

INVOLUNTARY RESETTLEMENT IN THE EXTRACTIVE INDUSTRIES: SOME LESSONS FROM A VIETNAMESE MINING PROJECT

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ABSTRACT

Involuntary resettlement presents significant social, cultural, economic and impoverishment risks for both resettled and host communities. In recent years, various global efforts have been made to improve the implementation of development-induced resettlement projects. This has included promulgation of global standards by international organisations such as the World Bank, the Asian Development Bank, and the International Finance Corporation. However, the available evidence indicates that practice often falls well short of these standards, especially in developing nations.

In the Asian regional context, as the growth in global demand for minerals continues, mine-induced resettlement has become more prevalent. This will pose significant challenges for developing nations including ASEAN members, given that these governments are often not equipped to deal with the complexities associated with resettlement. This paper compares governance of mine-induced resettlement with global standards by exploring the experience of a large-scale mining project in Vietnam. Research findings reveal significant process and knowledge gaps between the various private and public sector actors. These gaps reinforce the importance of building capacity among actor groups as well as defining roles and responsibilities of stakeholders in contemporary Vietnam. Drawing on this study, the paper proposes specific recommendations that can be applied in Vietnam and other ASEAN countries to improve outcomes for communities impacted on by resettlement projects.

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INTRODUCTION

Involuntary resettlement is often a corollary of large-scale development projects, particularly in the developing world. As various studies have demonstrated, poorly implemented resettlements can have severe and lasting adverse consequences for resettled people and host communities, and even comparatively well-managed processes can be problematic. International organisations such as the World Bank, International Finance Corporation (IFC) and the Asian Development Bank (ADB) have sought to redress this situation by promulgating resettlement performance standards and promoting good practice, but these initiatives have had only limited penetration to date.

Traditionally, the major triggers for involuntary resettlement in South East Asia have been the construction of dams and other large-scale infrastructure projects, such as roads and ports, and urban renewal schemes. However, mining projects also displace significant numbers of people due to the need to access ore reserves and to establish mine infrastructure such as mineral processing plants, tailings, dams and roads, all of which require considerable amounts of land (Terminski, 2013). For example, in Freeport mine in Indonesia, approximately 15,000 affected people were required to relocate (Hyndman, 1994). Another example is the proposed Tampakan copper-gold mine in the Philippines, which could lead to around 5,000 households being displaced (Swissinfo.ch, 2013). With the continuing growth in global demand for minerals and the increased level of mining activity in regions such as Asia and Africa, mine-induced resettlement is likely to become an even more salient issue in the future.

Poorly managed resettlements can exacerbate social problems and conflicts in the areas where mining projects are located, cause project delays because of opposition from displaced people, expose companies and governments to legal action, add to the financial burden of the State (particularly where resettlement results in a loss of livelihoods) and attract adverse international attention from multilateral organisations, other governments and NGOs. Unfortunately, governments in the developing world are often not equipped to anticipate and deal with the complexities associated with mining-induced resettlement. Furthermore, governments are not always disinterested parties in the process; to the contrary, some of the more problematic resettlement have been undertaken by state-owned mining companies (see, for example, Mathur, 2013 on Coal India).

In this paper, we use the example of a large mining project currently under development in Vietnam to demonstrate some of the governance challenges associated with mine-induced resettlement in emerging economies. We argue that the centralised nature of the Vietnamese State, combined with deficient legislation and a lack of expertise and resources at the local level, has created a situation where project-affected communities have been placed in a particularly vulnerable position. We conclude by identifying specific actions that could be taken in Vietnam and other ASEAN countries to provide better protection for people at risk of being displaced by mining projects and other large-scale developments.

THE GLOBAL CONTEXT: INTERNATIONAL STANDARDS FOR INVOLUNTARY RESETTLEMENT

The World Bank was one of the first international development agencies to formulate an involuntary resettlement policy. The original policy – Operational Manual Statement 2.33 was drafted in 1980 and since then has been revised a number of times in 1986, 1988, 1990 and most recently in 2001- Operational Policy (OP 4.12) - as it is now called, requires borrowers (typically governments) to prepare and implement a Resettlement Plan complying with a broad range of conditions (World Bank, 2001).

In 2006, IFC – a member of the World Bank group - adopted Performance Standards (PS) on Social and Environmental Sustainability for private sector companies that were in receipt of IFC funding (IFC, 2006). In the beginning, the standards were considered to be aspirational guidelines, and were treated as an international benchmark for private sector projects (Nazari, 2010). However, in the context where the IFC becomes a lender, they are no longer just a good practice benchmark but have become compliance standards and now operate as a risk management tool for IFC-funded projects. Increasingly, the IFC standards are also seen as providing a global benchmark.

