

World Bank Safeguards and Land Tenure and Natural Resources



Expert Focus Group, South Africa

20 February 2013

Context to inform and guide the Discussion

Publication Note

- The purpose of this presentation was to facilitate the discussion on land tenure and natural resources and safeguards by the international expert focus group held in Johannesburg on February 20, 2013. A [summary](#) of the discussion of this focus group as well as the [participant list](#) are available on the safeguards review [website](#).
- The focus group was conducted in accordance with Chatham House rules, and all participants spoke in their individual capacities rather than as representatives of their respective institutions.
- This focus group was part of the World Bank safeguard policies review and update process, and the topic of Human Rights is one of the emerging areas that stakeholders have asked the Bank to consider during the review. Other emerging areas include: labor and occupational safety; disability; free, prior and informed consent of Indigenous Peoples; gender; climate change; and land tenure and natural resources. The international expert focus groups have been held by the World Bank to inform the ongoing safeguard policies review on how the Bank can address emerging areas through an integrated safeguards framework—either at the level of principles, policies and procedure—or through other approaches outside of the safeguards ambit.
- More information about the expert focus groups as well as the terms of reference for participation is available [here](#).
- More information about the safeguard policies review and consultations is available on the review [website](#).

Outline

1. Land and World Bank safeguards: framing the discussion
2. The Bank's land portfolio
3. Land as a factor in non-land projects
4. How Bank safeguards currently treat land: a brief overview
5. Questions for discussion

1. Framing the Discussion:

Two Dimensions to the Land-Safeguards Nexus

The Bank's "land portfolio"

Bank land projects provide support to land titling, land administration, etc

Can safeguards be designed to address more effectively the social and environmental issues arising in land projects?

Other Bank projects: land as a cross-cutting issue i

Land is an issue that affects projects in many sectors (infrastructure, agriculture, forestry, urban development, etc)

Can safeguards policy and practice be better calibrated to deal with land issues across the Bank's portfolio?

2. The Bank's Land Portfolio

- The World Bank has supported governments' efforts to strengthen land policies and administration systems in member countries for over four decades.
-
- Since 1990, the Bank has provided finance of \$2.7 billion to more than 60 land administration projects around the world.
- Currently, 23 stand-alone projects are under implementation, with 23 broader projects including land administration components



A wide variety of activities supported

- Legal, regulatory, and policy reforms
- Systematic titling and registration
- Institutional development, training, inter-institutional coordination
- Mapping, demarcation of municipal/district boundaries, surveying, establishment of protected areas
- Planning, zoning, and implementation of alternative uses of land as a natural resource
- Development of technological platforms and establishment of multi-purpose land information systems and provision of information online
- Improvement of data collection and data quality, digitalization, automation of processes, integration of institutional data-bases
- Farm privatization and allocation of individual rights to farmers
- Land distribution from under-utilized large farms to landless poor farmers through voluntary acquisition of land rights (sales or leases) by beneficiaries themselves (there have been only nine such projects (six in LCR, two in AFR and one in EAP).
- Conflict resolution, land regularization, recognition of indigenous peoples' land rights,
- Development of systems and training for land valuation and taxation
- Monitoring of land market transactions, research and analysis

Challenges arising in land projects

- Inherently complex
- Require long-term commitments from governments and partners
- Diverse, local nature of land rights
- Importance of tailoring to local realities (cost and design)
- Frequent tension between statutory and customary rights
- Information and resource disparities
- Gender and inheritance
- Etc!



3. Land Issues in Non-Land Projects

Aside from the "land portfolio", land is a cross-cutting issue that often has profound significance for projects in many sectors. For example:

- **Infrastructure:** addressing land rights and compensating losses when project sites are assembled
- **Agriculture:** addressing potential impacts on individual and community land rights in irrigation or commercial agriculture projects
- **Forestry:** how should REDD+ initiatives deal with issues related to forest tenure rights
- **Urban development:** effects of rising land values on the urban poor
- **Private sector development:** security of tenure and efficient land markets as key to a strong business environment

4. How Bank safeguards currently treat land: a brief overview

- The Bank does not have a “land safeguard policy” as such
- Instead, a number of Bank safeguard policies deal with land tenure issues from environmental and social perspectives, most notably:
 - OP 4.12 (Involuntary Resettlement)
 - OP 4.10 (Indigenous Peoples)
 - OP 4.01 (Environmental Assessment)
- Other safeguard policies deal with the use of land as a natural resource (e.g., forestry, natural habitats, etc.)

Operational Policy 4.12 on Involuntary Resettlement

GUIDING PRINCIPLES

- Involuntary resettlement should be **avoided** where feasible, or **minimized**, exploring all possible project design
- Resettlement activities should be conceived and executed as **development programs**
 - Sharing project benefits, consultation, participation
- Displaced persons should be assisted in their efforts
 - to **improve their livelihoods** and standards of living, or at least
 - to **restore** them to pre-displacement levels, in real terms



IMPACTS COVERED

- Involuntary **taking of land**, resulting in:
 - Relocation or loss of shelter
 - Loss of assets or access to assets
 - Loss of income sources whether affected persons must move to another location or not
- Involuntary **restriction on access to legally designated parks and protected areas** resulting in adverse impacts
- May apply to contemporaneous activities that are directly and significantly related to the Bank-financed activity.

