

Recommendations for the Review of the Policy on Involuntary Resettlement

Endorsed by:

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Policy Scope

1. The revised policy scope should explicitly state that the policy applies retroactively in cases in which resettlement for the project has occurred before initial discussions with the Bank and the acquisition of the area, or restrictions on land use or access to resources within the area, are directly linked to the project. Bank procedures should require the Task Team to determine whether any displacement has already occurred to make way for the project. When this circumstance arises, the Task Team should be required to determine whether the objectives of the involuntary resettlement policy have been met for those displaced. To the extent that policy objectives have not been met, a comprehensive remedial action plan should be required as part of project preparation, as a precondition to allowing dispersal of funds for the project.
2. The revised scope should clarify that the policy applies in cases of full or partial, permanent or temporary physical and economic displacement.
3. The revised policy should apply whenever a Bank-supported project permanently or temporarily restricts access to or use of land or other natural resources that people depend upon for their physical, economic, social, cultural or spiritual well-being.
4. The policy scope should be extended to cover displacement (including restricted access to or use of resources) caused by project externalities that create hazardous conditions, or pollute or otherwise threaten the use of resources depended upon by affected persons for their livelihoods and sustenance.
5. The revised policy should cover all direct and indirect impacts of displacement. The economic litmus test to be applied should be: if the costs would not have accrued without the project, then they are project costs and must be factored in. This should apply to both resettlement and restrictions on access to land and natural resources.
6. The policy should apply consistently across all projects that involve “voluntary” or “involuntary” resettlement, with policy entitlements serving as the minimum basis for any negotiated agreement.
7. New guidance materials for Bank staff should affirm that the policy objectives and measures apply in full to associated facilities that are directly and significantly related to the Bank-assisted project; necessary to achieve the project’s objectives; and carried out reasonably contemporaneously with the project.

Prohibiting Forced Evictions and Ensuring that Displacement is Truly a Last Resort

1. The policy should contain a clear statement that Bank operations will not contribute directly or indirectly to forced evictions and that Bank funds cannot in any circumstances be used to carry out forced evictions. The policy should adopt the definition of forced evictions contained in the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*.
2. The policy should require an independent assessment of the general welfare value of any proposed projects that will cause displacement, including restrictions on access to or use of land and/or other natural resources. A project will not meet the “general welfare threshold” if its public purpose cannot be affirmed through a democratic process, including meaningful consultation with expected beneficiaries and affected persons about their development priorities, with an emphasis on poor and marginalized groups; if it will violate affected people’s human rights; or if the magnitude of displacement and the degree of risk of harms to affected persons is not reasonable and proportional to its public value.
3. The general welfare value of projects in which a private company has a substantial stake should be subject to additional scrutiny and extensive consultation processes, including with affected persons, independent experts and civil society.
4. The policy should make clear that for projects that do not meet the “general welfare threshold,” resettlement can only occur on a genuinely voluntary basis predicated on free, prior and informed negotiations under conditions that establish a fair and level playing field. In such cases, where only voluntary resettlement is permitted under international law, policy objectives and requirements should continue to apply, as a minimum basis for the terms of any agreement to resettle.
5. The policy should put in place practical mandatory procedures to ensure an inclusive, transparent, robust and participatory process of exploring alternative project designs and options, including a “no project option”, to ensure that involuntary resettlement and restrictions on access to or use of land and other natural resources is avoided and minimized to the fullest extent possible. *In situ* solutions should be explored in consultation with affected persons and adopted unless it is not technically feasible to do so, or the affected persons prefer resettlement to an alternative site. The “no project option” should be given serious consideration where the project will cause large-scale displacement or result in extensive economic, social and environmental costs, and in environments in which there is a high-risk that policy objectives and requirements will not be met. The assessment of alternatives, including the feasibility of *in situ* solutions, should be undertaken by an independent third party with no conflict of interest in the project. The assessment should be based on the views of a variety of stakeholders, with meaningful opportunities provided to expected affected persons to propose alternatives.
6. With respect to projects that impact upon territories, lands and natural resources of

indigenous peoples, the policy should ensure that their right to free, prior and informed consent is respected.