For present purposes, the key IFC standard is PS 5 on ‘Land Acquisition and Involuntary Resettlement’ (PS5), which replaced the World Bank’s safeguard policies as far as the private sector was concerned. PS5 addresses the risk of involuntary resettlement caused by IFC-financed projects. It covers both physical displacement (relocation or loss of shelter or land) and economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood) that result from project-related land acquisition and/or restrictions on land use (IFC, 2012). The Standard requires clients to avoid or at least minimise involuntary resettlement wherever feasible, by considering alternative project designs. In instances where resettlement is unavoidable, clients are required to provide opportunities for resettled people and communities to derive proper development benefits from the project. In addition, adverse social and economic impacts from displacement must be mitigated in order to improve (or at least restore) the living standards of project affected people (IFC, 2012).

Where there is likely to be physical displacement, PS5 requires a Resettlement Action Plan addressing compensation, the establishment of resettlement sites, adequate replacement housing, and relocation assistance. In the case of a project involving economic displacement only, a Livelihood Restoration Plan is required to compensate affected persons and/or communities. This plan includes provisions for compensation of economically displaced persons and replacement property, and economic assistance (e.g. credit facilities, training, or job opportunities) (IFC, 2012).

There has been much commentary and criticism about the adequacy and relevance of the 2006 IFC standards (HIC, 2006; IFC, 2009, 2010; JACSES, 2009; Nazari, 2010). In response, the standards, including PS5, were updated in 2011 to incorporate lessons from IFC’s implementation experience and feedback from internal and external sources. The revised standards became effective in early 2012.

The revised PS5 2012 also includes a set of requirements outlining the responsibilities of developers where governments have formal carriage of the resettlement process. According to the standard, under government-managed resettlement, the private sector is expected to collaborate with the responsible government agency to “the extent permitted” to ensure that planning and implementation of the resettlement is consistent with the performance standard. In addition, developers are required to play a more proactive and engaged role in the land acquisition and resettlement process, particularly where government capacity is limited. The revised PS5, while recognising that investors will be restricted in their ability to influence government planning outcomes, emphasises the responsibility of the developer in accounting for resource needs, planning requirements, and the potential risks of the project on displaced peoples.

In the Asian regional context, ADB has played a lead role in setting standards for managing project-induced resettlement, commencing with the adoption of an Involuntary Resettlement Policy in 1995. This was replaced by a Safeguard Policy Statement in 2009 which in many respects reflects the World Bank/IFC approach. The primary focus of the ADB has been on ensuring compliance with its policies in relation to projects which it funds. However, it also undertakes some capacity building with governments of member companies and has provided technical assistance on the development of laws and regulations (for example, in Mongolia).

Both the ADB and World Bank have been active in Vietnam and have been involved in a number of projects requiring large-scale involuntary resettlement (for example *Hoa Lac* high-tech park, *Song Bung* hydropower project, *Hanoi* urban transport development project and *Nui Phao* mining project). Most of these projects have related to urban infrastructure or dams (*Kunming-Haiphong* transport corridor project, *Ho Chi Minh city-Long Thanh-Dau Giay* expressway project, *Song Bung* and *Son La* hydropower projects). There is only one recorded case of a multi-lateral agency being involved in funding a mining project; the *Nui Phao* Mining Project which sought funding from World Bank’s Multilateral Investment Guarantee Agency. As it happens, this project did not proceed. The ADB has also provided some technical assistance to the Vietnamese Government in reviewing current laws and policies relating to resettlement (ADB, 2013).

GOVERNMENT-MANAGED RESETTLEMENT: AN OVERVIEW

Much of the available literature on involuntary resettlement in the extractive resources sector has focused on the behaviour of mining companies, but the State also has a very important role to play. Governments define the regulatory context within resettlement takes place (e.g. through laws relating to compulsory acquisition and compensation), may cause or contribute to displacement by their own actions (e.g. when they require people to move so that a dam or road can be built), and in Vietnam and some other countries (e.g. Laos, Cambodia the Philippines, China and India) themselves act as resettlement agencies.

A consistent finding from the research is that the implementation of resettlement projects in which the responsibility is vested in the State is often cumbersome, particularly for large-scale projects (C. De Wet, 2004; McMillan, Sanders, Koenig, Akwabi-Ameyaw, & Painter, 1998; Robinson, 2002; Scudder, 2011; Sonnenberg & Münster, 2001; Zaman, 2002). The following problems appear to be commonplace:

- Lack of clear policy mandate
- Overlapping responsibilities of government agencies
- Lack of organisational capacity
- Poor communication at all levels
- Lack of local participation
- Land tenure problems
- Underfinanced resettlement components

In many cases, resettlement projects led by the State have been conducted in the absence of explicit policies, frameworks and guidelines (Karimi & Taifur, 2013; Maitra, 2009; Nihar Ranjan Das, 2008; Rew, Fisher, & Pandey, 2000). For example, a review of resettlement projects in India conducted by (Maitra, 2009) reveals that due to the absence of national resettlement policies and guidelines, both the compensation rates and the resettlement assistance are unsatisfactory by any standards. Maitra (2009) also stresses that numerous national resettlement projects have failed largely due to weak implementing institutions, lack of clear policy mandate and inadequate organisational capacity.

