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FROM THE AMERICAN PEOPLE

GUIDELINES ON COMPULSORY DISPLACEMENT AND RESETTLEMENT IN USAID PROGRAMMING

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This document was written by Caleb Stevens and Chad Dear, Land and Resource Governance Advisors in USAID’s Land Office, Bureau for Economic Growth, Education, and Environment. For additional information please contact landmatters@usaid.gov or visit www.usaidlandtenure.net. The authors would like to thank the following individuals for their invaluable comments on earlier versions: Michael Cernea, Karol Boudreaux, Darryl Vhugen, Gaia Larsen, Kathleen Hurley, Teresa Bernhard, Brian Keane, Yuliya Neyman, Sarah Lowery, Heath Cosgrove, Kim Kim Yee, Reed Aeschliman, Nichelle Johnson-Billips, Leslie Johnston, Julie Lelek, Caroline Brearley, Cynthia Brady, Rosarie Tucci, Victor Bullen, and Carrie Thompson.

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I. INTRODUCTION

These Guidelines describe good practices regarding compulsory displacement and resettlement (CDR). This voluntary tool is intended for use by USAID Operating Units and their partners at all stages of the program cycle, whether for implementation of activities or as a good practice guide for project design.¹ Ensuring that CDR, in particular resettlement, avoids, minimizes and mitigates risks of impoverishment of affected legitimate landholders is critical to achieving the Agency’s mission “to end extreme poverty and promote resilient, democratic societies.”

CDR is when displacement and resettlement of legitimate landholders is compelled by USAID programming, and when legitimate landholders do not have the genuine right or ability to refuse displacement and resettlement (Box 1). These Guidelines are consistent with international good practices established over the decades. Since the 1980s, development experts and donors have increasingly recognized CDR risks related to development and have taken concrete actions to address them. Many multilateral development banks and bilateral donors have standards, practices, or policies to avoid CDR or, when unavoidable, minimize and mitigate its associated risks.

These Guidelines are also consistent with USAID’s mission and core values and will help ensure that USAID programs involving CDR do not undermine desired development objectives. The *Vision for Ending Extreme Poverty* recognizes that property rights and secure land tenure are essential for inclusive economic growth. Similarly, in the *Democracy, Human Rights and Governance Strategy*, USAID commits to elevating human rights as a key development objective, including respect for economic, social, and cultural rights. The *Gender Equality and Female Empowerment Policy* acknowledges that women in developing countries are more vulnerable with respect to their land and resource rights. Further, USAID’s *Environmental Compliance Procedures* (22 CFR 216) identify resettlement as a class of action with a “significant effect” on the environment and therefore requiring, as appropriate, an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The CDR Guidelines could inform these mandatory analyses.

Finally, the CDR Guidelines are consistent with the leading international standard on land and resource tenure—the *UN Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests, and Fisheries in the Context of National Food Security*, endorsed by the Committee on World Food Security in 2012 (UN Voluntary Guidelines).²

Specific guidelines that will enable USAID Operating Units and partners avoid, minimize and mitigate CDR risks include:

¹ The term ‘program’ is used to capture all potential stages of the program cycle, but, in general, this tool is most useful at the activity level.

² In the context of CDR, the UN Voluntary Guidelines require respect for all legitimate landholders by acquiring the minimum resources necessary for the project and prompt and just compensation, among other things.

1. Understand the legal and institutional context;
2. Identify all legitimate landholders and relevant risks;
3. If physical displacement is unavoidable, develop a Resettlement Action Plan;
4. Promote informed and meaningful engagement;
5. Improve livelihoods and living standards; and
6. Provide additional protections to vulnerable groups, especially women and indigenous peoples.

Box 1: Key Terms (Additional Definitions are in Appendix A)

Compulsory Displacement and Resettlement (CDR): partial or total physical displacement, economic displacement, and resettlement of legitimate landholders compelled as a result of USAID programming when the legitimate landholder does not have the genuine right or ability to refuse displacement and resettlement.

Legitimate Landholder: person, family, or community with a customary, informal, or formal right, claim or occupancy of land, resources, or other land-based assets. All persons affected by the project are legitimate landholders, other than opportunistic persons whose right, claim, or occupancy is solely for the purposes of obtaining assistance as a result of USAID programming.

Total Physical Displacement: legitimate landholder's complete loss of land, resources, shelter, or other assets.

Partial Physical Displacement: legitimate landholder retains beneficial use and possession of some of their land and associated resources and assets, but is removed from the remainder. For example, a farmer may be physically displaced from part of their farmland due to a large-scale agricultural concession and road construction, but retain use and possession of some of the original farmland or their dwelling.

