



USAID ISSUE BRIEF

LAND AND RESOURCE TENURE AND SOCIAL IMPACTS

EXECUTIVE SUMMARY

Land and natural resources are central to the livelihoods and cultures of local communities and indigenous peoples around the world, and secure rights to them provide a foundation for poverty reduction, increased food security, gender equality, cultural survival and environmental sustainability. However, especially under the conditions of widespread tenure insecurity that exist in many developing countries, development interventions can inadvertently cause rural communities to lose rights to lands and resources, triggering a range of negative social impacts. These may include loss of livelihoods, increased food insecurity, threats to the cultural survival and cultural heritage of indigenous peoples, disproportionate harms to women and girls, and loss of access to water or benefits from other ecosystem services.

This brief highlights issues of rural land tenure-related social impacts and their importance and relevance to the work of USAID. Taking account of these social impacts is essential to ensure that projects do not inadvertently cause harm, undermine USAID's development objectives, contravene existing policy commitments, or erode public support for USAID operations.

Decades of work on social impacts have generated a foundation of principles, standards and practical measures to prevent and address social impacts of development projects, including impacts related to land and resource tenure. Compulsory displacement and resettlement has been a central focus of the social safeguard systems of international development institutions, which emphasize avoiding displacement as much as possible. The close ties of indigenous peoples to their traditional territories mean that they are highly vulnerable to impacts affecting their lands and resources; accordingly, obligations to respect and protect rights of indigenous peoples to their lands, territories, and resources are a focus of international indigenous rights frameworks. Women's land rights require specific attention due to differences in men's and women's resource management roles, and the differentiated impacts of development interventions on them. The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) provide an overarching framework emphasizing the need to recognize and respect all legitimate tenure right holders and their rights, and to safeguard against tenure-related social impacts.

Concrete measures distilled from experience to safeguard against potential adverse social impacts of development interventions include to:

- Define and communicate safeguard standards
- Assess social impacts as part of project design
- Ensure effective community engagement and participation in decision-making, including securing FPIC where actions may affect indigenous peoples
- Develop dedicated plans to address social impacts
- Proactively strengthen land tenure and resource governance
- Monitor social impacts as part of project interventions and adapt accordingly
- Establish accessible and effective grievance mechanisms

These elements constitute minimum good practices¹ that should be observed across all types of development projects. As such, they may support but do not take the place of broader programming dedicated to achieving tenure security, indigenous rights, women’s empowerment, and community livelihoods objectives.

INTRODUCTION

Secure land and resource tenure are essential foundations for the well-being of rural peoples, and for their economic and social development. Increasingly, global and national policies have recognized that attention to local land and resource tenure is necessary to achieve key goals related to poverty reduction, governance, women’s empowerment, ecosystem management and climate change. However, especially where tenure is insecure, development interventions can inadvertently cause rural communities to lose rights to lands and resources, triggering a range of negative social impacts. These tenure-related social impacts, in turn, can undermine the development intervention’s original objectives, and reduce public support for development institutions and activities.

This brief highlights issues of rural land tenure-related social impacts and their importance and relevance to the work of USAID. Land tenure refers to the relationship, whether legally or customarily defined, among people - as individuals or groups - with respect to land (FAO 2002).² The social impacts of development, in turn, may be defined as intended or unintended social consequences, both positive and negative, of planned development interventions (Vancley et al. 2015). In light of the centrality of secure tenure to rural development, this brief focuses in particular on understanding and addressing potential negative social impacts related to land and resource tenure. While most directly associated with infrastructure projects such as dams, other energy infrastructure and roads, or with the extractive industry, a range of other types of development policies, programs and projects can create risks of negative social impacts related to tenure.

¹ Social safeguards are designed to help avoid negative social impacts (e.g., to “do no harm”) and therefore are often considered to be minimum standards that are required for all relevant interventions. Meeting safeguard standards, by itself, does not take the place of more extensive, proactive efforts on social issues such as indigenous rights. More extensive and proactive efforts might constitute a “best practice” depending upon the context.

² For convenience, FAO uses “land” in this definition to include other natural resources (FAO 2002). In different contexts, tenure may include weaker or stronger “bundles” of rights, often grouped as use rights and control or decision-making rights (Meinzen-Dick et al. 2004).

The following section of this brief provides background information on the importance of secure tenure for sustainable development, and describes the conditions of tenure insecurity in many rural areas of developing countries around the world. It also introduces the types of projects that risk generating tenure-related social impacts, and relevant USAID priorities and commitments that compel attention to them. Subsequent sections of this brief explore key standards and safeguards that have been developed over time to address tenure-related social impacts, with a particular focus on compulsory displacement and resettlement, indigenous peoples and women's land rights. The final section provides information and recommendations on practical steps to understand and address these social impacts in the planning, implementation and monitoring of development initiatives.

BACKGROUND

Importance of Secure Tenure for Sustainable Rural Development

Land and natural resources are primary livelihood and development assets for rural peoples, and secure rights to these key assets provide a foundation for poverty reduction, increased food security, gender equality, cultural survival and environmental sustainability. Since most rural communities depend on natural resources for both subsistence and income – from agriculture, livestock, forestry and fishing – access to and control of land and resources is essential for their livelihoods. Secure land rights also increase incentives for communities and smallholders to invest in enhancing the productivity of their lands, which contributes, in turn, to increased food security and incomes (Roth and McCarthy 2013, Deininger 2003).