In the case of Indonesia, Zaman (2002) and Karimi and Taifur (2013) argue that the absence of national policy and guidelines is one of the most important causes for the failure of resettlement projects. They observe that many of the government agencies with large-scale resettlement projects do not have adequate resources or training. Moreover, government officials carrying out the majority of resettlement work do not have a clear understanding of the policy requirements. It is common for these officials to hold the misinformed belief that compensation for affected people is one-dimensional, involving only financial payment without any need to assist with livelihood restoration.

In reviewing the implementation of resettlement projects led by the State, Cernea (1996, p24) observed that effective legal mechanisms are likely to be either absent or often subverted under authoritarian institutions. Under government-managed resettlement in an authoritarian setting, central governments typically make regulatory decisions without consulting with other actors (Cernea, 1996; Sonnenberg & Münster, 2001; Tan, 2008). According to Tan (2008), the Chinese government is entirely responsible for managing resettlement processes and has decisive roles in many aspects of the resettlement including overall planning, and making, implementing and monitoring all resettlement policies and regulations. Furthermore, in authoritarian regimes, individuals and groups who are adversely affected by government action, or inaction, have limited recourse to remedies such as legal action, media campaigns or political lobbying.

A further concern, identified by De Wet (2002, p10), is that the State is both player and referee in government-led resettlement projects, being both the initiator of resettlement and the source of laws and regulations. This creates an inherent conflict of interest and increases the risk that the rights and interests of project-affected people will be overlooked, or overridden, in the pursuit of broader national development objectives.

As detailed below, all of these shortcomings and problems have been manifested, to varying degrees, in the case of Vietnam.

THE STUDY AND ITS CONTEXT

Research Methodology

This paper draws on research conducted at and around the *Thach Khe* Iron Ore Mine project (TKIOM) in Vietnam from January 2011 to December 2011. The study sought to document the impoverishment risks facing people affected by the project, and to assess the capacity of the government, mining company and affected people to mitigate and manage these risks.

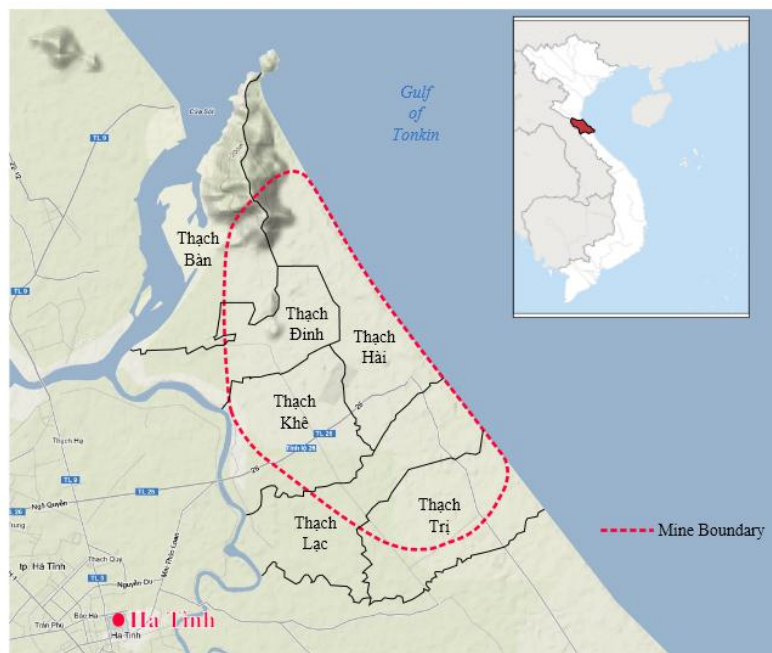
The main research methods utilized were semi-structured interviews and observations, both of which are qualitative methods. Secondary data collection was also undertaken (using ‘official data’ such as government reports) along with participatory methods such as informal conversations, participatory mapping and a transect walk. Data collection was undertaken in two phases: an initial scoping study and then a more extended fieldwork visit. The main source of qualitative data comprised semi-structured interviews with 28 key informants, drawn from three actor groups associated with the mine. In addition, 45 others were asked a range of questions pertaining to resettlement processes, their own experiences and impacts.