Economic Displacement: legitimate landholder's land rights or land use rights are restricted or they suffer a reduction in living standards or a loss of livelihood regardless of whether they are physically displaced.

Ensuring that CDR in USAID programming supports development outcomes and respects legitimate landholders is a complex but manageable process. In following these Guidelines, USAID Operating Units are not alone. USAID and its partners have considerable technical expertise in this area to guide the process if potential CDR issues are encountered.

II. THE NEED FOR GUIDELINES WITHIN USAID

These Guidelines respond to the need to understand, document and address programmatic and reputational risks for the Agency associated with CDR, especially the risk that projects may impoverish affected legitimate landholders. Programmatic risks are the possibility that an intervention will undermine or adversely affect expected outcomes. Reputational risks are the possibility of a loss of credibility or of public trust as a result of the way an intervention is implemented. USAID may encounter both when programming involves CDR.

MANAGING PROGRAMMATIC AND REPUTATIONAL RISKS

Several types of USAID programs are susceptible to CDR risks. CDR is most often driven by large infrastructure projects. Although USAID rarely directly supports large infrastructure projects outside of the Middle East, Afghanistan, and Pakistan, the Agency is increasingly entering into partnerships resulting in such infrastructure. For instance, according to *Power Africa's Roadmap*, that initiative supports “economically feasible hydropower projects when they are developed in an environmentally and socially sustainable manner.” The risk of large dam projects impoverishing displaced populations is well-documented (Scudder 2005). Mindful of these risks, Power Africa transactions are subject either to an environmental and social screening, which includes land tenure status and resettlement issues, or comparable standards implemented by its partners. If CDR is identified as a possibility in a Power Africa-supported project, these Guidelines can complement the above-mentioned tools and standards.

In addition, urbanization is a leading cause of displacement, brought on by projects involving urban transportation, horizontal expansions of cities, and urban renewal projects that target informal settlements and other impoverished areas (Terminski 2013). In the urban context, there is evidence that joblessness, lack of access to community facilities, health risks, and social disruption are consequences of increased distances to work, schools, healthcare, and markets (Kopalapillai & Lakshman, 2012; Patel et al. 2015). USAID programming may result in urban displacement and resettlement through, for example, road construction projects.

Also well-known are the displacement effects of conservation projects, particularly protected areas. Conservation projects are inherently spatial in that they involve restrictions on human access and use of a given area (Agrawal & Redford 2009; Cernea & Schmidt-Soltau 2006). Although not directly displacing people, USAID conservation projects may encounter risks that governments or other partners displace people dependent on resources in a planned or existing conservation area.

USAID and other donors operate in countries where land is a primary non-labor asset for most people, yet land governance is frequently weak and land rights are often undocumented or not recognized in law. When land rights are legally recognized or documented, often laws are not implemented or do not sufficiently address CDR risks. A recent review of the compulsory

acquisition laws in 30 countries found only one that provided sufficient robust resettlement assistance consistent with the UN Voluntary Guidelines (Tagliarino forthcoming).

Recognizing weaknesses in national laws, in 1980 the World Bank pioneered mandatory involuntary resettlement standards for its projects regardless of a borrower country's laws (World Bank 2013; World Bank 2004). Following the World Bank's lead, other multilateral development banks, including the European Bank for Reconstruction and Development, the International Finance Corporation, the African Development Bank, Asian Development Bank, and the Inter-American Development Bank, adopted similar standards (EBRD 2014; IFC 2012; AfDB 2013; ADB 2009; IADB 1998).

In 1992, the OECD Development Assistance Committee adopted *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*. Some bilateral donors followed with their own guidelines and policies governing compulsory resettlement. The German Federal Ministry for Economic Cooperation and Development (BMZ) situates their guidance within general human rights standards and principles, binding on all government institutions involved in development assistance, including its wholly-owned German Corporation for International Cooperation (GIZ). BMZ guidance frames compulsory resettlement as a potential human rights violation.

As part of its environmental and social safeguards, the Japan International Cooperation Agency (JICA) requires assessment of compulsory resettlement as part of the social impact of its projects. In line with this policy, JICA published a Resettlement Guide that distinguishes between compensation required under national law, which typically covers only limited kinds of assets, and resettlement assistance provided by JICA or its partners, intended to cover all loss of assets and deterioration in living standards (JICA 2012).

The Australian Department of Foreign Affairs and Trade (DFAT), of which Australian Aid (AusAID) is a part, provides guidance on CDR (DFAT 2015) in terms of risk management. Importantly, regardless of whether the project involves direct aid to a partner government, co-financing with a multi-lateral development bank, or delegation to another implementing organization, the project must comply with DFAT's policy on CDR (Ibid).

