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Unacceptable Means: The Inspection Panel Actions on World Bank Forcible Resettlement

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Since the Inspection Panel's inception in 1993 it has received 89 Requests involving involuntary resettlement of people in World Bank Projects. While this is over one half of all the requests received by the Panel, the Panel only investigated 32 of those cases. Even though not all the resettlement requests were investigated, some facts are indisputable: involuntary resettlement almost exclusively results from top-down decisions that adversely impact marginalized sections of local communities such as indigenous peoples, minorities, fisher folk, poor farmers, and those without land tenure. The Bank and host country typically try to justify involuntary resettlement as a necessary cost of larger development projects, where people living in the project area need to be moved to accomplish the project's goals.

The World Bank's disastrous record in involuntary resettlement dates back far beyond the Inspection Panel's creation and in fact a particular project --the Sardar Sarovar dam on the Narmada River in India— and the historic grassroots resistance to it became the impetus for the Bank's Board to create the Panel. The building and implementation of the Sardar Sarovar dam and the accompanying forced relocation was so egregious that in 1992 a review team (The Morse Commission) wrote a whole book covering all the violations of Bank safeguard policies. The involuntary resettlement of Adivasi tribal people in the project area was often accompanied by police force and violence, to the extent that the Morse Commission said that continued resettlement would be completed only through 'unacceptable means."[2] The Morse Commission documented the failure to accurately count the numbers of those to be resettled, a lack of land for resettlement, the moving of people by police force, and other human rights abuses; it was a case study in how not to conduct resettlement. One of the chronic failures in those years was the inability to calculate the actual number of those being displaced. In Sardar Sarovar, years after the appraisal it became clear the Bank had underestimated the number of people displaced by at least 250,000.

This was in 1992; in that era, projects like Sardar Sarovar dam, the Singrauli Coal project also in India, Transmigration in Indonesia, Polonoroeste in Brazil, and Nam Thun II in Thailand were protested by grassroots and international activists alike. The creation of the Inspection Panel in 1993 established a channel for people who had been harmed by Bank projects to appeal to an independent body for an investigation and assessment of potential violations of World Bank policies. Many of those activists fighting against resettlement impacts believed that if the Bank would simply implement and enforce its own safeguard policies, it would provide some remedy to

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[2] Sardar Sarovar, Report of the Independent Review, Bradford Morse, Thomas Berger, Hugh Brody, Resource Futures International, 356 (1992) ("The opposition especially in the submergence area has ripened into hostility. So long as the hostility endures progress will be impossible except as a result of unacceptable meanest).

the communities. The Board of Executive Directors were willing to create this mechanism if its mission was narrowly defined, and the Panel reported directly to them.

The fundamental elements of the World Bank's Operational policy and Bank Practice (OP/BP 4.12) are that resettlement should be avoided or minimized wherever feasible, resettlement activities should be conceived as sustainable development projects where displaced people share in project benefits, and affected and displaced people should be assisted to improve their livelihoods or at least to restore their previous standard of living.

Fast forward to 2016 when the Inspection Panel issued their first *Emerging Lessons Series: Involuntary Settlement*.[3] This Report drew on the Panel's Experiences and lessons from its 22-year caseload. By 2016, the Panel had received 105 requests for inspection. Out of the 32 cases that were investigated, 21 involved forcible resettlement. Several of the cases were problematic projects where the Bank had grossly underestimated the number of people to be displaced, such as the Ghana Second Urban Environment Sanitation Project, and The Albania Integrated Coastal Zone Management and Clean-Up Project. The Democratic Republic of Congo (DRC) Forest-Related Operations, although not a resettlement project, was another case in which Pygmy people who were impacted by the project were not identified or counted adequately.[4] The main conclusions from the Report were that the Bank's policy goal of implementing resettlement as sustainable development projects had not been achieved in most cases because they had failed to analyze the full costs and impacts of resettlement.[5] The Panel also concluded that the Bank should implement better analysis of the full economics of resettlement and include a thorough examination of what it takes to restore and improve the incomes and livelihoods of those who are resettled.[6]

The Panel drew seven lessons learned from its review of projects from 1994-2014:[7]

- *The risks of involuntary resettlement should be assessed comprehensively before a project begins.* For example, in the Uganda Private Power Generation Project (Bujagali), the Panel found that when the previous project was stopped, the resettlement of a portion of the 8,700 people had already started. When the project commenced, the Panel found that the resettlement plan did not effectively assess the impacts of the previous resettlement, and affected people were left out of the new resettlement plan. In the Kenya Natural Resources Management Project, the implementing agency had no mandate or experience in resettlement or with community access to forest resources.[8]