The Thach Khe Iron Ore Mine Project

Background

Thach Khe Iron Ore Mine (TKIOM) is an open pit iron ore mine in central Vietnam. The mine is located in the North East of *Thach Ha* District, *Ha Tinh* province. The mine is approximately 8.5km to the East of *Ha Tinh* city and about 1.6 km from the coast (MOIT, 2008). Figure 1 below shows the location of the mine in the region.

Figure 1. Location of Thach Khe Iron Ore Mine



The TKIOM deposit was discovered by chance in 1961 when the geology group of the Vietnamese Geography Department was carrying out routine mapping in the North (MOIT, 2008). The subsequent definition of the size and shape of the deposit took place over several decades. A relatively recent estimate reserve for the *Thach Khe* deposit is 544 million tons, which equates to 60% of the total iron ore reserves of Vietnam. This deposit is considered to be not only the largest in Vietnam but also in Southeast Asia (MIOT, 2008). It is expected that the deposit will support a mining rate of 10 million tons per year for the next three decades.

A range of domestic and foreign investors expressed an interest in investing in the TKIOM; but only domestic bidders were successful. This was despite foreign investors from China, India, Korea and Russia showing an interest in building a steel refinery close to the TKIOM (MAC, 2007; MOIT, 2008; VCII, 2007). Although foreign investors are legally able to establish joint ventures with local partners, the Government of Vietnam required that domestic investors hold the controlling stake in this venture, due to the size of the deposit. The details of the bidding process for the ownership of TKIOM were not made public; however, during the tender process, some foreign investors withdrew their bids, due to the uncertain regulatory framework and complex geographical position of the mine. As a result, the final joint venture arrangement only included domestic investors (VCII, 2007).

Thach Khe Iron Ore Joint Stock Company (TIC) was established in 2006 as a joint venture between multiple domestic investors, with a view to developing the TKIOM deposit in order to provide iron ore to meet domestic demand and for sales to the export market. The TIC has nine main domestic shareholders, most of which are state-owned enterprises. The company has been granted a 30 year lease to mine the iron ore over 527 hectares and to a depth of 550 metres (Vietnam Development Gateway, 2007).³

Resettlement at TKIOM: the State of Play

According to TKIOM's 2008 Environmental Impact Assessment report (EIA), the mine was expected to impact approximately 3,898 hectares of natural land covering six communes.⁴ This comprises 2,364 hectares of agricultural land, 793 hectares of non-agricultural land, and 741 hectares of non-used land. Approximately 3,952 households, comprising around 16,800 people in six communes, would be directly affected by the mine operation and required to relocate. Most affected households, about 2,500, were involved in agricultural production, with the others make their living through fisheries (587 households), salt making (404 households) and trading (437 households) (MOIT, 2008).

Under the resettlement roadmap, all 3,952 households should have been resettled between 2009 and 2013 (MOIT, 2008). According to the plan, the main years of resettlement were to be 2010 and 2011 when 60% of total households were expected to relocate. Notably, all households from two of the communes, *Thach Ban* and *Thach Dinh*, should have completed relocation by 2010 (see Figure 2). However, at the time of the fieldtrip in December 2011,