In recent years, bilateral donor agencies encountered controversies around CDR. The UK Department for International Development (DFID) is undergoing a review of alleged rights abuses stemming from its involvement in Ethiopia's Protection of Basic Services Project, which plans to resettle 1.5 million rural families from their land to new villages (Kelly 2014). AusAID was also scrutinized by Oxfam and others for its involvement in a Cambodian railway project that could potentially displace and resettle more than 4,000 households (Bugalski & Medallo 2012).

The message from these controversies and the development community generally is clear—CDR should be avoided. If no feasible alternatives to CDR exist, then USAID and its partners should minimize and mitigate the many risks for the Agency and affected legitimate landholders associated with CDR. By contrast, if displacement and resettlement is neither avoided nor well planned and implemented, landholders can be left worse off. In such situations, the costs to

individuals, households, and entire regions tend to far outweigh the cost of well-planned and implemented displacement and resettlement. These Guidelines articulate how to responsibly plan and implement displacement and resettlement.

IMPOVERISHMENT RISKS TO LEGITIMATE LANDHOLDERS

Programmatic and reputational risks to the Agency are bound up with impoverishment risks to legitimate landholders. If a project fails to comply with CDR good practice, then affected legitimate landholders risk impoverishment which in turn undermines the Agency's values and development objectives. Primary empirical research, as well as a comprehensive review of nearly 200 World Bank projects from 1993 to 1994, identified nine risks to which displaced people are exposed. These include: landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity, lack of access to common property resources, loss of education, and community disarticulation (Cernea 2000). These risks are interlinked and produce cumulative effects.

Not all landholders are affected equally by CDR. Some vulnerable groups, especially women and indigenous peoples, tend to be more at risk of negative impacts. Women are often the primary caregivers and tend to be excluded from formal land documents and customary decision-making. As a result women are more vulnerable to loss of networks and social support, a form of social disarticulation, and face health risks brought on by loss of livelihoods.

Indigenous peoples are particularly vulnerable to social and economic hardships as a result of CDR due to their distinct spiritual and cultural relationships to their land and resources. Their livelihood skillset and cultural identity is inextricably linked to their land and resources. Despite this special connection to their land and resources, the livelihoods of indigenous peoples have been undermined by development projects (FAO 2010).

RESETTLEMENT AS SUSTAINABLE DEVELOPMENT

If physical displacement is unavoidable, then resettlement should be planned and implemented as a sustainable development program. Understanding the interlinked impoverishment risks involved with CDR is vital so that risks are preempted or reduced through the resettlement process. Well-planned resettlement involves targeted counter-risk strategies by, for example, addressing: the risk of landlessness through land-based resettlement; the risk of joblessness through reemployment; and the risk of homelessness through housing construction (Cernea 2000).

Good practice on CDR emphasizes resettlement over a narrow focus on compensation to improve livelihoods and living standards. Increasingly, donors and development specialists understand that if the logic of a project compels physical displacement, then the logic of the project's development objectives and the donor agency's values compels application of robust resettlement standards, such as these Guidelines. By ensuring that physical displacement is paired with robust resettlement plans and development assistance, livelihoods and living standards are improved, risks are well understood, and potential negative impacts avoided.

III. WHEN TO APPLY THE GUIDELINES

Although non-binding, these Guidelines apply whenever USAID programming will result in CDR of legitimate landholders, whether permanent or temporary, after considering all reasonably foreseeable effects. Many USAID programs do not trigger these issues either because they do not involve land development (e.g. training sessions) or are not of sufficient scale (e.g. construction of a single school). However, for appropriate programs, these Guidelines cover all stages of the program cycle, including design, planning, implementation, and monitoring and evaluation. For instance, the Guidelines could be used as a tool for developing an EA (or EIS) under 22 CFR 216, or as a reference guide to incorporate good practice into strategy and project design.

The Guidelines should apply to all types of funding arrangements (e.g. direct aid to partner governments, co-financing, or delegation to an implementing partner). They should apply to actions by USAID, as well as those of consultants, contractors, recipients, partner governments, private sector actors, and other partners involved in a USAID program. USAID does not typically directly displace or resettle landholders, but may fund a project in which a partner engages in such activity. These Guidelines should be used to influence practices of partner governments when appropriate. However, if a partner or the Agency applies comparable standards to a program, such as IFC Performance Standard 5, then those standards may be followed in lieu of these Guidelines to avoid unnecessary duplication. Finally, these Guidelines complement mandatory analyses and risk screenings under ADS Series 200.

