

# DISPLACEMENT AND RESTRICTIONS ON ACCESS TO RESOURCES

## Conservation, Livelihoods and Governance Programme

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This paper outlines FFI's position on displacement and offers guidance on managing relocation and compensation processes. The guidance is based on internationally recognised good practice as developed and promoted by development banks<sup>1</sup> and others, including international conservation organisations.

Displacement refers to physical displacement, relocation or resettlement as well as to economic displacement i.e. the loss of or restricted access to resources that people depend on for their livelihoods.

### FFI's position

FFI endeavours to ensure that its conservation activities do not disadvantage or undermine poor, vulnerable or marginalised people who are dependent upon or live adjacent to natural resources, and wherever possible seeks to conserve biodiversity in ways that enhance local well-being and social equity.<sup>2</sup> We are committed to respecting human rights, promoting their protection and realisation within our conservation programmes, and supporting the governance systems that can secure those rights.<sup>3</sup>

FFI seeks to uphold this position in all of its partnerships, including with government departments, the corporate sector and civil society organisations.

### Human Rights: rights holders and duty bearers

Human rights are expressed in a number of international instruments including treaties, law, covenants and protocols. There are a wide range of human rights and they can be categorised in several ways, including for example substantive rights (such as the right to life, health, food) and procedural rights (such as the right to participate in political processes and the right to information).

All human beings are rights holders; every person is entitled to their human rights without discrimination. Those responsible for the realisation of rights are duty bearers. This has historically been taken to mean states, as they are party to international treaties and are bound by international law. However, the responsibilities of non-state actors are increasingly recognised and NGOs and private sector actors<sup>4</sup> are also now regarded as duty bearers who share certain human

<sup>1</sup> The guidance draws in particular on *Performance Requirement 5: Land Acquisition, Involuntary Resettlement and Economic Displacement* of the European Bank for Reconstruction and Development.

<sup>2</sup> This position statement was approved by FFI Council in 2005.

<sup>3</sup> FFI is one of the founding members of the Conservation Initiative on Human Rights (<http://www.thecihr.org>), a consortium of international conservation NGOs that seek to improve the practice of conservation by promoting the integration of human rights in conservation policy and practice.

<sup>4</sup> Principles 1 and 2 of the United Nations Global Compact relate to human rights and state that: Businesses should support and respect the protection of internationally proclaimed human rights (Principle 1); and make sure that they are not complicit in human rights abuses (Principle 2). The UN Global Compact aims to encourage businesses worldwide to adopt and report on the implementation of sustainable and socially responsible policies. <https://www.unglobalcompact.org/what-is-gc/mission/principles>

rights responsibilities. The consensus is that all actors have obligations to at least respect rights within the scope of their influence and power.

### Obligations of duty bearers

Obligations under international instruments are commonly understood to be as follows:<sup>5</sup>

- **Respect rights** – refrain from actions that directly or indirectly interfere with peoples' enjoyment of their rights e.g. through inadequately or uncompensated and/or forced eviction.
- **Protect rights** – ensure (e.g. through regulation and enforcement) that the actions of third parties do not interfere with peoples' enjoyment of their rights against human rights abuses and actions by third parties
- **Promote and fulfil rights** – take positive action such (e.g. through legislation and policy) to create an enabling environment in which people can enjoy their rights (promoting) and provide for rights when people cannot do so themselves e.g. provision of aid (fulfilling).

### Respecting human rights in the context of displacement

Displacement refers to physical displacement, relocation or resettlement as well as to economic displacement i.e. the loss of or restricted access to resources that people depend on for their livelihoods. When communities do not have the right to refuse land acquisition or restrictions on land or resource use that result in displacement, resettlement is considered involuntary. In international human rights law, protection against forced eviction is afforded specifically through the right to adequate housing and the right to choose residence.

