sovereignty of member states, because the Bank's policy was increasingly setting the standard for domestic constitutional law. As a result:

> …borrowers implement projects under two sets of norms: Their own domestic law, and international obligations towards the Bank. If national law does not meet Bank standards, the borrower faces the choice of forgoing the loan or raising its national standards to meet higher Bank standards, at least for the project at hand. Under the economic and geopolitical conditions prevailing until the 2000s, most borrowers accepted, if only grudgingly, this trade-off between cheap loans and collective autonomy. Consequently, the conditionalities and the network of hundreds of loan agreements the Bank concluded with a total of 146 countries over time effectively multilateralized the safeguard regime. The Bank had turned from lender to international lawmaker. (Dann and Riegner 2019: 241)

In practice, however, the reviews discussed in Chapter 1 found that the reluctance of the Bank to suspend or call in the loans meant that resettlement plans, particularly compensation, were paid at the generally lesser rate of the country standard.

7.2.5 Analytical synthesis on research question 1 on the evidence-based feedback link

The mainstream theoretical position created new fields and semantic meanings – "resettlement" – and subjects – "resettler" – as well as "resettlement practitioners", which are defined in practice in interaction with country legal frameworks. Country frameworks are themselves responding to these pressures in different ways and through different means, addressed in Section 7.5 of this chapter. The negotiated interactions provide significant variation in meaning and performance.

Chapter 1 and other chapters have found that many projects lack documented resettlement outcomes. Lender and borrower evaluations that address outcomes, as in World Bank 2012 and 2014, are rare. Whether or not the resettlement plan succeeded in its objectives and those of the resettlement policy remains partially or completely unknown. Well documented cases of resettlement planning that convincingly demonstrate the achievement of outcomes and policy objectives, or which track even less perfect resettlement cases seeking improvement, remain elusive (most recently, ADB 2020). This absence hampers the smooth operation of the dialogic

link. It restricts the ability of resettlement practitioners to discuss alternatives based on solid data or to learn from evidence to improve planning and implementation practice in a range of different circumstances. It limits the scope to provide grounded, evidence-based feedback to policy formulation. More broadly, it limits the contribution to the development of legislation, regulations and governance in country frameworks. Lack of outcome analysis, in short, represents a significant barrier to effective evidence-based feedback links to better practice, to policy renewal or to wider ends.

The lack of documented outcomes also hampers the ability of advocates for resettlement planning to counter claims that resettlement planning cannot resolve the multiple risks of displacement for people affected (for example, Dwivedi 2002). It leaves many informed researchers with little option but to conclude that resettlement planning fails to prevent impoverishment of those in the way of development projects (for example, Scudder 1981, 2005a and b; Downing 2002; 2015; Wilmsen and Webber 2015 a and b; Owen and Kemp 2016). This applies to public sector projects, unless they are internationally financed and subject to lender evaluations. It applies even more so to private sector projects, which may be ostensibly bound by a series of voluntary codes of conduct that require a resettlement planning phase, but which seldom report publicly on the resettlement planning process or its outcomes. Tangguh's private sector operator has pioneered publicising safeguard and human rights issues, as noted in Chapter 3.

Somewhere over the past 40 years, the policy, which had taken its authority from – and owed its existence to – an impeccable ethnographic lineage documenting painful social realities among resettled communities, stopped responding to evidence-based social information. Cernea and Maldonado (2018) identified a point of 20 years ago. Researcher and practitioner-identified issues, such as: enhanced, rather than merely restored, livelihoods and well-being; development opportunity for the displaced; benefit-sharing with the displaced; addressing inequities in outcomes, including gender inequities; resolving spatial complexities in implementation; finding practical ways to address asymmetries of power and information in project selection, negotiation, planning, and implementation; and making the right to consent meaningful have not been centralised in policy reforms. Political dimensions barely register, or are totally absent from, resettlement policies.

In return for their willingness to transform into the compliant policy construct of "resettlers" under any circumstances – even for the most questionable projects – the displaced people are offered no guarantees. The question arises as to how a policy of such distinguished lineage has become so ineffective in defending the people it purportedly supports.

Practitioners and consultants have accumulated significant knowledge and experience as set out in the good-practice handbooks, manuals, Guiding Principles and similar documents. These are not mandatory requirements but are intended to complement the resettlement policies. A positive example is the International Finance Corporation's recently released draft *Good Practice Handbook on Land Acquisition and Resettlement* (IFC 2019).

Significant, substantive policy change, however, has stalled and has been stalled for some time. It has been difficult to meet even the existing policy requirements. For example, ADB's Safeguard Policy Statement (SPS) requires that, if affected people are living below the national poverty line, they should be brought to a level above it. This is a relatively strong statement among multilateral lenders. The recent safeguard found that this objective was difficult both to achieve and to measure outcomes (ADB 2020). The same applied to livelihoods and to benefit sharing.

7.3 Research question 2

Are the feedback links aimed at improving resettlement policy and practice obstructed by the lending culture in which resettlement policy operates? This question is addressed globally and with special reference to Asia Pacific region.

The answer to this question is, for the most part, yes, as set out below. There are two key qualifications. First, the global norm-setting role of the World Bank in safeguards moved closer to human rights standards during the recent ESF negotiations – even though diluted in practice by "decoupling" procedures from the standards and by releasing certain stronger-performing countries from full requirement to address the safeguards. Second, Chapter 3 demonstrated that commercial imperatives can act to support a high-quality approach to resettlement in private sector projects.

7.3.1 Lending imperative as a constraint to better resettlement practice

Chapters 1 and 2 identified several issues in the lending culture and practice that distort resettlement implementation. The first issue is the tight time frame in project cycles for critical steps in resettlement planning and implementation. Second, the pressure of lending, flowing through into the increasingly shortened project cycles, leaves insufficient time for resettlement planning and implementation before the commencement of civil works. Loan covenants are rarely being used to suspend or call in loans where covenants are breached. There is also an increasing use of generic loan covenants, which are less specific on the substantive resettlement issues relating to particular localities – and which focus on compliance rather than outcomes (ADB 2020).

Approval culture demands fast loan processing through an increasingly streamlined planning cycle that permits little time for innovation; planning for resettlement is structurally contingent on a very small planning window, followed by implementation during a short window before civil works contracting, which detracts significantly from good resettlement performance. Resettlement in the planning cycle is in an asymmetrically weak position from which it is difficult to escape under current lending parameters. Structurally, the position of resettlement as reactive means it too readily seems to constitute a slowing impediment at the level of lending and project rollout. The way it is defined, there cannot be involuntary resettlement without a project. Any proactive resettlement project is, by definition, not displacement for development and must satisfy standalone project appraisal criteria.

