

Resettlement is Displacement:
A right Based Perspective on the
Internally Displaced in Tibet



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Tibetan Centre For Human Rights And Democracy

Tibetan Centre for Human Rights and Democracy

The Centre for Human Rights and Democracy (TCHRD) is the first Tibetan nongovernmental organization to be formed with the mission to promote and protect human rights of Tibetans in Tibet and to educate the exile Tibetan community on human rights concepts and democratic principles. TCHRD is registered NGO, established in January 1996, based in Dharamsala, North India. It is funded by the donations from individuals' supports and foundations around the world.

TCHRD conducts regular, systematic investigations of human rights abuses in Tibet and published research documents on various human rights issues confronted by the Tibetan people in Tibet.

TCHRD organizes various educational programs like workshops, talk series, and public discussions in an effort to empower the Tibetan exile community to play an important participatory and vigilant role in a democratic future Tibet. TCHRD attends UN Human Rights Council sessions and takes part in other national and international conferences to highlight the human rights situation in Tibet.

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Cover Photo: A resettlement village in Machen County, Golok Tibetan Autonomous Prefecture, Qinghai Province. [Credit: RD (2013)]

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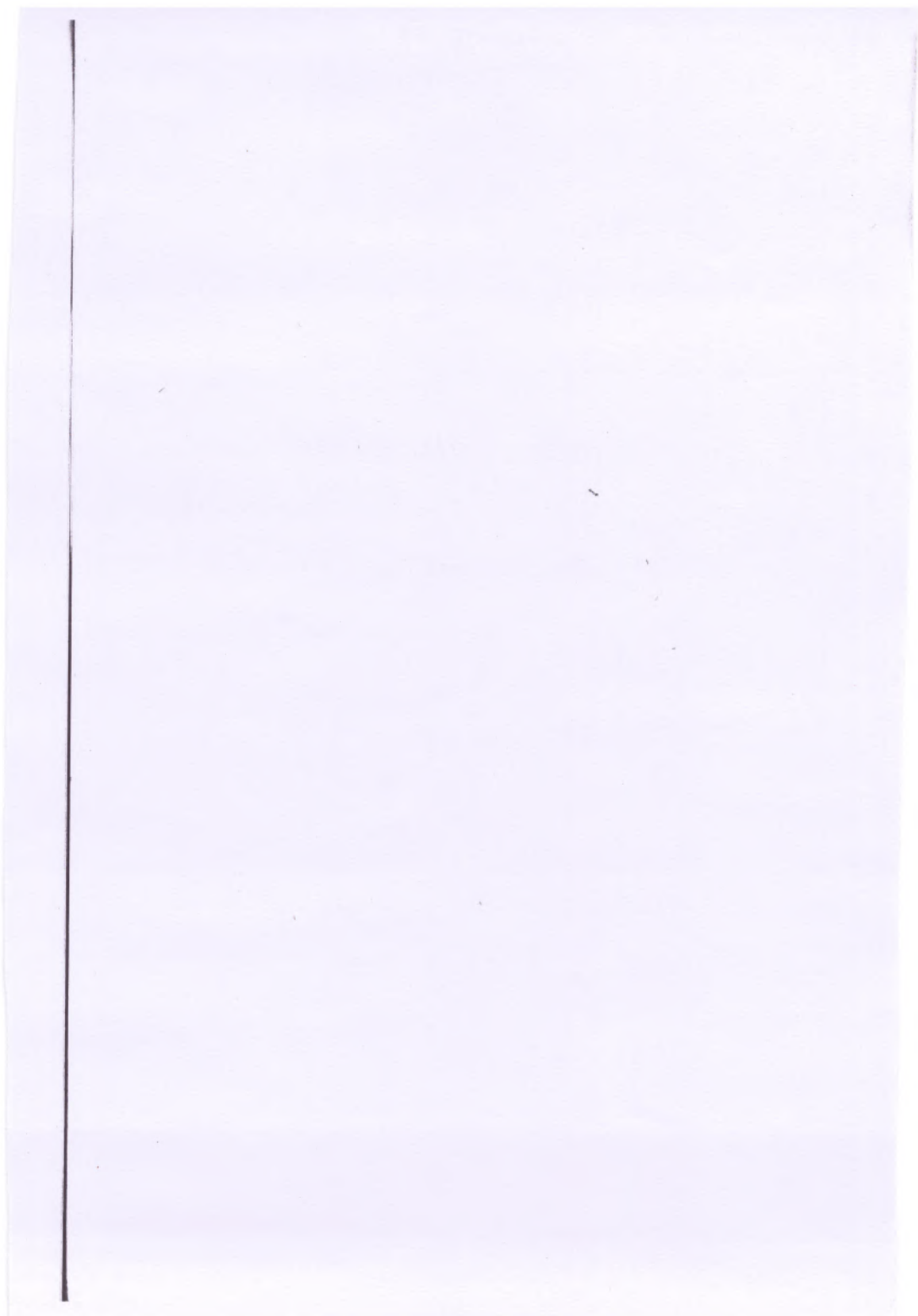


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I. Executive Summary

The Tibetan people have been facing severe human rights violations at the hands of the Chinese government for over half a century. The Chinese government is now implementing policies that are displacing the Tibetan population; however they are not recognised internationally as Internally Displaced Persons (IDPs). This report utilises the UN Guidelines on Displacement as a methodology to analyse data gathered on the resettlement process. Evidence shows that the resettlement policies are not planned or implemented in accordance with the Guidelines. As a result, displaced Tibetan people are no longer able to sustain their nomadic lifestyle. Alternative livelihood opportunities for the Tibetan people remain sparse; they are facing economic difficulties, as well as social and cultural erosion. Those who have been, or are at risk of being affected by the resettlement policies in Tibet should be recognised as displaced and the guidelines applied to their situation.

Since the 1950s, the government of the People's Republic of China (PRC) has enforced a number of policies in order to modernize rural Tibetan society. The Chinese government has unilaterally imposed on Tibetans an urbanized, secular and monetized society. Consequently, Tibetans have been forced to leave their homes, abandon their traditional sources of livelihood and become sedentary populations.

The Chinese government maintains that the implementation of its policies improves living conditions for Tibetans, eases access to government social services,

alleviates poverty, protects the Tibetan ecosystem and that all resettlement is voluntary. In reality, Tibetans find themselves forcibly displaced, vulnerable and exposed to discrimination and repression. Through the continued pursuit of China's misguided development policies such as the 'Western Development Strategy' (WDS), Tibetans are prevented from enjoying their Civil, Political, Economic, Social and Cultural rights. This has resulted in prolonged unrest and hardship for the Tibetan people. As a response to the denial of self-determination and human rights, there have been increased acts of self-immolations among the Tibetan people, a form of socio-political protest against religious and cultural repression. The Chinese government has responded by tightening policies to monitor and control the Tibetan population, further hindering their ability to access and realise their human rights.

This report is a study of the Internally Displaced Persons of the Tibetan Plateau. Using the UN Guidelines on Development-based Evictions and Displacement, this report shows that Tibetans are forcibly displaced due to economic injustice, social marginalization, and human rights violations. The report disputes the official Chinese contention that its development and conservation efforts are "in the public interest" (gon gongliyi) and that they are beneficial to the economy and the environment.

II. Introduction

A period of unprecedented global economic growth over the last century has led to a better quality of life for many people around the world. This economic prosperity however, has not been equal for all members of society. Not only have the benefits of growth excluded a large number of the world's poor and marginalised people, it has been to their detriment. A stark example of the unequal impacts of development on populations is the displacement of people from their homes in the name of development. Traditionally, conflict has been known as the largest causation factor in displacing populations. However, in recent years the displacement of populations caused by large scale development and conservation projects are categories that have seen the biggest increase.¹

Since the Universal Declaration of Human Rights in 1948, a global rights regime has gradually evolved, as more rights have been identified, defined and recognised in international law. Similarly more populations whose rights are transgressed have also been gradually redefined, categorised and recognised. One such major category is that of the Internally Displaced Persons, or "IDP", persons who have been forced to leave their homes in order to avoid armed conflict, situations of generalized violence and violations of human rights, and who have not crossed an internationally recognized State border.²

1 Rhodri C. Williams *'Protecting Internally Displaced Persons: A Manual for Law and Policymakers'*, Brookings Institution-University of Bern, October 2008 available at <http://www.refworld.org/docid/4900944a2.html>.

2 United Nations Office For The Coordination Of Humanitarian Affairs - OCHA *'The Guiding Principles on Internal Displacement'* (1998) available at <http://reliefweb.int/sites/reliefweb.int/files/resources/AB752ABEA5C1EFFCC1256C33002A8510-idp>.

Those who have crossed an international border are formally labelled as refugees.³ International law has by now established a framework of treaties and conventions to protect and assist refugees, whose right to claim asylum in other countries is well recognised, if still contested. By comparison, protection for the internally displaced has been comparatively weak, since the doctrine of sovereignty of the nation-state is the cornerstone of international relations. Unlike refugees, IDP's have not crossed an international border to find sanctuary but have remained inside their home countries. They remain under the protection of their own government, even though in most cases, that government might be the root cause of them fleeing their homes.

IDPs are less clearly identified than refugees, however they remain vulnerable and in need of protection. They often lose their properties and access to their livelihood, are separated from family members and discriminated against once displaced. In recent years more attention has focused on the internally displaced and a general duty to protect human rights, regardless of whether the displaced have crossed an international border. This is an evolving issue, requiring further attention and research before the rights of the internally displaced are on a firm footing.

This report is a case study of the internally displaced of the Tibetan Plateau which is pertinent for several reasons. Firstly, it is almost impossible for Tibetans to cross to another country and seek asylum. China invests enormous resources in sealing the Tibetan borders, and has been filmed shooting live ammunition at those

html.

3 Definition of refugees found in 1951 United Nations Convention Relating to the Status of Refugees.

seeking to flee.⁴

Secondly, Chinese authorities refer to those resettled as “ecological migrants” (shengtai yimin).⁵ This misleading categorisation suggests that their loss of land and livelihood is voluntary, done for the greater good of China, in order to rehabilitate degraded Tibetan grasslands or make way for development projects. This brings into question a host of rights which are violated. The collective economic and social rights of the pastoral nomads of the Tibetan Plateau, specifically their rights to food security, land tenure and access to a sustainable traditional livelihood, are all compromised by being made to leave their land. The civil and political rights of individuals are transgressed by the compulsory nature of the displacement, the official insistence on tearing up government guarantees of land tenure, and the impermissibility of protest or free expression of opposition.

As part of the Chinese government’s efforts to ‘build a new socialist countryside’; two policies have contributed towards the relocation and resettlement of Tibetan farmers and herders in recent years. They are the Comfortable Housing Policy and the Environmental Migration Policy.⁶ Designed to rapidly increase the

4 NBC News, ‘Chinese shooting of Tibetans sparks outcry’ 10/23/2006, Available at: http://www.nbcnews.com/id/15390844/ns/world_news-south_and_central_asia/t/chinese-shooting-tibetans-sparks-outcry/.

5 Human Rights Watch ‘HRW’ (2007) “No One Has the Liberty to Refuse” Tibetan Herders Forcibly Relocated in Gansu, Qinghai, Sichuan, and the Tibet Autonomous Region, Human Rights Watch, Volume 19, No. 8 (C), June 2007.

6 Human Rights Watch (2013) “They Say We Should Be Grateful” Mass Rehousing and Relocation Programs in Tibetan Areas of China’. Available at: <http://www.hrw.org/news/2013/06/27/china-end-involuntary-rehousing-relocation-tibetans> [accessed 01.09.2013].

economy of Tibet and raise the living standards of its population, the 'Comfortable Housing Policy' has been in place since 2006 in the Tibet Autonomous Region (TAR). Between 2006 and 2012, more than two-thirds of the population in the TAR have been resettled into new homes.⁷ The Government intends to resettle another 180,000 people by 2015. The 'environmental migration scheme' has been focused on Qinghai Province, located on the Eastern Tibetan plateau where 300,000 former nomads have been resettled. Plans have been made for settling another 113,000 people by the end of 2013. By then 90% of the herder population in Qinghai will have been resettled into permanent structures.⁸ Policies in Tibet are a template for the relocation of ethnic minorities in other areas of China. This includes hundreds of thousands of herders in Inner Mongolia and Xinjiang.⁹

There is little hope for the complete halting of the eviction of the nomads from their traditional lands and livelihoods. Recent media reports state that between 1.5 and 2 million Tibetan pastoralists have been displaced from their lands and homes.¹⁰ Since then the information office of China's State Council have released a White Paper on Development and Progress of Tibet in October 2013. This indicates that the government expects all Tibetan farmers and herdsmen to be sedentarised into new homes by the end of that year.¹¹

7 (HRW 2013: 4).

8 (HRW 2013: 4).

9 (HRW 2013: 4).

10 Khadka, N.S. (2013) 'Tibetans displaced within region amid rampant mining', BBC News: Environment report, 13 December 2013. Available at: <http://www.bbc.co.uk/news/science-environment-25359391> [Accessed 14.12.2013].