Secure land and resource rights are particularly important for vulnerable groups. For example, lands, territories and resources are intrinsically linked to the cultures and ways of life of indigenous peoples, and secure tenure rights provide a necessary foundation for them to maintain their livelihoods and cultures (IASG 2014, Feiring 2013). Women's tenure security contributes directly to gender equality and women's empowerment, and also has broader positive impacts on the well-being of families. Tenure rights have been found to be associated with increased “participation in household decision-making, household income, reductions in domestic violence... and increased expenditure on food & education for children” (Giovarelli et al. 2013).

With regard to ecosystem conservation, a growing body of scientific evidence demonstrates the links between secure community tenure and conservation, as land rights provide communities with the legal protections and incentives they need to manage resources for the long term (Aggarwal and Freudenberger 2013). A comprehensive review of relevant literature on forests undertaken in 2014 found that where communities have legal recognition of their rights to forests and government support – such as for registration, enforcement of rights, and technical assistance for community forest management - deforestation rates within indigenous and community forests are significantly lower than in forests outside these areas (Stevens et al. 2014). These lower rates of deforestation are significant for efforts to combat climate change; the 15.5 percent of global forest area to which communities have government-recognized rights contain over 37.7 billion tons of carbon, or the equivalent of 29 times the annual emissions from all passenger vehicles in the world (ibid).

Increased recognition of the contributions of tenure security to this wide range of development goals has resulted in a growing international policy consensus on the importance of securing land and resource

rights. The post-2015 development agenda adopted by the UN General Assembly in September 2015 includes targets on land to achieve Sustainable Development Goals on poverty, food security and gender equality (UNGA 2015). The VGGT, unanimously endorsed by the members of the UN Committee on World Food Security (including the U.S.) in 2012, highlight the need to recognize and respect all legitimate tenure claims, including those derived from custom (FAO 2012). Rights of indigenous peoples to lands, territories, and resources that they possess by reason of traditional ownership or use are recognized in the United Nations Declaration on the Rights on Indigenous Peoples (UNDRIP), and in International Labor Organization Convention 169 on Indigenous and Tribal Peoples.

Prevailing Tenure Insecurity and Pressures

The increasing awareness and policy commitment to securing land tenure is vital, because in rural areas of many low-income countries tenure remains unclear, overlapping and insecure. By one estimate, at least one billion of the world's poorest people live in rural areas and lack secure rights to the land they use for their subsistence (Prosterman et al. 2009). Many of these people hold land and resource rights informally through customary, community-based tenure systems, which are estimated to extend across large areas of Africa, Asia and Latin America and to affect up to 2 billion people (Alden Wily 2011).³

One significant issue affecting tenure security in rural areas is the lack of formal, legal recognition of community-based tenure rights. This situation stems from historical processes in which governments (often colonial governments) claimed, as state land, areas that were traditionally owned and governed by indigenous peoples and local communities. Where local communities have maintained attachments to these ancestral lands, there are often overlapping systems of statutory tenure (codified in state law) and customary tenure (Freudenberger 2013; Springer and Campese 2008). Over time, with growing awareness of customary rights and the benefits of secure local land tenure, national governments have legally recognized some customary rights, or devolved land and resource rights to communities to meet conservation, sustainable use and/or livelihoods objectives. However, the gap in recognition between the area of land that is customarily held by indigenous peoples and local communities and the area of land that is formally recognized as community-owned or managed under statutory laws remains significant in many countries (RRI 2015). Analysis of forest tenure trends also indicates that the pace of recognition slowed in the period 2008-2013 as compared with 2002-2008 (RRI 2014a). The lack of legal recognition renders communities' land rights largely invisible, increases the vulnerability of their lands to expropriation, and constrains their incentives to make long-term investments in productive capacities and ecosystems.

Even where land rights are recognized under statutory law, they may not be implemented, enforced or respected in practice. In some countries, laws have been enacted to allow for recognition of land rights, but no land has yet been registered under them (RRI 2015). In other cases, land is demarcated and registered, but even these land rights are not respected in practice due to competing interests, such as from private sector investments, low government capacity, and/or lack of coordination across land and other relevant ministries.

³ Within community tenure systems, land may be managed as commons, allocated to individual households, or – as in most cases – include a combination of both types of land management (RRI 2015).

This is a special problem for women who, despite playing significant roles in agriculture and in the provision of household nutrition across rural areas of developing countries, tend to have weaker tenure rights than men (FAO 2011). Women and female-headed households are far less likely to own or control land in developing countries, and women's landholdings are generally smaller and of lower value than those held by men (USAID Gender Policy; World Bank 2012). Addressing women's unequal land and resource rights reflects both limitations in legal recognition, and cultural constraints on the participation of women in ownership and land use decisions.