Displacement and involuntary resettlement are significant issues in large scale development projects and thus a number of key guiding principles have been developed, primarily in relation to multi-lateral development bank policies but also applicable more widely.<sup>6</sup>

- Avoid displacement and restrictions on access of resource-dependent communities as much as possible and, where necessary, minimise and mitigate their impacts.
- Pay particular attention to impacts on and needs of vulnerable groups. Particularly avoid displacement of indigenous peoples and, where necessary as an exceptional measure, only with their free, prior, informed consent.
- Affected people should be compensated for the loss of land, resources and other assets to which they have legitimate (customary or statutory) rights, and alternative resources should be sustainable and (at least) economically and culturally consistent with the losses incurred.
- Priority should be given to land-based resettlement strategies for those losing (customary or statutory) rights to land.
- All affected persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs, including access to appropriate grievance mechanisms.

Guidance on how these principles can be put into practice is outlined below. If followed, the guidance supports and is consistent with respect for human rights.

In facilitating resettlement and compensation for persons and communities affected by displacement, including restrictions on resource access, the related issues of **participation** and **free, prior and informed consent** are relevant.

### Participation

Participation is a widely recognised procedural right and is fundamental to the realisation of many other procedural and substantive rights. A distinction can be made between superficial forms of

<sup>5</sup> Springer, J et al (2011) *Conservation and Human Rights: Key Issues and Contexts*

<sup>6</sup> See Springer, J et al (2011) *Conservation and Human Rights: Key Issues and Contexts* and the EBRD's *Performance Requirement 5: Land Acquisition, Involuntary Resettlement and Economic Displacement*.

participation in which people are informed or consulted about decisions that will affect them without any opportunity to influence those decisions, and more meaningful participation where people do have the opportunity and time to consider how they will be affected, share their concerns, and negotiate alternatives. Guiding principles of participation include the following:<sup>7</sup>

- Participatory processes should be ‘well governed’ (transparent, accountable, legitimate, fair and inclusive).
- There should be sufficient capacity for all involved (community members, government agency staff, civil society actors, etc.) to meaningfully participate, which may require capacity strengthening for some or all groups.
- Sufficient time should be built into decision-making processes to enable genuine participation.
- Participation should be equitable, with particular attention to ensuring accessibility and ‘voice’ of those who may be marginalised or vulnerable. This may involve additional financial, technical, time, and other resources for some groups, and attention to issues of language and culture.
- Processes should be based upon and encourage mutual respect between participants, including substantive roles and appropriate power sharing.
- Representation and leadership should be inclusive and effective.
- Participation should be an integral part of any activity or project cycle, commencing at the outset of activities and continuing through project/program design, management, monitoring and evaluation.

### **Free, Prior and Informed Consent**

Free, prior and informed consent (FPIC)<sup>8</sup> is the principle that a community has the right to give or withhold its consent to proposed projects or actions that will affect them, in particular the lands and resources it customarily owns, occupies or otherwise uses. FPIC was initially established in relation to indigenous peoples but is increasingly being extended to non-indigenous project-affected peoples.

The principles of FPIC are as follows:

- Negotiations between companies, governments or other project proponents and local communities must be free from force, intimidation or other pressure.
- Consent must be sought from communities prior to authorisation by other bodies (e.g. government issuing of licenses) and before any activities are undertaken that may affect them. There should be adequate lead time to allow for communities’ own decision-making processes.
- Communities must have a full and accurate understanding of the implications for them and their lands so that they can make an informed decision. Information should be available in a format and language that is easily understood and available from independent sources.
- The form of the consent will be context specific and should be sought at various stages of a project, rather than as a one-off. Communities must be given sufficient time to decide whether they will agree to the project or not, using community defined decision making processes.

Consent must be sought from those who have either statutory or customary claims to lands and resources. In situations where community stakeholders do not specifically have the right to FPIC, they will still have the right to consultation and participation. Early and active engagement and dialogue with local communities is still important and they must be free from intimidation and fully informed.

### **Displacement, resettlement and compensation: practical guidance**

Involuntary resettlement can adversely affect the livelihoods and wellbeing of affected persons, and can leave the proponent exposed to legal action. The consensus of most development banks

<sup>7</sup> Springer, J et al (2011) *Conservation and Human Rights: Key Issues and Contexts*

<sup>8</sup> For further information on FPIC see <http://www.fauna-flora.org/wp-content/uploads/Free-Prior-and-InformedConsent1.pdf>

is that involuntary resettlement should be avoided, but where this is not possible measures should be put in place to address and reduce any adverse impacts.