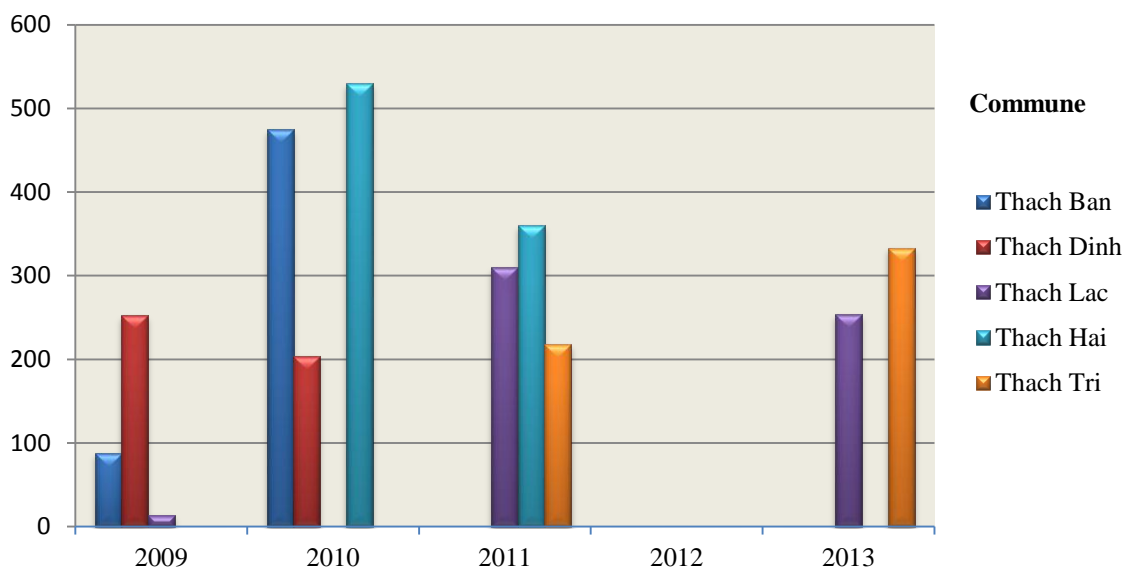
³ 1 hectare = 10,000 m²

⁴ Approximately 3,898 hectares of affected land include 527 hectares of the area to be mined, areas to be used for waste rock dumps, roads, plants and buffer zones etc.

only 12 households from the *Thach Dinh* commune had relocated; all of these households were situated on the mining company’s planned transportation route.

Figure 2. Planned Resettlement Timeframe for Affected Household in TKIOM

Unit: Households (HH)



Source: (MOIT, 2008)

The main reason for why resettlement has been significantly delayed is because the mining company has failed to contribute the capital that it promised. In 2009, the company committed to contribute 1.3 trillion VND (65 million AUD) by 2010; however, by 2012, it has only provided 221.5 billion VND (11.05 million AUD). According to the company, this is partly because some shareholders, who have a controlling stake in the company, have been affected by a financial crisis and have incurred large debts. In addition, the company has been undergoing a restructuring process with major changes to the shareholder structure (Unibros News, 2011; VCII, 2007).

The delay in the resettlement process has seriously impacted upon the lives of affected people. At the time of the field trip, the mining company was still undertaking excavation operations even though provisions for relocation had not been finalized. Environmental mining issues such as dust, noise, air pollution, water shortage and contamination have impacted upon local people and this has been amplified by the delay in the resettlement process.

Our data show that affected people did not know when the relocation would take place, where they would go, and when compensation would be provided. The only certainty is that they cannot stay because of the adverse environmental impacts of the company’s mining operations. Affected people, therefore, face a dilemma of “not being able to move but finding it hard to stay”. These uncertainties have increased the stress levels and the economic costs for affected people because they are unable to plan their relocation. This has resulted in further hardship for groups who were already vulnerable. Findings indicate that affected people in the case study potentially confront a number of risks including landlessness,

joblessness, homelessness, marginalisation, loss of access to common property and services, social disarticulation, loss of access to education, and financial insecurity.

INSTITUTIONAL CHALLENGES UNDER GOVERNMENT-MANAGED RESETTLEMENT IN VIETNAM

In the international sphere, mining companies confront the complexity of resettlement with a set of internationally recognised performance standards as their guide. However, even with the benefit of experienced consultants and practitioners operating within the parameters of carefully constructed standards, executing a successful resettlement eludes most companies. In Vietnam, where bureaucracies only have government legislation to guide them through this process, these problems are compounded.

Our analysis points to several overlapping factors that help to account for the current unsatisfactory state of affairs at TKIOM. These can be summarised under the following headings:

1. Unclear and confusing responsibilities
2. Inadequate representative structure
3. Lack of collaboration between government agencies
4. A lack of capacity and resources in government, particularly at the local level where responsibility for implementation sits
5. Marginalisation of the company and a general lack of capacity
6. Failure to ensure, prior to project approval, that funds were available to cover the costs of resettlement
7. Poor communication processes
8. An absence of external monitoring and oversight

Prior to considering these aspects, it will be helpful to provide a short overview of governance arrangements in Vietnam as they relate to resettlement.

Governance Arrangements in Vietnam

The Vietnamese government structure comprises the National Assembly, the Government, the People's Courts and the People's Prosecutors. At central level, the National Assembly is the highest legislative body of the state power, with the Government as its executive organ. At local level, there are three tiers of government: province, district and commune. At the provincial level, the Provincial People's Committee is elected by their constituents and is responsible for formulating and implementing the province's socio-economic development plans, budgets, defence and security. This Council elects a Provincial People's Committee as its executive arm in order to implement the constitution, laws, and formal orders of the central level of government. In addition, the Provincial Committee is responsible for issuing resolutions for the districts and communes to implement socio-economic development measures. At district level and commune levels, the structure are similar to the provincial level with People's Councils and People's Committees that have similar functions, a progressively more practical approach and work in their respective communities. As a matter of principle, the governments at lower levels are expected to be subordinate to those at the higher level (IDLO, 2011).