Compensation and other benefits

- Displaced people are to be compensated for the **replacement cost** of:
 - Land, if they fall into Category 1 or 2
 - Non-land assets (all Categories)
- Displaced people may also be entitled to:
 - Resettlement assistance
 - Assistance during relocation
 - Residential housing, housing sites or agricultural sites
 - Transitional support to restore livelihoods and standards of living
- Preference for land-for-land compensation, where livelihoods are land based.

OP 4.12 is not just about compensating people for lost land and assets, its about restoring or improving livelihoods.

ELIGIBILITY FOR BENEFITS

Para. 15 describes three categories of eligible affected people:



a. Those with formal legal rights to land (including customary and traditional rights recognized under the laws of the country)



b. Those who do not have formal legal rights to land at the time of census, but have a claim that is recognized under the laws of the country (*adverse possession, prescription*)

ELIGIBILITY FOR BENEFITS

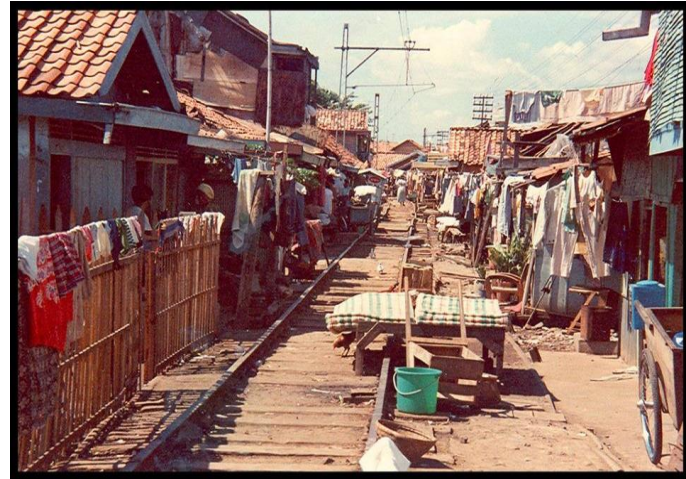
Three Categories of displaced persons:

- c. Those who have no recognizable legal right or claim to the land they are occupying ("*squatters*", *wastepickers*).

OTHER CONSIDERATIONS

Timing: Were you there before the cut-off date? Were you displaced before the project was started ("legacy issues")?

Causality: Were you displaced as a result of the project or of some contemporaneous linked activity?



OP 4.12 and Land Titling

"This policy does not apply to disputes between private parties in land titling projects. The policy also does not apply to land use planning activities, or to the regulation of natural resources on a regional, national and/or sub-national level (such as watershed management, groundwater management, fisheries management, coastal zone management, etc.) unless such activities or regulation involve Bank-assisted investments that require the taking of land. It is good practice, however, to conduct a social, legal and institutional assessment in all of the above situations, to help identify potential impacts and risks with a view to minimizing and mitigating adverse economic and social impacts, especially those that affect poor and vulnerable groups."

OP 4.10 on Indigenous Peoples

- **Definition:** No universally accepted definition of indigenous peoples. The term is used in a “*generic manner to refer to a distinct, vulnerable, social and cultural group...*” (para 4, chapeau).
 - *Identity and culture uniquely tied to their land and natural resources*
- **Application:** The Policy applies to all projects proposed for Bank financing that “affect” IPs.
- **Criteria:** Driven by the *presence* in or, *collective attachment* to the project area (land or related natural resources).
- **Consultation and Community Support:** The Bank provides project financing only where free, prior and informed consultation results in broad community support to the project by the affected IP”.

OP 4.10 and Land

- **Policy requires borrower to “pay particular attention” to:**
 - customary land rights
 - the need to protect their land from illegal intrusion
 - cultural and spiritual functions of such land
 - IPs NRM practices and long-term sustainability.
- **An Action Plan is required** for the legal recognition of IPs’ land rights when the project involves:
 - the acquisition of such land
 - project are activities that are contingent on establishing legally recognized rights to lands and territories that IP traditionally owned, used or occupied.

5. Questions for discussion

- How should land issues be addressed in the environmental and social assessment process?
- What are the gaps in the current safeguard policies?
- If we move toward using country systems, what impact will this move have on land issues?
- What are areas outside the safeguards that the World Bank should consider and address?

On the last of the four questions...

- The importance of “getting land right” for sustainable development is indisputable...
- ...but not all development objectives necessarily belong in a safeguard policy
- So a special challenge for us: *How do we credibly draw the line between land-related impacts that should be the focus of Bank policy, as opposed to those that are more appropriately addressed through other means, such as through project design, Bank-country dialogue or sharing of best practices?*