Chapter 3's resettlement case offered a counter example of how privately sponsored, open-ended negotiations with the potentially displaced people could avoid the high costs of project delay due to community unrest. This model also provided an example of how resettlement, when well-conceived and implemented, could contribute to an overall highly ranked successful project model. This case demonstrates that private sector financing does not necessarily mean low quality of resettlement. The perceived need to streamline processing cycles in order to compete with other lenders runs counter to the longer run advantages of high-quality resettlement work founded upon open ended negotiation with people potentially affected. The Tangguh case demonstrated that time and resources devoted to resettlement can achieve better long-term commercial results – even while not meeting all local customary expectations.

7.3.2 Lending culture and practice as opportunity

Analyses of global investment patterns that trigger safeguards, including resettlement, demonstrated a recent significant increase in investment projects globally and finance flows. There was also a distinct move away from traditional public-sector lending patterns to private-sector lending. Most recent data from ADB for the Asia-Pacific region, for example, show that ADB's lending volume doubled over the period 2010 to 2018 and included a large increase in private-sector financing (ADB 2020). While traditional, standalone public-sector investment is still significant, it is declining as a share of the total investment flows. Novel lending modalities, which increase the number of sub-projects to be financed only after loan approval, are rising. This means fewer resettlement plans can be prepared before appraisal, focusing attention on the capacity of borrowers to implement or arrange implementation of various sub-projects or sub-components that necessitate resettlement (ibid).

Financing sources are also diversifying globally. Borrowers around the world have had access to a range of new sources of finance. Traditional multilateral development lenders may, as a result, be under pressure to simplify their safeguard requirements, including resettlement, to guard against competition from lenders lacking such safeguards. China, for example, is playing an increasing role in global finance that is not well understood. Over the past decades, China has exported record amounts of capital to the rest of the world. Horn et al found that many of these financial flows are not reported to the International Monetary Fund (IMF), the Bank for International Settlement (BIS) or the World Bank. "Hidden debts" to China are especially significant for about three dozen developing countries and distort the risk assessment in both policy surveillance and the market pricing of sovereign debt (Horn et al 2019). The contracting arrangements may omit environmental and social issues entirely. Wilmsen et al (2020) documented the case of a dam constructed in Ghana with Chinese financing under a "turnkey" project contract that required only the technical design, procurement and construction to be completed by the contractor. This left the environmental and social assessment, including the resettlement plan, required under Ghanaian law, to be completed as a separate exercise by another contracted company. In China, however, there has been significant improvement in the country framework, with remediation for past resettlement failures (Chen 2018) and benefit sharing in the hydropower sector (Shi 2018, 2019).

7.3.3 Pandemic uncertainty

Will these lending pressures continue? Infrastructure is a good indicator of future levels of displacement because infrastructure projects – roads, rail, reservoirs, urban developments, irrigation and so forth – are most likely to be displacement intensive. The analysis of future lending trends seemed straightforward before the Covid-19 pandemic. Infrastructure, a leading resettlement-intensive sector, was expected to increase across the globe. Significant new global investment in infrastructure had been projected as necessary to achieve the Sustainable Development Goals (SDGs) (World Bank 2018).

Considerable work had gone into identifying policy options that would enable countries to achieve the SDGs relating to access to water, sanitation and electricity; greater mobility; improved food security; and better protection from floods, while also ensuring eventual full decarbonisation in the interests of sustainability and limiting spending on new infrastructure to 4.5 per cent of GDP a year (Rozenburg and Fay 2019). Similarly, considerable work was done to identify cost-effective, low-displacing renewable energy options that also met security needs, for example, through solar and wind (Burke et al 2019) and non-displacing hydropower options, for example, river offtake hydropower instead of reservoir projects (Baldwin 2018).

Since the Covid-19 pandemic began, however, global forward projections have fallen and there is significant uncertainty going forward. Some projections envisage a world that is less globalised and more isolated, as international travel and human contact are deemed to be unnecessarily risky. This will also mean less choice, higher prices and perhaps a more insecure world in which international co-operation may decrease. Domestic travel may also continue to fall as people remain fearful of crowded spaces, whether trains and buses, cafes and restaurants, theatres and stadiums, supermarkets and offices. Some also believe the rapid trend towards urbanisation may be another major casualty of the coronavirus outbreak. This would translate into less pressing requirements for global infrastructure (Dean and Garrett 2020).

This may be positive news in terms of reducing carbon emissions and slowing the pace of climate change. For example, noting that the coronavirus and its accompanying lockdowns have stalled transport and industrial production, prompting the "largest annual drop in carbon dioxide emissions in history", Yim and Kassam add that the International Energy Agency predicts:

"Covid-19 could wipe out international demand for coal, oil, and gas, with only renewable energy showing resilience" (2020: 1).

7.3.4 Analytical synthesis on the influence of the lending culture

New lenders such as the Asian Infrastructure Investment Bank (AIIB) (Beijing), the New Development Bank in Shanghai and China's policy banks provide increasing competition for more established lenders, so the lending imperative is still significant, if lessened by the Bank's global norm-setting role. AIIB has as a multilateral lender, adopted a form of the international safeguard including for resettlement – although not a poverty-reduction objective (Gransow and Price 2018). Despite the evidence that better resettlement based on open-ended negotiation at the beginning can save time and resources later (Chapter 3), the approval culture flourishes, demanding fast loan processing that permits little time for innovation. Within lender agencies, there is immense pressure to seem workmanlike in the project cycle context – if resettlement policy implementation seems to raise too many awkward questions, it will be difficult to continue to ensure lender support. Thus, the lending imperative in practice diminishes pressures for policy defenders to secure more time and reduces the scope for resettlement policy innovation and better resettlement practice.

Structurally, the position of resettlement is reactive, it is not a field of project financing in its own right (although resettlement created by one project might be packaged and financed as another). This means resettlement must address perceptions that it slows the lending pipeline and project rollout. Without a pre-existing project, there cannot be resettlement. Any proactive settlement project is, by definition, not displacement for development and must satisfy standalone project appraisal criteria – including application of the resettlement policy if there is any displacement resulting from creating new settlement areas.

7.4 Summing up: substantive and procedural issues in research questions 1 and 2

This analysis has shown that the assumption of dialogic feedback links from research to policy and practice is reasonable and in accordance with standard iterative evaluation practice. Numerous research findings have generated evidence of policy failure and recommended improvements, while evaluations cannot confirm systematic success. However, any such dialogic link cannot be assumed to be "evidence-based" because of these factors:

1. **Resistance to reform:** Pressures of lending and project cycle block the assumed "evidence-based" nature of the links – the evidence on need for improvement to avoid failure is hampered by overwhelming pressure to lend and disburse funds. For example, a central concern of researchers, on the need to enhance, rather than simply restore, livelihoods and living standards of displaced people, has never been fully addressed by the World Bank, although several regional banks, including ADB, have stronger formulations. Benefit-sharing has been treated as an aspirational objective, and after a strong start in the 1990s, more recently has been neglected (Price et al 2020b). The IRR model was never formally adopted into World Bank Group resettlement policies, although it was approved at a high level and has been presented and discussed in various non-mandatory resettlement handbooks and guidelines (Cernea and Maldonado 2018). Debate has intensified on the utility of the IRR (Wilmsen et al 2020), with alternative approaches being proposed (Hay et al 2019). Other models developed through sociological research, for example, on routine dissonance and spatial complexity have been ignored in policy making.