Compounding these prevailing patterns of tenure insecurity is the strong pressure on land in rural areas of many developing countries. Growing global demand for agricultural commodities and natural resources has led governments to allocate land to large-scale industrial concessions, despite the existence of competing claims to the land from smallholders and communities (Roth 2013). While difficulties in accessing information on concessions mean that estimates are uncertain, one study by the International Land Coalition identified approximately 203 million hectares in large-scale land acquisitions between 2000 and 2011 (Anseeuw et al. 2012). Moreover, much of the interest from investors has targeted countries where local tenure rights are insecure (Deininger et al. 2011). Other pressures on land include urban expansion and associated infrastructure development, demands for biofuels, and expansion of protected area systems, including for climate mitigation (Roth 2013). While all landholders face risks due to these pressures, landholders with insecure tenure rights face considerably higher risks of losing their lands and livelihoods.

Social Impacts and USAID Priorities

In this context of tenure insecurity and global pressures on land, several types of development projects carry significant risks of generating negative social impacts on rural communities. Infrastructure and energy projects often rely on states' powers of eminent domain to acquire land to which local people have customary or statutory rights. Similarly, agribusiness investments that involve land acquisitions may allocate to private investors land that is held by communities under customary tenure. Establishment of protected areas and species conservation measures may physically displace communities or restrict access to lands and natural resources that are vital to indigenous and community livelihoods and cultures. Concerns regarding land acquisition or restrictions on access and use to reduce emissions from deforestation and degradation have prompted the development of safeguards for REDD+ under the UN Framework Convention on Climate Change (Somerville 2013; Alcorn 2011). As USAID has built partnerships with private sector actors through initiatives such as Feed the Future, Power Africa and the New Alliance for Food Security and Nutrition, social impacts associated with private sector investments have also become increasingly relevant for USAID (Boudreaux and Neyman 2015).

Disruption to local land tenure and resource governance systems is associated with a range of significant social impacts. While not comprehensive, these may include:

- Loss of livelihoods and employment
- Food insecurity
- Threats to the cultural survival and cultural heritage of indigenous peoples
- Disproportionate harms to women and girls

- Loss of biodiversity, particularly species important for community livelihoods and/or cultures
- Loss of access to water or benefits from other ecosystem services
- Social marginalization and disarticulation
- Increased morbidity and mortality

Taking account of these tenure-related social impacts is essential in order for USAID to ensure that projects do not inadvertently undermine USAID’s mission to end extreme poverty and promote resilient communities. Where land and resource tenure social impacts are not addressed, they risk causing harm to local people and vulnerable groups. Adverse social impacts also risk undermining USAID’s social license to operate and its public support. Responsibly and effectively addressing potential social impacts is therefore an integral part of USAID’s aims to “advance the economic, political, social, and environmental well-being of the world’s most vulnerable people” (USAID Mission).

While USAID does not have an overarching social safeguards policy, the Agency has established commitments to domestic and international frameworks that imply obligations to address social impacts. The U.S. 2015 Quadrennial Diplomacy and Development Review, for example, highlights U.S. commitments to “democracy, human rights and accountable governance” and to the “empowerment and inclusion of vulnerable populations” including indigenous peoples (US 2015). The U.S. Foreign Assistance Act of 1961, Executive Order 13107 on Implementation of Human Rights Treaties, and U.S. Commitment to Advancing Human Rights in the UN System Section emphasize the importance of providing U.S. support in ways that are consistent with and further international human rights. USAID’s policy on Gender Equality and Female Empowerment establishes the accountability of all staff, particularly senior managers and directors, to these goals (USAID 2012). In stating U.S. support for the UN Declaration on the Rights of Indigenous Peoples, the U.S. has “committed to serving as a model in the international community in promoting and protecting the collective rights of indigenous peoples as well as human rights of all individuals” (Announcement of U.S. support for UNDRIP, Dec 2010). All OECD members, including the U.S., endorsed the 1992 Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects (OECD 1992).

In addition to establishing commitments, existing frameworks set standards and provide practical guidance for addressing land-related social impacts, as discussed further in the following sections.

ADDRESSING SOCIAL IMPACTS: RELEVANT STANDARDS AND SAFEGUARDS

Decades of work on social impacts and social safeguards have generated a foundation of principles, standards and practical measures to prevent and address social impacts of development projects. This section focuses on three main issues that are particularly important for efforts to safeguard against tenure-related social impacts – Compulsory Displacement and Resettlement (CDR), Indigenous Peoples and Women’s Land Rights. For each, the subsections below include information on concepts and definitions, nature of the associated social impacts, relevant standards and frameworks, and principles to guide action.

In addition to each of the specific issues described below, the VGGT provide an overarching framework for understanding and addressing tenure-related social impacts. These Guidelines, adopted in 2012, emphasize the need to “recognize and respect all legitimate tenure right holders and their rights... including legitimate customary tenure rights that are not currently protected by law” (FAO 2012).

The Guidelines include provisions on avoiding displacement, securing tenure rights of indigenous peoples, and adequately protecting women’s tenure rights. In addition, the focus on all legitimate tenure rights highlights the importance of appropriate forms of recognition, particularly in areas under customary, collective tenure. Individual land titling approaches have often had severe negative impacts in such areas, particularly where they have included options for the sale of land (RRI 2012). Alternative tenure reform approaches that avoid negative social impacts on customary, collective tenure include formal recognition and protection of the customary tenure system and collective titling (Freudenberger 2013; Roth and McCarthy 2013).