11 Hao, Zang. (2013) 'Insight: Housing project eases Tibetans' life, posing no harm to culture' cctv.com, 02.12.2013. Available at: <http://english.cntv.cn/20131202/103986.shtml> [accessed 14.01.2014].

Despite this inevitability, there are measures that can be taken to protect vulnerable populations from both displacement and its effects. A number of guidelines have been designed for this purpose. These guidelines are constantly evolving and developing to keep up with the emerging types of displacement that occur around the globe. The UN,¹² the World Bank¹³ and the Chinese government's own domestic laws¹⁴ all set forth guidelines on displacement. All these guidelines state that even if there is no viable alternative, displacement must be carried out in a way that causes the least detrimental impact.

Development and conservation efforts will cause unavoidable population relocations at times.¹⁵ It is inevitable that the process will cause some losses and gains. While most development projects can be justified, due to the financial and other advantages they may bring to some groups, the growth of GDP at the expense of certain groups must be mitigated. Those displaced due to development projects are often the ones who pay an unequal share of the cost of these improvements. In many cases people do not see any form of benefit

12 United Nations (UN) (2007), 'Basic Principles and Guidelines on Development-Based Evictions and Displacement', A/HRC/4/18, http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf [Accessed 03.07.2013].

13 World Bank (2002) 'World Bank Operational Manual', OP4.12 article 36. World Bank, Washington DC.

14 People's Republic of China (PRC) (1998) 'The Law of Land Administration of the People's Republic of China', adopted on June 25, 1986 and amended on December 29, 1988 and August 29, 1998: Article 2 and 31, Available at: <http://www.china.org.cn/english/environment/34345.htm> [Accessed 06.08.2013] PRC.

15 Cernea, Michael M. (2000), 'Risks, Safeguards and Reconstruction A Model for Population Displacement and Resettlement'. *Economic and Political Weekly* 35: 3659-3678, Oct. 7-13, 2000.

from displacement. It is these people that require more protection and assistance from their own government, and failing that, the international community.

Those who are responsible for planning and implementing development policies need to have the fundamental goal of advancing the welfare of the entire population.¹⁶ Policies implemented to create economic growth need to be fully analysed as to who they are benefitting.¹⁷ In Tibet people are being removed from their homelands and placed elsewhere in the country in the name of development. Those affected are defined as 'resettled' by the Chinese government.¹⁸ This categorisation would suggest that their loss of land and livelihood is voluntary, done for the greater good of China/Tibet, in order to make way for development projects. But this not so.

Categories of displacement due to large scale development and conservation projects have seen the biggest increase in recent years.¹⁹ Tibetans displaced within the Tibetan Plateau are not granted the protection under international law, despite suffering the same consequences as those affected by displacement.

16 Terminski, Bogumil. (2013) 'Development-Induced Displacement and Resettlement: Theoretical Frameworks and Current Challenges'. Geneva, May 2013.

17 Ibid.

18 Hao, Zang. (2009) '50,000 resettled to protect Qinghai-Tibet Plateau ecology', cctv.com, 25, August 2009. Available at: <http://english.cctv.com/20090825/101571.shtml> [Accessed 03.02.2014].

19 Rhodri C. Williams 'Protecting Internally Displaced Persons: A Manual for Law and Policymakers', Brookings Institution-University of Bern, October 2008 available at-<http://www.refworld.org/docid/4900944a2.html>.

III. Resettlement and Displacement in Tibet

The PRC's Western Development Strategy calls for the resettlement of large numbers, and in some areas the entirety of the Tibetan population. In combination with the concept of environmental protection, the resettlement efforts highlight the policy planner's goal for socio-economic development benefits for those involved.²⁰ The Chinese government believe that by relocating the rural population in towns and cities they will become workers in this new and expanding urban economy.²¹ This is justified by the theory that rural Tibetans and their lifestyles are "backward"; their way of life therefore needs to be "advanced" towards a civilised life which is driven by the pursuit of profit.

Whether these hoped-for achievements are being partially or fully met is unknown. There exist few studies of the impact of the resettlement processes on either the environment or for Tibetan people.²² The Chinese government also refuses to allow any independent research on the matter inside Tibetan areas.²³ The Chinese government claims that those who moved into their new permanent residences are grateful for the improvement in their living conditions. Despite these claims, concerns have been raised about the significant intervention into the lives of the Tibetans by the state.

20 Foggin, M. and Tashi, G. (2012) 'Resettlement as Development and Progress? Eight Years On: Review of emerging social and development impacts of an 'ecological resettlement' project in Tibet Autonomous Region, China'. *Nomadic Peoples*, Vol. 16: 1, page 134-151.

21 Robin, F. (2009), 'The "Socialist New Villages" in the Tibetan Autonomous Region-Reshaping the rural landscape and controlling its inhabitants'. *China Perspectives*, Volume: 3, page 56-64.

22 Foggin and Tashi (2012: 13).

23 HRW (2013: 31).

The displacement of Tibetans, whether through their relocation into townships or restriction of access to livelihoods, is causing social and cultural devastation as well as deepening state control over the lives of the Tibetan people.²⁴ Studies point that the aims of the resettlement programmes were dubious from the outset, as none of the policies were primarily designed to meet the needs of the nomads.²⁵ While these policies have the initial objective of re-organising rural Tibet in purely physical terms, the resettlement policies make clear China's desire to further their social control over the entire population.²⁶

The term 'forced eviction' is not clear-cut. Under international law, forced eviction does not require the physical removal of people from their homes; it includes aspects such as the lack of meaningful consultation or compensation, or no provision of alternatives. Relocations in Tibet are a clear example of this. The Chinese government disputes the allegations of forced evictions during the course of their operations and proclaim that the Tibetan people voluntarily take part in these relocation and rehousing programmes.²⁷ However, the resettlement programmes are portrayed by the government as major political decisions and opposition to the relocation programmes is not seen as an option for the Tibetan people.²⁸ Those who do resist face being branded as 'separatist' and in violation of disruption of the public order. No system of legal redress either state

24 Ptackova, Jarmila (2012), 'Implementation of Resettlement Programmes amongst Pastoralist Communities in Eastern Tibet'. Chapter 12 in *Pastoral practices in High Asia: Agency of 'development' effected by modernisation, resettlement and transformation*, (ed.) Hermann Kreutzmann: Springer Publications.

25 Ptackova (2012: 231).

26 Robin (2009).

27 HRW (2007).

28 HRW (2007; 2013).

or independent exists to bring issues or complaints to about the resettlements to in Tibet.²⁹ No legal recourse exists for those who wish to appeal the decision to remove them from their land or make any complaint about displacement practice.

A major limiting factor of the entire resettlement process is the lack of consultation with the Tibetan pastoralists.³⁰ This lack of the involvement of those affected in its planning and implementation can be problematic for its success and sustainability. The Chinese government has learned no lessons from past mistakes.³¹ In the 1980s and 1990s state technicians attempted to implement a greenhouse project so that Tibetan people could grow fruit and vegetable for their own consumption. However technicians failed to comprehend that vegetables do not make up a significant part of the native diet and therefore this project was unsuccessful in every way. This lack of participation by those affected in various levels of decision making also undermines the population's ability to utilize any international or state safeguards.³²

IV. Development, Displacement and Guidelines

The term 'displacement' refers to the removal of people from their place of residence, or habitat. Development is one of the leading causes of displacement worldwide. Estimates put the rate of displacement due to development projects during the 1980s and the 1990s at about 10 million people annually;³³ in recent years this

29 HRW (2007: 50).

30 Ptackova (2012: 219).

31 Robin (2009).

32 Lennox, C. (2012) 'Natural resource Development and the rights of minorities and indigenous peoples', State of the World's Minorities and Indigenous Peoples. UK: Minority Rights Group International.

33 Michael Cernea, 2000, "Risks, Safeguards and Reconstruction:

has been seen to rise to about 15 million displacements per year.³⁴ Dam construction used to be the main cause of displacement globally, but this rate is falling as mining projects and the conservation of nature are categories that are emerging as major causes of displacement.³⁵ Although covered by general human rights conventions, there still exists gaps in the international system relating to the protection and assistance of internally displaced people. Unlike refugees, for whom the UNHCR has the responsibility, no international legal instruments or institutions exist to specifically protect IDPs.³⁶

Since their involvement in shaping the standards of involuntary relocation in the 1970s, the World Bank has been the central actor in the regulation of development displacement. The World Bank is the first institution to set out guidelines on involuntary resettlement in the 1980s with the Operational Policy on Involuntary Resettlement (OP 4.12). The term 'development induced displacement and resettlement' (DIDR) was coined in the 1980s by the World Bank.³⁷ The World Bank continues to shape policy and has since established the Operational Policy 4.12 (OP 4.12) on involuntary resettlement in December 2002, revising this in 2011 and then again in 2013.³⁸ Regional development banks, including the Asian

A Model for Population Displacement and Resettlement." In M. Cernea and C. McDowell (eds) *Risks and Reconstruction: Experiences of Resettlers and Refugees* (Washington, DC: World Bank).

34 Terminski (2013: 11).

35 Terminski (2013: 11).

36 Internal Displacement Monitoring Centre (IDMC) and The United Nations Office For The Coordination Of Humanitarian Affairs Displacement and Protection Support Section (UNOCHA-DSS) (2008) 'Guidance On Profiling Internally Displaced Persons' April 2008, UNOCHA-DSS.

37 Cernea, Michael.M. (1988), 'Involuntary Resettlement in Development Projects: Policy Guidelines in World Bank-Financed Projects', The World Bank Technical Paper. Washington, DC.

38 World Bank (2013), OP 4.12

Development Bank and the African Development Bank have followed in the World Bank's footsteps and have set out their own guidelines on resettlement. The Asian Development Bank has materialised a set of standards that must be implemented when their projects cause relocation.³⁹

In 1997, the United Nations developed Comprehensive Human Rights Guidelines on Development-Based Displacement.⁴⁰ Although this is yet to be formally adopted by states, these guidelines represent an important framework that protect the human rights of those communities and individuals who have been moved from their land by the State. Ten years later the Special Rapporteur on adequate housing presented the Human Rights Council with a set of Basic Principles and Guidelines on Development-Based Evictions and Displacement. This aims to assist states in developing domestic legislations and policies to prevent forced evictions and provide effective remedies should prevention fail.⁴¹ Additionally these guidelines provide a deeper understanding on the cost of displacement.

The UN Guidelines defines forced displacement is defined as "acts and/or omissions involving the coerced and involuntary removal of individuals, groups and communities from their homes and/or lands and common property resources that they rely or depend

39 Asian Development Bank (ADB) (1995): Policy on Involuntary Resettlement, August 1995, ABD.

40 United Nations (UN) (1997) 'Comprehensive Human Rights Guidelines on Development-Based Displacement', The Practice of Forced Evictions: United Nations Comprehensive Human Rights Guidelines on Development-Based Displacement, Geneva, Switzerland, 11-13 June 1997.

41 United Nations (UN) (2007), 'Basic Principles and Guidelines on Development-Based Evictions and Displacement', A/HRC/4/18,

upon".⁴² The guidelines do not set out new laws. They highlight the obligations of States in respect to their compliance with existing international human rights standards. These apply in situations where populations are forcibly evicted to allow for development projects to take place.⁴³ These guidelines lay down the criteria under which displacement can occur in "exceptional circumstances",⁴⁴ with "full justification"⁴⁵ and "procedural guarantees."⁴⁶ If the evictions are deemed completely necessary, they provide the comprehensive steps that must be taken by States in order to protect their population's human rights before, during and after evictions.⁴⁷ Governments are therefore urged to carry out in-depth eviction-impact assessments, prior to displacement.⁴⁸ Provision of compensation, restitution and adequate rehabilitation that are consistent with human rights standards is called for.⁴⁹

Development practices covered in these guidelines include evictions often prepared or conducted under the auspices of being 'in the public good'. These include, among others, infrastructure projects such as dams, large-scale industrial or energy projects and extractive industries like mining; land-acquisition measures that are associated with environmental protection; agricultural purposes; urban renewal and housing renovation.⁵⁰ Invariably, forced evictions intensify social conflict and inequality, affecting the poorest and

42 (UN 2007 Para. 4).

43 (UN 2007).

44 (UN 2007 Para. 6).

45 (UN 2007 Para. 21).

46 (UN 2007 Para. 21).

47 (UN 2007).

48 (UN 2007 Para. 32-33).

49 (UN 2007 Para. 42, 60-63).

50 (UN 2007 Para. 8).

most vulnerable sectors of society.

States are duty bound to refrain from and protect against forced evictions from homes and land.⁵¹ This obligation arises from many international treaties, decisions, judgements and other texts that have recognised and reaffirmed the wide range of human rights violations that are breached when forced evictions are carried out. Included in these are the Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (Art. 27, Para. 3), the International Covenant on Economic, Social and Cultural Rights (Art. 11, Para. 1), the Convention on the Elimination of All Forms of Discrimination against Women (Article 14, Para. 2: h) and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5: e).