CDR will typically result from the government's authority to expropriate, generally known as eminent domain. However, CDR also happens through less obvious means and may be inaccurately labeled as 'voluntary' by governments or other stakeholders. For example, legitimate landholders may have the legal right to refuse land acquisition but the government will deny them essential services if they exercise this right. In so doing, the government denies landholders the genuine ability to refuse displacement and resettlement. In other cases, the government may be the legal owner of the land on which legitimate landholders reside and may not recognize customary or traditional rights or claims to land and resources. If such legitimate landholders are subject to CDR, these Guidelines apply.

Displacement and resettlement is only voluntary when affected legitimate landholders: 1) enjoy the *genuine right or ability*, free from coercion, to refuse project-related land acquisition or restrictions on land use that result in displacement; and 2) possess the *necessary information* to assess how displacement, resettlement and/or compensation will affect their livelihoods and living standards.

If there is uncertainty whether a program will result in CDR, USAID should ensure that partners are aware that these Guidelines will apply if CDR becomes more likely. At a minimum, awareness would involve understanding the legal and institutional context (Guideline 1).

IV. THE GUIDELINES

This section sets forth guidelines of good practice around CDR in order to avoid, minimize and mitigate risks and to ensure CDR is conceived and executed as a sustainable development program that improves livelihoods and living standards. These guidelines are:

1. Understand the legal and institutional context;
2. Identify all legitimate landholders and relevant risks;
3. If physical displacement is unavoidable, develop a Resettlement Action Plan;
4. Promote informed and meaningful engagement;
5. Improve livelihoods and living standards; and
6. Provide additional protections to vulnerable groups, especially women and indigenous peoples.

The primary principle, however, is that CDR is a last resort and should be avoided if possible. Program approaches that do not require CDR should be fully explored. This is especially important for vulnerable groups particularly susceptible to social and economic hardships as a result of displacement and resettlement, such as indigenous peoples (Guideline 6).

If unavoidable, limit displacement to program requirements, for clearly specified program purposes, and for a clearly specified period of time. Use the minimum land needed for the program (e.g. consider acquiring land in phases based on current needs). However, if partial acquisition of the land would render the remainder economically unviable, then provide the affected legitimate landholder the ability to request acquisition of the entire land. Finally, if possible, impose only temporary displacement and resettlement.

I. UNDERSTAND THE LEGAL AND INSTITUTIONAL CONTEXT

Key Question: *Do the applicable laws meet international standards? What are the gaps?*

A thorough understanding of the legal and institutional context is critical for a program that might result in displacement and resettlement. This includes not only familiarity with domestic law, but any international agreements to which the host country is a party, applicable decisions by international courts, and other international standards and sources of international law. Who owns or uses the land, resources, and assets and whether they have legal recognition and official documentation of their ownership rights are only some of the relevant features of the tenure system. The legal and institutional context is often more complicated than a narrow focus on legal ownership. The purpose of this guideline is to identify and fill the gaps in a country's national legal framework to ensure international standards are met and risks avoided, minimized and mitigated.

National law may not recognize or protect the land and resource rights of all affected legitimate landholders. Indeed, the law may treat legitimate landholders as illegal squatters, even though they resided on the land for years. This scenario is unfortunately prevalent throughout cities

and rural areas in the developing world. An estimated 30 to 50 percent of urban residents in the developing world suffer from insecure tenure due to lack of official documentation (Payne 2012). In the rural context, customary tenure predominates. Yet, the lands that communities possess and use collectively in accordance with customary norms are vulnerable to assertions of state ownership and appropriation. Statutory law may vest the government with ownership of customary land, and often there is no consistent visible use by rural communities (Wily 2011).

The law may also recognize rights to the land but not to resources vital to the landholders' livelihoods. For instance, few Sub-Saharan African countries recognize customary rights to trees and water, with almost all wildlife formally owned by governments (Salcedo-LaViña 2014). As a result, landholders may not receive sufficient compensation for lost assets and income sources if only national law is followed.

In addition to a narrow focus on legal recognition and documentation, national law may not provide the necessary procedural protections for people affected by CDR. For instance, meaningful engagement is vital to resettlement processes. Yet national laws often do not require a sufficient level of engagement with legitimate landholders. In a recent study, the laws of only 6 out of 30 countries reviewed (20 percent) required governments to conduct public consultations prior to expropriation (Tagliarino forthcoming). Without such engagement, as is so often the case, livelihoods suffer, conflicts erupt, public confidence erodes, and programs fail.

In addition, the law may not require fair valuation and just and prompt compensation for lost land, resources, or other assets as well as lost income. A common standard is fair market value, which is challenging to determine in rural areas with weak land markets. If compensation is provided, it may be a one-time payment that does little to sustainably improve the living standards of landholders. Because lands and resources provide continuous productive value, a one-time payment does not sufficiently capture its value. This is why, for instance, the Asian Development Bank's Involuntary Resettlement Policy emphasizes adequately restoring lost assets and income even if restoration efforts are spread out over time (ADB 2009; Debnath 2014).