2. **Social equity** concerns remain unaddressed in standard welfare economic approaches that may include resettlement, raising ethical and rights concerns (Mariotti 2012; Penz et al 2011; Bugalski and Pred 2013).

3. **Absent political perspectives.** Although the earliest policy formulation (1980) recognised the "powerlessness" of displaced people, all recognition of politics and power has been stripped out of subsequent policies, thereby limiting problem recognition and resolution. The terms under which displaced people can be reincorporated into livelihoods and living standards remain neglected (Mariotti 2012; Wilmsen and Rogers 2019, Wilmsen et al 2020).

4. **Less than robust alignment with international norms.** While borrower frameworks are changing as human rights and ethics play out independently in borrower social frames, protests against displacements have increased over the past two decades and borrower property and expropriation law provides generally weak protection for displaced people. Human rights frameworks depend on borrower governments as their principle enforcers, leaving those governments with perceived conflict of interest versus development pressures and their own variant of the "borrowing imperative". The ESF negotiation (2012-2016) succeeded in bringing

some human rights concerns into the ESF. At the same time certain borrowers with stronger governance can negotiate a lesser requirement to meet the ESF standard.

This analysis has also demonstrated an undermining of the integrity of the dialogic, evidence-based feedback loop – real evidence is not getting through because of several factors:

1. **Limited policy categories**. The audit and IRR examples demonstrate the limitations of the policy categories in representing the full values of displaced people. The top-down "prescription" of solutions hampers the utility of the tools in incorporating and addressing valid "evidence" from the social realities of the affected people and in acknowledging or presenting it. Ontological pluralism, in recognising different voices, may yield more creative approaches.

2. **Defensive posture**. The iterative nature of evidence-based feedback links into policy from practice may be seen in contest situations as a weakness. The contested arena of lending does not foster an open and honest learning from the evidence, but rather a defensive stance to protect the policy. Inspection fears among lender agencies may also create sensitivities to recognising the need for better knowledge of outcomes. Contracting confidentiality clauses limit the ability of consultants to publicise any lessons learned, although they may be added to Handbooks and Guidance Notes to inform future practice.

3. **Rare outcomes data**. The scarcity of good outcomes data hampers the dialogic learning from project experience. This matters particularly in the case of the poor and vulnerable affected people, who may, depending on the lender, be expected to improve their economic and social base rather than be restored to their pre-existing poverty and vulnerability.

4. **Superficial legal coverage**. Pro-forma and generic approaches to the monitoring of resettlement implementation through legal covenants do not readily support substantive understandings of the detail of resettlement implementation in specific locations and its outcomes.

5. **Civil society potential**. Some examples from borrowers show civil society, where strong and organised, can act to strengthen borrower legal frameworks and practices that pertain to displacement, but this is by no means universal. It depends to a large degree on the space permitted for civil society operation and discourse in each country.

7.5 Research question 3

To what extent do country legal frameworks interact with wider international thinking in a possible rapprochement between sustainability, rights and risks in approaches to development in general and resettlement in particular?

There is significant interaction. There is potential for rapprochement between rights, risks and sustainability at the country level, given country roles and responsibilities in addressing human rights and the sustainable development goals, in formulating property, expropriation and environment laws and regulations; in supporting implementing agencies; in setting development priorities, and in selecting and regulating projects. These responsibilities are carried out in an increasingly globalised governance space.

The resettlement policy has been one element in the safeguard that has emerged since the 1980s as part of the gradual legalisation of the global governance regime. The ESF approval in 2016 reflects the continued World Bank role in norm setting globally and, through determination of sovereignty for country safeguard purposes, also reflects different standards for countries in addressing safeguard issues and individual potential vis a vis human rights and World Bank Inspection Panel access. The ESF also reflects three key elements that are not necessarily in alignment: a stronger human rights lobby, backed by multilateral organisations and civil society; stronger national perspectives, especially from the emerging countries such as India and China; and "counter-institutionalisation", for example, the China-led new AIIB in Beijing.

7.5.1 The country role

Research question 3 was formulated to test the assumption that country frameworks offer scope for strengthening the rapprochement between rights, risks and sustainability. The logic here is not difficult to grasp. Countries formulate property and expropriation law, including the definition of the public purpose or interest. They formulate environmental law and related regulations. They formulate laws and regulations that restrict access to land, for example, for environmental ends.

Countries also sign up to international agreements and commit to monitoring regimes. Under international human rights law, states (countries) have the duty to protect against human rights abuses by all actors in society; they must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations. States also endorse and implement the SDGs through their enactment of environmental and social policies, legislation and regulation; their adoption of budgets; and their role in ensuring accountability for the effective implementation of SDG commitments. Governments and public institutions will also work closely on implementation with regional and local authorities, sub-regional institutions, international institutions, academia, philanthropic organisations, volunteer groups and others. It is also important to note that states also formulate development strategies and, though disaster-related, energy and environmental policies, laws and regulating systems may adopt climate-change strategies. They also establish project selection priorities and procedures.

Chapter 1 highlighted the escalating challenges in achieving "global health" and the need to integrate environmental and social concerns, encompassing equity and sustainability, underpinned by respect for rights.. Chapter 1 highlighted the notion of the public purpose or interest as a key concept and legal point with potential to integrate sustainability strategies, rights and environmental and social risks, including displacement risks. This raised the question of the varying standards of multiple differing sets of country law, including property and expropriation law, and the dynamic change some have undergone.

Chapter 2 introduced research question 3. It paid special attention to the anthropology of law, which is being reinvigorated to focus on law, inequality and power, with special reference to the production of human rights and law in society.

Chapter 3 focused on a project case, which integrated both rights and risks that resonated with parallel developments in a marginalised area subject to human rights abuses. The negotiated settlement with land users to lease their land was witnessed by local government. The reach of this initiative at project level has been significant but is, ultimately, restricted by overall political developments and the failure of the Special Autonomy Law to reduce separatist tensions. This is related in large part to racist attitudes towards indigenous people, associated rights violations, and loss of their customary land in perpetuity.

This private sector project model raises pertinent questions. The model development and LARAP pre-dated the United Nations' Guiding Principles (GP) on Business and Human Rights (2011), which clarify what is expected of business enterprises in taking action to prevent, mitigate and, where appropriate, remedy human rights abuses that they cause or to which they contribute. The GP outline the process through which companies can identify their negative human rights impacts and demonstrate that their policies and procedures are adequate to address them. The GP affirm that businesses must take similar actions for their supply chains. The principles also assign an overall role to states to protect against human rights violations through actions to prevent, investigate, punish and redress abuses that take place in domestic business operations. In addition, the GP recommend that states set clear expectations that companies domiciled in their territory/jurisdiction respect human rights in every country and context in which they operate. Since instigating the LARAP, Indonesia has approved Law 2/2012 as discussed in Chapter 6.