The executive institutions including Central Government and local People’s Committees are responsible for implementing resettlement projects in the nation. Central Government has issued several regulations and guidelines for the implementation of land acquisition and resettlement.⁵ Figure 3 shows the governance relationships between the key agencies involved in relation to the TKIOM resettlement project.⁶

Figure 3. Governance Arrangements relating to Resettlement in TKIOM

Level	Government Organisation	Interaction	Organisation Responsible for Resettlement Projects
Central	<ul style="list-style-type: none"> Ministry of Finance Ministry of Natural Resources and Environment Ministry of Construction 		Project Management Unit (PMU)
Province	<i>Ha Tinh</i> Provincial People’s Committee (PPC)		<i>Thach Khe</i> Iron Ore Mine Management Board (MB)
District	<i>Thach Ha</i> District People’s Committee (DPC)		<i>Thach Ha</i> Compensation, Assistance and Resettlement Committee
Commune	Six People’s Committees of six affected communes: <i>Thach Ha, Thach Dinh, Thach Khe, Thach Ban, Thach Lac, Thach Tri</i>		

Legend:

- Direct Supervision
- ←..... Subordination

It is evident that the primary responsibility for the governing of the resettlement process in Vietnam falls to the State. The Central Government makes all decisions and passes down its regulations for implementation. In the case of TKIOM, the major institutions involved in the project are local governments, which brings with its unique complexities.

Key Issues

Unclear and Confusing Responsibilities

Although there are laws and regulations to empower the Vietnamese State to dispossess land ‘needed for the public good’, no explicit policies and legal frameworks have been established to compel relevant government agencies to address the complexity of resettlement. According to Dao (2010) and Bladh et al (2005), in the absence of an official resettlement policy and

⁵ The main implementation regulation on land acquisition and resettlement is Decree 197/2004/ND-CP on “Compensation, rehabilitation and resettlement in the event of land recovery by the State” and Decree No. 181/2004/ND-CP on guiding the implementation of the land law.

⁶ Responsibilities of government agencies in relation to the implementation of resettlement projects are stipulated under Land Law 2003 and Decree 197/2004/ND-CP.

framework, responsibilities for government agencies in land acquisition and resettlement have not been clearly defined. Development projects address resettlement matters as they arise on a purely ad hoc basis through the promulgation of instructions that are specific to the project in question. As a result, accountability assigned to government agencies is indefinite and vague.

In the case of TKIOM, as indicated, the major responsibility for resettlement implementation and management rests with local authorities, mainly the *Thach Ha* district and six mine-affected communes. The resettlement project was started in 2008 when there was no specific guideline addressing the responsibilities of relevant government agencies. It was not until 2010 that the *Ha Tinh* province issued Decision No.7/2010/QĐ-UBND on “Compensation, Assistance and Resettlement When the State Acquires Land in the Provincial Region”. A further two years on, in July of 2012, the provincial People’s Committee issued Decision No. 37/2012/ QĐ-UBND on “Cooperation among the TKIOM Management Board, corresponding government agencies and the People’s Committees at the district and commune level” which is specifically related to the TKIOM resettlement project.

A comparison of relevant documents reveals that, although there are local implementation regulations, responsibilities for district and commune level authorities were not defined clearly. These unclear and overlapping responsibilities have made it difficult to interpret the legal framework. The situation has been further exacerbated because not all actors have the same level of understanding; in the interviews, several key actors expressed confusion regarding the different levels and types of responsibilities. While the company and the government agencies had some understanding of their general tasks in the resettlement process, affected people often mistook the responsibilities of the company as belonging to the government and vice versa.

Inadequate Representative Structures

On the surface, the structure of the Resettlement Committee appears to be democratic and to involve all key actors; the government, company and affected people. However, data from interviews and written reports in circulation indicate that the existing membership of the *Thach Ha* district Resettlement Committee is not in alignment with the legal requirements. In particular, two key actors are not represented on the Committee: the company and affected people. Consequently, people who are directly affected by the mining project have been left “in the dark”. This raises questions about whether the decisions that have been made relating to resettlement activities are relevant to the needs of affected people.

Lack of Collaboration between Government Agencies

According to Rath and Jena (2003), for the implementation of a resettlement process to be successful, government agencies must have effective collaboration vertically and horizontally from the highest policy decision level to the district and grass-root administrative level. Existing legal regulations in Vietnam relating to resettlement appear to require this, but in practice, there is a lack of effective coordination and communication channels between government agencies in the TKIOM. There were some positive indications from the data that People’s Committees (PCs), at local level, coordinated with each other to some extent vertically, with higher PCs providing directions and guidance to lower PCs in implementing

resettlement activities. However, there was no effective collaboration horizontally between government departments, although this is required by law.