Furthermore, when governments compulsorily acquire land, the law may not require the government to return the land to the original holder if the planned project is cancelled. This is especially problematic when displaced landholders are promised employment or another benefit-sharing arrangement in the cancelled project.

Finally, the definition of public purpose is often overly broad; with wide discretion vested in the government to determine the public interest (Tagliarino forthcoming). This can lead to abuses whereby private interests are enriched through the government's use of its expropriation authority with little to no public benefit. Moreover, the wide discretion vested in the government limits the ability of courts to review the legality of the government's actions.

Given the often considerable differences between the legal status of legitimate landholders and the on-the-ground realities, strict compliance with national law can be insufficient. When national law does not provide the necessary recognition and protection, compliance with these

Guidelines can help avoid, minimize and mitigate risks to the Agency and affected legitimate landholders.

2. IDENTIFY ALL LEGITIMATE LANDHOLDERS AND RELEVANT RISKS

Key Question: *Who are the legitimate landholders, and what are the relevant impoverishment risks?*

Land and resource rights are a continuum, ranging from informal to formal. In between these two poles are customary tenure, occupancy (in which the landholder has no legal right and indeed may be an illegal squatter), leases, legal ownership, and other types of rights (UN-Habitat 2008). In the urban context, legitimate landholders could include pavement dwellers and squatter tenants as well as legal owners (Payne 2000). All affected persons, other than opportunistic claimants, are legitimate landholders under these Guidelines.

Legitimate landholders include:

- landholders with formal legal rights to the land, resources, or other assets;
- landholders with a recognized, or recognizable, formal legal claim to the land, resources, or other assets; or
- landholders whose rights or claims are recognized as legitimate by customary or traditional authorities, neighbors, religious leaders, or others with whom they live.

All are considered legitimate landholders and affected persons, unless their right, claim, or occupation is opportunistic and thus solely for the purposes of obtaining assistance as a result of USAID programming (Box 1).

The following elements could be included in an assessment to identify all legitimate landholders and relevant risks. These same elements could also inform an EA (or EIS) under 22 CFR 216.

1. **Identify** all affected legitimate landholders and their impoverishment risks through a participatory mapping process or survey. Through the survey identify relevant impoverishment risks: landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity, lack of access to common property resources, loss of education, and community disarticulation. In particular, identify the income of affected legitimate landholders and their lands, resources, and other assets, regardless of legal status, and determine eligibility for compensation and resettlement assistance if necessary. In conducting the tenure assessment, be sensitive to the commons which may not be subject to active visible use, in particular with respect to seasonal pastoralists. Finally, take special measures to ensure vulnerable groups, especially women and indigenous peoples, are identified (Guideline 6).
2. **Analyze** the results to ensure the perspectives of all legitimate landholders are well understood, in particular their vulnerability to impoverishment risks, especially impacts on their assets, livelihoods, and incomes. See Guideline 4 on engagement for further information on how to obtain the perspectives of those affected. Legitimate landholders can provide key insights on who will be affected by a program and how. Understanding the tenure dynamics is an essential prerequisite to effective avoidance, minimization and

mitigation of risks.

3. **Map** the results of the analysis to better understand impacts on various landholders, including women and girls and vulnerable groups, how they are impacted, and to what extent. Graphics, charts, quantitative methods, spatial data, or other advanced analytics and technology may be particularly beneficial in this phase.
4. **Prioritize** affected legitimate landholders based on the results of the identification, analysis, and mapping phases such that vulnerable groups particularly susceptible to social and economic hardship are given special consideration. Examples of potential priority groups deserving of special consideration include women and girls, youth, ethnic minorities, and indigenous peoples.

Involve the affected community in all aspects of the tenure assessment. Meaningful community participation is critical given their extensive knowledge of the local context, such as the location of resources and sacred sites, disputes with neighboring communities, and internal or external pressures on the land. At the conclusion of the tenure assessment, establish a cut-off date for eligibility to receive assistance for resettlement and livelihood improvements to exclude opportunistic claimants. Widely and regularly disseminate the results of the tenure assessment, including the cut-off date, to all affected legitimate landholders in an easily understood language and in an accessible form (Guideline 4).

3. IF PHYSICAL DISPLACEMENT IS UNAVOIDABLE, DEVELOP A RESETTLEMENT ACTION PLAN

Key Question: *If physical displacement is unavoidable, has a Resettlement Action Plan (RAP) been prepared that is proportional to the significance of the CDR?*

Good practice emphasizes the importance of robust resettlement over a mere focus on compensation. Physical displacement should not occur without resettlement. A well-planned and implemented resettlement process is critical to ensuring livelihoods and living standards are improved.