Chapter 4 situated resettlement policy within the arena of property and expropriation law in country frameworks. It posed some questions on the extent to which such laws support resettlement policy principles. Chapter 6 tested a portfolio of 40 Asia-Pacific legal frameworks for attributes coalescing with both resettlement policy principles and disaster-related resettlement. It found some countries unchanged with respect to the wider resettlement agenda while some others have moved, in a few cases taking large strides, towards substantive and procedural support for resettlement policy principles. Chapter 6 found cases of property and expropriation law addressing human rights issues. It also found several cases in which limits on the public purpose or interest had taken on greater clarity; and where project selection required an assessment of whether the full social and environmental risks, including of displacement, outweighed the benefits.

7.5.2 Potential for benefit-sharing

Some countries are moving quickly to establish benefit-sharing mechanisms, particularly for hydropower reservoir projects that exact intensive social costs both in inundated areas and downstream. Countries that are regulating the sharing of revenue or royalties from hydropower projects during project operations include China, Nepal, India, Brazil and Colombia (Price et al 2020b). Regulating benefits generates legal certainty and transparency – but might do little for the affected people directly, if regulated benefits flow to national, provincial or district

governments, sometimes for mitigating transborder, downstream costs (Johnson and Cimato 2018; Hay et al 2019). Nonetheless, benefit-sharing presents a promising approach for providing longer-term livelihood support to affected people, if it can be done in partnership with the affected people, with flexibility to address resettlement needs as they arise as well as the financial logics of revenue generation and reporting (Price et al 2019).

7.5.3 Determination of the public purpose

Efforts to "avoid and minimise resettlement" were built into the policy at an early stage but they comprised little more than revising the technical design of pre-approved projects. They did not question whether a different, non-displacing project could be found to meet the same purpose nor whether the project's expected benefits justified the social cost of resettlement. Still less did they examine underlying strategies and possible synergies between environmental and social perspectives in planning and selecting projects.

Several key issues coalesce around the determination of the public purpose (interest), the environmental and social strategy underpinning project selection and the way it manifests in law. Figure 7.1 illustrates the interconnections.

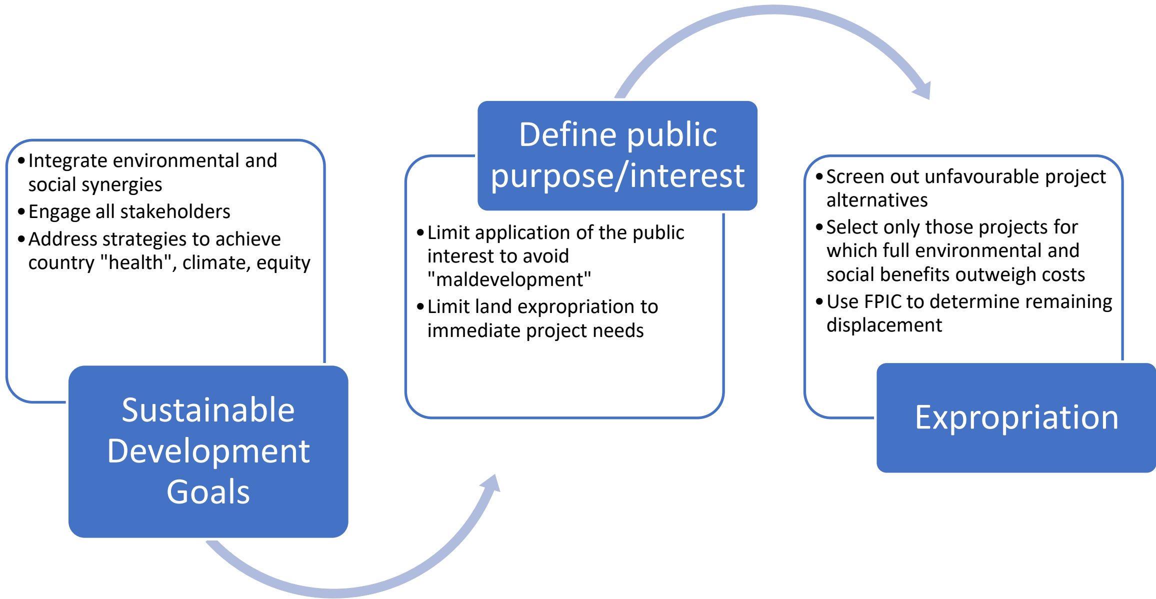


Figure 7.1 Interrelationships: sustainable development, the public interest and expropriation

These provisions potentially intersect with property and expropriation law through the early decision-making on the public purpose in relation to development choices. The definition of the public purpose is not discussed in international resettlement policy formulations. International policy on resettlement typically requires only that resettlement be avoided and minimised "by exploring project design alternatives" (World Bank 2017a: 53).

There are alternative relevant international approaches. The Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) call for governments to define the term "public purpose" sufficiently clearly to allow for judicial review of expropriation objectives carried out in its name. Yet recent comparative analyses have shown that national legal frameworks governing expropriation decision-making vary significantly from country to country (Tagliarino 2017, 2018; Price 2018, 2019a, 2019b). As Hoops and Tagliarino have shown, national legal frameworks also "often fail to comply with the VGGT standards on expropriation. This creates the potential for unpredictable and, in some cases, arbitrary applications of expropriation law in practice" (Hoops and Tagliarino 2019: 1).

The public purpose, or interest, provides the rationale for expropriation in most countries. Yet the public purpose can be misused:

> In most jurisdictions, expropriation is only permitted if the government shows the targeted property is needed for a 'public purpose' …. Yet the definition of 'public purpose' and the parameters by which governments decide what constitutes a 'public purpose' vary depending on the country and context. Without clarity around the concept of 'public purpose', governments may misuse or abuse expropriation power by arbitrarily justifying an expropriation decision under the pretext of a public purpose when the actual purpose will not serve public interests. This is also because open and ambiguous definitions of public purpose limit the potential for effective judicial oversight. In some cases, economic development expropriations that benefit from open and ambiguous definitions of 'public purpose' can be controversial even if their stated aim is to promote private business activities that create jobs and stimulate economic growth. If expropriation is permitted for such 'economic development', but laws do not establish proper limits to the government's decision-making such as checks to ensure

> that the project generates jobs or economic growth for local populations, then expropriation may be used as a tool for transferring land to private companies. (ibid: 1)

Misuse of the public purpose can trigger discontent and conflict (Chapter 6; Price 2019; Hoops and Tagliarino 2019; Tagliarino 2016). The VGGT assign the sensitive task of substantively defining the public purpose, with the legislature or courts typically taking responsibility for laying down the concept of "public purpose" in law, common law and mixed jurisdictions. The VGGT further state that the function of the public purpose requirement is to prevent expropriations for illegitimate purposes. According to the guidelines, the courts should ensure that the public purpose requirement can perform this function. This means the definition of the public purpose in law must enable judges to selectively review whether the public purpose requirement has been met. As described in Chapter 6, the Indian LARRA (2013) defines and sets limits on the public purpose, introduces consent requirements and also introduces a SIA (social impact assessment) to determine the full extent of costs. These full costs can then be weighed against the benefits of the project, and decision-making on project selection also includes the people affected, who are fully informed of the likely impacts upon them by this stage. India's LARRA (2013) is recognised as among the most comprehensive and progressive pieces of national legislation to encompass the rights of displaced people to fair and transparent land acquisition and the right to livelihood rehabilitation (Kabra and Das 2019). It reflects decades of struggle by multiple stakeholders, including socially conscious bureaucrats, social movements, activists, legal reformers, academics, political parties and civil society organisations in India's vibrant democratic system (ibid).