Limited Capacity of Government Agencies

Only four key personnel in the Resettlement Committee were involved in making plans, providing resettlement guidelines and giving directions to the commune governments. These officials also held other positions, which have additional demands on their time and which prevented them from fulfilling their tasks associated with the resettlement process effectively.

There is also the issue of knowledge and competency. Members of the Resettlement Committee have only limited formal tertiary education and most staff in the communes have not studied beyond high school. This has been compounded by the lack of training opportunities pertaining to planning and supervising resettlement. For most of the officials, the TKIOM is the first resettlement project that they have dealt with.

Poor knowledge at the local government level has manifested itself in a lack of capacity to conceptualise Resettlement Action Plans (RAPs). All of the government officials who were interviewed considered a RAP to be a kind of a roadmap which includes site clearance, tentative relocation timelines, and the establishment of new resettlement sites. They did not have a comprehensive picture of the components that should be addressed in a conventional RAP such as project impacts, a compensation framework, resettlement assistance and livelihood reconstruction, budget and implementation schedule, organisational responsibilities, consultation and participation, grievance redress, and monitoring and evaluation (IFC, 2012). This narrow focus contributed to resettlement activities being carried out on an ad-hoc basis with little consideration of the long-term consequences.

Role of the Company

The entire responsibility for resettlement implementation, under current Vietnamese legislation, is given to local governments, rather than project developers. The investors are responsible only for providing resettlement funds. In the case of TKIOM, this has meant that responsibility for resettlement has rested solely with local governments, particularly with the district People's Committee; the role of the company has been restricted to providing compensation funds. Documentation provided in the meetings and correspondence between the local governments and the company relates purely to requests for site clearance. There are no other reports from the company on matters such as the distribution of compensation payments or the provision of technical designs.

According to current IFC guidelines, investors are encouraged to collaborate with government agencies in several key areas including: (i) the establishment of methods for determining and providing adequate compensation to affected people; (ii) the distribution of compensation payments; and (iii) the design and implementation of a monitoring program (IFC, 2012). These practices have not been applied in the case of TKIOM. For example, there are no forums, such as a Joint Resettlement Committee or a Joint Funding Program that would provide opportunities for formal or informal collaboration between the company and government.

In TKIOM itself, at the time interviews were conducted, responsibility for resettlement was shared amongst three staff on a part-time basis. These personnel also held other unrelated responsibilities within their roles. Obviously, deployment of such a limited number of staff is not commensurate with the scale and complexity of the project. In addition, the three staff did not have any relevant experience, knowledge or understanding of resettlement; similar to government officials, this project was the first one in which they had been involved.

Inadequate Financial Provision

The company not only lacks human resources but its finances are limited. It does not have sufficient funds to compensate affected people with the calculated amounts. This is because the key shareholders, most of whom are state-owned enterprises, have weak balance sheets and have not been able to provide required funds in a timely manner. As of October 2012, the company was going through a capital re-structuring process. As discussed earlier, the resulting shortage of funds has contributed to a significant delay in the relocation process.

During interviews, company representatives also stated that they were well aware of the company's responsibility in providing enough resettlement funds and that any delay in the compensation process would cause more hardship for affected people. They also highlighted that the shortage of funds is one of the factors negatively affecting the resettlement process.

Inadequate Communication Processes

The participation of affected people in the TKIOM resettlement process has been minimal. Their main communication channels have been through meetings at the grassroots level (commune and village level); they were generally unable to attend higher levels meetings (province and district levels). In addition, the support provided at these meetings has been limited to infrequent written publications and public broadcasting by the local governments. Moreover, the information provided to the local people has been essentially delivered in a top-down manner. The information was of poor quality and delivered irregularly. The research data also show that the consultation process in the TKIOM remained a one-way process from affected people to the local government authorities. A few affected people raised their concerns and expectations through available feedback mechanisms; however, they had not received any response from the governments.

Lack of External Oversight

Civil society has the potential to play a constructive role in facilitating public discussions and dialogues during resettlement planning and implementation. According to Gonzalez and Mendoza (2003), civil society organisations play an important role in articulating the issues and preferences of the people. Such organisations also play a valuable role in ensuring the accountability of the government and private sector. The ADB (2012) likewise recognises the significant role of civil society organisations by partnering with them in its funded resettlement projects.

Participants interviewed during the field trips confirmed that there were no local and international civil organisations representing the interests of affected communities in the TKIOM. Therefore, it must be questioned whether the local funding of the TKIOM precluded the involvement of civil society, thus resulting in no independent organisations being available to provide guidance and to track and ensure compliance with planning and implementation guidelines.

