Globalization and accountability: the corporate sector in involuntary displacement and resettlement

by Patricia Feeney

The UN Conference on Trade and Development estimates that in 1997 the world's 100 largest transnational companies (TNCs) together held $1.8 trillion in foreign assets, sold products worth $2.1 trillion abroad and employed some six million persons in their foreign affiliates. The ultimate objective of TNCs is to enhance their own competitiveness in an international context. This article argues that the liberalization of regulatory regimes for foreign investment, the transfer of state obligations to non-state actors and the dilution of international development guidelines have reduced the protection afforded to poor people facing involuntary development-induced displacement.

Despite the broad range of stakeholders affected by their operations and influence many TNCs insist that they are legally responsible only to their shareholders and national governments. Increasingly pressure is being brought to bear on companies to take a less restrictive view of their wider obligations. The UN Secretary General, Kofi Annan, recognising the enormous impact that TNCs have on human rights - in their employment practices, in their environmental impact, in their support for corrupt regimes or in their advocacy for policy changes – has called for a 'Global Compact' for corporate accountability.[1]

Business as beneficiaries of overseas aid budgets

The phenomenal growth in foreign direct investment (FDI) in developing countries, resulting from liberalization of FDI rules and privatization of state-owned enterprises, has - in part - been used by OECD governments to justify the recent dramatic decline in official aid flows. The unprecedented levels of private flows have shaped the donors' new development strategies. A major cause of concern is the failure of private companies, based in industrialized countries, many of which obtain substantial benefits from official aid programmes, to apply internationally agreed development policies. Official Development Assistance (ODA) provides an accessible source of public money that is used both to finance the private sector construction of large infrastructure projects or, as is becoming more common, to mitigate the risks of such projects.

The OECD's Development Assistance Committee (DAC) reports that, while more aid is now provided on concessional terms or as grants, there is a growing tendency to mix ODA and commercial loans in a single package. In 1996 one third of ODA lending had associated commercial funds, underlying the importance of tied aid and the influence of commercial interests in aid flows. There is a lack of clarity on the part of donor and recipient governments about the extent to which companies awarded international contracts are required to fully adhere to official aid guidelines and procedures. Nowhere is this more apparent than in projects involving involuntary displacement and resettlement.

Safeguards in resettlement

Most aid guidelines specify that before a project involving involuntary displacement can be approved the host country government or private business sponsor must submit a plan that conforms to international resettlement policies. Resettlement policies are supposed to ensure that displacement is kept to a minimum; that those who are displaced have a share in the project benefits or investment resources; that the standard of living of the resettled communities improves or at least does not deteriorate; that there is participation in the planning and implementation of the resettlement plan (for example in the selection of the resettlement site); and that people are informed of their rights and options and offered a number of acceptable alternatives.

In the case of the World Bank, its review and approval of the documentation and provisions for subsequent supervision are made conditions of loan effectiveness. Resettlement Action Plans are supposed to be made available in draft to the public in the project area for comment prior to approval of new project funding and should be reviewed by World Bank social, technical and legal experts. In practice such safeguards, as the World Bank has itself recently acknowledged,[2] have been frequently disregarded.

A number of papers prepared for the World Commission on Dams highlight the lack of clear delineation of responsibility and allocation of accountability in large dam projects.[3] The International Law Commission argues that entities which take on core functions of governments are subject to the same duties as a state under international law by virtue of the principle of attribution. When a state contracts out to private companies the design, implementation or monitoring of projects involving involuntary resettlement, a case can be made that these companies then acquire responsibilities for ensuring compliance with the relevant international human rights standards and development policies and procedures.

Frequently, however, there is depressingly little evidence that this is properly understood by any of the parties involved. It is all too apparent that private companies lack the necessary skills and experience to undertake social and environmental assessments that best aid practice requires.

One such example is Exxon's role in the controversial Chad-Cameroon Pipeline, a project which involves sinking some 300 oil wells in southern Chad and running a 1,050-km buried pipeline the full length of Cameroon to a marine export terminal on the Atlantic coast.[4] Exxon commissioned a series of studies in preparation for obtaining World Bank approval (and funding). According to a Dutch Government panel of experts and World Bank social and environmental staff, the Environmental Impact Assessment and Environmental Management Plan submitted lacked essential information and contained no sound statistical picture of the population likely to be affected by the project.

Similar failings are evident from the inadequacy of surveys into the number and characteristics of the population displaced by the privatization of copper mines in Zambia. There is a five-fold variation in the numbers presented by the parastatal mining company involved and those put forward by local councils. In the case of the Nchanga mine at Chingola, now sold to Anglo American, the lack of baseline data has meant that the company and the council are at loggerheads about who is and is not a squatter on land owned by the mine.

Need for more effective regulation

While there is an undoubted benefit for developing countries in harnessing private sector capital and know-how to improve service provision and to finance modern infrastructure, insufficient attention has been paid to ensuring that effective and appropriate regulatory systems are in place to protect the rights and interests of the poor.
New regulatory bodies have been hurriedly set up throughout the developing world but most lack the necessary financial or political backing to enable them to protect the interests of the wider population. As a result, environmental and social guidelines are not adequately implemented and equity is given scant consideration.