The LARRA 2013 addressed most of the criticisms of the previous colonial-era land acquisition law by strictly defining the public purpose to ensure no land is taken involuntarily except to serve wider societal goals (ibid). It counts not just those people losing land as project-affected persons but includes most of those who lose their primary sources of livelihoods, thereby acknowledging the risks of economic displacement. It makes explicit provisions for acquisition to take place with full transparency and tries to incorporate the principle of free, prior and informed consent (Chapter 6). Several clauses in the LARRA make special provision for vulnerable groups: women, the disabled, indigenous people and other socially disadvantaged groups (ibid).

Evidence-based data on risks and impacts are to be collected through SIA of project-affected people so that land-acquiring bodies provide them with proper compensation and rehabilitation. The LARRA's SIA clauses are also unprecedented in the history of national land acquisition laws in that they stop land acquisition if the project's public purpose cannot be demonstrated and limit land acquisition to the bare minimum, thus enshrining the principle of avoiding or minimising displacement (ibid; Hoops and Tagliarino 2019; Chapter 6). Cumulatively, these carefully structured legal requirements put India far ahead of many other countries in its willingness to tilt the balance of expropriation in favour of the affected people. India emerged at the forefront of the 40-country Asia-Pacific study in Chapter 6, at least in terms of national expropriation law. In India, states have the power, in some circumstances, to override national laws and so can undermine these principles in practice. The Indian court appeals system will continue to play a major role in guarding the principles of the LARRA 2013 (Hoops and Tagliarino 2019).

The analysis of Chapter 6 was based on a 40-country comparison of international resettlement policy concerns, highlighting livelihood restoration. Figure 7.5 below reports on a smaller, global, 30-country comparison that reflects a broader set of indicators expressing VGGT principles. These encompass a more overtly human rights agenda than the resettlement policy indicator set of Chapter 6. Beginning with the limits on the public purpose, the set of expropriation indicators listed below and in Figure 7.5 address the interests of groups who may be disproportionately disadvantaged by displacement – the poor, the marginalised, the vulnerable and, in some circumstances, women. The indicators explicitly include customary resource-holding groups whose tenure is not necessarily formalised but who, nonetheless, depend for their very survival on their customary resource base, as in Chapter 4. The indicators also refer to forced evictions before the World Bank formally adopted the term into the ESF (World Bank 2017a).

Expropriation indicators

1. Is "public purpose" clearly defined to allow for judicial review?
2. Must the government expropriate only the minimum amount of land necessary to achieve a public purpose?
3. Are areas of cultural, religious and environmental significance given special protection?
4. Is land that is held by poor and vulnerable groups given special protection?

5. Must the government grant reacquisition rights when the land is no longer needed for a public purpose?
6. Prior to expropriation, must the government identify all affected populations?
7. Prior to expropriation, must the government inform affected populations about the acquisition plan, including reasons for expropriation?
8. Prior to expropriation, must the government consult affected populations?
9. Are customary tenure holders with formally recognised tenure rights entitled to compensation?
10. Are customary tenure holders without formally recognised tenure rights entitled to compensation?
11. Are the users of undeveloped land (land used for hunting, grazing and other purposes) entitled to compensation?
12. Must the government follow a gender-sensitive approach to calculating compensation?
13. Must the compensation reflect the economic activity associated with the land?
14. Must the compensation reflect the improvements of the land?
15. Must the compensation reflect the historical/cultural connections associated with the land?
16. Is compensation payable in land as an alternative or in addition to cash?
17. Must compensation be afforded prior to the taking of possession or within a specified time frame?
18. Can affected populations negotiate compensation levels?
19. Can affected populations challenge compensation in court or before a tribunal?
20. Are displaced persons legally entitled to a relocation allowance?
21. Are displaced persons granted alternative land and housing?
22. Must the alternative land granted to displaced persons be "productive" land?
23. Must the government consult displaced persons during the resettlement process?
24. Must the government avoid or minimise forced evictions?

Source: Land Portal data Tagliarino (2016)

This research, set out also in the country comparison in Table 7.2 (Tagliarino 2016) overleaf, concluded that only four of the 30 countries drawn from a global sample establish a definition of the public purpose that is sufficiently clear to allow for judicial review. These countries are India, Cambodia, Indonesia, and Mongolia. Ten more countries achieved an improved, but not fully sufficient, definition. In these four countries, national laws provide clearly defined lists of legitimate public purpose expenditures (for example, public infrastructure projects). These laws

also indicate that governments cannot expropriate land for a purpose not explicitly included in the list, nor can they expropriate excess land. Expropriation laws for the leading four countries are more recent than the other countries sampled.