After much criticism, the World Bank, having narrowly defined resettlement resulting from bank projects and the impacts on local communities, has now adopted a more inclusive approach. Set out in the World Bank Operational Policy (OP) 4.12 on Resettlement, it defines the 'restricting of access' to indigenous and other people in parks and protected areas as 'involuntary displacement' even if actual physical displacement and relocation does not occur. Displacement can also occur even if the original reason for their movement may have been voluntary or the consequences of their displacement may not have been apparent initially.⁵² The rationale behind this broadening of definition is that displacement can occur in both an economic and a social sense. This occurs when developmental or conservation projects restrict access or prohibit use of the natural resources such as cultivatable or grazing land, fishing ground and forests.⁵³ These changes in the

51 (UN 2007 Para. 1).

52 World Bank (2002).

53 Cernea, Michael M. (2005) 'Restriction of access' is

World Bank's policy also have particular implications for those displaced by conservation projects.

A fundamental problem for international efforts made to protect IDPs is the issue of sovereignty. When populations have not crossed an international border they are the responsibility of their own government. According to the UN, the state has the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.⁵⁴ In 2012, the UN Special Rapporteur on the Human Rights of IDPs acknowledged that there is resistance to the international regulation of internal protection due to the principles of sovereignty and non-intervention.⁵⁵ While sovereignty of countries is an important concept, it cannot be used as an excuse for non-performance in the protection of populations. The Special Rapporteur highlighted the term 'sovereignty as responsibility', coined by the UN guidelines on displacement,⁵⁶ to counter this failure to adhere to international obligations.

1. Urbanisation Policy

Over the past decades, the Chinese government has accelerated its urbanization policy with the goal of fully integrating 70 percent of the PRC's population, or roughly 900 million people, into city living by 2025.⁵⁷

displacement: a broader concept and policy'. *Forced Migration Review* 23: 48-9.

54 UN (2007: 11).

55 Beyani, C. (Special Rapporteur on the Human Rights of Internally Displaced Persons) (2012) 'The Mandate of the Special Rapporteur on the Human Rights of Internally Displaced Persons'. *International Law Meeting Summary*, 22 February 2012, London School of Economics and Political Science.

56 (UN 1997).

57 Ian Johnson, *New York Times*, 15 June 2013, China's Great

Currently, only half that number has been moved into newly constructed towns and cities. The official rationale behind the urbanisation policy is that it improves social services, raises standard of living and income for rural people and creates new productive enterprises. Chinese government officials have indicated that the only way out of poverty for Tibet is urbanization and that urbanization will dramatically improve quality of life.⁵⁸

Urbanization has transformed societies, including farmlands and the lives of rural dwellers. The shift is occurring quickly and the potential costs are high. Some fear that rural China is once again the site of radical social engineering.⁵⁹ Overall, urbanisation has had a negative social impact upon the local community. Land expropriations have become one of the most controversial issues in China. Millions of farmers or villagers have been “legally or illegally” made landless over the years.⁶⁰ Landless farmers have found themselves having no choice but to leave their lands and are thrust into city life. According to official statistics, three million people become land-lost farmers every year in China.

Uprooting: Moving 250 Million Into Cities, http://www.nytimes.com/2013/06/16/world/asia/chinas-great-uprooting-moving-250-million-into-cities.html?_r=1&.

⁵⁸ Journal of the International Association of Tibetan Studies, no. 4 (December 2008): 1-44. <http://www.thlib.org?tid=T5563.1550-6363/2008/4/T5563>. © 2008 by Emily T. Yeh, Mark Henderson, Tibetan and Himalayan Library, and International Association of Tibetan Studies.

⁵⁹ Ian Johnson, New York Times, 15 June 2013, China's Great Uprooting: Moving 250 Million Into Cities, http://www.nytimes.com/2013/06/16/world/asia/chinas-great-uprooting-moving-250-million-into-cities.html?_r=1&.

⁶⁰ Nyima, Tashi (2010) “Development Discourses on the Tibetan Plateau: Urbanization and Expropriation of Farmland in Dartsedo,” Himalaya, the Journal of the Association for Nepal and Himalayan Studies: Vol. 30: No. 1, Article 16. Available at: <http://digitalcommons.macalester.edu/himalaya/vol30/iss1/16>.

The total number is expected to double in 2020 with the current pace of urbanization⁶¹.

In 2004, in Tsamchusampa (Ch: Simaqiao) village in Dartsedo (Ch: Kangding) County in Kardze (Ch: Ganzi) Tibetan Autonomous Prefecture (Sichuan Province), local authorities relocated 800 villagers in 177 households to erect a new town on village farmland. The project area stretched beyond the village boundary to include land of two neighbouring villages. By 2007, many of the villagers still remained displaced with their farmlands expropriated. The new apartments which were provided to other villagers had major construction defects and there were many living in improvised roadside settlements. They either refused to move into the new apartments or, despite protesting, did not receive one.⁶²

Local county governments earn lucrative fees generated by land transactions and the taxes imposed on urban businesses in construction, retail, and residential housing. The county level leaders are motivated by their desire to elevate the county to “city” status, which would bring additional revenues to county government coffers, and a higher status and rank for county officials⁶³.

According to Tsering Gyatso, 27, from Dzachuka in Kardze Tibetan Autonomous Prefecture, the greatest threat to Tibetan livelihood and cultural survival is the rapid pace of urbanization. “The newly erected

61 Zhao, B. 2005. “How to address the problem of land-lost farmers?” *Renminwang*, December, 9, 2005. <<http://theory.people.com.cn/GB/40553/3929253.html>> (accessed August 20, 2007).

Nyima, Tashi (2010).

62 Ibid.

63 Hillman, Ben (2013) “The Causes and Consequences of Rapid Urbanisation in an Ethnically Diverse Region: Case study of a county town in Yunnan” No. 2013/3.

urban towns and city centres in our area attracts an overwhelming number of Chinese migrants who take advantage of the opportunities for businesses and employment while Tibetans many of whom are former nomads with no skills are left high and dry.”⁶⁴

Many among the rural population struggle to take advantage of the new economic boom due to lack required skills and education. This has led to an increase in skilled Chinese migrants arriving to fill better paid positions. Many of the young people find themselves stuck, seeing no future in traditional occupations, but without the skills and knowledge needed to access alternative careers. Local labour markets favour Chinese migrants, there is an increased risk of Tibetans and other local ethnic minorities becoming marginalised in their own local economy. Even though many of them are finding employment, they are concentrated in low-skilled and low-paid positions. The inadequate, substandard efforts put in by local county governments to promote local businesses has led to large-scale labour in-migration and marginalisation of local labour force who subsequently remain vulnerable to discrimination in the labour market.⁶⁵

Chinese state media play no small part in projecting a positive image of urbanization as ‘modernization’, that is, acquisition of the Chinese language, and the adoption of Chinese dietary and clothing preferences.⁶⁶ Many Tibetans see the urbanisation policy as a way for the Chinese government to closely monitor Tibetan

64 Tsering Gyatso interviewed by Tenzin Nyinje and Alice Reetham, June 2013, TCHRD office, Dharamsala, India.

65 Hillman, Ben (2013).

66 Emily T. Yeh & Mark Henderson, *Journal of the International Association of Tibetan Studies*, no. 4 (December 2008): 1-44. Available at <http://www.thlib.org?tid=T5563>. 1550-6363/2008/4/T5563.

nomads. Many view the compensation funds offered to nomads as a trick to deceive them into accepting the government's development plan. Many who were first dispossessed of their traditional means of livelihood, and then eventually lost their own voice, did not offer public defiance or protest out of fear of reprisals. When asked about development, one villager responded, "We are not developed but impoverished [bianqiong le]. The state and the local officials involved in the project have been developed."⁶⁷

"Forced urbanization" in PRC's ethnic minority regions is part of China's nationwide urbanization policies.⁶⁸ The program is justified as part of the "new socialist countryside" program, which promised to invest more in rural communities. While the program may have good intentions, the results are often misguided at best and tragically destructive at worst.⁶⁹

Urbanization has inevitably brought its own set of problems in protecting Tibetan culture as well as exacerbating ethnic tensions. The high population based urbanisation leads to exerting pressure on the environment and natural resources⁷⁰ and reorganisation of the traditional Tibetan social and cultural landscape.⁷¹ Urbanisation has become a means to increase China's control of Tibet and exploit its vast resources⁷² and

67 Nyima, Tashi (2010).

68 Andrew Stokols (2013) "Urbanizing China's Ethnic Minorities" Available at <http://andrewstokols.com/?p=408>.

69 Ibid.

70 Discussion on Sustainable Urbanization in Tibet, Fan Jie, Wang Hongyuan, Chen Dong, Zhang Wenzhong, Wang Chuansheng (Institute of Geographic Sciences and Natural Resources Research, Chinese Academy of Sciences, Beijing 100101, China).

71 Nyima, Tashi (2010).

72 AFP, "Chinese Authorities Raze Homes in Historic Center of Lhasa," May 3, 2002.

essentially a process of “developing cities to encourage Chinese migrants from mainland China to settle in Tibet.”⁷³ Urbanisation has a devastating impact upon the culture and identity of the Tibetan people and accounts for large scale social disintegration. Loss of livelihood leads to disempowerment, family and community breakdown, crime, alcoholism and traumatic disorders among the displaced Tibetans⁷⁴ and displacement of many has resulted in unemployment, social problems, destruction of a rural culture and religion.

2. “New Socialist Countryside”

To further enhance development, a nationwide initiative was implemented in 1996 to build “New Socialist Countryside” (shehuizhuyi xinnongcun jianshe). In Tibet Autonomous Region (TAR), the campaign involved the implementation of the “Comfortable Housing Project” in 2006 when radical plans were introduced to transform the housing conditions of rural Tibetans in order to improve “the production and living conditions of farmers and herdsmen, and increase their income”.⁷⁵ Traditional Tibetan villages and settlements were demolished to make way for “New Socialist Villages” comprising of rows of identical houses, close to communications, transportation and economic activity where relocation is thought necessary. Such settlements are viewed as ideal for establishing new lifestyles for Tibetan pastoralists who should afford increased comfort and income possibilities through better connections to infrastructure. In the next six years since the project

73 Sangay, Lobsang (1999) “China in Tibet: Forty Years of Liberation or Occupation?” *Harvard Asia Quarterly*.

74 International Campaign for Tibet (2008) ‘Tracking the Steel Dragon - How China’s Economic Policies and The Railway Are Transforming Tibet.’

75 HRW (2013).

began, two million Tibetans (more than two thirds of the entire population of the TAR) had been covered by the program.⁷⁶ According to China's 2009 white paper on Tibet, some 200,000 households, comprising of nearly one million farmers and nomads, had moved into modern houses.⁷⁷

Resettlement of pastoralists away from their traditional grazing lands is the most significant intervention into their way of life.⁷⁸ For instance, the 'pastoral sedentarization' (mumin dingju) project, implemented under the Comfortable Housing Project, is aimed at providing housing to pastoral families mainly along the sides of the roads in TAR.⁷⁹ The government justifies that roadside resettlement houses enables nomads better access to social services such as roads, water, electricity, schools and hospitals.

In January 2012, the UN Special Rapporteur on the Right to Food, Dr Olivier de Schutter, in his report on his mission to China, expressed his concern with the resettlement of nomads in 'New Socialist Villages', which he found resulted in nomads giving up herding and farming revenues and consequently losing economic independence. De Schutter considered food security issues arising from relocation or rehousing of rural residents to include "loss of land, limited ability to keep livestock, relocation in areas unsuitable to agriculture, and generally a disruption of traditional patterns of

76 Ibid.

77 White Paper: "Tremendous Historic Changes over the Past Half-century", March 2009, available at: http://www.china.org.cn/government/whitepaper/2009-03/02/content_17359490.htm.

78 Emily T. Yeh (2013) *Taming Tibet: Landscape Transformation and the Gift of Chinese Development*, Cornell University Press, Ithaca and London.

79 Ibid.

livelihood.”⁸⁰

V. Conservation-induced displacement

Conservation-induced displacement is defined as the eviction or resettling of people from their places of residence due to the establishment of protected areas. Those affected are referred to as ‘involuntary displaced’, or ‘involuntarily resettled’.⁸¹ Displacement of populations due to conservation is one of the youngest and fastest growing categories of development displacement globally.⁸² This form of displacement is recognised by the compulsory removal processes initiated when a project’s need for ‘right of way’ is deemed to override the ‘right to stay’ of the inhabiting populations.⁸³

Conservation induced displacement is justified on the premise that it is done in “the public interest”.⁸⁴ However, the “public interest” is not defined and abuses are common in the expropriation process with many citizens

80 Report of the Special Rapporteur on the right to food, Olivier De Schutter: Mission to China (Addendum), Human Rights Council: Nineteenth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, General Assembly, January 20, 2012, A/HRC/19/59/Add.1. Available at: http://www.srfood.org/images/stories/pdf/officialreports/20120306_china_en.pdf (accessed April 12, 2012).