The rationale of the new development agenda has been that public provision projects suffered substantial time and cost overruns. However, transaction costs with private projects are higher and private sector project performance also suffers from delays and implementation problems. In its 1999 Annual Report, the World Bank conceded that 30-40 per cent of its private sector portfolio of projects in industry, water and sanitation were "problematic". Recently-created World Bank instruments have led to concern that scarce concessional funds are being taken away from pro-poor initiatives to the benefit of private investors for projects with limited or, in the worst cases, negative development gains.

World Bank resources can now be used to provide guarantees to private sector investors in projects in low-income countries which are intended to generate substantial foreign exchange revenues. Whether these projects are helping to eradicate poverty or simply to increase the wealth of private individuals is often far from clear. It is not easy to ensure that such private commercial enterprises comply with development guidelines and policies.

In the case of the Zambian copper mines, although Anglo American signed up to World Bank resettlement guidelines, it has defaulted on its obligations by not conducting adequate household surveys, offering inadequate compensation and not disclosing details of its Resettlement Action Plan to those affected.[5] Given the use of adjustment loans and technical assistance to support the privatization process, the World Bank ought from the outset to have considered the situation of settlers on mine land. Failure to do so has resulted in a wave of evictions in mining areas. Former miners have merely been offered 'repatriation' to their original areas - in reality, a one-way journey to penury and destitution. After many years' absence, few of the returning miners have any entitlement to customary land.[6]

Trade subsidies: weak regulation and absence of agreed norms

While there are still major difficulties in ensuring that the private sector complies with resettlement guidelines in projects funded out of multilateral or bilateral aid funds, transnational companies benefiting from trade-related subsidies are reluctant even to accept that their operations should be constrained by official development policies.

In the last decade export credit agencies (ECAs) have increased their activities and in their search for new markets have exerted themselves to provide concessional credits and guarantees to private sector companies. Roughly half of new export credit commitments in recent years have gone to support project financing in such sectors as power generation, telecommunications and transport. ECAs are the largest official creditor of developing countries, accounting for 31 per cent of their debt to official creditors.

Since the G-8 Summit in Cologne in 1999 called for the development of common environmental guidelines for ECAs, there has been remarkably little progress.[7] The UK's Export Credit Guarantee Department (ECGD), in common with most other ECAs, claims that it is not bound by development guidelines and procedures. This ignores the fact that the companies and their sponsors frequently justify public backing for their projects on the grounds that the results will bring wider social and economic benefits to the host countries.

While ECAs may for the time being continue to be able to sidestep good development practice, their activities are likely to be constrained by the application of international human rights and environmental laws. This may reduce the danger that future debt will accumulate to export credit agencies for promoting unsustainable and undesirable private sector projects. It may also dampen the enthusiasm of governments to use taxpayers' money to bail out companies with no commitment to sound environmental policies, human rights and resettlement standards.

The current controversy surrounding the proposed construction of the Ilisu Dam on the Tigris River in southeastern Turkey has brought concerns about the role of ECAs into the public domain. The contractors, Balfour Beatty, are seeking £200 million of export credit guarantees from the ECGD despite the absence of any government scrutiny of the resettlement plans and despite the fact the company is currently being investigated for alleged bribery in connection with the Lesotho Highlands Water Project. International guidelines for resettlement are not being observed. Consultation with the local population and civic authorities has been limited or non-existent.[8]

Conclusions

Clearly, developing countries need a flourishing private sector if they are to participate in the global economy. It is also clear that much official aid is promoting the interests of major companies based in industrialized countries while doing little either to encourage the emergence of local entrepreneurs able to compete in world markets or to promote the rights of those affected by such projects. As the World Bank Group places increasing emphasis on its partnership with the private sector it remains to be seen whether recent reformulation of operational policies, bank procedures and good practices regarding involuntary resettlementix will include scope for complaints from affected communities.

The adoption of voluntary codes of conduct by such leading companies as BP Amoco and Shell is not enough. Environmentalists are calling for a 'development screen' to ensure that the World Bank's International Finance Committee's projects promote growth that is 'pro-poor' and strictly conforms to aid guidelines. European NGOs have suggested that export credits and contracts paid for out of overseas aid budgets should be dependent on private companies publicly adopting the revised OECD Guidelines for Multinational Corporations.

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1 See www.unglobalcompact.com
2 See the pages of the Resettlement Thematic Team on the World Bank website www.worldbank.org
3 See www.irn.org/programs/review/submissions.shtml
4 For details see www.worldbank.org/pics/pid/td44305.txt
5 Oxfam GB Draft Report on Resettlement in the IFC/Konkola Mining Project, Zambia, June 2000
6 Robin Palmer, Patricia Feeney and Michelo Hansungule 'Land Tenure Insecurity on Zambia's Copperbelt', report for Oxfam GB in Zambia, December 1998.
7 The partly privatized British Commonwealth Development Corporation, the US credit agency, the Overseas Private Investment Corporation (OPIC) and the World Bank's Multilateral Investment Guarantee Agency (MIGA) are almost alone in their public commitment to complying with some basic development and environmental standards.
8 For further details visit the Ilisu Dam Campaign website www.ilisu.org.uk
9 See http://wbln0018.worldbank.org/essd/essd.nsf/81f3f0192ec0edee852567eb0062fb33/ecce741f851ed3ca852567ed004c9be8?OpenDocument