Table 7.2 Indicator findings by country

INDICATOR	INDIA	BANGLADESH	VIETNAM	CAMBODIA	SRI LANKA	AFGHANISTAN	CHINA	HONG KONG	TAIWAN	SOUTH SUDAN	INDONESIA	MONGOLIA	MALAYSIA	THAILAND	KAZAKHSTAN	PHILIPPINES	BURKINA FASO	ZIMBABWE	ZAMBIA	GHANA	UGANDA	LIBERIA	BOTSWANA	TANZANIA	NAMIBIA	SOUTH AFRICA	ETHIOPIA	KENYA	NIGERIA	RWANDA
1	Y	N	P	Y	N	P	P	N	P	P	Y	Y	N	P	P	N	P	N	N	N	N	N	N	N	N	N	N	P	N	P
2	Y	N	N	N	N	N	N	N	Y	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
3	Y	P	N	N	N	P	N	N	Y	P	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	P
4	Y	N	N	N	N	N	N	N	Y	P	N	N	N	N	N	Y	N	P	N	N	N	N	N	P	N	N	N	N	N	N
5	P	P	N	Y	P	N	P	N	P	N	N	N	N	Y	N	P	N	Y	N	Y	N	Y	N	N	N	N	Y	Y	N	N
6	Y	N	Y	P	N	N	P	N	N	N	Y	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N
7	Y	N	Y	Y	N	N	P	N	N	Y	Y	Y	N	Y	N	N	Y	Y	N	N	N	Y	N	Y	N	Y	N	N	N	Y
8	Y	N	Y	Y	N	N	Y	N	N	P	Y	N	N	N	N	P	Y	N	P	N	N	N	N	Y	N	N	P	N	N	Y
9	P	N	Y	P	N	Y	N	N	Y	Y	Y	N	Y	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	P	Y	Y	Y	P	Y
10	P	N	P	N	N	N	N	N	N	Y	N	N	N	N	N	Y	P	N	Y	N	Y	N	N	Y	N	Y	N	N	N	N
11	P	N	N	N	N	N	N	N	P	P	P	N	N	P	N	P	P	N	P	N	P	N	N	P	N	P	N	N	N	N
12	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
13	Y	Y	Y	Y	Y	N	P	Y	P	P	Y	P	Y	Y	Y	P	P	P	N	P	P	N	Y	Y	P	Y	P	Y	N	Y
14	Y	N	Y	N	N	Y	P	P	Y	Y	Y	Y	P	P	P	Y	N	Y	Y	P	P	N	P	Y	P	Y	Y	Y	Y	Y
15	P	N	P	N	P	N	N	N	P	N	N	N	N	N	N	Y	N	N	N	P	N	N	N	P	N	N	N	N	N	N
16	Y	N	Y	Y	Y	Y	N	N	N	Y	Y	Y	N	N	Y	Y	N	N	Y	Y	N	N	N	Y	N	N	Y	Y	Y	Y
17	P	Y	Y	N	Y	Y	N	Y	Y	P	Y	P	P	Y	Y	Y	N	Y	N	N	Y	N	Y	P	P	P	Y	Y	N	Y
18	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	Y	P	Y	N	Y	Y	Y	N	Y	Y	P	Y	N	Y	N	Y
19	Y	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
20	Y	N	Y	N	N	N	Y	N	Y	P	Y	N	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N	Y	N	N	N
21	Y	N	P	N	N	N	N	N	N	N	Y	N	N	N	N	P	N	N	N	P	N	N	N	N	N	N	Y	N	N	N
22	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	N	P	N	N	N	N	N	N	N	N	N	N
23	Y	N	Y	N	N	N	Y	N	N	Y	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N
24	Y	N	N	N	N	N	N	N	P	N	N	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N

Note: Y = yes; N = no; P = partial. Source: Tagliarino 2016

These legal reforms balance more equitably the interests of the people affected with the interests of government and developers. They may result in less conflict and better projects than may be

selected in countries without strong limits on the public purpose or a clear definition of groups likely to be particularly disadvantaged. The points below clarify these indicators, which serve to increase their transparency and equity.

1. **Public purpose definition**. Lawmakers provide a clearly defined list of public purposes to allow for judicial review. With this list, expropriating authorities have clear instructions on which properties can be expropriated. Using this list, judiciaries can selectively monitor and rule on whether the proposed purpose violates the law.

2. **Consent for variation in the public interest**. Lawmakers provide a special procedure where the authority wishes to expropriate for another public purpose not listed in the expropriation legislation. This special procedure should, in particular, require the authority to obtain the consent of a certain percentage of all affected parties. This would maximise democratic control and the legitimacy of the expropriation.

4. **Due diligence on the public interest rationale**. The legislature should require the authority to follow a due diligence process. India's requirement for a SIA is followed by a review of the acquiring authority's expropriation decision by an expert group. This will not only clarify the objective of the expropriation and its public interest rationale, it will also provide a forum for evaluating whether it is feasible for the project to achieve that purpose and whether expropriating the land or property in question is necessary to achieve that purpose. (Drawn from Chapter 6; Price 2019; Hoops and Tagliarino 2019: 15-16.)

The enhanced indicator list set out above opens the door to more inclusive decision-making at an earlier stage in the project cycle, when there is still time to make a difference to project selection, siting and design. Identifying a range of stakeholders, including marginal groups of those likely to be affected, at an early stage in strategy setting and project selection results in more inclusive decision-making and less likelihood of conflict in the longer term. The set of indicators reveals that this process can include gender sensitivity and sensitivity to the situation of poor and vulnerable groups. It can also take account of social and cultural issues, and the issue of customary land.

The progress at country level in addressing the problems of displacement is very slow overall. Nonetheless, there have been some brilliant innovations, which raise the possibility of substantive and transformative change at country level in achieving better outcomes for people displaced by development.

Chapter 8: Conclusion

8.1 The research questions and the Policy Paradox

In 1980 the first international resettlement policy came with impeccable ethnographic credentials, epistemological authenticity, and a strong evidence base that offered dialogic feedback possibilities. Paradoxically, it has spread successfully and permitted continued lending where there is displacement without any guarantee of promised outcomes – safeguard or benefit – for the affected people. The anthropologies of policy and law provide a dynamic methodology to address this paradox at global, Asia Pacific regional, country, and project levels.

Three research questions aimed to find out how the paradox could be understood and addressed. The findings are summarised below.

Research Question 1: Has evidence-based feedback from resettlement policy application, when reflected in revised resettlement policy and practice, been effective in reducing or eliminating resettlement failure? This question is addressed globally and with special reference to Asia Pacific region.

Answer:

The policy has been productive: The policy created a new category "resettler", stimulating new activity from actors in lender agencies and in borrower countries. Resettlement Plans and Frameworks are legion, with handbooks, sourcebooks and good practice notes written by experienced practitioners becoming an important channel to disseminate feedback to improve practice among lender staff and in country. Experienced practitioners drew upon past failures to prepare a model project that proposed to enhance, not just to restore, living standards and livelihoods. The model, linking both rights and risks approaches, was well received and succeeded in its objectives, despite questions over sustainability. Its potential for replication has not, however, been fully explored. The resettlement policy became a part of a productive new role for the Bank in international governance through norm creation, which was reinforced upon establishment of the accountability inspection mechanism in 1993, because it created a channel for grievance redress outside country legal systems.

There is, however, still no guarantee that the policy objectives will be met.

In terms of performance, Bank reviews and evaluations show that a significant number of affected people are still not restoring living standards and livelihoods, especially among those without legal title to their land and/or in at-risk groups. Benefit-sharing, after initial enthusiasm, has faded to just a handful of Bank projects, while having wider application elsewhere. The thesis has found longstanding structural anomalies that have impeded resettlement policy performance. Reviews of global lending data find there are still major gaps between the resettlement policy standard and country standards which undermine performance. Yet the same country institutions deemed inadequate are the ones responsible for resettlement policy implementation. The persistent policy aim merely to restore livelihoods and well-being has undermined the policy aim for benefit sharing; while measures for economic reconstruction vary significantly among borrowers.

Lessons from the significant number of resettlement cases examined by the Inspection Panel have repeated the same recommendations for improvement throughout the project cycle resettlement steps as are found in earlier review reports. One informed view is that the dialogic feedback link has not been working for the past two decades, and that attention to basics such scoping, risk analysis and livelihood reconstruction have lacked attention. The policy has been productive, but not performative. Its agency has been contested in lending institutions and among borrowers. It has sparked contest at resettlement sites as affected people have appealed to this higher standard, but this kind of contest has had mixed results.