81 Forced Migration Online (2013), ‘What is forced migration?’ [forcedmigration.org](http://www.forcedmigration.org/about/whatisfm/what-is-forced-migration) Available at: <http://www.forcedmigration.org/about/whatisfm/what-is-forced-migration>.

82 (Terminski 2013; Stanley 2004).

83 Schmidt-Soltau, Kai (2010) ‘Evictions from DRC’s protected areas’ *Forced Migration Review*, Volume 36, November 2010.

84 Christopher McDowell, Gareth Morrell (2010), ‘Displacement Beyond Conflict: Challenges for the 21st Century’, Berghahn Books, pp 104.

complaining of receiving little or no compensation.⁸⁵ Majority of these projects are implemented as poverty alleviation or resettlement programmes that are 'voluntary' and are used to depopulate destitute areas and cause rural-urban migration.⁸⁶

The Chinese government developed several major environmental protection programs to resettle populations outside areas designated as ecologically fragile, known as "ecological migration" program. Conservation programmes that cause displacement⁸⁷ can be defined by two processes. The first is the forced eviction of people from their homes and the second is economic displacement – that is the exclusion of people from particular areas in pursuit of their livelihood.⁸⁸

Involuntary resettlement, with its de facto lack of social justice, occurs throughout the developing world displacing populations and causing impoverishment in the form of material and cultural losses.⁸⁹ This form of forced displacement is the epitome of social and economic marginalisation of certain groups, causing economic and social exclusion out of a set of functioning social networks.⁹⁰

With little historical experience in environmental management of the Tibetan plateau, Chinese

85 Congressional Executive Commission on China, 2010 Annual Report. 10 Oct 2010, pp 41–42.

86 Martin Stein, *Internally Displaced People-A Global Survey*, (Northeast Asia, p117-121), 1998. Edited by Janie Hampton, Norwegian Refugee Council and the Global IDP Survey, Earthscan Publications.

87 Jason Stanley *Development Induced Displacement- An Overview* January 2004 Forced Migration Online <http://www.forcedmigrationonline.org>.

88 Cernea (2005).

89 Cernea (2000).

90 Ibid.

legislators have dictated a grassland policy that will have major environmental and social consequences.⁹¹ China's model is exclusionary, a policy based on an either/or logic, in which land may be used either for grazing or for conservation, not both. Creation of conservation areas is one component of a wider appropriation of land, natural resources and social control. By classifying the historical residents of the land as the very threat to its preservation the Chinese government is justifying forced displacement.⁹²

Creation of conservation areas are one component of a wider appropriation of land, natural resources and social control that can be dated back to British colonial times. Traditionally, reserves were created principally for the recreation of foreigners without the consideration or consent of the locals, their land use or tenure practices.⁹³ Suddenly, activities that had for centuries been vital to indigenous livelihoods such as grazing of livestock, collecting firewood and hunting became 'illegal' in certain areas.⁹⁴ Protected areas cover an estimated 10% of the world's land surface and globally, conservation-induced displacement led to an estimated 5 million to tens of millions of people being affected.⁹⁵

Credibility of the state's justification for displacement

91 TCHRD's 2011 Annual Report: Human Rights Situation in Tibet.

92 David Himmelfarb (2005) 'Moving People, Moving Boundaries: The Socio-economic Effects of Protectionist Conservation, Involuntary Resettlement and Tenure Insecurity on the Edge of Mt.Elgon National Park, Uganda' University of Georgia.

93 Chatty, D. & M. Colchester (2000), 'Introduction: Conservation and mobile indigenous people', Page 1-20, In D. Chatty and M. Colchester, (eds.), Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement and Sustainable Development, New York: Berghahn Books.

94 Himmelfarb (2005).

95 Terminiski (2013: 41).

in favour of environmental policies has been called into question.⁹⁶ Studies have shown that they make very little social or ecological sense.⁹⁷ Internationally accepted standards on grassland science do not put much emphasis on overgrazing as a driver of environmental degradation and instead focus on the role of climate change and in some circumstances resource extraction such as mining.⁹⁸ Some studies actually show that long periods without livestock grazing will permanently modify the grassland and could actually harm the ecosystem.⁹⁹ No evidence proves that the removal of nomads from the grassland will have a positive influence on its recovery. Therefore, it cannot be convincingly argued that resettlement is the only or best way to circumvent degradation on the Tibetan plateau.¹⁰⁰ The 'ecological migration' program has caused the emergence of many economic and social problems.¹⁰¹ International human rights organisations have expressed concern that the issue of grassland degradation has been used to justify arbitrary land

96 YanBo Li, Gongbuzeren, and WenJun Li, 2014, A review of China's rangeland management policies. IIED Country Report. IIED, London. Available at: <http://pubs.iied.org/10079IIED>.

97 Hannibal Rhoades (2012), 'Inconvenient Truths: De-bunking China's Plan to Settle Nomadic Populations', Available at: <http://intercontinentalcry.org/inconvenient-truths-de-bunking-chinas-plan-to-settle-nomadic-populations/> 19th September 2012.

98 United Nations Human Rights Council (UNCHR) (2012), 'Report of the Special Rapporteur on the right to food, Olivier De Schutter' Nineteenth session, 20 January 2012, A/HRC/59/Add.1.

99 Ptackova,(2012).

100 J Marc Foggin and Jared Phillips (2011) 'Horizontal Policy Analysis— A tool to promote sustainable livelihoods development: With implications for Ecological Resettlement and other major development programs in the Tibetan Plateau region', Draft Manuscript Version: 16 June 2011.

101 Marusca Perazzi in 'State of the World's Minorities and Indigenous Peoples-East Asia.' Minority Rights Group International, <http://www.minorityrights.org/11374/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2012.html>.

confiscation,¹⁰² and the Chinese government's intentions to end the nomadic lifestyle. Others have expressed concern that the Chinese government's real motive is to clear land for mineral extraction than any real concern for environmental.¹⁰³

VI. Consequences of displacement

It was not until the 1990s that analysis into the humanitarian effects of development induced displacement was carried out.¹⁰⁴ Due to the lack of formal resettlement policies available for analysis, positive examples of development induced displacement and resettlement are difficult to find.¹⁰⁵ Evidence shows that eviction from traditional lands exposes the displaced to the risks of landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to common resources and social disintegration.¹⁰⁶ These areas of security have much in common with the UNDP's (1994) seven basic pillars of human security: food security, political security, environmental security, health security, personal security, economic security and community security.¹⁰⁷ Losses due to displacement are not limited to instances of physical relocation. They can also occur in an economic and social sense when development

102 HRW (2007)

103 Tashi Tsering (2012) "Mining for gold after kicking out the Tibetan nomads." Available at: <http://tibetanplateau.blogspot.in/2012/04/gold-mining-after-kicking-out-tibetan.html>.

104 Stanley, Jason (2004) 'Development Induced Displacement-An Overview', Forced Migration Online. Available at: <http://www.forcedmigrationonline.org> [Accessed 16.05.2013].

105 Ibid.

106 Cernea (2000).

107 United Nations Development Programme (UNDP) (1994) 'Human Development Report 1994'. New York: Oxford University Press.

projects restrict access or prohibit use of the natural resources.¹⁰⁸

Factors that influence the economic and social standards of resettlement centre are the existence of a democratic government, the level of property rights and participation by citizens in political processes.¹⁰⁹ When resettlement is carried out in countries that have a democratic form of government, a high level of citizen political participation and strong citizen property rights it does not become such a visible social problem. Development projects carried out in countries that are distinguished by both an authoritarian government and strong antagonisms between social groups are often accompanied by several forms of human rights violations.¹¹⁰ The UN Special Rapporteur on the Human Rights of IDPs also highlighted the critical nature of the relationship between those displaced and the government, as it is often an internal state collapse that has caused the problem. Those displaced are often politically disenfranchised with their own government and it is not uncommon for the majority of affected populations to be indigenous or minority groups. It is this divide that often has to be addressed before change can happen.

Policy planning and implementation that is based on a model of rapid economic growth and industrialisation is problematic in nature, as it is highly unsustainable.¹¹¹ An example of this is the 'Great Leap Forward' policy that was responsible for the deaths of between 18 and

108 (Cernea 2005).

109 Terminski (2013: 13).

110 Robinson, W. C. (2003) 'Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement', Occasional Paper, The Brookings Institution-SAIS Project of Internal Displacement, Washington DC.

111 Terminski (2013: 27).

45 million Chinese citizens and is widely recognised as one of the greatest crimes committed by a leader of State on their own people. The needs of local communities should be considered paramount in any development activity.¹¹² Development policies need to be carried out in accordance with a country's social, economic, cultural, demographic and environmental factors. The requirements of present and future generations should also be considered.

VII. Findings and Analysis

Unlike refugees, IDPs do not benefit from any specialised protection as there is no international treaty which exists to specifically protect them. IDPs, like any other persons, must therefore look to various bodies of law for protection existing in international human rights law, domestic law and international humanitarian law. The lack of an independent covenant for IDPs has warranted highscale criticism, that persons who have been displaced are more amenable to vulnerability and human rights abuses and are in need of greater protection. The issue of an independent legal convention for the protection of IDPs is pertinent to the issue of overall protection of IDPs. It warrants further consideration and developments from the UN, for instance, the creation of a new office which is more willing and able to extend protection to IDPs, particularly if the gap between refugee and IDP protection persists.

The World Bank is currently the only international institution significantly engaging with the issue of development induced displacement.¹¹³ However their guidelines were compiled for, and therefore most appropriate during infrastructural development

112 Ibid.

113 Terminski (2013).

projects. The majority of displacement in Tibet does not fall into this category since it is carried out in the name of environmental conservation and economic prosperity.

The UN Basic Principles and Guidelines on Development Induced Displacement were developed for all forms of displacement and are applicable to the Tibetan situation. The Guiding Principles identify the rights relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. The Guiding Principles have become the accepted international standard for dealing with internal displacement. As a restatement of existing law the principles are and are intended to guide governments, international organizations and all other relevant actors, nationally and internationally, in providing assistance and protection to IDPs, consistent with international law. The Guiding Principles have also served to make IDPs more aware of their rights. The guidelines provide a useful framework to analyse the consequences of resettlement in Tibet. This section will present the evidence collected during the course of research. The format of evidence will be the explanation of a UN guideline, followed by specific evidence from the Tibetan situation.

1. The Obligation to Expropriate Only as a Last Resort

UN Guidelines

States should refrain from compulsory acquiring of housing or land, to their fullest possible extent. If States are compelled to undertake proceedings of forced evictions should ensure that their actions are (a)

determined and envisaged by law and norms regarding forced eviction; that is they should be consistent with internationally recognized human rights; (b) solely for the purpose of protecting the general welfare in a democratic society; (c) reasonable and proportional and (d) in accordance with the present Guidelines (e) regulated to ensure full and fair rehabilitation and compensation. (UN 2007 Para. 21)

Evidence

The PRC justifies displacement in the name of development, economic growth and environmental protection. Despite this, evidence suggests that there are alternative justifications behind the resettlements programmes. Interviews conducted by Human Rights Watch between 2005 and 2012 resettlement programmes are designed to further extend government control over the Tibetan population in the name of maintaining stability in the region, and combating ethnic separatist sentiment.¹¹⁴

“In my opinion, the change in policy in regard to the grassland management and nomadic communities is not due to excessive grazing of grassland but due to political influence where they want to destroy the traditional values of the nomads and to be able to keep an eye on the nomads efficiently as they are hard to locate at times and in turn hard to govern.”

- Lobsang Dolma, 2012¹¹⁵

“The Chinese officials say that sedentarisation of the nomadic people is to modernise them and to provide

114 HRW (2013); HRW (2007).

115 Thutop, Tenzin (2012), ‘Socio-ecological aspects of Tibetan and Himalayan nomadic communities’. Dissertation report (M.Sc.) for the Forest Research Institute University, Dehradun, India.

them with houses, electricity and communication but the main reason in my opinion is to monitor the nomadic people.... and also to use the grassland for their own purpose.”

- Monlam, 2012¹¹⁶

Tibetans see resource extraction as one of the main reasons behind the resettlement policies. Activities related to opening of factories and resource extraction have led to the accelerated extinction of nomadic communities.¹¹⁷ The entire ecosystem has been disrupted through the commandeering of land that was in use by the nomads.

“In my opinion the depletion of nomads in my area is due to the modern development and excessive mineral extraction”

- Rigyal, 2012¹¹⁸

“Abundant brass [mineral] deposits in the area have led to mining activities in this formerly pastoralist region. Land in the area is being bought and the Tibetans are being relocated with and without their will. The extent of the extraction can be seen by the rows of damaged wheels from the machines that are piled up on the roadsides.”

- Drukyl Kyap¹¹⁹

116 Ibid.

117 Ibid.

118 Ibid.

119 Ibid.

2. Eviction impact assessment

UN Guidelines

States are obliged to conduct eviction impact assessments prior to the initiation of any project that could result in displacement (UN 2007 Para. 32).