- M*eaningful consultation and participation should be an essential part of involuntary resettlement programs.* In the Mumbai Urban Transport Project, which was the Bank's

[3] Emerging Lessons Series No 1: Involuntary Resettlement, Inspection Panel, April 2016.
[4] In *The Inspection Panel at Fifteen* (p. 67), the Panel noted shortcomings in the delineation of project-affected areas that did not include all people who would be affected and that somehow "these people have fallen off the radar screen".
[5] *Emerging Lessons Series No 1: Involuntary Resettlement*, Inspection Panel, April 2016, page iv
[6] *Id.*
[7] *Id.*, Appendix B, List of Panel cases Analyzed.
[8] *Id. at* 5-6.

largest urban resettlement project at the time, the Panel found that the meeting with affected people consisted of informing them of what was going to occur rather soliciting participation. In the Nepal Power Project, the affected people had little knowledge of their resettlement because the documents were only in English, and only made available and translated seven years later.[9]

- *If the Bank's resettlement policy is utilized, then there should be preparation of a resettlement policy framework or a resettlement action plan.* The choice of the appropriate resettlement instrument is the cornerstone of effective resettlement. In the Ghana UESP II Case, the project continued without a resettlement plan or policy framework. The lack of preparation adversely impacted the identification of project risks and proper consultation.[10]

- *There should be active supervision of resettlement projects to properly identify and resolve issues.* In the Cambodia Land Management and Administration Project, attention to the social impacts of land titling, including possible evictions, was not systematic and there was a lack of expertise on social safeguards.

- *Compensation to project affected people should be timely and needs to have a sound method of valuing the amount of compensation.* The Nepal Power Development Project, for example, failed to complete compensation payments because there was confusion about when payment should be released, and this resulted in economic strain on communities.

- *A local grievance redress mechanism needs to be available and accessible to the affected people.* In the Nepal Power Development Project, the affected people were unaware of their right to engage with a redress mechanism. The Panel found there was not an accessible mechanism available.[11]

- *The goal of livelihood restoration is most effective when there is transitional support, development assistance and alternatives to resettlement are provided.*[12] In the Kenya Electricity Project, the Panel thought that "land for land" was a positive development but the Panel found that the resettlement site has poor pastoral land for cattle, which provided subsistence security and cash income for the affected people. In the Kenya Electricity Expansion Project, the affected Maasai people were left without their cultural center, which provided tourism income.[13]

Following the publication of ***Emerging Lessons on Involuntary Resettlement,*** World Bank President Jim Yong Kim stated that he knew resettlement was an area the Bank needed to improve, and he added "I am confident that the lessons identified by the Panel in this report will help greatly in that effort."[14]

[9] *Id.*, at 8-9
[10] *Id.*, at 9-10.
[11] *Id.*, at 13.
[12] *Id.*, at 4-16. n.b. The Panel is restricted to drawing from Panel cases and cannot comment more broadly on Bank performance in projects involving resettlement.
[13] *Id.*, at page 16.
[14] *Id.*, at pages 32.

The Inspection Panel ***Emerging Lessons Report*** followed on the heels of the 2012 and 2014 internal World Bank reports on involuntary resettlement that were not released until March 2015 after the Bank weakened its ten safeguard policies through an extensive revision and reinvention of its policies.[15] Most significantly, the Environmental and Social Framework disposes of Bank staff responsibility for policy enforcement, and puts the onus on the Bank's borrower, the majority of which do not have resettlement or indigenous people's policies. The new framework came into effect in 2018 but the Panel has not yet handled a case filed under the newer policy.

After the internal Bank Reports were made public, President Kim also expressed concern: "We found major problems. One is that we haven't done a good job in overseeing projects involving resettlement; two we haven't implemented those plans well enough, and three, we haven't put in place strong tracking systems to make sure that our policies were being followed. We must and will do better."[16]

Kim announced an action plan and stated, "Our policy is that if we resettle someone from their home, we will assist efforts to *improve or at least restore their incomes and living standards (emphasis added)".*[17]

Kim's statement reflected the fact that the policy goals enshrined in Bank policies from the beginning have rarely, if ever, been accomplished. Despite President Kim's concern, seven years later many of these lessons learned and recommendations have not been considered or implemented by Bank operations.