CONCLUSIONS AND RECOMMENDATIONS

As noted at the outset of this chapter, the main triggers for involuntary resettlement in ASEAN countries have traditionally been the construction of dams and other large-scale infrastructure projects, such as roads and ports, and urban renewal schemes. However, with the increase in mining activities in several member countries (e.g. Vietnam, Laos, Philippines, Indonesia) mining-induced displacement has also emerged as a significant issue requiring attention in the region. Risks that member countries face in this regard include potential criticism for not protecting the rights of displaced people, and increased difficulty in attracting funding from the financial sector and multilateral agencies.

This paper has provided a case study demonstrating how the governance of mine-induced resettlement in one ASEAN member country, Vietnam, has fallen well short of accepted international standards. Under current Vietnamese national legislation full responsibility for resettlement implementation is given over to the government, with no responsibilities assigned to the project investors, other than to provide the finance to support the physical relocation of people. The structure and governance of resettlement planning and implementation in Vietnam ostensibly draws a large number of representative bodies into the process, but there is no overarching governance framework for coordinating or differentiating roles and responsibilities between different agencies and actors.

A compounding factor is that both the government and the mining company had very limited capacity with regards to resourcing, knowledge and relevant skills. Furthermore, there was a lack of external monitoring and oversight during the resettlement process. The impact in terms of policy implementation has been a state of near paralysis at different levels of government, and a system of planning that is almost impossible for affected people to access, interpret or influence. Implementation failures, delays in preparing relocation sites or providing services and infrastructure to affected households have had a direct negative effect on access to education and basic livelihood support.

These findings provide a useful point of reference and/or comparison for other studies of mining-related resettlement in the region. A regional research approach, building on this study, will help build a stronger knowledge base and enrich the literature relating to resettlement generally and specifically to the mining sector. Comparisons could also assist member countries to learn from each other and improve the design and implementation of policy frameworks. In this regard, there would be particular value in comparing the advantages and limitations of government managed resettlement processes with those that devolve more responsibility to private sector actors.

More generally, the paper has highlighted the need to strengthen institutional arrangements, build the capacities of key actors, better define actor jurisdiction, encourage these actors to actively engage in the resettlement process and strengthen the involvement of civil society. An important lesson for ASEAN countries is the necessity of more active participation by stakeholders and a more comprehensive resettlement policy and frameworks for managing resettlement projects.

Based on this study, there are several recommendations that can be made to member countries (DMCs) of ASEAN, including Vietnam, regarding the governance of resettlement arising from mining projects and other large development projects:

1. DMCs, with the assistance of international organisations such as ADB or the World Bank, should consider undertaking a ‘gap analysis’ of their current policy and legislative frameworks to identify areas where these frameworks fall short of current international standards relating to resettlement.
2. To support this process, there would be value in ASEAN establishing model legislation and common guidelines for resettlement planning and implementation that could be used as a reference point by all member countries. This would help fill the current policy void and provide a framework signifying the commitments of both the governments and project developers to international resettlement standards.
3. Consideration should also be given to creating an advisory facility to provide guidance and expert advice on any matters relating to resettlement. It may be possible to secure aid funding from donor countries for such a facility.
4. Civil society organisations have a potentially important role to play in advocating for the rights and interests of communities that may be subject to resettlement, as historically displaced communities have often had a very limited capacity to engage with the State. DMCs should therefore explore ways in which organisations with demonstrated expertise in the area of resettlement can be given some standing in decision-making and implementation processes, subject always to the proviso that they are acting with the consent of the communities that they purport to represent.
5. Periodic independent external reviews of resettlement projects should be undertaken and developers should be required to make financial provision to fund these reviews (see below). The reviews would track and verify compliance and progress toward the implementation outcomes. An example is the IFC’s Performance Standard 5, which requires investors to commission an external completion audit of the Resettlement Action Plan or Livelihood Restoration Plan to review mitigation measures and implementation outcomes against agreed objectives. The ADB has also required that a monitoring and reporting framework for resettlement activities be developed during the resettlement planning and implementation. These independent external reviews should be undertaken by competent resettlement professionals.
6. International and local developers should be required to engage proactively in the resettlement process. As a condition of license approval for development projects,

DMCs should require these investors to comply with global standards on resettlement such as IFC Performance Standards and ADB Safeguard Standards. In addition, developers should be required to provide a financial guarantee to cover compensation and relocation costs before a development project can be allowed to proceed.

7. DMCs, with the assistance of multi-lateral organisations and aid donors, should invest in the training and capacity building of government officials responsible for conducting or overseeing resettlement processes. Officials from both the regulatory body and implementing agencies should receive this training as should key company personnel. Possible topics to cover include: the risks associated with involuntary resettlement; the design monitoring and implementation of resettlement action plans; livelihood restoration; and community engagement and dialogue skills.

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