Evidence

Few studies have been carried out by the Chinese government on the impacts of the resettlement, and none were found to be carried out before the policies were implemented. The evaluation results of the Namsaling Dekhi New Village, concluded that a lack of foresight by those who designed and implemented the project was its biggest downfall.¹²⁰ [Namsaling Dekhi is the largest ecological resettlement project implemented within the national Yijiang Lianghe (One River, Two Streams) Project, which was launched in the TAR in 1994.]¹²¹ Issues surrounding the new livestock-deprived lives of the former nomads became quickly apparent.¹²² Many could not adjust to their new lives and wanted to return home. As they had sold their livestock and given up their land they had no option other than to remain where they were.¹²³ An impact assessment prior to the displacement would have disclosed issues such as

120 Foggin and Tashi (2012: 13).

121 The 'Yi Jiang Liang He' project covered the middle reaches of the Yarlung Tsangpo River, the Lhasa River, and the Nyang Qu River.

122 Metok, Skal B. (2012) 'Impacts of Ecological Reconstruction Projects on Tibetan Nomadic Life in Qinghai', in Earth Rights International (eds.) 'Land, Water, Rights: Voices from the Tibetan Plateau to the Mekong Delta'. A collection of reports by students of the Earth Rights School Mekong, Earth Rights International, page 17-29.

123 Ibid.

these and steps could have been taken to mitigate such difficulties.

3. Access to legal remedies and information

UN Guidelines

It is the responsibility of the State to provide effective legal and or other appropriate remedies to any persons who claims that their right of protections against forced eviction has, or is under threat of being violated (UN 2007 Para. 17). Legal remedies that affected people are entitled to include access to legal counsel, a fair hearing, restitution, rehabilitation and compensation (UN 2007 Para. 59). Access to free and timely legal counsel must be provided by the State (UN 2007 Para. 41).

Evidence

There is little protection afforded to Tibetan people in China's land rights system. Of those interviewed, few were aware of legal avenues to challenge arbitrary official decisions over land ownership issues. When asked for the existence of legal remedies or information on the process, no interviewee was aware of any; when asked why; one former nomad had this to say:

"It's all about government ordering people to do things."

- Interview 2¹²⁴

A lack of education and ability to initiate any available legal process intensified the problem.

"No one here would think of complaining to the local

124 See Appendix 1, TCHRD interviews (2013).

authorities. Whatever local people think about these policies, they just talk among themselves [...] Since I am uneducated I have to listen to whatever orders officials give, that's the sad truth."

- Tenzin Oser¹²⁵

In many cases, those who sign the contract are illiterate and do not understand what they are signing. For example, over 50% of pastoralists in Zeku County (Qinghai Province), who signed contracts were illiterate and had to sign a document that they did not understand; those who could read found that they were 'voluntarily' handing over between 50% and 100% of their pastureland to the government.¹²⁶

Tibetan refugee testimonies have shown that when the policy of ecological migration was put in place, locals were unsure exactly how it was meant to work.¹²⁷ The only thing the locals were sure of was that it was not beneficial for either the nomads or their environment. In some cases government officials coaxed Tibetan households into signing agreements by telling them that they are for the provision of subsidies; other aspects of the agreement, such as the compulsory reduction of herd size are left unmentioned.¹²⁸

Evidence suggests that there is very little knowledge among the Tibetan people of their land rights, or rights in the resettlement process. Even if education about

125 HRW (2013).

126 Ptackova (2012: 225).

127 Central Tibetan Administration (CTA) (2010), 'A First-Hand Account of Nomadic Life in Tibet' 2010, Testimonies from Tibetans in exile. Available at: <http://tibet.net/publications/> [Accessed 20.07.2013].

128 HRW (2013: 66).

rights was implemented, there are few avenues to turn to as there is no complaints process. Illiteracy poses a huge problem during the eviction, people are told to sign documents and do not realise that they are signing away rights to their land and livelihood.

4. Compensation, Restitution and Return

UN Guidelines

All those who are subject to forced evictions are entitled to compensation for any losses incurred. While financial compensation must be provided for any economically assessable damage, cash is not to be replaced by real compensation in the form of land and common property resources. If and when land is taken, land equal or better in size or value should be provided (UN 2007 Para. 60).

Evidence

Reports of a lower or even a complete lack of compensation payment are widespread and there were no avenues available to make enquiries or complaints about this. Decisions are made about compensation at a local level; this causes problems, not the least of which is inconsistency of payments. Complaints of corruption and embezzlement of the compensation money were also given by those interviewed:

“[County and township officials] give various reasons and people don’t receive the exact amount promised by the government”

- HRW (2013)

“Initially, the government said that they would help but

after the nomads had spent their money building the new houses in fact the government did not give a single Yuan.”

- Dekyi Lhadzom¹²⁹

Under the environmental migration scheme in the Golog (Ch: Guoluo), Tsolho (Ch: Hainan) and Yushu Tibetan Autonomous prefectures, an ‘eco-migrant’ household is promised compensation of 2,000 RMB (US \$317) every year.¹³⁰ Despite these claims, many of the people interviewed in these areas never received any compensation.¹³¹

Attempts made by some local authorities to pay some form of cash compensation remain inadequate since the amount is too little to cover the losses endured by the displaced.

5. Adequate standards of relocation sites

UN Guidelines

Relocation sites should be of adequate standards. These standards include tenure security, infrastructure and facilities such as energy for cooking, heating and lighting, water and sanitation facilities, potable water and access to natural and common resources (UN 2007 Para. 55).

Evidence

Recent studies contend that the relocation of farmers and nomads, as well as nomads from different tribes into

129 HRW (2013).

130 (Metok 2012 22).

131 Ibid.

the same villages, highlights a lack of sensitive planning by the Chinese authorities.¹³² Discernible differences between these groups' views, beliefs, customs, language and lifestyle, and being forced into close proximity can cause disputes. The unsuitability of the location of new homes is an issue brought up by many interviewees:

"The government probably built houses for the relocated people but now they are facing big problems because the land is not good. There is no cultivable land and there is no place for raising livestock. It is sandy, water is scarce, and sand blows into the houses." ~

- Losang Tenzin¹³³

Inadequate planning often causes real, practical problems for resettled Tibetans in getting basic necessities such as drinking water.¹³⁴ In Namsaling Dekhi resettlement village, state funds were provided for initial drinking water pipes, which at first proved sufficient, but subsequent expansion of the village caused overuse, resulting in less water for all households and eventually drought. Water for the village was sourced from a river that only gave water during the wet season. This left those resettled without water for three months of the year, worse, it was the time of the year when water was needed for irrigation purposes.

Lack of natural resources for those relocated is a fundamental problem.¹³⁵ There were some efforts by the authorities to provide access to land for agricultural growth. Topsoil provided to the area at huge cost from the outset of the resettlement was eroded at an

132 Metok (2012).

133 HRW (2013).

134 Foggin and Tashi (2012: 7).

135 Foggin and Tashi (2012: 14).

unprecedented rate leaving land unusable and infertile. Majority of the farmland in Namsaling Dekhi village was too poor to yield enough barley for even subsistence needs of households. With little or no livestock to provide organic fertiliser, farmers had to buy expensive chemical fertiliser, causing crop production rates to rise by 60%.

By its very nature, relocation away from the grasslands leads to loss of access to common property resources. A clear example of this is the redistribution and fencing off of common grasslands, whereby what was once common property becomes 'private'. This results in livestock no longer being able to be moved trans-humanly.

"If a plot of land is fenced off and becomes snowbound, shepherds can no longer move their livestock to uncovered grassland"

- Interview 2

Evidence suggests that relocation sites are not of adequate standards for those affected. When farmland was provided, it was of poor quality; and while infrastructure for the provision of water was initially adequate, it became insufficient over a time period as demands increased. Overall, it can be seen that relocation sites were not sufficiently planned out.

6. Access to social facilities

UN Guidelines

Access to social facilities such as health-care, schools and employment options should be paramount in deciding the relocation site (UN 2007 Para. 55).

Evidence

Employment opportunities for relocated nomads are limited mainly because they have no skills or experience in anything other than nomadic occupation. Assumptions that the former nomads would fill jobs generated by the construction and tourism industries fail to consider the ground reality. This is aggravated due to the influx of Chinese migrants looking for work in Tibet.¹³⁶ Migrant Chinese workers are privileged in that they are invariably possess more skills than local Tibetans in addition to speaking Chinese, which is preferred by the job market. As they are more likely to be hired than the Tibetans, it further distorts the job market.

“Chinese migrants are routinely employed for government construction and development projects, with none of the jobs going to unemployed nomads..... Chinese commercial enterprises operating in Tibet tend to hire migrant Chinese employees who, in addition to their knowledge of Chinese language are also more familiar with Chinese work culture and practice.”

- Interview 2¹³⁷

Before resettlement, the nomadic life was a self-sustaining one and depended very little on externalities.

“Nomads depend fully on their livestock for their living. Their staple diet is dried meat, butter, cheese, milk, yogurt and tsampa. Sheep wool and yak skin provide clothing and shelter. Animal dung provides fuel”

136 ICT (2008).

137 See Appendix 1.

- CTA (2010)¹³⁸

Nomads have few skills relevant to their new livestock deprived life making it more difficult for them to find employment.¹³⁹ Jobs available in the urban areas are mainly in construction and due to their lack of experience employers do not want to hire them. Being displaced from their land and ancestral lifestyle, and thrust into an alien environment and culture, have caused more difficulties for nomads than the Chinese authorities appear to have imagined.¹⁴⁰ Resettlement villages are a completely new environment for the nomads, and problems arise as they enter the cash economy.

"We used to be nomads. Now I am neither nomad nor farmer. All the families have been settled into brick houses all along the highway. The Chinese claim that they are doing this to help us"

- CTA (2010)¹⁴¹

"Now that the nomad's main occupation is lost, so is their income"

- CTA (2010)¹⁴²

Local governments provide subsidies in most cases, but these payments do not cover the cost of new expenditures and so the nomads must seek new sources of income.¹⁴³ When state subsidies are provided they are not sufficient to cover the huge increase in the living cost of the new urban lifestyle.¹⁴⁴ Paying for food, fuel

138 See note 127.

139 Metok (2012: 17-18).

140 Ptackova (2012: 231).

141 See note 138.

142 Ibid.

143 Ptackova (2012: 226).

144 Ptackova (2012: 226).

and utilities are new costs to those who formerly led a self-sufficient lifestyle outside of the cash economy.

“In most cases nomads realise they have made a mistake in selling their livestock - no animals means no dung and therefore even fuel has to be bought from the market”

- Interview 2¹⁴⁵

“In the new settlement we have to buy everything, yet we don’t have an income. You cannot live here without cash. The 500 Yuan the government gives us [per month] is not even enough to cover the electricity and water bills. And then you have to buy your own food.”

-HRW (2012)

Housing, transportation and access to education are areas that have seen improvement in some areas since the resettlement.¹⁴⁶ A major factor influencing the decision to resettle is educational opportunity for children, as 60% of those interviewed in Namsaling Dekhi resettlement village stated that it was the main push factor for them.¹⁴⁷

While the provision of a school in Namsaling Dekhi village has been of benefit to many, employment prospects for those who graduate into non-labour job market remain poor. Regarding healthcare, most villagers felt they enjoyed better access and quality of health services. However, a high proportion of interviewees felt that they paid a much higher price for it than previously.¹⁴⁸ Health

145 See Appendix 1. TCHRD interviews (2013).

146 Foggin and Tashi (2012: 14).

147 Foggin and Tashi (2012: 12).

148 Foggin and Tashi (2012: 11).

care related services and information are provided only in Chinese, even though less than one third of Tibetans in the area speak Chinese.¹⁴⁹

While there have been some improvement in the provision of services, evidence suggests that it is far from what was promised to and required by those affected by resettlement. This is problematic given that one of the major reasons behind the resettlement policies was better distribution of social services. The lack of access to and training for employment is particularly unsatisfactory, especially due to the loss of livelihood associated with the resettlement. A resettled Tibetan nomad from a village in Qinghai sums up the difficulties experienced by displaced nomads as a result of the radical transformation of their lives, for which they are ill-prepared and during which they do not receive adequate support:

“We are very happy that the government offered houses to us. For me, I really want to cherish this house, thus I encouraged my family to relocate here. In the beginning, my wife was against my decision, but I tried to persuade her several times. She said, ‘It’s very difficult to change from one life to another.’ But for me, I never attended school; because I am a nomad and I inherited a traditional lifestyle where grazing animals in the grasslands was my whole life. But nowadays, I realize it’s very difficult to survive without education. I know it is okay for my generation to survive without education, because we don’t need to worry about food and shelter in our pasture area; everything we get we don’t need to pay money for. Through our livestock, we can produce milk, cheese, and yogurt by ourselves for eating and we have sufficient meat for the whole year. But [when] I

149 Foggin and Tashi (2012: 11).

considered my son's future, I decided to come here and live in the government house.