These three reports that documented serious failures apparently did not discourage the Bank from pursuing forcible resettlement on a large scale in development projects going forward. The weakened policy framework may make matters worse as there is less commitment to restoring the quality of life of those resettled. Most activists, anthropologists, and academics that study or work on resettlement have rejected the Bank's Environmental and Social Framework and the Environmental and Social Standards as unacceptable because the Bank has squandered responsibility.

The Bank's experience with resettlement is tragically not unique. In 2018, the celebrated anthropologist Michael M. Cernea and lawyer Julie K. Maldonado produced a book revealing the disastrous state of development caused by forced relocation of marginalized people across the globe.[18] While of course not all the highlighted projects are funded by the World Bank, the Bank does not emerge from analysis as a leader in the field, but rather as a contributor to the disaster.

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[15] World Bank (2012), Social Development Department Inventory Resettlement Review, Phase I: Inventory of Bank financed projects that triggered the Involuntary Resettlement Policy (1990-2010), Draft World Bank Social Development Projects, Washington, D.C.

[16] World Bank, Press Release, March 4, 2015. After a Panel presentation, the Bank's General Counsel Alberto Ninio responded that there was no disagreement on the conclusions reached in the Inspection Panel Report, and that the Bank had been working to improve resettlement outcomes, adding "This is the most difficult issue when it comes to development.".

[17] *Id.,* at 2.

[18] Challenging the Prevailing of Displacement and Resettlement, Edited by Michael Cernea and Julie K. Moldonado, 2023, page 2.

In the opening chapter Cernea and Maldonado propound that "forced displacements are expanding, compounding harmful economic pauperization and cultural impacts."[19] The authors also note that the magnitude of the researched evidence points to major failures in reconstructing livelihoods. The frameworks are failing, they argue, because most borrowing countries do not have proper legislation or policy dealing with resettlement, and there is lack of funding and poor implementation. [20]

The levels of resettlement are staggering:

> "The World Bank estimated in 1994 that 10 million people per year were displaced in developing countries by activity in only three economic sectors (hydropower, urban, and transport) producing 100 million people displaced per decade. For the following decade (2001-2021), they estimate along similar criteria but also included additional economic sectors [indicating] that the number displaced would be about 15 million per year, resulting in 150 million displaced people for the first decade of the 21st Century. For the decade 2011-2020 and as the pace of infrastructure building accelerates, the estimated magnitude of forcible displacement is likely on conservative estimates to exceed 20 million people per year which means 200 million or even more for a decade."[21]

Cernea and Maldonado also emphasized data from the 2012 and 2014 internal World Bank reports noting that:

> "even the minimal level of restoring pre-displacement level was achieved in less than one-third of the Banks many hundreds of projects. The other two-thirds of the projects are listed as either having ***failed*** to achieve the minimal policy goal of income restoration or as projects [where] the Bank ***didn't know*** what happened to the livelihoods of the populations displaced. This low percentage is the sad recognition is that two out of every three projects have failed to deliver to the displaced people what the World Bank and their countries governments had committed to deliver. ***This is a remarkable admission of failure and of ignorance about displacements' outcome*** (emphasis added)."[22]

One of the Chapters ***Boomtown Risks and Community Harm in an Infrastructure Project*** discusses a Bank resettlement project in Uganda where there was lack of consultation, failure to monitor and supervise, or identify actual numbers of people to be displaced or the governments lack of capacity to implement resettlement projects.[23] The Inspection Panel wrote: The particulars in the Project demonstrate how a combination of poor planning, weak risk analysis, and accompanying mitigation measures, coupled with the lack of understanding of community dynamics led to serious harm.[24]

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[19] *Id*.
[20] *Id.*
[21] *Id.*, at 4.
[22] *Id.*, at 16.
[23] Elana Berger & Moses Ntenga, *Boomtown Risks and Community Harm in an Infrastructure Project,* in MICHAEL CERNEA & JULIE K. MOLDONADO, EDS., CHALLENGING THE PREVAILING OF DISPLACEMENT AND RESETTLEMENT 95 (2023).
[24] *Id.*

In November 2023, the Inspection Panel issued a new Advisory Report on Livelihoods which again reflects poorly on World Bank involuntary resettlement activities. Thirty-nine cases were considered in the report, and of these twenty-three were registered. The Panel recommended an investigation in nine of the cases. Six of the cases involved involuntary resettlement.[25] The Report details that in most cases communities that were forcibly displaced did not have their livelihoods restored. The advisory details several recurring issues in World Bank projects, including lack of consultation and lack of understanding of local conditions; failure to accurately determine numbers of people to be displaced; and extensive problems in affected people recovering their livelihoods. In the Brazil's Teresina Resettlement, the training programs used for restoration were pre-existing national programs that impacted people did not know how to approach. Additionally, these impacted people had to compete with 100,000 residents from other areas. The Panel suggested that the Bank determine whether the programs were accessible to the affected people.