7. The policy should explicitly state that land acquired under a Bank-financed project for a particular public purpose should not be utilized for a different purpose. If circumstances arise in which the land is no longer required for the project or if the land is not utilized for the project within a period of three years, the original land-users must be given the right to return. In case of land acquired in excess that is unutilized, the policy should require return of the land to the original land-users, or, if return is not feasible, its use as common property for the local community, or otherwise for the general welfare.

Category A Resettlement: Using a Twin-Project Approach

1. For Category A projects with significant displacement impacts, the policy should require resettlement to presumptively be treated as a separate project in order to trigger the full set of analytical, preparatory, supervision, monitoring and evaluation activities. The separation of projects, however, should only occur (a) after the general welfare value of the investment project causing the displacement has been established, based on meaningful consultations and taking into account the displacement impacts – material and non-material, and short-term and long-term; and (b) once the original investment project has been designed to minimize displacement to the fullest extent possible. A resettlement project cannot be considered for financing without the prior verification of the general welfare value of the investment project.
2. Disbursements of funds for the original investment project should be linked to regular independent audits of the resettlement activities and their compliance with the policy.

Human Rights Impact Assessment and Due Diligence

1. The revised policy should require that *ex ante* human rights impact assessments be conducted in the early stages of project preparation and *ex post* impact assessments at regular intervals for several years after resettlement or restrictions on access to resources has occurred.¹ All *ex ante* and *ex post* impact assessments must be publicly disclosed in full, and translated summaries in accessible language should be prepared and distributed to affected persons.
2. The World Bank should design an assessment tool or toolbox that is consistent with best practice in rights-based impact assessment. The assessment should collect and compile disaggregated data, regarding the human rights impacts on affected persons and communities, taking into account, inter alia, all assets, resources and opportunities expected to be lost as a result of displacement, as well as patterns of

¹ To be determined based on the magnitude and other particularities of the resettlement project.

exclusion, marginalization and discrimination that must be addressed. Special attention should be paid to the impacts on vulnerable and marginalized groups, including people with disabilities, children, women, the elderly, minorities and other groups subject to discrimination.

3. Assessments should be conducted with full participation of affected people. Household specific information should be verified by affected households and they should be afforded opportunities to challenge any survey results with which they disagree.
4. Cumulative Impact Assessments, including upstream and downstream impacts from associated facilities, should be required wherever relevant.
5. Resettlement Plans and Process Frameworks should reflect the findings of the human rights impact assessment.
6. Bank procedures should require the Task Team to conduct its own human rights risk assessment of the draft Resettlement Plan, Policy Framework or Process Framework taking into account the capacity and commitment of the borrower to fully implement it.

Access to Information, Consultation and Active Participation in Decision-Making

1. The policy should require that all affected people are informed and meaningfully consulted on the project at the earliest stages and throughout the project cycle, using accessible communication methods and language. Informed and meaningful consultations should be conducted in relation to the public value of the project, the findings of impact assessments, the exploration of alternatives and the design of resettlement plans and process frameworks.
2. The policy should require that all affected people be informed, using accessible communication methods, about their rights and entitlements under the policy and their right to access the Inspection Panel.
3. A definition of meaningful consultation, or a standalone policy on consultation, should be included in the new integrated safeguards framework and be applicable to all relevant aspects of the safeguard policies, including in relation to resettlement. The policy should reflect the elements of the definition of meaningful consultation in the ADB Safeguard Policy Statement (2009) and the definition of consultation and participation in the Voluntary Guidelines on the Responsible Governance of Tenure. It should additionally require relevant consultations to be carried out by independent parties that do not have a stake in the project.
4. Affected persons should be provided with all necessary support and resources to enable them to actively participate in decision-making and have greater control over the resettlement, rehabilitation and development process. The policy should require

the provision of independent advice, technical assistance and ongoing support funded by the project to enable active participation in decision-making and planning. The provision of support should, where appropriate, extend beyond the closure of the main Bank-financed project that has caused displacement.