Compulsory Displacement and Resettlement

The term compulsory displacement and resettlement (CDR) encompasses several concepts and processes. Displacement occurs when development projects cause people to lose land or access to resources, and may be physical and/or economic. Physical displacement occurs when people are required to leave their homes and settlements due to a development project, such as when a dam will flood a current settlement. Economic displacement occurs when people lose access to lands, natural resources or other assets that are important for their livelihoods, whether or not they have to move, as when establishment of a protected area blocks access to areas used for hunting, fishing or gathering. Resettlement is the process of assisting displaced communities to improve, or at least restore, their incomes and living standards (World Bank 2004). Displacement and resettlement are considered to be compulsory or involuntary when people do not have a choice as to whether or not the displacement will occur, usually because the land acquisition process is subject to state powers of eminent domain (Vanclay 2015).⁴

CDR has been a central focus of the social safeguard systems of international development institutions since the 1980s, as the devastating social impacts of dam construction and other large-scale development projects became apparent, and citizens mobilized in protest. CDR is most closely associated with large-scale infrastructure and energy development projects, though over time there has been increasing recognition of the wider range of interventions that may result in compulsory loss of land or access to resources. For example, the World Bank revised its policy on Involuntary Resettlement in 2001 to include situations of “involuntary restriction of access to legally-designated parks and protected areas, resulting in adverse impacts on the livelihoods of displaced persons” (World Bank 2001).

Risks of adverse social impacts from compulsory displacement are particularly acute in the prevailing conditions of limited legal recognition of community land rights in rural areas of developing countries, as communities with unrecognized rights are unlikely to have recourse to mechanisms to avoid or receive compensation for displacement. Cernea (1997) identifies eight types of impoverishment risks from

⁴ The power of state agencies relative to rural citizens has called into question some claims of “voluntary” resettlement in cases where land acquisition is backed up by state powers. World Bank guidance emphasizes that voluntary resettlement requires that project-affected people are able to exercise both informed consent, and power of choice - i.e., that they can agree or disagree with the proposed land acquisition (World Bank 2004).

displacement, including: (1) landlessness; (2) joblessness; (3) homelessness; (4) marginalization; (5) food insecurity; (6) loss of access to common property resources; (7) increased morbidity; and (8) community disarticulation. Despite the severity of these risks, national laws frequently do not provide assistance for displaced communities; a recent study found that land acquisition laws in only 9 of the 32 countries studied provided resettlement assistance (Tagliarino 2015).

Severe impacts and inadequate national safeguards mean that displacement is a prominent cause of conflict. Recent analysis of hundreds of cases of conflict with local communities over investment projects show that displacement is the most frequent cause of conflicts between local communities and agriculture and hydropower projects, and is second only to environmental damage as a cause of conflicts with mining projects (TMP 2015). Concerns regarding displacement impacts have also been a focus of recent public criticisms of bilateral donor agencies (USAID 2016), while the World Bank's own internal review found serious shortcomings in how projects involving resettlement have been assessed, overseen and followed up over two decades (World Bank 2014).

The prominence of compulsory displacement and resettlement issues in large-scale development has led to the widespread adoption of CDR policies by multilateral development banks as well as by some bilateral aid agencies.⁵ Key guiding principles regarding compulsory displacement and resettlement include to:

- Avoid displacement and restrictions on access of resource-dependent communities as much as possible and, where unavoidable, minimize and mitigate their impacts.
- Understand the legal and institutional context governing displacement, resettlement and compensation and identify gaps with international standards.
- Identify all legitimate landholders affected by displacement and their claims. Legitimate landholders include those with formal legal rights; those without formal legal rights, but who have a claim recognized by the state; and those with no formal legal right or recognized claim but with rights that are recognized as legitimate through customary or traditional arrangements.
- Identify and analyze risks to affected legitimate landholders. Common risks include: landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity, lack of access to common property, loss of education, and community disarticulation (Cernea 1997)
- If displacement is unavoidable, develop a dedicated plan for resettlement that mitigates identified risks. The resettlement plan should have a separate budget, implementation schedule and monitoring and reporting requirements.

⁵ Multilateral policies include those of the World Bank (World Bank Operational Policy 4.12), the European Bank for Reconstruction and Development (EBRD PR 5), the International Finance Corporation (IFC PS 5), the African Development Bank (ADB Statement V), and the Inter-American Development Bank (IDB OP-710), while among bilateral donors, the German Federal Ministry for Economic Cooperation and Development (BMZ), the Australian Government and the Japan International Cooperation Agency (JICA) have adopted positions on land acquisition and involuntary resettlement that result from their projects (USAID 2016).

- Meaningfully consult all affected persons and provide opportunities for them to participate in planning and implementing resettlement programs, including access to appropriate grievance mechanisms (adapted from Springer and Campese 2010).
- Set a standard to improve livelihoods and living standards through resettlement. Give priority to land-based resettlement strategies for those losing customary or statutory rights to land. Compensate affected people for the loss of land, resources and other assets to which they have legitimate customary or statutory rights, and ensure that alternative resources are sustainable and at least economically and culturally consistent with the losses incurred. Any cash compensation should be at replacement cost.
- 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 (FPIC).

These principles are further elaborated in the *Guidelines for Compulsory Displacement and Resettlement in USAID Programming*.