"Everything here we need to buy with money, even fuel. We have no yak dung for fuel, so we have to buy coal instead. One bag of coal is 70 RMB; how can we afford that? Because my son needs to get an education, we sold all our livestock before we came here. Even though life is much more difficult here than we imagined, we are unable to go back to the grasslands, because we don't have any. We will become useless people if we go back."¹⁵⁰

7. Affordable housing

UN Guidelines

Governments should provide housing that is affordable, culturally appropriate and habitable, with sufficient space and protection from the elements (UN 2007 Para. 55). Those proposing or carrying out the resettlement is legally required to pay for any cost associated with the resettlement (UN 2007 Para. 56: c).

Evidence

While a proportion of those who are displaced are given money partially or in full for a house in one of the appointed resettlement villages, the housing situation for nomads is still problematic. Families become heavily debt-ridden because money has to be loaned to pay towards construction cost of housing or fencing of the grassland.

"Nowadays there is no single household that does not have loans to repay."

150 Metok (2012: Tibetan Nomad).

- Tsering Tsomo¹⁵¹

Housing arrangements differ greatly across the Tibetan Plateau.¹⁵² The predominant practice is that part of the housing construction cost is met by the state and the rest is paid for by the nomads. But lack of information about the details of the loans provided during the resettlement means that it is hard to determine the specifics of those affected by indebtedness.

“Nomads are often required to build the houses themselves according to strict specifications. The government officials then visit the houses and decide if they are adequate. If they approve, 3,000 to 10,000 yuan is provided to the owners. If they do not approve, all recompensation is withheld.”

-Interview 1¹⁵³

Due to the lack of income-generating activities in their new livestock deprived environment, the ability to repay loans remains uncertain from the beginning.¹⁵⁴

“People were forced to construct new houses along the road by getting low interest loans even though they didn’t have money. The inability to repay the loans has driven some households into increased financial difficulties.”

- Tsering Tsomo¹⁵⁵

Lack of space and land in their new permanent homes

151 HRW (2013).

152 HRW (2013: 19).

153 See Appendix 1. TCHRD interview (2013).

154 (HRW 2013: 78).

155 HRW (2013).

was identified as problematic for those relocated:
“They are building all the houses right next to each other, stacking them all together tightly [by the roadside]. There just isn’t enough space. We can’t keep our animals there. It would be impossible for us to graze our yaks and sheep with such little space. They won’t let us live on the open grassland where there is space for our animals.”

- Rinchen¹⁵⁶

Issues of inappropriate and shoddy housing are common in resettlement villages. For instance, in Namsaling Dekhi resettlement village housing condition was identified as one of the biggest problems as nomads were not permitted to expand their homes to make space for their livestock.¹⁵⁷ Therefore villagers moved their livestock into the bottom floor of their homes and as a result lacked sufficient space for themselves. Even when houses are fully paid for by the government, they are of such bad quality that the nomads have to use their own money on bricks and cement to reinforce them.¹⁵⁸ “There are different views about the new houses among the locals. Some like them but many do not, because despite spending a huge amount of money they get a poor quality house.”

- Tsering Kyizom¹⁵⁹

While guidelines stipulate that the entire cost of new houses should be paid for by those carrying out the displacement, evidence shows that this is rarely the

156 TCHRD’s 2013 Annual Report.

157 Foggin and Tashi (2012: 7).

158 Metok (2012: 22).

159 HRW (2013).

case in Tibet. Moreover the housing provided for by the government and partly financed by the Tibetan people is not adequate for their needs.

8. Rehabilitation policy

UN Guidelines

States hold the responsibility to ensure that no resettlement should take place without a rehabilitation policy. Policies should include programmes specifically designed for women and marginalised groups to ensure their equal enjoyment of their human rights (UN 2007 Para. 57).

Evidence

Studies have shown that many areas in the TAR received no form of rehabilitation or training programme.¹⁶⁰ Most of the money set aside for these essential programmes never reaches its destination. Moreover, there are few training opportunities available, and those who received some sort of training benefitted little from it.¹⁶¹

A former nomad from Dzachuka County in Kardze Tibetan Autonomous Prefecture, Sichuan Province told TCHRD that there were no programmes in place to teach skills to nomads or integrate them into the job market.¹⁶² Local governments often cite funding scarcity as the reason for lack of training programmes. In Zeku County in Qinghai Province, those fortunate enough to receive vocational training found that the month-long course was far from sufficient to impart the knowledge and confidence necessary to start a business.¹⁶³ According

160 Metok (2012).

161 Foggin and Tashi (2012).

162 See Appendix 1. TCHRD interview 2.

163 Ptackova (2012:226).

to a former nomad from Amdo County in Nagchu Prefecture (TAR), lack of business skills leads to low success rates for those enterprises that do make it off the ground in the newly resettled areas.¹⁶⁴ Despite being an essential part of the resettlement package, regular subsidy payments from the government to compensate for loss of livelihood over the resettlement period are insufficient.¹⁶⁵ The lack of alternative livelihood remains a major concern for those affected by resettlement policies.

“People in the village are desperate about abandoning their homes and having to resettle. They don’t have any other skills than farming, and won’t have any herds or land worth speaking of anymore. How is the next generation going to survive as Tibetans?”

- Tenzin Gyaltsso¹⁶⁶

“It’ll be a very happy occasion for me if the situation of the nomads returns back to what it has been before.”

- Gyamtsen Gyalpo¹⁶⁷

“Nomadic livelihood is the basic survival for many Tibetans. If this is not taken care of it will lead to the marginalisation of Tibetans, which I believe is one of their objectives”

- Dhondup¹⁶⁸

The absence of proper rehabilitation programmes including vocational and skills development trainings further marginalises the Tibetan population, pushing

164 See Appendix 1. TCHRD interview 1.

165 Ptackova (2012:226).

166 HRW (2013).

167 Thutop (2012).

168 CTA (2010).

the displaced communities further to the margins of society and making them more vulnerable to economic and social disruption.

9. Participation and Consultation

UN Guidelines

Decisions relating to the evictions, including a full justification for the decision, should be announced in the local language to all those affected (UN Para. 41). Consultation and dialogue with the full spectrum of affected persons during the planning process is paramount (UN 2007 Para. 39). Adequate information regarding the planning and implementation of the resettlement should be dispersed to the affected population (UN 2007 Para. 56: h); affected populations should participate and be consulted in all stages of the resettlement process (UN 2007 Para. 56: i).

Evidence

Evidence shows that resettlement policies are rarely implemented with the consultation or consent of local people. No evidence of consultation with the Tibetan people was found at any stage of the process.¹⁶⁹ The majority of those affected first learned about the resettlement plans just before they were initiated through public meetings convened by village leaders.¹⁷⁰ In some cases, no information was given to nomads about the conditions of the resettlement programmes.¹⁷¹

Far from being participative events, village meetings are convened by township government officials, and the head

169 HRW (2013).

170 HRW (2013: 76).

171 Ptackova (2012: 232).

of each nomad household is required to attend for little other reason than to receive directives.¹⁷² It is at these meetings that nomads are told of the terms of their displacement. No alternative sources of information are made available. A former nomad from Dzachuka County gave the following testimony to TCHRD regarding the nature of his family's eviction:

"There was a meeting and representatives from each camp were called and the announcement was made. No discussion occurred. They were given a deadline to fence the land and that was it."

- Interview 2¹⁷³

According to a former nomad from Ngaba Tibetan Autonomous Prefecture (Sichuan Province), proper consultation with those affected by resettlement was important given the poor understanding of nomadic lifestyle among the Chinese officials.

"In my opinion [...] the Chinese official didn't understand the complex nature of [the] nomadic lifestyle and should incorporate the Tibetan nomad's indigenous knowledge into consideration when making any rules and regulations concerning these areas and the people"
- Palden Gyal¹⁷⁴

One of the most detailed official reports on the resettlement policies in China published in 2006 by the TAR government on the Comfortable Housing Programme does not mention engagement with the public or any consultation with those affected at any

172 See Appendix 1. TCHRD Interview 2.

173 Ibid.

174 Thutop (2012).

stage.¹⁷⁵ Recent interviews conducted by TCHRD reveal that Tibetans have been involved in the policy making process. The top-down sedentarisation programme has been imposed on to Tibetans without giving the native inhabitants and primary stakeholders, a voice in resource management and land use, nor the tools and skills necessary to adapt to a new way of life.

10. Nature of evictions

UN Guidelines

National legislation should conform with international human rights provisions to ensure that no discrimination adversely affects the enjoyment of rights to adequate housing or lead to forced evictions (UN 2007 Para. 24). During the resettlement, local government officials and neutral observers are to be present to make sure that no force, violence or intimidation is involved (UN 2007 Para. 56: k).

Evidence

The Chinese government maintains that Tibetan nomads have been given the right to choose, that they are in no way forced to move and that they are allowed to move back if they so wish.¹⁷⁶ But testimonies collected by human rights groups over the years have demonstrated a different story. While the majority of relocations were not forced in nature, the threat of official retribution was

¹⁷⁵ Wei, Zhou. and Yong, Sun. (2006) 'Report on the Comfortable Housing Project of China's Tibet Village', China's Tibet New Socialist Countryside Green Books Series. Beijing: China Tibet Studies Press.

¹⁷⁶ China Daily (2012) 'Over 1 million Tibetan nomads choose settlement', 7.6.2012, Chinadaily.com. Available at: http://www.chinadaily.com.cn/china/2012-07/06/content_15555645.htm [Accessed 05.07.2013].

a major reason for the compliance of the Tibetan people. "They told my village that everyone had to leave their old homes and move to the new houses [in the resettlement village] by September 2012, and that refusal to do so would be considered as "a political issue." Everybody knows what this means: you're risking a minimum of three years in prison."

- Tenzin Gyaltso¹⁷⁷

"No, we cannot disagree. Officials say that the farmers have the right to use the farmland only but do not own the land. Therefore, if the owner of the farmland refuses, the local land bureau would call the police to have them arrested. In any case Tibetan residents are not bold enough to argue about their disagreement and give up their farmland. The relevant government departments force them to agree.....No one dares to oppose government policy directly."

- Losang Namgyal¹⁷⁸

"They [local government officials] said we had to move and relocate at the end of the valley. People thought of opposing it but it is too dangerous, who wants to be arrested?"

- Tenzin Gyaltso¹⁷⁹

"Nomads were told that now they couldn't continue to live as before because a "New Socialist Countryside" was being developed. We have to go along because we don't have our own country and we have followed government orders for so long. If we protest or complain that we don't have rights, well, then there is only one

177 HRW (2013).

178 HRW (2013).

179 Ibid.

way it could end [...] People are poor and no one dares to oppose this policy”

- Losang Namgyal¹⁸⁰

Over the years, TCHRD has reported on forced relocations in Tibet.¹⁸¹ In 2000, nomadic families from Tsekhok County in Malho Tibetan Autonomous Prefecture (Qinghai Province) had their tents and houses demolished while security forces stayed present to arrest any protestors. In 2007, a native of Dhartso County, Tsolo Prefecture, (Qinghai Province) had also reported that his family along with more than 200 other nomads were forcibly evicted from their land to make way for mining activities.¹⁸²

In 2003, Tibetan refugee testimonies revealed the highly coercive nature of evictions in Tibet. A testimony collected by TCHRD quoted a former nomad as saying: “When met with my resistance, authorities stated, ‘Since it is a decision taken by the government, you cannot refuse.’ They told me to accept everything by asserting that the central government has the ownership of not only the lands and houses but also the sky and the air we breathe.”¹⁸³

On 2 July 2012, two former nomads were sentenced to 4 and 3 years imprisonment respectively on these charges having staged a protest against their resettlement.¹⁸⁴

In 2009, TCHRD reported the forcible displacement of tens and thousands of Tibetans for the construction of

180 Ibid.

181 TCHRD’s 2001 Annual Report: Human Rights Situation in Tibet.

182 TCHRD’s 2007 Annual Report: Human Rights Situation in Tibet.

183 TCHRD’s 2003 Annual Report: Human Rights Situation in Tibet, (2003: Ata).

184 HRW (2013: 71).

a major hydroelectric dam between Nyag-chu and Tawu County in Kardze Tibetan Autonomous Prefecture, Sichuan Province.¹⁸⁵ In 2007, Tibetans protesting the appropriation of the sacred mountain of Shak Drak Lha Tse for lead and zinc extraction were arrested and the area under high security alert Pamchenchu, Tawu County (Sichuan Province).¹⁸⁶

Interviews conducted between 2005 and 2012 by Human Rights Watch in Tibet found evidence that suggests large numbers of people were re-housed or relocated without their consent; no consultation took place and no alternatives were offered.¹⁸⁷ In 2007, another major report on resettlement by HRW exposes the coercive nature of evictions, based on numerous witness statements from those who have been 'resettled' in Tibet.¹⁸⁸

VIII. Conclusion

The Chinese government claims that resettlement policies are designed to alleviate poverty and protect the environment. However, the reality is this explanation is a thin disguise designed to hide the real purpose of the policies. Neither the Comfortable Housing Policy nor the Environmental Migration Policy alleviate poverty or protect the environment. Instead, they further the Chinese government's goals of gaining access to and control of Tibet's natural resources while simultaneously maintaining social control of the Tibetan population.