5. Particular attention must be paid, through tailored support, to ensuring that vulnerable and marginalized groups, including minorities, landless persons, women, children, older persons, the infirm and persons with disabilities are able to fully participate in planning, decision-making and implementation processes.
6. Bank policy must respect the right of Indigenous Peoples to give or withhold their free, prior and informed consent (FPIC) to any resettlement or displacement impacts resulting from Bank-financed operations. Implementation, supervision and redress mechanisms must be established to ensure that FPIC standards and the collective decision-making processes of indigenous peoples are respected.

Respecting and Fulfilling the Human Right to Adequate Housing

An objective of the new policy should be for all displaced persons to enjoy their human right to an adequate standard of living, including the right to adequate housing, following resettlement. To ensure this objective is met, the policy should contain the following requirements:

1. Provision of culturally appropriate adequate housing that provides inhabitants with adequate space, protection from cold, damp, heat, rain, wind, structural hazards, disease vectors or other threats to health, and ensuring the physical safety of occupants OR an amount of monetary compensation that is at least sufficient to enable access to adequate alternative adequate housing (adjusted for household size), in accordance with international human rights standards and established on the basis of independent expert advice. Replacement cost should only be used as the basis for compensation of lost housing when it exceeds the minimum amount necessary to purchase or construct an adequate house. When this is the case, full replacement cost should be required. All transaction and transitional costs must also be covered. Independent experts should be engaged to audit and verify compensation amounts or the adequacy of housing provided. The choice of housing or compensation should be made according to the preference of the affected community and, where feasible, of each household. All other lost assets, including common property resources should be replaced unless it is the preference of affected persons to receive compensation at full replacement cost. An independent third party should be engaged to ensure that affected households and communities have an opportunity to freely choose between the options presented based on all relevant information.
2. Suitably accessible housing and moving assistance must be provided to persons with disabilities, the infirm and the elderly.
3. In order to minimize disruption to livelihoods, families who rely on the urban

economy to derive income must be resettled as near as possible to their former locations, or in an alternative location with equivalent economic opportunities. For resettlers whose livelihoods are land-based, the provision of alternative productive cultivable and irrigated land of at least commensurate size and value must be provided. Families with coastal or riparian-based livelihoods must be given land with equivalent access to the sea, river and other resources. Resettlement should not occur unless affected persons agree, and the Bank is of the opinion, that the location of the resettlement site will provide access to at least equivalent livelihood and other opportunities and resources as previous residential locations. Several options should be presented to affected households as possible sites with opportunities for affected people to nominate alternative sites themselves and participate in selecting their destination from the available options. If affected people choose to receive monetary compensation instead of replacement land, an independent third party should be engaged to verify that this decision was made freely and on the basis of all relevant information about the implications of receiving cash rather than replacement land.

4. Relocation sites should be unpolluted and free from health and safety risks to resettled families. All due care should be taken to ensure that resettlers - especially women, children, older persons and persons with disabilities - are not put in danger due to the location of the site, distance to amenities or schools, lack of services, such as water, sanitation or lighting, or other hazards. Communities/villages should be resettled together; relocation should not disperse community and family members. Resettlers should have opportunities to participate in evaluating sites and determine them to be free from health and safety risks.
5. Relocation sites should be equipped with: (a) basic 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; and (b) access to healthcare services, schools, childcare centers and other social facilities, whether in urban or rural areas.
6. A culturally and socially appropriate form of secure tenure, that provides legal protection from forced eviction must be provided to resettled households. Titles or other documents that record tenure rights should not automatically be registered on a "heads-of-household" basis. Women should be secured as the sole or joint holders of title, lease or other form of tenure. Collective tenure rights, including women's collectives, should also be secured through appropriate processes.