Indigenous Peoples

Indigenous Peoples are estimated to number approximately 370 million people worldwide and are found in all regions of the world (UN 2009). Characteristics of indigenous peoples include long-term historical continuity of residence in a certain area, collective ties to traditional lands, territories and resources, and customary social and political institutions, customs, and ways of life that are distinct from the mainstream society or culture. In some regions, such as Latin America, the term indigenous also refers to residence prior to conquest or colonization by others. The UN recognizes self-identification as a primary element in determining who are indigenous peoples (ILO 169; UNDRIP 2007).

The close ties of indigenous peoples to their traditional territories mean that indigenous peoples are highly vulnerable to social impacts that affect their lands and resources. Indigenous peoples around the world are also disproportionately poor; while indigenous peoples make up approximately five percent of the world's population, almost 15 percent of the world's poorest are indigenous people (United Nations 2009). Indigenous peoples are often politically marginalized and lack legal recognition of their collective land rights, or protection of those rights when in conflict with other actors and land uses. These vulnerabilities require that special consideration be given to potential land and resource tenure impacts of development initiatives on indigenous peoples.

Social impacts affecting the lands, territories and resources of indigenous peoples arise from large-scale land acquisitions for infrastructure, agricultural concessions and energy projects, such as building of dams in the Brazilian Amazon. Extractive industries, particularly oil, gas and mining have a history of severe, negative impacts on indigenous peoples, including from destruction of the environment of indigenous lands (Anaya 2013; Tebtebba 2014). In addition to direct impacts, infrastructure projects and agrarian reforms may make it easier for migrants or poor farmers to settle in indigenous lands (Alcorn 2011). Protected areas for biodiversity conservation have resulted in physical and economic displacement of indigenous peoples (RRI 2014c). Climate mitigation policies and programs (such as REDD+) may threaten indigenous peoples and their tenure rights, such as through restrictions on traditional resource use

activities and assignment of carbon rights to others (Alcorn 2011; RRI 2014b). Land titling programs that give priority to individual titling also risk disrupting the collective attachments of indigenous peoples to their lands and territories.

In light of the importance of land for the cultural identity and survival of indigenous peoples, it is not surprising that international frameworks on rights of indigenous peoples emphasize their rights to land. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP 2007) affirms rights of indigenous peoples to their traditional lands, territories and resources (Article 26), prohibits indigenous peoples' forced removal from their traditional lands (Article 10), and calls on states to obtain the free, prior and informed consent of indigenous peoples before approving any project affecting their lands, territories or resources (Article 32). Broader provisions regarding rights to self-determination, to determine their own economic, social and cultural development (Article 3), to governance and decision-making through their own institutions (Article 18) and to cultural heritage and traditional knowledge (Article 31) also complement and serve to reinforce tenure security. The rights of indigenous peoples living in voluntary isolation to freely decide to remain in isolation have also gained recognition in recent years (UN 2009).

Indigenous peoples have been a primary focus of the social safeguard frameworks adopted by multilateral and bi-lateral development organizations, and by many non-governmental organizations. As noted above, in supporting the UN Declaration on the Rights of Indigenous Peoples, the US government has "committed to serving as a model in the international community in promoting and protecting the collective rights of indigenous peoples as well as human rights of all individuals," including to promote the "distinct international concept of self-determination specific to indigenous peoples" (Announcement of US support for UNDRIP, Dec 2010).

Guiding principles to prevent negative land-related social impacts on indigenous peoples from development projects include to:

- Ensure indigenous peoples' attachments to their lands, territories and resources are not disrupted and, as much as possible, strengthen the security of customary rights, including through support for formal legal recognition and enforcement.
- Ensure that indigenous peoples are able to participate in decision-making about activities affecting their lands, territories and resources, through their own freely-chosen representatives.
- Do not support activities affecting indigenous lands and resources that have not obtained the free, prior, and informed consent of the indigenous peoples concerned.
- Ensure that protections for cultural heritage and traditional knowledge are in place, including protections for indigenous peoples' intellectual property over their heritage and knowledge.

Key practical steps to avoid negative social impacts on indigenous peoples as a result of development or investment projects include to:

- Identify whether or not indigenous peoples are present or concerned with lands, territories and resources likely to be affected by projects
- Understand the national context of legal recognition and support

- Build relationships with indigenous peoples' representative organizations
- Ensure meaningful participation and free, prior, informed consent to project activities
- Involve indigenous peoples in monitoring; ensure accessible grievance mechanisms are in place

Women's Land Rights

The potential social impacts of development projects on women's land rights require specific attention because differences in men's and women's roles in land and natural resource management mean that tenure-related impacts are likely to affect them differently. As noted above, women also tend to have weaker land access and rights than men within the same community, reflecting weaker recognition of women's rights to land within both customary and statutory tenure systems. Discrimination against women's participation in decision-making may also constrain women's voice in asserting their specific land and resource needs in the context of land acquisitions or other project impacts on local tenure.