Where there is sufficient rule of law and secure property rights there are usually appropriate mechanisms in place to provide adequate compensation for displacement. However, where land and natural resources are owned by the state under statutory law, and customary ownership or use rights are not recognised, there may not be sufficient mechanisms in place to address the impacts of displacement. In all cases negotiated settlements, in which affected persons and communities are provided with fair and appropriate compensation and incentives, can help to mitigate negative impacts and avoid the use of expropriation and force.

The main requirements for a well-managed resettlement and compensation process are outlined below.<sup>9</sup>

### ***Informed and meaningful consultation and participation***

Affected persons and communities (including host communities where relevant) must be consulted and their early and informed participation in decision-making processes facilitated. Discussions with community members should be held at an agreed time and location and must not include participants that are considered to be coercive or intimidating. Affected persons must be given the opportunity to participate in the negotiation of the compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing. Consultation will continue during the implementation, monitoring, and evaluation of compensation and resettlement and channels or mechanism for ongoing dialogue should be established. Those facilitating the process should provide full disclosure of their own interests in and relationship to the project and its proponent(s).

### ***Census and socio-economic assessment***

A census and socio-economic assessment must be carried out to identify who will be displaced, either partially or fully, by the project as well as to determine who will be eligible for compensation and assistance. The assessment should also provide a description of the socio-economic conditions of women and men in the project area, including an understanding of livelihoods and how these relate to natural resource use and dependencies. A participatory mapping process allows community members to assess and map any areas that are important to them (including any of cultural significance). It is important also to understand the rights of access to and use of land and natural resources, including both statutory and customary. Consideration must be given to seasonal resource users who may not be present during the time of the census/assessment but who may have claims to affected resources and/or whose access to resources may be affected. The assessment must consider all resources relevant to affected people - including land, forest and marine resources – and not just those located at or near their place of residence.

### ***Identification of vulnerable stakeholders***

The socio-economic assessment should include the identification of individuals and groups that may be differentially or disproportionately affected by the project because of their disadvantaged or vulnerable status (due for example to their age, gender, or ethnicity). Measures should be taken to ensure that they are able to participate in the consultation and negotiation processes and are not further disadvantaged by the project.

### ***Classification of displaced persons***

The census and socio-economic assessment will establish the status of the displaced persons which will help to determine the level of compensation and support to be provided. The European Bank for Reconstruction and Development (EBRD) and the African Development Bank Group have similar classifications of displaced persons as follows:

- those who have formal legal rights to the land or other assets (including customary and traditional rights recognised under national laws);

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<sup>9</sup> Full and detailed guidance can be found in the references at the end of this paper.

- those who do not have formal legal rights to land or assets at the time of the census, but who have a claim that is recognised or recognisable under the national laws (including persons who may not have any assets or direct sources of livelihood derived from the project site, but who have spiritual and/or ancestral ties with the land); or
- those who have no recognisable legal right or claim to the land they occupy. This third category includes squatters who claim or make use of land without formal legal rights, and others, who may have usufruct or customary claims to affected land or other resources not recognised or recognisable under national laws.

It is important to understand the statutory and customary rights people may hold in respect of forest, coastal and marine resources and not just the land on which they reside or farm.

### ***Compensation for displacement***

Displacement refers both to physical and economic displacement. In the case of physical displacement people must be offered a choice of resettlement options and must be provided with relocation assistance. Adequate housing and security of tenure must be provided to displaced persons at resettlement sites. Economic displacement refers to loss of income or livelihood, through for example interruption or elimination of a person's access to his/her employment or productive assets and resources. Displaced persons and communities should be offered compensation for loss of assets at full replacement costs including transaction costs. Where losses cannot be valued or compensated for in monetary terms, in-kind compensation may be appropriate but the goods or resources must be equivalent or greater in value and must be culturally appropriate. Compensation is intended to restore and if possible improve the livelihoods and standard of living of those affected. Compensation should be provided before displacement or restriction of access to resources and must take into account any seasonal factors (for example in the agricultural or fishing calendar).

### ***Establish and disseminate cut-off date*** (if applicable)

It may be necessary to set a cut-off date to discourage inflow of people who are not eligible for compensation and assistance. This is usually considered to be the date of completion of the census and socio-economic assessment. Information regarding the cut-off date will be well-documented and disseminated throughout the project area.