Depending on the nature of the impact on legitimate landholders, prepare a Resettlement Action Plan (RAP), along with a budget. A RAP is based on engagement with the affected legitimate landholders, and sets forth how impacts from physical displacement will be addressed and ensures that any resettlement occurs in conformity with these Guidelines and international standards.

In addition, a RAP should ensure that:

- Affected legitimate landholders are resettled in a way that protects a group or community's social and cultural identity and cohesion;
- Receiving communities and households have the opportunity for informed and meaningful engagement in order to avoid, minimize and mitigate disputes or conflicts with resettled legitimate landholders; and

- Affordable, accessible and independent grievance procedures are provided that account for customary, administrative, judicial, or alternative dispute resolution mechanisms.

The detail of a RAP should be proportionate to the significance of the physical displacement that results from a program. A RAP may include:

- General description of the program and location of the program area;
- Alternatives considered to avoid, minimize and mitigate displacement and resettlement and why they were not selected;
- Analysis of the legal and institutional context (Guideline 1);
- Applicable results from the tenure assessment (Guideline 2);
- Strategy for informed and meaningful engagement (Guideline 4);
- Timeline for the resettlement process, including the engagement process;
- Criteria for determining eligibility for resettlement assistance;
- Description of plans and processes to improve living standards and livelihoods in order to minimize and mitigate risks of adverse impacts (Guideline 5);
- Valuation method used to calculate replacement costs for lost assets or access to resources;
- Specific plans for the physical transfer of people and their moveable assets to the resettlement site;
- Identification of vulnerable groups and applicable laws and standards regarding their treatment (Guideline 6);
- Resettlement staffing needs; and
- Anticipated costs of the process.

For programs that require significant resettlement, integrate the RAP into the program design and implementation, and consider consulting resettlement specialists for advice on RAP development. For additional guidance, refer to the International Finance Corporation's *Handbook for Preparing a Resettlement Action Plan*.

4. PROMOTE INFORMED AND MEANINGFUL ENGAGEMENT

Key Question: *Have legitimate landholders, including women and girls, youth, and vulnerable groups, been informed and meaningfully engaged at all stages of program implementation?*

It is imperative to inform and meaningfully engage landholders whose livelihoods, and in some cases cultural and spiritual identity, will be significantly altered by a program. Engagement lessens information asymmetries and the likelihood of conflicts and disputes, as well as perceived unfairness, which can cause delays and decrease the overall sustainability of a program. Ultimately, through avoidance of delays, engagement lowers program costs even though it may require initial time and resources.

There should be informed and meaningful engagement with affected communities at all phases of a program. Design an engagement process to build consensus through open dialogue free of intimidation and in a climate of mutual respect. Local norms and institutions should guide

engagement and be relied on as much as possible. Consider all available avenues, including local CSO and government networks, newspaper ads in the local language, radio, and other approaches.

Take measures to avoid elite capture of the engagement process. For example, customary institutions sometimes involve decision-making by chiefs, elders, or other traditional leaders to the exclusion of the majority of the community and marginalized or vulnerable groups, including women and girls, youth, and minorities. While respecting local norms and institutions, ensure that all, or substantially all, affected legitimate landholders, and not only community representatives, are afforded the opportunity for informed and meaningful engagement.

Prior to any displacement and resettlement, prepare affected legitimate landholders well in advance of the engagement process. This involves providing relevant program related information. For cases of resettlement, engagement covers the manner and form of the resettlement assistance, and the provision of training or other interventions to help ensure that affected legitimate landholders have adequate economic opportunities once resettled. Present all affected legitimate landholders with options and alternatives related to resettlement, facilitating visits to alternative relocation sites, if available. Also, engage affected legitimate landholders on improvements to livelihoods and living standards. Finally, include affected legitimate landholders in program implementation monitoring to ensure the resettlement process is followed.

The engagement should be well documented, and the discussions recorded in order to track comments and responses. Inform participants of how their comments were considered. Communicate the results of the engagement to all affected legitimate landholders in their local language and formats that are appropriate and accessible.

5. IMPROVE LIVELIHOODS AND LIVING STANDARDS

Key Question: *Are affected legitimate landholders provided assistance in the form of: adequate relocation sites and alternative housing, an opportunity to reacquire the land, secure rights to the resettlement land, and training and other support to improve livelihoods and living standards?*

The livelihoods and living standards of all affected legitimate landholders should be improved in a way that addresses impoverishment risks. This requires, first and foremost, assistance to affected legitimate landholders such that they are left better off than prior to the displacement. Assistance should consider that the living standards of those displaced could, depending on the scale and timing of the program, decrease during the planning process.