Studies of gender-differentiated impacts of compulsory displacement and large-scale land acquisition highlight a number of ways women's land and resource tenure may be affected. For example, projects may predominantly affect the resources that women use, particularly common property resources, such as forests, fisheries, forage and grazing lands, on which women rely for fuel, non-timber forest products, fodder and water. Loss of access to these common property resources disproportionately affects women's economic contributions and, in turn, diminishes their social standing in relation to men (Pandey et al. 2012). Where only male heads of household are recognized as landowners, resettlement compensation can focus on them to the exclusion of women. Furthermore, new employment opportunities associated with agricultural concessions or infrastructure development and maintenance are more likely to go to men (Aird 2001). These impacts may exacerbate the already existing poor security of women's land and resource access or further limit their livelihoods options (Behrman et al. 2012).

Equal rights of women to enjoy ownership and benefits from property are enshrined in international law (Silverman 2015). The main international convention establishing the equal rights of men and women, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979), provides for equal rights of "ownership, acquisition, management, administration, enjoyment and disposition of property."⁶ USAID's own Gender Policy commits the Agency to reduce gender disparities in access to, control over and benefit from resources, wealth, opportunities and services economic, social, political, and cultural (USAID 2012). And the recently enacted Girls Count Act authorizes USAID to:

support programs and key ministries, including: interior, youth, and education ministries, to help increase property rights, social security, home ownership, land tenure security, inheritance rights, access to education, and economic and entrepreneurial opportunities, particularly for women and girls (Girls Count Act).

Ways to avoid adverse impacts on women's land rights from development projects include to:

- Ensure equal access of women and men to project information and consultation processes.

⁶ While not ratified by the United States, the United States did participate in the 1995 Beijing Declaration, which reaffirms commitment to the principles enshrined in CEDAW and related instruments.

- Understand women’s specific roles and land uses, and resources of importance to them, as a basis for project design.
- Pay particular attention to common property resources that women rely on for domestic use, such as water and fuel wood, and ensure that access to them is not impeded or made more difficult.
- Ensure that development opportunities provided through projects are gender equitable, such access to agricultural development support or new employment opportunities.

RECOMMENDATIONS AND CONCLUSIONS

Efforts over many years have generated considerable knowledge regarding effective practices to safeguard against potential adverse social impacts of development interventions. There has also been an evolution in thinking about social impacts over time, from a narrower focus on avoiding negative outcomes to a more positive orientation towards enhancing the overall benefits of projects to affected communities (Vancley 2015).

The following points highlight key elements for effective management of the social impacts of development projects, elements that typically form parts of an integrated social safeguards system. They are consistent with but do not replace the more detailed treatment of specific issues in USAID policies and guidelines such as on Gender Equality and Female Empowerment, Indigenous Peoples and Compulsory Displacement and Resettlement. It is important to note that these are minimum good practices that should be observed across all types of development projects. As such, they may support but do not take the place of broader programming dedicated to achieving tenure security, indigenous peoples, women’s empowerment or livelihoods objectives.

Define and Communicate Safeguard Standards

A critical foundation for efforts to address project social impacts is a framework defining the standards and principles to which the organization will be held. This often takes the form of an institutional policy; for example, the World Bank, International Finance Corporation, Asian Development Bank, African Development Bank, Inter-American Development Bank, European Bank for Reconstruction and Development, European Investment Bank, Millennium Challenge Corporation and the Global Environment Facility have all adopted some form of policy on Compulsory Resettlement and Indigenous Peoples, and ERBD and MCC also have Gender policies (USAID n.d.). Policies typically define the issues of concern to the organization, relevant standards, the role of the organization in meeting those standards, and operational measures to ensure they are met in projects, including the types of projects the organization will not support. In most cases, policies are binding on the organization, as well as on other organizations that receive funding from them.

Assess Social Impacts as Part of Project Design

Assessment of social impacts involves two key dimensions. One is understanding the project itself and the social context in which it will be implemented – such as, the communities present in the area, their land tenure systems and land uses, and legal frameworks for recognition of their tenure rights in the national context. A second dimension is predicting potential social impacts of the project within that social context. Assessment of potential social impacts should consider direct impacts as well as indirect impacts, differentiated impacts on different social groups (particularly indigenous peoples and women),

and an analysis of the likelihood and significance of the predicted impacts (Vancley 2015). Assessment of social impacts should involve the participation of potentially-affected groups (VGGT 12.10), and is thus intertwined with the following element on community engagement.

The International Association for Impact Assessment's 2015 publication on *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects* provides detailed guidance on the scope and process for conducting up-front social impact assessments, as well as other steps to ensure effective management of social impacts throughout project design, implementation and closure. It notes that, while a key role of SIA is to predict impacts, "Equally important is the role of SIA in contributing to the ongoing management of social issues through the whole project development cycle..." (Vancley 2015). While primarily oriented towards private sector companies and investors, USAID's Operational Guidelines for Responsible Land-Based Investment contain further guidance on social impact assessment, stakeholder engagement and other best practice elements relevant to development projects (Boudreaux and Neyman 2015).

Ensure Effective Community Engagement and Participation in Decision-Making, Including Securing FPIC Where Actions May Affect Indigenous Peoples

Full and effective participation of potentially-affected communities is essential for sound project design and implementation. It enhances social impact assessment and management by engaging the knowledge and perspectives of communities, including by providing an opportunity to validate other information. Meaningful consultation requires that potentially-affected groups have a real opportunity to influence the design and implementation of the project. Community participation is also essential for securing a project's social license to operate, and is widely accepted as a procedural right; for example, as established in Principle 10 of the Rio Declaration, and the European Aarhus Convention (Vancley 2015; Springer and Campese 2008). The Voluntary Guidelines on the Governance of Tenure identify consultation and participation as essential principles of implementation (VGGT 3B.5; Boudreaux and Neyman 2015).