Livelihood Improvement and Benefit-Sharing

1. The revised policy objective should be to improve the living standards of the displaced through commensurate investments in resettlers' development.
2. The revised policy should contain requirements to enable displaced people, including

women, to share in project benefits by increasing their access to resources and opportunities and through investments in the development of their livelihoods, above and in addition to compensation for losses. Potential strategies and mechanisms for project revenue benefit sharing must be explored with the active participation of affected people, including women, during the project design and appraisal stage. The Bank should provide guidance to borrowers regarding potential strategies or mechanisms for effective benefit sharing.

3. Resettlement budgets must realistically reflect the actual financial and technical investments needed, upfront and over time, to fully replace lost assets and develop the living conditions and livelihoods of resettlers and achieve the policy objectives, based on sound economic analysis. Budgets should take into account whether, and the extent to which, a portion of project revenue will be allocated to investments in displaced communities to support their ongoing development. Justifications for all assumptions made in calculating compensation rates and other cost estimates must be included and disclosed in the Resettlement Action Plan.
4. Actual loss of income during the transition period should be compensated on a periodic basis through a social safety net system until such time as resettlers have been fully rehabilitated.
5. Benefit distribution should, wherever possible, accrue to the women members of the affected families.

Cut-Off Dates and Eligibility for Benefits

1. The policy should require the provision of replacement cost compensation for housing and other lost assets to those who settle or purchase property in the affected area after the cut-off date, so they are not left destitute. All other due process rights must be afforded to anyone subject to eviction, including an adequate notice period of at least 90 days.
2. The borrower should be required to demonstrate the effective, systematic and continuous public dissemination of information about the affected project area in which people are prohibited from settling after the cut-off date.
3. The policy should entitle households who have built structures or planted trees/crops, etc. after the cut-off date to full compensation for these assets and improvements, as there is often a significant time lag between the cut-off date and resettlement, and these investments are usually necessary to livelihoods or living conditions during that period.

Resettlement Supervision, Monitoring and Evaluation

1. The revised policy should require the borrower to retain a qualified independent monitoring organization to verify the borrower's own monitoring information through regular publicly disclosed monitoring reports.
2. For any resettlement project that is deemed high-risk during the Bank's risk assessment, a Panel of Experts (PoE) should be engaged to provide regular independent review of, and guidance on, all aspects of resettlement, and in particular whether safeguard policy requirements and objectives and project resettlement plans and goals have been met. PoE members should be selected through a consultative process, including project affected people and civil society. PoE reports should be publicly disclosed.
3. If any significant involuntary resettlement issues are identified by the external monitor or Panel of Experts, the Bank and the borrower should jointly develop a remedial action plan to address the issues, which should include measurable, time-bound actions and be publicly disclosed.
4. The revised Bank procedures should stipulate that in cases of serious non-compliance, the borrower should be prevented from implementing the specific project components for which displacement impacts are identified until the remedial action plan is implemented.
5. The revised Bank procedures should require the Task Team to include performance indicators on resettlement outcomes in project results frameworks and ensure systematic collection of data to monitor and evaluate policy performance. Investment Completion Reports and independent reviews of those reports should rate and report on resettlement outcomes, and for projects with significant resettlement impacts, ensure that the results are incorporated as an essential dimension when assessing achievement of the project's development objective.
6. The Bank should, for relevant staff, factor resettlement outcomes into its staff assessment and incentive system.
7. The Bank must invest significantly greater resources in supervision and implementation support, regardless of the risk classification of the project, and particularly in projects that rely on Resettlement Policy Frameworks.

Ensuring Access to an Effective Remedy

1. The revised policy should guarantee the right to an effective remedy, including the right to reparations, for people who have suffered human rights violations and other harms resulting from displacement and resettlement. Special provisions should be made to enable women to access their right to remedy, including through legal aid.

2. The policy should require that independent, accessible and transparent grievance mechanisms are established at the local level for every project that induces involuntary resettlement.
3. The policy and Bank procedures should provide recourse for affected people to seek remedies, including where appropriate compensatory damages, if they are found by the Inspection Panel to have suffered harm as a result of a Bank operation. These provisions should be stipulated in the legal agreement with the borrower.