The most productive ESF changes in the resettlement arena reflected concerns around land tenure and the uncertainty it raised especially among communities, including customary and informal land users, lacking formal title to their land. Human rights and civil society lobby group concerns on this issue are reflected to a significant extent, in the ESF. This left key elements that undermine policy performance unchanged or even weaker, for example in the weakened requirement for the appraisal check on resettlement before project approval; the variable treatment of countries depending on sovereignty assessments; and the less than robust requirements for outcome analysis that might form a better basis for dialogic feedback.

Research Question 2: Are the feedback links aimed at improving resettlement policy and practice obstructed by the lending culture in which resettlement policy operates? This question is addressed globally and with special reference to Asia Pacific region.

Answer:

Yes, with two key qualifications. The thesis found evidence of the spending imperative and lending culture overwhelming resettlement policy objectives. Pressure to streamline the project cycle and speed up project approvals cuts into the time available for key resettlement planning steps in scoping, impact assessment, meaningful consultation and planning for livelihoods and wellbeing. The policy falls well short of human rights standards on the issue of consent. The thesis also found reluctance to suspend or withdraw loans due to resettlement problems in implementation; and that the resettlement timeline for full livelihood reconstruction usually extends beyond the project timeframe. These factors undermine the dialogic link by limiting scope for acting on feedback and adopting innovative models and practices proposed by researchers.

Reviews have found that compensation and other assistance often drops back to lesser country standards during implementation without correction from the Bank. The ESF focus on implementation and outcomes, at the expense of early preparation and appraisal checks, runs counter to earlier reviews and Inspection Panel findings. Earlier reviews found that scoping and meaningful participation on well-financed, sound resettlement planning measures are vital to achieving successful resettlement outcomes. The ESF does not acknowledge nor address the problem of the lending imperative. Political economy theoretical orientation that attributes resettlement planning to pressures for commodification and dissemination of the market logic resonate with these pressures. The Foucauldian notion of governmental technology as a means for deepening political control over subjects also helps to explain how displacement can continue to be rationalised despite its frequent adverse outcomes.

The two qualifications. First, Chapter 3 analysis of a model rights and risks resettlement demonstrated that commercial imperatives can support a high-quality approach to resettlement standards in private sector projects. The lack of uptake of this model is comprehensible, however, in light of an overwhelming lending imperative. Second, the Bank's move towards human rights standards during the recent ESF negotiations reflects its global norm setting and legitimising role. There is insufficient provision in the accompanying ESF procedures, however, to ensure these standards are met in practice. The ESF in any case also has provision to release certain stronger-performing countries from the full safeguard requirements.

Research Question 3: To what extent do country legal frameworks interact with wider international thinking in a possible rapprochement between sustainability, rights and risks in approaches to development in general and resettlement in particular?

Answer:

Countries have increasingly interacted with wider international thinking through the policy application since 1980, as the World Bank gradually assumed a global norm making role. There is both potential and necessity for rapprochement between rights, risks and sustainability at the country level, given country roles and responsibilities in addressing human rights and the sustainable development goals, in formulating property, expropriation and environment laws and regulations; in supporting implementing agencies; in setting development priorities, and in selecting and regulating projects. These responsibilities are carried out in an increasingly globalised governance space. The recent ESF negotiations found borrower countries taking stronger negotiating positions than in previous years, making it imperative to address country concerns. The ESF decision to relinquish resettlement supervision responsibility and to vary the safeguard application according to sovereignty assessments also confirm the importance of the country perspective.

Country frameworks also share the productivity versus performance dilemma – and also respond to contest: All countries, whether developed or developing respond to some degree to contest over land – and the land grabbing issue has been highly visible in past several decades. More countries than not have been productive in changing their property and expropriation laws since 2000 but not all changes have been significant in terms of the resettlement policy as assessed both globally and in the Asia Pacific 40-country data base. There are several outstanding exceptions. India's LARRA, and China's hydrological sector benefit sharing are exceptional, while Vietnam, Lao PDR, Indonesia and the Philippines have taken strong country-wide steps in different ways. Many Pacific countries, uncomfortable with the concept of land separation from customary owners, have moved back towards accessing land for development through customary land institutions. Through the determination of sovereignty for country safeguard purposes, the ESF reflects different standards for countries in addressing safeguard issues and individual potential vis a vis human rights and World Bank Inspection Panel access. The ESF also reflects three key interest groups that are not necessarily in alignment: a stronger human rights lobby, backed by multilateral organisations and civil society; stronger national

perspectives, especially from the emerging countries such as India and China; and "counter-institutionalisation", for example, the China-led new multilateral AIIB in Beijing.

8.2 Comparing three theoretical positions on the way forward

The pandemic, sharpened by the increasing impacts of climate change and growing inequality, heightens uncertainty going forward. It also heightens the need for resolution of the resettlement policy paradox. The thesis found that the theoretical orientation determines, to a degree, the position taken on the causes of displacement and the means for overcoming failure. This final section summarises the perspective from each theoretical position, together with some ideas on likely recommendations adherents might make on the way forward.

There have been shifts in categories and meaning. The rights and risks model in Chapter 3, whilst never formalised in policy or procedure, helped create new precedents. The recent ESF approval transforms the formerly stand-alone policy on involuntary resettlement into Environmental and Social Standard (ESS) 5, with several human rights features, if not a full grounding in human rights. This has moved the policy mainstream closer to the human rights based ethical arena. The recent alignment between rights and mainstream positions has been productive in policy terms in generating new categories of meaning, based on areas of past contest - categories which are only partial in terms of the human rights agenda. They omit, for example, consent to relocation by all affected people not just the indigenous; and project justification through "compelling and overriding public interest", both of which are required by the UN's Guiding Principles on Internal Displacement (UN 2004).

These and other new features of ESS 5 mean a re-working of some mainstream elements: negotiable features such as appraisal documentation; differential country impacts; with citizens of those countries having access to variable policy and human rights standards and variable access to Inspection. These new features heighten risk for affected people, emphasising the necessity to take stock of the policy impact and outcomes.

That stocktaking may come sooner rather than later, with the combined impacts of current global crises: the pandemic, climate change and inequality. The diagnosis of resettlement failure is still, to a degree, theoretically determined. The challenge may be to bring the diverse

theoretical perspectives, particularly from the radical wing, into a framework that allows productive exchange of ideas.

The mainstream perspective has traditionally focussed on improved performance in resettlement planning and management including scoping, meaningful consultation, resettlement supervision, compensation and livelihood restoration. The IEG Report (2016) is a good example of this approach. The mainstream perspective also expects countries to bring laws and regulations closer to international policy standards especially for full livelihood reconstruction; to improve financing; and to improve implementing capacity (Cernea and Maldonado 2018). The possibility of raising the objective to “enhance” rather than simply “restore” livelihoods and living standards has been canvassed from the beginning by some in the mainstream perspective. The demarcation between mainstream and rights based approaches is blurring, with crossover in likely recommendations. The mainstream must address human rights elements in monitoring, review and evaluation, set out in the ESF.