Effective consultation and participation in decision making are generally core elements of social safeguard policies for particular issues or groups – for example, promoting informed participation and meaningful consultation in relation to compulsory resettlement, ensuring meaningful consultation and free, prior, informed consent (FPIC) to actions affecting indigenous peoples, and ensuring participation of women. As with social impact assessment, community engagement, consultation and FPIC are highlighted here as part of the initial project design, but should be ongoing throughout project development, management and monitoring.

Develop Dedicated Plans to Address Potential Social Impacts

Where potential social impacts are identified, a further good practice element is to develop a social impact management plan in order to ensure the issue is effectively addressed over the course of project design and implementation. Social safeguard policies on land-related social impacts generally require dedicated plans – for example, multilateral development bank policies on resettlement require that borrowers prepare Resettlement Action Plans (RAP) for projects involving resettlement, and policies on indigenous peoples require that borrowers prepare Indigenous Peoples Plans where initial impact assessment and consultations identify activities affecting indigenous peoples.

Dedicated plans ensure that impact management measures are worked through in detail, agreed, and documented; they also provide a basis for accountability. Plans should define how potential adverse impacts will be avoided, minimized, mitigated, or compensated for, and how affected groups will receive appropriate social and economic benefits from the project. Plans should include a budget, implementation schedule and monitoring and reporting plan and should be prepared sufficiently early in the planning process so they can inform assessment of the overall project feasibility. The outcomes of dedicated plans to address social impacts should also be subject to evaluation.

Proactively Strengthen Land Tenure and Resource Governance – Including National Policies and Their Implementation

In contexts of weak tenure security, project interventions often cannot effectively ensure against negative impacts without complementary investments in strengthening broader frameworks and capacities for land tenure and resource governance. For example, ensuring that indigenous territorial rights are not infringed may require support to the capacity of indigenous organizations to defend their rights in relation to other actors or land uses (against encroachment and competing claims), or support for the demarcation and registration of indigenous lands. Similarly, guarding against compulsory displacement may require investments in the capacity of relevant government agencies or processes to strengthen national legislation regarding alternative approaches and compensation. The emphasis in the recently enacted Girls Count Act on supporting key ministries to strengthen property rights and land tenure security also reflects this orientation towards strengthening governance contexts. The need for these complementary investments reflects the fact that risks of adverse social impacts are in large part a function of the broader governance environment within which projects are designed and implemented (Springer and Campese 2008).

Monitor Social Impacts as Part of Project Interventions, and Adapt Accordingly

As projects are implemented, it is good practice to monitor the potential social impacts identified in the SIA as an integral part of overall project monitoring. Effective monitoring depends on development of indicators to measure social impacts. The process of developing and monitoring these indicators should also be participatory, involving project affected people. Monitoring must then feed into an ongoing process of adaptive management, including corrective action where monitoring identifies unanticipated social impacts or ineffective measures to address them.

Establish Accessible and Effective Grievance Mechanisms

As a complement to proactive tracking of impacts through monitoring systems, grievance mechanisms enable affected communities to raise their concerns regarding development projects, and guarantee that they will receive a response. Grievance mechanisms typically operate at two levels – project and institutional. Establishing good practices for project-level grievance mechanisms would include ensuring that they are: 1) proportional to the project’s risk of adverse impacts; 2) culturally appropriate; 3) accessible to communities; 4) transparent and accountable; and that they 5) protect against retribution and do not impede judicial remedies (IFC 2009; CAO 2008; USAID n.d.; Boudreaux and Neyman 2015). Institutional grievance mechanisms provide recourse for affected communities whose complaints are not resolved at the project level, and enable institutional oversight, learning, and iterative strengthening of complaints resolution processes.

Conclusion

These measures provide important safeguards against potential adverse, land-related social impacts of USAID-supported development projects. Taking account of these social impacts is essential to ensure that projects do not inadvertently cause harm, undermine USAID's development objectives, contravene existing policy commitments, or erode public support for USAID operations. Moreover, actions to address social impacts contribute to enhancing the overall tenure and resource governance benefits of projects to communities, thus providing a foundation for realizing a wide range of poverty reduction, indigenous rights, women's empowerment, ecosystem management, and climate change goals.