Financial compensation, especially a one-time payment, is inadequate to prevent the impoverishment of displaced people, regardless of how accurately assessed (Cernea 2000). Preference should be given instead to counter-risk strategies. For example, the risk of landlessness should be addressed through land-based resettlement, while reemployment support should be provided to reduce the risk of joblessness. To improve livelihoods and living standards, particular care should be given to the sufficiency of resettlement provisions. For example, compensatory land and resources should be equal or better in terms of size, quality

(e.g. location, productivity) and legal status (e.g. formal documentation) than those lost due to displacement and resettlement.

Displaced people can also be provided with the opportunity to share in the benefits of the project that displaced them. Benefit sharing is a longer-term arrangement that helps avoid the reduction in livelihoods and living standards after short-term benefits are exhausted.

Although compensation is insufficient to prevent adverse impacts, it is often a necessary component of a larger resettlement program and should be fairly calculated. Assets and costs to consider in determining the appropriate compensation level include:

- Land and naturally occurring resources associated with the land (e.g. clean water, natural vegetation);
- Structures on the land whether temporary or permanent (e.g. houses);
- Improvements to the land, including environmental improvements (e.g. crops, planted trees, carbon storage, and restored fisheries and watersheds);
- Legal or professional costs;
- Access to health services and traditional medicines
- Administrative charges (e.g. title registration fees) and other transaction costs;
- Costs of moving and finding alternative housing, if not provided as part of the resettlement process;
- Temporary loss of earnings; and
- Intangible losses (e.g. cultural or spiritual value) (Keith, et al. 2008; Debnath 2014).

Although many national laws consider the appropriate level of assistance to be synonymous with fair market value, this is not necessarily true. Fair market valuation assumes a willing buyer, a willing seller, and an available strong market. However, in many developing countries land markets are weak. For instance, markets for customary land in Sub-Saharan Africa are often informal, based on ethnic or kinship ties (Chimhowu & Woodhouse 2006) and not easily assessed for external valuation purposes. In these cases, alternative valuation approaches are available.³ The goal is always to leave the affected legitimate landholders in a better position than before the displacement and resettlement. Make sure to effectively communicate to affected legitimate landholders the valuation method used and the results, and incorporate into a RAP as appropriate.

In addition to replacement costs for lost land, resources, or other assets, assist affected legitimate landholders to improve their livelihoods and income sources. Perhaps one of the most important forms of resettlement assistance is ensuring affected legitimate landholders have secure tenure over the resettled land. Tenure security means, at a minimum, the resettled land is free of competing claims. Depending on the legal and institutional context, tenure security can also come in the form of titling, certification, or other official documentation.

³ For more information on valuation methods see Keith, S., McAuslan, P., Knight, R., Lindsay, J., Munro-Faure, P., & Palmer, D. (2008). *Land Tenure Studies 10: Compulsory Acquisition of Land and Compensation*. Rome, Italy: FAO.

Assistance may also include training for off-land employment, equipment, or technical assistance to improve livelihoods and incomes.

Finally, delays in improving livelihoods and living standards, even after land is acquired, are common. Assistance should be provided to affected legitimate landholders to improve livelihoods and living standards *prior* to acquiring the land.

6. PROVIDE ADDITIONAL PROTECTIONS TO VULNERABLE GROUPS, ESPECIALLY WOMEN AND INDIGENOUS PEOPLES

Key Questions: *Are some of the affected legitimate landholders part of a vulnerable group, especially women or indigenous peoples? Have all applicable laws and standards regarding the treatment of indigenous peoples been complied with?*

When women are affected by CDR it is important to appreciate their unique vulnerability to loss of networks, social support, livelihoods, and increased health risks. Because women are often the primary caregivers, these negative impacts can also adversely affect children. Cash compensation is often insufficient to avoid, minimize and mitigate these risks. Instead, assistance in the form of comparable land, resources, and housing is the preferred option and social support systems should be preserved through resettlement.

USAID programming that encounters indigenous peoples should incorporate international norms and good practices applicable to indigenous peoples. Specifically, affected legitimate landholders should be afforded Free, Prior, and Informed Consent to the extent the standard is supported by the U.S. government, or required by a donor partner, the laws of the partner government, or international instruments ratified or adopted by the partner government.