The India Amaravati project was a land pooling scheme where landowners gave up their farmland in exchange for smaller plots with public services. The Panel wrote that "affected persons participating in this scheme needed to transition from rural farm-based livelihoods to urban non-farming livelihoods. This was a drastic social change that inherently involved high risks of impoverishment. Furthermore, many of the [project-affected people] lacked formal education and had low literacy, and many had farmed their whole lives."[26] The Report further stated that "Property value does not automatically translate to a production system or employment that can sustain a family into the future and improve their standard of living."[27]
In another India case, R Water Supply and Sanitation Project for Low Income States, The Requesters complained that a water treatment plant impacted their goat pastures, and the collection of medicinal herbs, and also restricted access to red mud used for painting houses. The construction of the plant also made it more difficult to collect wood for fires and to fence home gardens. The Panel findings stated that the social assessment and tribal development plan did not adequately assess customary land, cultural and religious uses and practices.[28]

In the Panel Report's conclusions, they state: "The Panel cases show that at times, the more vulnerable and marginal people are more likely to be overlooked in census surveys, data and assessments. As a result, they are not adequately consulted or included in livelihood restoration and improvement strategies, leading to further marginalization and impoverishment."[29] The Report also indicates that close monitoring and supervision has not occurred in many cases.

Can it be true that so little has changed in the implementation of involuntary resettlement in Bank projects since the early 1990's? The same mistakes and miscalculations are clearly still being made in Bank operations. With this poor record of resettlement, the only possible conclusion is that no more World Bank funding be spent on forcible resettlement; given that few borrower governments have adequate resettlement policies in place, continued support of forced resettlement only invites more failure and resulting destitution for communities. The bottom line seems to be that

[25] Inspection Panel, Ensuring Development While Securing Livelihoods 6 (2023).
[26] *Id.*, at 22-23.
[27] *Id.*, at 23.
[28] *Id.*, at 18.
[29] *Id.*, at 30.

involuntary resettlement of communities to make way for top-down development is difficult, and that it's probably impossible to restore all impacted people's livelihoods.

Resettlement issues should become more important to the Bank as it positions itself to address climate change impacts, including administering the Loss and Damage Fund under the UNFCCC. If the World Bank moved towards bottom-up community-based development that responds to climate change events and community goals it could avoid forced resettlement in many cases. Whether related to climate change or not, the Bank should reject projects involving forcible resettlement of large numbers of people, and especially where there is no clear land base to move people. The Bank should also be held accountable for violations of policy by Bank shareholders, Executive Directors, parliaments, and taxpayers.

With the evidence compiled over 30 years it is obvious that the Inspection Panel in 2023 needs more authority. The upcoming review of the Bank's Accountability Mechanism does not include a review of the Panel's mandate and authority, which is unfortunate because the Panel's powers desperately need to be expanded so that problems can be corrected early and often.

The Board should empower the Inspection Panel for the following:

1. The Panel needs teeth. It should have the same monitoring and reporting authority enshrined in other compliance mechanism policies. Monitoring should be continued for five years after the publication of Panel Investigation Reports, and the monitoring reports should be sent directly to the Board with findings and recommendations.

2. The Panel should be empowered to conduct spot checks through site visits to any World Bank project involving involuntary resettlement that has become problematic.

3. During eligibility or investigation or at any time during the Panel process, the Panel should be empowered to recommend suspension of a project to the Board.

4. The Panel should be able to return to legacy Bank resettlement projects that were previously investigated and still have outstanding issues, and make recommendations to Board and management on remedy.

Going forward, if the World Bank cannot enforce its own policies, it should avoid funding projects that involve forcible resettlement and only fund resettlement that is based on bottom-up community consent. This is particularly important if the Bank expects to be a leader in change finance. Climate change will put pressure on many communities, requiring difficult decisions about whether to resettle whole neighborhoods, regions, and even countries. Perhaps lessons learned over the past decades in misapplying its resettlement policies in the context of development-induced displacements may be easier to apply in the climate context where the Bank is not directly responsible for financing the displacement.