There is un-doubtable evidence of environmental

185 TCHRD's 2009 Annual Report: Human Rights Situation in Tibet.

186 TCHRD's 2007 Annual Report: Human Rights Situation in Tibet.

187 HRW (2013).

188 HRW (2007).

degradation on the Tibetan plateau. Yet China has implemented policies that harm the environment rather than protect it. Development policies have failed to address the income discrepancy, instead making it harder for Tibetans to escape from poverty. The negative consequences of the PRC's policies are neither necessary nor inevitable. Funds allocated for resettlement projects could be used more effectively to genuinely protect the environment and alleviate poverty.

The frenzied way the resettlement projects were implemented in Tibet resulted in numerous preventable problems arising only after the project is underway. These problems have led to uncertainty among the resettled population about their future. This uncertainty further marginalizes the Tibetan people and makes the sustainability of the project questionable.

The Chinese authorities must provide legal counsel for those affected by displacement as required by international standards. Despite this requirement, there is no evidence of any legal remedies or complaints procedures made available to those displaced. The lack of legal counsel is exacerbated because those affected have no knowledge of their rights in the resettlement process. Illiteracy is a huge issue among the Tibetan people, meaning that when contracts are signed they are often not even understood.

In accordance with the UN Guidelines, compensation is usually promised to displaced Tibetans. However, regional differences and official embezzlement make the actual payment of compensation inconsistent and inadequate. Unfortunately, in the majority of cases, if the displaced Tibetans receive any compensation it is only a fraction of what they were promised. The inadequacies of the compensation mechanism represent a failure on

the part of the Chinese government.

Without adequate compensation the resettled population lacks sufficient food and fuel in their new housing facilities. This is exacerbated because, despite international standards, the housing is neither affordable nor culturally appropriate. As a result, most of the people who are resettled and were previously self-sufficient must borrow money to pay for construction materials or the house itself. This brings them further under the control of the government, who provides the loans. Furthermore, the resettled Tibetans were promised access to running water, electricity and other facilities but evidence have shown a different picture.

The broken promises perpetuate the disenfranchisement of the resettled population who were not allowed to participate in the decision-making process. The compliance of the resettled population was ensured through the threat of force or the imposition of fines. The resettled Tibetans were given no real alternative but to relocate to the resettlement villages. By refusing to allow Tibetan to participate in the decision-making, China missed an opportunity to incorporate traditional knowledge into development policies. Doing so would have benefitted both the Tibetan people and the environment. More importantly, China would have discovered possibilities for working with the Tibetan nomads and improving their livelihood without undermining their self-sufficiency.

In Tibet, the term 'resettlement' is little more than a euphemism for forced displacement. As illustrated in this report, those resettled in Tibet face the same consequences as IDPs, who are displaced in a more recognized manner. Despite this, Tibetans are not formally entitled to the same rights as IDPs. Tibetans

should be awarded the same rights as those who have been classified as IDP's under international law. International development agencies and heads of State should recognize the displacement of the Tibetan people; this should be swiftly followed by their combined action to pressure the Chinese government to address the situation.

The primary responsibility for the rights of the internally displaced rests with their sovereign government. Any international assistance to an internally displaced population requires the acquiescence of the state. However, where governments are unwilling or unable to uphold their international legal obligations to promote and protect human rights, the international community is legally entitled, if not obliged, to become involved. If IDPs are facing persecution, discrimination or neglect, then the international community may become involved. Through consideration of the discrimination faced by Tibetans, this is applicable. In situations where the state may itself be responsible for the displacement, as is the case in Tibet, the need for international protection and assistance is all the more necessary.

IX. THE KAMPALA CONVENTION

On 6 December 2012, the African Union convention for the protection and assistance of internally displaced people in Africa, known as the Kampala Convention, came into force. The Kampala convention is the world's first legally binding continental convention on internal displacement which serves as a critical tool for addressing the situation of internally displaced people in Africa. It represents a framework, a corollary to the rights-based Guiding Principles, and establishes a comprehensive set of obligations under which states

are to prevent displacement, assist and protect IDPs and seek durable solutions for them.¹⁸⁹ The Kampala Convention has been signed by 39 and ratified by 22 of the 54 member states of the African Union.

The Kampala Convention draws on both International Human Rights Law and International Humanitarian Law. It outlines the roles and obligations of states themselves and gives them concrete responsibilities. It identifies and addresses the varied multiple causes of displacement in Africa. It serves to remind the international community that “forced displacement is not only a humanitarian issue, but must be viewed through a human rights lens to fully understand its causes and consequences”.¹⁹⁰ Upon ratification, State parties are required to incorporate the provisions of the Convention into domestic law and establish a national legislation. This will enable the state to develop a “comprehensive vision of displacement based on a human rights framework, thus forming a common platform for all relevant entities to plan and implement well targeted responses.”¹⁹¹

In line with the principle of sovereignty and in line with human rights instruments, the Kampala convention emphasises that states have the primary duty to protect and fulfil human rights, including those of IDPs.¹⁹² The Kampala Convention revives the concept of national sovereignty as a mandate giving principle, rather than a mere privilege.¹⁹³

189 The Kampala Convention, One year on: Progress and Prospects, Internal Displaced Monitoring Centre, 2013.

190 Ibid. p.13.

191 Ibid.

192 Kampala Convention, Article 3 (d).

193 The Kampala Convention, One year on: Progress and

The Convention highlights the need for collaboration and participation. It emphasises the states cooperation with international and humanitarian organisations during all phases of displacement. It further sets out the terms for states to fulfil their role as primary providers for IDPs. A states compliance with the convention can be translated into its efficient exercise of its national responsibility. The convention also offers them concrete support in doing so. The Convention presents cooperation not only as a duty, but as a real opportunity for states to properly fulfil their responsibilities and provide effective protection and assistance to IDPs.¹⁹⁴

In line with the human rights based approach of the Guiding Principles, the Kampala Convention sets out the rights and guarantees relevant to IDPs protection, including their right to participate in decisions which affect their lives. It highlights the duty on states to ensure this happens and that the establishment of consultation and participation methods are based on community based approaches.

The prevention of forced displacement and protection from it are key aspects of the Convention. The Convention takes bold steps to condemn and comprehensively address arbitrary displacement, forced evictions and their consequences, including by committing states to examine how they carry out development and other projects through a human rights lens.¹⁹⁵ The Convention specifies that human rights violations which

Prospects, Internal Displaced Monitoring Centre, 2013, p14.

194 Ibid. p. 15.

195 The Kampala Convention, One year on: Progress and Prospects, Internal Displaced Monitoring Centre, 2013 p.25.

force people to flee their homes can constitute arbitrary displacement,¹⁹⁶ whether in the context of peace, generalised violence or war.

The Kampala Convention is an illustration of the commitment to protect and assist IDPs, collaboration and cooperation of all member states. By recognising the multiple and interlinked causes of displacement and by assigning clear responsibilities to state and non-state entities, it has established an excellent framework to design comprehensive laws, policies and responses to address the various types of internal displacement.¹⁹⁷

The proposition of using the Kampala Convention as a model framework in an effort to assist those displaced within Tibet presents various issues. China will need to look at causes of displacement, adhere to and ensure respect for international law, so as to prevent conditions that might lead to arbitrary displacement in the first place. Also collaborative action is needed for any change to occur, including states, international development and humanitarian organisations, local and national society and the communities affected by displacement themselves. This will require China to be cooperative and open up their policies for discussion and critique. The Chinese government will also need to accept that many are involuntarily displaced and forcibly displaced without adequate consultation. Due to the aforementioned reasons, it does not seem likely that a convention such as the Kampala Convention would, at this stage, assist to protect the human rights of Tibetans within Tibet due to the likely un-cooperation of the

196 Kampala convention, Article 4 (4) d.

197 The Kampala Convention, One year on: Progress and Prospects, Internal Displaced Monitoring Centre, 2013.p.26.

PRC who continue to refute any allegations of human rights violations as interference in its domestic affairs. It is more probable that the pursuit of independent international intervention will generate more concrete and substantial assistance for the protection of IDPs within Tibet. This will only begin once the UN acknowledges Tibetans within Tibet as IDPs based on the human rights violations committed by the PRC during the implementation of resettlement policies.

X. APPENDIXES

1. TCHRD Interviews

1. Informants

Interview 1

Name: G.C.

From: Amdo County, Nagchu Prefecture, Tibet Autonomous Region.

Date and time interviewed: 30th July 2013, at 3 pm.

Place Interviewed: Dharamsala, Hiamchal Pradesh, India

Translator: Tenzin Nyinjey

Interview 2

Name: T.G.

From: Dzachuka County, Kardze Tibetan Autonomous Prefecture Sichuan Province

Date and time interviewed: 2nd August 2013 at 10am.

Place Interviewed: Dharamsala, Hiamchal Pradesh, India

Translator: Tenzin Nyinjey, TCHRD

2. TCHRD Questionnaire on Displacement

Sec A. In the beginning

1. Were you born in Tibet?
2. Do you now live in India?
3. When did you leave Tibet and arrive in Dharamsala?
4. Are you here alone or does some of your family also live here? When did they arrive?
5. Is your family still in Tibet?
 - a) If the family is still in Tibet do they keep in touch and if so how?
6. What region did your family live in Tibet?
7. Were your family nomads or farmers?
8. If you were neither, could you please describe the status of your family? You can Skip to Section B of the questionnaire.
9. Could you please describe the system of ownership of the land that you used? Did this differ from the Chinese understanding of who owned the land?
 - a) Nomads-
 - i. Did you have livestock?
 - ii. What livestock did you have?
 - iii. How many?
 - b) Farmers
 - i. How much land did you have?

- ii. What crops did you farm?
- iii. What was the approximate output of your land each year?
- iv. Did you have animals? What kind?
- v. How many animals did you have?
- c) After resettlement, how did you support yourself?
- 10. What were the main difficulties of the nomadic lifestyle?

Section B. The resettlement

- 11. Has your family been part of a resettlement programme?
- 12. Is there a possibility of you and your family becoming part of a resettlement programme in the future?
 - a) When?
 - b) Would your family welcome such a programme?
 - c) Why do you say this?
- 13. Under which programme were you resettled?
 - a) 'Comfortable housing' scheme (Ch: anju gongcheng)
 - b) 'Grassland to pasture' (Ch: tuimu huancao)
 - c) 'Farmland to forest' (Ch: tuigeng huanlin)
 - d) Development project (If known, please name)
 - e) You were not told
 - f) Other

Note: Please answer this section if you/your family have been resettled

14. How did you first hear about the relocation? (i.e. media, local officials, other nomads nearby, etc)
15. What was the time frame involved i.e. how long was it from when you first heard about the resettlement until it was implemented?
16. Did you have the ability to refuse being resettled?
 - a) If yes, what options were given to you
17. Were your family happy to be resettled? Why?
18. To your knowledge were the others in your area happy to be resettled?
19. What proportion of your local area was resettled?
 - a) How many in numbers was this?

Section C. Consultation/Compensation

20. Was there promises of consultation at any point?
 - a) In what way?
 - b) Was this carried out?
 - c) Was this carried out at an individual family level or at a community level?
 - d) To your knowledge was anyone else consulted in the resettlement process?
21. Were you promised compensation as part of the resettlement process?
 - a) In what way?
 - b) Was this carried out as promised?
 - c) Was this carried out at an individual family level

or at a community level?

d) If no, what happened? Has this been followed up?

e) To your knowledge was anyone else compensated in the resettlement process?

Section D. Signing the contract

22. Did you have to sign a contract to take part in the scheme?

23. Was it your family who made the decision to sign the contract or was it a community decision?

24. Was the contract in Chinese or Tibetan?

25. Were you able to read/understand the document?

26. What were the terms in the contract?

27. Did you have to give up the rights to your land?

28. Did you have to get rid of your herd/land/means of support

29. Were you given any legal advice during the process? What sort of advice was this?

30. Who gave you this advice? Was it a lawyer, a Chinese official, or a local Tibetan who has knowledge in the area?

a) Who paid for this advice?

Section E. Life after the resettlement

31. Did any members of your family gain employment after resettlement?

a) What kind of employment was this?

b) Was the employment for the entire year?

c) Was the money made sufficient for the family to survive?

32. Did you have the opportunity to farm after the resettlement?

A) Was this in the form of keeping livestock or growing crops?

B) Was this enough to provide for the family?

33. If you answered no to the above 2 questions, how did you sustain yourself?

34. Were you promised the option of taking part in training programme?

a) Were you actually given the option to take part in the programme?

b) What was the programme?

c) Did you take part in it?

d) Did it lead to any other opportunities?