Resettle indigenous peoples only in exceptional circumstances. The resettlement process set forth in the RAP should be consistent with indigenous peoples' cultural preferences and permit their return if the reasons for their resettlement cease. In conducting tenure assessments, give special consideration to any affected indigenous people. Ensure the views and interests of affected indigenous peoples are fully heard and considered as part of the engagement process. Assistance at replacement cost should take into consideration indigenous peoples' unique spiritual and cultural connection to the land and resources. If a program significantly impacts the cultural heritage of indigenous peoples then such impacts are to be avoided if at all possible. If a program negatively impacts indigenous peoples in a situation of voluntary isolation or initial contact, then USAID should decline to support or carry out the program, given their inherent vulnerability to such impacts.

Finally, persons with disabilities, including women with disabilities and indigenous people with disabilities, are also adversely affected by CDR in unique ways such as loss of support systems and health care services. Oftentimes persons with disabilities face more isolation and neglect following resettlement than in their home communities.

V. WAY FORWARD

The primary principle advocated in these guidelines is that CDR should be avoided. If unavoidable, USAID programs can undertake CDR in accordance with these Guidelines and still further desired development objectives. By following these Guidelines, Operating Units and partners can avoid, minimize and mitigate adverse risks such that CDR does not harm the Agency's reputation, jeopardize the success of its programs, or undermine the livelihoods and living standards of affected legitimate landholders. Adherence to these Guidelines whenever USAID programming results in CDR will help ensure USAID core values and policies are promoted and that serious consideration is given to the risk of negative impacts.

The actions recommended in these Guidelines seek to ensure respect for the rights of legitimate landholders, and help the Agency to approach a complex development issue. By leveraging USAID's considerable expertise in a proactive manner, Operating Units and partners that encounter potential CDR issues in their programs can efficiently address them. USAID's Land Office in the E3 Bureau (E3/Land) has several tools on its website, www.usaidlandtenure.net, to aid in implementation:

- **Operational Guidelines for Responsible Land-Based Investment:** A guide that discusses USAID's recommendations for private sector actors on good practices around land-based investments. Much like these Guidelines, the tool provides practical steps for implementing the global standards on land and resource governance—specifically, the UN Voluntary Guidelines, International Finance Corporation Performance Standards, and others relevant instruments.
- **Issue Briefs:** Issue Briefs on the relationship between land and resource governance and gender, indigenous peoples, and customary tenure, among many other issues.
- **Country Profiles:** Country Profiles covering Asia, Middle East, Sub-Saharan Africa, Eastern Europe, and Latin America, that provide accessible, easily understood overviews of countries' issues in the land, forests, and water sectors.
- **Technical Support:** E3/Land has experts specializing in impact evaluation, geospatial data and analysis, law, policy, ecology, and economics. Operating Units may contact these experts directly or by the general office email at landmatters@usaid.gov to request rapid land and resource governance assessments, including advice on compliance with these Guidelines. In addition, USAID has numerous experts on food security, biodiversity, social safeguards, and other areas ready to assist Operating Units and partners address risk around CDR.

FURTHER READING

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APPENDIX A

Definitions of Terms

Commons: shared land or resources of a definable group of persons, such as indigenous peoples or customary communities.

Compulsory Displacement and Resettlement (CDR): partial or total physical displacement, economic displacement, and resettlement of legitimate landholders compelled as a result of USAID programming when the legitimate landholder does not have the genuine right or ability to refuse displacement and resettlement.

Customary Tenure: set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources as opposed to statutory tenure which is rooted in the formal legal framework.

Economic Displacement: legitimate landholder's land rights or land use rights are restricted or they suffer a loss of income sources or means of livelihood regardless of whether they are physically displaced.

Indigenous People: community or group that self-identifies as indigenous people, with collective attachment over the land or resources of a distinct area, possesses distinct customary or traditional institutions, and has a distinct language or dialect.

Legitimate Landholder: person, family, or community with a customary, informal, or formal right, claim or occupancy of land, resources, or other land-based assets. All persons affected by the project are legitimate landholders, other than opportunistic persons whose right, claim, or occupancy is solely for the purposes of obtaining assistance as a result of USAID programming.

Livelihood: the full range of means that individuals, families, or communities use to make a living, such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, trade, and bartering.

Partial Physical Displacement: legitimate landholder retains beneficial use and possession of some of their land and associated resources and assets, but is removed from the remainder. For example, a farmer may be physically displaced from part of their farmland due to a large-scale agricultural concession and road construction, but retain use and possession of some of the original farmland or their dwelling.

Tenure: rights, rules, and institutions that govern who may access, use, manage, and transfer land and resources and under what conditions.

Total Physical Displacement: legitimate landholder's complete loss of land, resources, shelter, or other land-based assets.

APPENDIX B

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U.S. Agency for International Development
1300 Pennsylvania Avenue, NW
Washington, DC 20523