### ***Resettlement Action Plan and/or Livelihood Restoration Plan***

A Resettlement Action Plan (RAP) should be developed, along with or incorporating a Livelihood Restoration Plan (LRP) as appropriate. The scope and level of detail of the plan(s) will vary with the magnitude of displacement and the complexity of the measures required to address adverse impacts. At a minimum, the following should be included:

- the resettlement (and LRP) objectives
- description of project impacts, identifying all people to be displaced and an inventory of affected assets and resources
- demonstration that displacement is unavoidable and has been minimised
- the legal framework for land acquisition and compensation
- description of the process of consultation with affected people regarding acceptable alternatives, and the level of their participation in the decision-making process
- description of the entitlements for all categories of displaced people
- the methods applied for valuing affected assets or resources, or the access thereto, at full replacement cost and enumerates the rates of compensation to be paid
- description of other measures for improving or, at a minimum, restoring the livelihoods and standards of living of displaced persons
- description of the process for selection, allocation, preparation and land titles relating to housing replacement
- relocation assistance to be provided
- a schedule for land take (or application of restrictions) and compensation payments

- description of the process whereby affected people can appeal against valuations they deem to be inadequate
- the institutional/organisational responsibility for the implementation of the RAP/LRP and procedures for grievance redress
- a timetable and budget for the implementation of the RAP and/or LRP
- details of arrangements for monitoring, evaluation and reporting

### **Information disclosure**

Affected people must be given relevant project information to ensure that they understand the risks, impacts and opportunities of the project. Information must be provided in local languages and accessible formats (e.g. graphically if literacy levels are low), to the wider community and not just community leaders. The information contained in the RAP/LRP must be summarised and shared to ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project (for example, when an offer will be made to them, how long they will have to respond, grievance procedures, legal procedures to be followed if negotiations fail). Enough time should be given to allow affected persons to consider the information provided. The effectiveness of communication methods, and people's understanding of technical information and agreements, should be assessed on a regular basis and adjustments made if levels of understanding are low.

### **Grievance mechanism**

A grievance mechanism should be established to enable the receipt, review and addressing of affected communities' concerns and complaints. Any person or group who is affected has a right to raise a grievance and the project proponent has the responsibility to respond within a reasonable time period.<sup>10</sup>

### **Independent and specialist support**

It is advisable to appoint or assign a manager for the resettlement project and a suitably qualified specialist should be engaged to carry out the census and socio-economic baseline assessment and assist in the preparation of the RAP/LRP. It is also advisable, where possible, to engage a neutral third party to support facilitation of discussions with communities. Displaced people may also need to be provided with access to an independent third party to help mediate negotiations and provide additional information and advice, including legal advice if necessary.

## **References**

African Development Bank Group (2013) *Integrated Safeguards System*

*Operational Safeguard 2: Involuntary resettlement, land acquisition, population displacement and compensation*

[http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December\\_2013\\_AfDB%E2%80%99S\\_Integrated\\_Safeguards\\_System\\_Policy\\_Statement\\_and\\_Operational\\_Safeguards.pdf](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_AfDB%E2%80%99S_Integrated_Safeguards_System_Policy_Statement_and_Operational_Safeguards.pdf)

European Bank for Reconstruction and Development (2014) *Environmental and Social Policy Performance Requirement 1: Assessment and Management of Environmental and Social Impacts and Issues*

*Performance Requirement 5: Land Acquisition, Involuntary Resettlement and Economic Displacement*

*Performance Requirement 10: Information Disclosure and Stakeholder Engagement*

<http://www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html>

FFI (2014) *Free, prior and informed consent*

<http://www.fauna-flora.org/wp-content/uploads/Free-Prior-and-Informed-Consent1.pdf>

<sup>10</sup> For further information on grievance mechanisms see <http://www.fauna-flora.org/wp-content/uploads/Grievancemechanisms.pdf>

FFI (2014) *Grievance mechanisms*

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For further information on business and human rights including sectoral initiatives and guidance on how to operationalise human rights see <https://business-humanrights.org/en/business-human-rights-a-briefintroduction>



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