The loosely grouped adherents of Radical/Political Economy/Foucauldian perspectives may have the most surprising and broad ranging recommendations as they call for “new ways of imagining and doing development” that return to focus on the act of displacement rather than the supposed “solution” of resettlement. They would separate displacement – too risky and destructive – from development entirely. If the resettlement policy simply provides for a threadbare resettlement standard that is just sufficient to ensure business as usual and continued project rollout, but does little for the people affected, this may further reflect the overwhelming lending imperative.

These arguments resonate differently in a pandemic where some governments have stepped in to address gaps in public health and social protection that the market had abandoned. Worsening climate change must at some point call for reframing of business as usual in development investments. As an exercise in political power, control, and governmental technology resettlement may be better jettisoned than improved – but some governments have strong leanings to use resettlement in this way. Foucauldian and political economy approaches deconstruct in different ways the processes whereby cultural difference in practice is devalued and debased through resettlement, by neglecting cultural goods in asset valuation, and by creating new built environments and livelihoods which reject those cultural values in favour of notions of market penetration and/or state-building. These pressures override the policy

injunctions to address and respect social and cultural differences. This issues separates "resettlement as development" approaches from the human rights/ethicists' focus on consent and empowerment from affected people and from climate change researchers favouring greater awareness of the advantages of ontological pluralism.

As some rights-based ethicists move closer to the mainstream position others among them may move closer to political economists, sharing a view that the mainstream reformist-managerial discourse offers a weak understanding of displacement itself and of the reasons for the failure of resettlement. The attempt to manage and control displacement through resettlement at the international level can be interpreted as a means to avoid ethical and moral issues. The ESF negotiation, for example, appears to present a solution satisfying both human rights advocates and borrower countries. While privileging its continued global norm-setting role, however, the Bank's solution may be unlikely to improve resettlement policy performance and reduce the resettlement failure rate because it neglects fundamental constraints. A number of recommendations arise in these intersections to address the resettlement policy paradox, and lower or, better still, eliminate the failure rate, as listed below.

Recommendations:

- Strengthen human rights provisions in the international resettlement policy and in country laws and regulations; and ensure sufficient time and procedural support for full implementation.
- Broaden stakeholder consultations on the definition of development and the selection of projects, specifically recognising and encouraging cultural diversity, the need for ontological pluralism and dialogue on sustainable development issues
- Redefine "resettlement" to give greater weight to options. Re-write the policies to upgrade the objective from "restore" to "enhance" livelihoods and living standards, defining a clear role for benefit-sharing and development opportunity.
- Ensure no displacement without consent, involving potential affected persons in early decision-making on project selection
- Compare full environmental and social project costs with project benefits before approving projects, taking account of distributional issues
- Tighten the definition and limitations on the public interest

- Reconceptualise operational lending proactively to address resettlement planning needs prior to, during and after resettlement.
- Ensure each resettlement undertaken has full outcome analysis as a comprehensive evidence basis for reactivating the dialogic link
- Draw displacement researchers into regular consultations at lender and country level
- Undertake regular reviews and evaluations with specific recommendations addressed at high level in lender and borrower institutions.
- Appoint an international body with a legally binding mandate to collect data on development displacement, monitor trends and report regularly with recommendations for borrowers and lenders.

This discussion and recommendations, drawn from published and oral sources, represent approaches that may help to address those fundamental constraints arising through current development strategies that underpin the resettlement policy paradox and lead to repeated failure in benefits and protection for the affected people. They may flow through also to other lenders and project financiers.

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Appendix

1. Sample of civil society support for the World Bank's new Rules on Resettlement 2017 to be included in the ESF

1. Prohibition on forced evictions includes informal settlers, who are entitled to adequate housing with security of tenure. **2.** Mandatory elements of a resettlement plan include census surveys and baseline socio-economic studies of affected people before they are resettled, which is deemed essential to ensuring that living conditions and livelihoods are restored. **3.** For projects that support land titling and "related issues", the borrower must demonstrate that applicable laws and procedures, along with project design features (a) provide clear and adequate rules for the recognition of relevant land tenure rights; (b) establish fair criteria and functioning, transparent and participatory processes for resolving competing tenure claims; and (c) include genuine efforts to inform affected people about their rights and provide access to impartial advice. **4.** Land rights more broadly are better – though not comprehensively – protected in the new framework, with borrowers required to assess and address risks associated with land and natural resource tenure and use, including potential impacts on land access, food security and land values, and any risks related to land conflict. **5.** Environment and Social Standard 5 (ESS5) protects communities and persons who may be displaced from land that is sold or otherwise transferred. For example, when a project involves support to commercial investments in agricultural land where the government transfers land to the investor, other people that use, live on and rely on the land are entitled to protections under ESS5. **6.** All such tenure claims, including those of customary and informal users, must be systematically identified and affected people must be meaningfully consulted, informed of their rights and provided with reliable information concerning environmental, economic, social and food security impacts of the proposed investment. **7.** "Community stakeholders" must be enabled to negotiate fair value and appropriate conditions for the transfer.

Source: Inclusive Development International n.d.

3. Sample of civil society criticism of the World Bank's new Rules on Resettlement 2017 to be included in the ESF

1. ESF has no clear prohibition on land grabbing, even from households with recognisable legal possession claims and communities with customary ownership rights to the land in question. **2.** The World Bank – although an agency of the UN – failed to use its new policy to affirm respect for human rights as the non-negotiable minimum floor for the treatment of project-affected people. The bank failed to seize this rare opportunity to strengthen its safeguards and bring them into line with international human rights standards. **3.** The bank decided to exempt from policy cover certain financing instruments such as Development Policy Loans (DPLs) and Program for Results (PforR) financing. **4.** The ESF assigns to the borrower the lion's share of responsibility for application. **5.** The World Bank's responsibilities to conduct due diligence, monitoring and evaluation or to seek independent checks are diminished with over-reliance on the borrower's word. **6.** ESF does not explicitly require essential documentation to inform rigorous due diligence and total project costs. Resettlement Action Plans are no longer explicitly required prior to the board's consideration and approval of every project that will cause displacement. **7.** ESS5 does not explicitly require that land takings must be in the public interest. **8.** ESS5 has no requirement to ensure the magnitude of displacement and the attendant risks of harm be reasonable and proportionate to the public good that the project will achieve. **9.** ESS5 explicitly excludes from policy coverage people who are displaced due to activities other than land acquisition and restrictions on land access, even when those activities are directly and significantly related to the bank-assisted project and necessary to achieve its objectives. Even if losses are severe, ESS5 to restore incomes and livelihoods does not apply. Instead, these impacts are dealt with under the more general requirement to "mitigate" harms or compensate when "financially feasible".

Source: Inclusive Development International n.d.