35. What does your family think of the resettlement now? Has the change lived up to your expectations? Why?

36. What are the feelings of others in your area of the resettlement now? To your knowledge are there any specific factors affecting this, i.e. are those who are more or less satisfied with the resettlement older or younger?

37. What are the benefits of your resettlement?

38. What are the disadvantages of resettlement in your eyes?

39. Is there anything you can think of that you would change in the resettlement process?

40. The following are some of the problems you may have encountered since the resettlement. Tick any if you have experienced these problems and elaborate on how this has affected you and your family.

a) Landlessness-(you lost your land in the resettlement process, this includes the loss of livestock)

b) Joblessness- (you lost your job/livelihood in the resettlement and have been unable to find a new one)

c) Homelessness (The loss of your traditional home and the problems with your new home. This can include problems of indebtedness or inability to pay housing loans)

d) Marginalisation (Perhaps you have felt excluded from the community or area you now live in)

e) Food insecurity (you no longer have sufficient food for the family all year round)

f) Increased morbidity and mortality (There has been increased problems with health)

g) Loss of access to common property (Perhaps you can no longer use your grasslands. What problems has this caused? Has this led to greater dependence on government subsidies?)

h) Social disintegration (What social problems have been caused by the resettlement? Perhaps the loss of livelihood has led to a loss of empowerment and this has caused social problems?)

i) Loss of access to community services (you no longer have the access to services that you are used to including religious facilities. Perhaps the promised access to roads, schools and healthcare has failed to become reality in the new resettlement villages?)

41. In your experience/knowledge, has there been gender specific impacts of the resettlement? Are there consequences that affect women differently?

Section F. Future options in Tibet

42. Is there a chance that your family can move back to the grasslands ? (Since some of the environment protection programs are for a period of 10 or 15 years only)

a) Would you take that chance?

b) Why?

43. What do you hope for the future for you/for your family?

44. Do you think there are other ways that the government could make life better for the nomads without resettlement? How?

45. Do you think there are ways that the government could reduce grassland degradation without "ecological migration"? How?

46. Why did you choose to leave Tibet and come to India? Did the resettlement have any influence on your decision to leave Tibet?

47. To your knowledge, has the resettlement led to anyone choosing to leave the country?

2. Basic Principles and Guidelines on Development-based Evictions and Displacement, UNITED NATIONS, 2007

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I. SCOPE AND NATURE

1. The obligation of States to refrain from, and protect

against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights. These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the Convention on the Rights of the Child (art. 27, para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. In addition, and consistent with the indivisibility of a human rights approach, article 17 of the International Covenant on Civil and Political Rights states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”, and further that “[e]veryone has the right to the protection of the law against such interference or attacks”. Article 16, paragraph 1, of the Convention on the Rights of the Child contains a similar provision. Other references in international law include article 21 of the 1951 Convention relating to the Status of Refugees; article 16 of International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries (1989); and article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention).

3. The present guidelines address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas.

These guidelines represent a further development of the Comprehensive human rights guidelines on development-based displacement (E/CN.4/Sub.2/1997/7, annex). They are based on international human rights law, and are consistent with general comment No. 4 (1991) and general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147, and the Principles on housing and property restitution for refugees and displaced persons (see E/CN.4/Sub.2/2005/17 and Add.1).

4. Having due regard for all relevant definitions of the practice of “forced evictions” in the context of international human rights standards, the present guidelines apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.¹⁹⁸

5. Forced evictions constitute a distinct phenomenon under international law, and are often linked to the

198 The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties.

absence of legally secure tenure, which constitutes an essential element of the right to adequate housing. Forced evictions share many consequences similar to those resulting from arbitrary displacement,¹⁹⁹ including population transfer, mass expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities.

6. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.

7. Forced evictions intensify inequality, social conflict, segregation and “ghettoization”, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.

8. In the context of the present guidelines, development-based evictions include evictions often planned or conducted under the pretext of serving the “public good”, such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land-acquisition measures associated with urban renewal, slum upgrades, housing renovation,

¹⁹⁹ Consistent with Principle 6 of the Guiding Principles on Internal Displacement.

city beautification, or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; unbridled land speculation; major international business or sporting events; and, ostensibly, environmental purposes. Such activities also include those supported by international development assistance.

9. Displacement resulting from environmental destruction or degradation, evictions or evacuations resulting from public disturbances, natural or human-induced disasters, tension or unrest, internal, international or mixed conflict (having domestic and international dimensions) and public emergencies, domestic violence, and certain cultural and traditional practices often take place without regard for existing human rights and humanitarian standards, including the right to adequate housing. Such situations may, however, involve an additional set of considerations that the present guidelines do not explicitly address, though they can also provide useful guidance in those contexts. Attention is drawn to the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Guiding Principles on Internal Displacement, and the Principles on housing and property restitution for refugees and displaced persons.

10. While recognizing the wide range of contexts in which forced evictions take place, the present guidelines focus on providing guidance to States on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in

contravention of existing international human rights standards and do not thus constitute “forced evictions”. These guidelines aim at providing a practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail.

II. GENERAL OBLIGATIONS

A. Duty bearers and nature of obligations

11. While a variety of distinct actors may carry out, sanction, demand, propose, initiate, condone or acquiesce to forced evictions, States bear the principal obligation for applying human rights and humanitarian norms, in order to ensure respect for the rights enshrined in binding treaties and general principles of international public law, as reflected in the present guidelines. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual parties, including private landlords and landowners, of all responsibility.

12. Under international law, the obligations of States include the respect, protection and fulfillment of all human rights and fundamental freedoms. This means that States shall: refrain from violating human rights domestically and extraterritorially; ensure that other parties within the State’s jurisdiction and effective control do not violate the human rights of others; and take preventive and remedial steps to uphold human rights and provide assistance to those whose rights

have been violated. These obligations are continuous and simultaneous, and are not suggestive of a hierarchy of measures.

B. Basic human rights principles

13. According to international human rights law, everyone has the right to adequate housing as a component of the right to an adequate standard of living. The right to adequate housing includes, inter alia, the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure.

14. According to international law, States must ensure that protection against forced evictions, and the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status.

15. States must ensure the equal right of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure, as reflected in the present guidelines.

16. All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential

services such as health and education.²⁰⁰

17. States must ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that his/her right to protection against forced evictions has been violated or is under threat of violation.

18. States must refrain from introducing any deliberately retrogressive measures with respect to de jure or de facto protection against forced evictions.

19. States must recognize that the prohibition of forced evictions includes arbitrary displacement that results in altering the ethnic, religious or racial composition of the affected population.

20. States must formulate and conduct their international policies and activities in compliance with their human rights obligations, including through both the pursuit and provision of international development assistance.

C. **Implementation of State obligations**

21. States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare;²⁰¹ (d) reasonable and proportional;

200 See general comment No. 4 on the right to adequate housing, adopted by the Committee on Economic, Social and Cultural Rights in 1991.

201 In the present guidelines, the promotion of the general

(e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.

22. States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations. States should refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights. For instance, an eviction may be considered justified if measures of land reform or redistribution, especially for the benefit of vulnerable or deprived persons, groups or communities are involved. States should apply appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner not fully consistent with applicable law and international human rights standards. States must ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions.

23. States shall take steps, to the maximum of their available resources, to ensure the equal enjoyment of the right to adequate housing by all. The obligation of States to adopt appropriate legislative and policy measures

welfare refers to steps taken by States consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable.

to ensure the protection of individuals, groups and communities from evictions that are not in conformity with existing international human rights standards is immediate.²⁰²

24. In order to ensure that no form of discrimination, statutory or otherwise, adversely affects the enjoyment of the human right to adequate housing, States should carry out comprehensive reviews of relevant national legislation and policy with a view to ensuring their conformity with international human rights provisions. Such comprehensive review should also ensure that existing legislation, regulation and policy address the privatization of public services, inheritance and cultural practices, so as not to lead to, or facilitate forced evictions.²⁰³

25. In order to secure a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.

26. States must ensure the equal enjoyment of the right to adequate housing by women and men. This requires

202 See general comment No. 3 on the nature of States parties' obligations, adopted in 1990 by the Committee on Economic, Social and Cultural Rights.

203 See the guidelines on housing and discrimination contained in the 2002 report of the Commission on Human Rights Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2002/59).

States to adopt and implement special measures to protect women from forced evictions. Such measures should ensure that titles to housing and land are conferred on all women.

27. States should ensure that binding human rights standards are integrated in their international relations, including through trade and investment, development assistance and participation in multilateral forums and organizations. States should implement their human rights obligations with regard to international cooperation,²⁰⁴ whether as donors or as beneficiaries. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy that may involve forced evictions, that is, evictions not in full conformity with international law, and as specified in the present guidelines.

D. Preventive strategies, policies and programmes
28. States should adopt, to the maximum of their available resources, appropriate strategies, policies and programmes to ensure effective protection of individuals, groups and communities against forced eviction and its consequences.

29. States should carry out comprehensive reviews of relevant strategies, policies and programmes, with a view to ensuring their compatibility with international human rights norms. In this regard, such reviews must

²⁰⁴ As set forth in article 22, Universal Declaration of Human Rights; Articles 55 and 56 of the Charter of the United Nations; articles 2, paragraph 1, 11, 15, 22 and 23, International Covenant on Economic, Social and Cultural Rights; articles 23, paragraph 4, and 28, paragraph 3, Convention on the Rights of the Child.

strive to remove provisions that contribute to sustaining or exacerbating existing inequalities that adversely affect women and marginalized and vulnerable groups. Governments must take special measures to ensure that policies and programmes are not formulated or implemented in a discriminatory manner, and do not further marginalize those living in poverty, whether in urban or rural areas.

30. States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. States should review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction. In the event of an increase in housing or land prices, States should also ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land.

31. Priority in housing and land allocation should be ensured to disadvantaged groups such as the elderly, children and persons with disabilities.

32. States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. "Eviction-

impact” assessment should also include exploration of alternatives and strategies for minimizing harm.

33. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.

34. Adequate training in applying international human rights norms should be required and provided for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects. This must include training on women’s rights, with an emphasis on women’s particular concerns and requirements pertaining to housing and land.

35. States should ensure the dissemination of adequate information on human rights and laws and policies relating to protection against forced evictions. Specific attention should be given to the dissemination of timely and appropriate information to groups particularly vulnerable to evictions, through culturally appropriate channels and methods.

36. States must ensure that individuals, groups and communities are protected from eviction during the period that their particular case is being examined before a national, regional or international legal body.

III. PRIOR TO EVICTIONS

37. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.

38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

39. During planning processes, opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.

40. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.

41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

42. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.

43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision

for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.

44. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.²⁰⁵

IV. DURING EVICTIONS

45. The procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or their representatives on site during evictions. The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

46. Neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.

47. Evictions shall not be carried out in a manner that

205 See section V of the present guidelines.

violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.

48. Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards.

49. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.

50. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

51. Authorities and their agents should never require or force those evicted to demolish their own dwellings or other structures. The option to do so must be provided to affected persons, however, as this would facilitate salvaging of possessions and building material.

V. AFTER AN EVICTION: IMMEDIATE RELIEF AND

RELOCATION

52. The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.

53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of

women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counseling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

55. Identified relocation sites must fulfill the criteria for adequate housing according to international human rights law. These include:²⁰⁶ (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

56. In determining the compatibility of resettlement

206 See general comment No. 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights in 1991.

with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

- (a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place;
- (b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;
- (c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;
- (d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;
- (e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;
- (f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;
- (g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;

(h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;

(i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;

(j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement; and

(k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

57. Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading treatment, and freedom of movement.

58. Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing. This applies equally to

host communities at relocation sites.

VI. REMEDIES FOR FORCED EVICTIONS

59. All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

A. Compensation

60. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

61. All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings.

62. Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.

63. To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income.

B. Restitution and return

64. The circumstances of forced evictions linked to development and infrastructure projects (including those mentioned in paragraph 8 above) seldom

allow for restitution and return. Nevertheless, when circumstances allow, States should prioritize these rights of all persons, groups and communities subjected to forced evictions. Persons, groups and communities shall not, however, be forced against their will to return to their homes, lands or places of origin.

65. When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence. Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes. Special measures may be required to ensure women's equal and effective participation in return or restitution processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women.

66. Competent authorities have the duty and responsibility to assist returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction.

67. When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

C. Resettlement and rehabilitation

68. While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to development-based evictions. Such resettlement must occur in a just and equitable manner and in full accordance with international human rights law as elaborated in section V of these guidelines.

VII. MONITORING, EVALUATION AND FOLLOW-UP

69. States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions, that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

70. States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

VIII. ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS

71. The international community bears an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards.

72. International organizations should establish or accede to complaint mechanisms for cases of forced evictions that result from their own practices and policies. Legal remedies should be provided to victims in accordance with those stipulated in these guidelines.

73. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

IX. INTERPRETATION

74. These guidelines on development-based evictions and displacement shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee, criminal or humanitarian law and related standards, or rights consistent with these laws and standards as recognized under any national law.

For copies of any reports and/or for more information, please contact

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