REFERENCES

- Aggarwal, Safia and Mark Freudenberger 2013. *Tenure, Governance and Natural Resource Management: Contributions to USAID Development Objectives*. Washington, DC: US Agency for International Development.
- Aird, Sarah 2001. *China's Three Gorges: The Impact of Dam Construction on Emerging Human Rights*. Human Rights Brief, American University Washington College of Law, Vol. 8, Issue 2 (Winter), pp. 24-37.
- Alcorn, Janis 2011. *Tenure and Indigenous Peoples*. USAID Issue Brief. Washington, DC: US Agency for International Development.
- Alden Wily, Liz 2011. *The tragedy of public lands: The fate of the commons under global commercial pressure* (accessed at: <http://newsite.landcoalition.org/fr/publications/tragedy-public-lands-fate-commons-under-global-commercial-pressure>).
- Anaya, James 2013. *Extractive industries and indigenous peoples. Report of the Special Rapporteur on the rights of indigenous peoples*. Report to the Human Rights Council A/HRC/24/41.
- Behrman, Julia, Ruth Meinzen-Dick and Agnes Quisumbing 2012. *The Gender Implications of Large-Scale Land Deals*. Journal of Peasant Studies (January 2012).
- Boudreaux, Karol and Yuliya Neyman 2015. *Operational Guidelines for Responsible Land-Based Investment*. Washington, DC: US Agency for International Development.
- Cerneia, Michael 1997. *The risks and reconstruction model for resettling displaced populations*. World Development. Volume 25, Issue 10, October 1997, Pages 1569–1587.
- CAO (Compliance Officer/Ombudsman) 2008. *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*. Washington, DC: International Finance Corporation.
- Deininger, Klaus and Derek Byerlee, with Jonathan Lindsay, Andrew Norton, Harris Selod, and Mercedes Stickler 2011. *Rising Global Interest In Farmland: Can It Yield Sustainable And Equitable Benefits?* Washington, DC: The World Bank.
- Deininger, Klaus 2003. *Land Policies for Growth and Poverty Reduction: A World Bank Policy Research Report*. Washington, DC: The World Bank.
- FAO 2011. *The State of Food & Agriculture: Women in Agriculture: Closing the Gender Gap*.
- FAO 2012. *Voluntary Guidelines on the Responsible Governance of Tenure of Land Fisheries and Forests in the Context of National Food Security*.
- Feiring, Birgitte 2013. *Indigenous peoples' rights to lands, territories and resources*. Rome: International Land Coalition.
- Freudenberger, Mark 2013 (with contributions from John Bruce, Beatrice Mawalma, Paul de Wit and Karol Boudreaux). *The Future of Customary Tenure: Options for Policymakers*. Washington, DC: US Agency for International Development.

Giovarelli, Renee, Beatrice Wamalwa and Leslie Hannay 2013. *Land Tenure, Property Rights and Gender: Challenges and Approaches for Strengthening Women's Land Tenure and Property Rights*. Washington, DC: US Agency for International Development.

Girls Count Act of 2015. Pub. L. 114-24, June 12, 2015, 129 Stat. 314 (22 U.S.C. 2151).

IASG (UN Inter-Agency Support Group on Indigenous Peoples' Issues) 2014. *Lands, Territories and Resources: Thematic Paper towards the preparation of the 2014 World Conference on Indigenous Peoples*.

International Finance Corporation (IFC) 2009. *Addressing Grievances From Project-Affected Communities: Guidance For Projects And Companies On Designing Grievance Mechanisms*. Washington, DC: IFC.

International Labor Organization (ILO) 1989. *ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*.

Meinzen-Dick, Ruth, Rajendra Pradhan, and Monica Di Gregorio 2004. *Collective Action and Property Rights For Sustainable Development*. Washington, DC: International Food Policy Research Institute.

OECD Development Assistance Committee 1992. *Guidelines on Aid and Environment No. 3: Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*. Paris, France: Organization For Economic Co-Operation And Development.

Pandey, Balaji and Binaya Kumar Rout 2004. *Development-induced displacement in India: Impact on women*. New Delhi: Indian National Institute for Women.

Prosterman, R., R. Mitchell and T. Hanstad 2009. *One Billion Rising: Law, Land and the Alleviation of Global Poverty*.

Rees, Caroline 2011. *Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned*. CSR Initiative, Harvard Kennedy School, Cambridge, MA.

RRI 2015. *Who Owns the World's Land? A global baseline of formally-recognized indigenous and community land rights*. Washington, DC: Rights and Resources Initiative.

RRI 2014a. *What Future for Reform? Progress and slowdown in forest tenure reform since 2002*. Washington, DC: Rights and Resources Initiative.

RRI 2014b. *Status of Forest Carbon Rights and Implications for Communities, the Carbon Trade, and REDD+ Investments*. Washington, DC: Rights and Resources Initiative.

RRI 2014c. *Protected Areas and the Land Rights of Indigenous Peoples and Local Communities*. Washington, DC: Rights and Resources Initiative.

RRI 2012. *What Rights? A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights*. Washington, DC: Rights and Resources Initiative.

Roth, Michael 2013. *Land Tenure and Food Security*. Washington, DC: US Agency for International Development.

Roth, Michael and Nancy McCarthy 2013. *Land Tenure, Property Rights and Economic Growth in Rural Areas*. Washington, DC: US Agency for International Development.

Silverman, Allison 2015. *Using International Law to Advance Women's Tenure Rights in REDD+*. Washington, DC: Rights and Resources Initiative and the Center for International Environmental Law.

Somerville, Matthew 2013. *Land Tenure and REDD+: Risks to Property Rights and Opportunities for Economic Growth*. Washington, DC: US Agency for International Development.

Springer, Jenny and Jessica Campese 2008. *Conservation and Human Rights: Key Issues and Contexts*. Washington, DC: Conservation Initiative on Human Rights.

Stevens, Caleb, Robert Winterbottom, Jenny Springer and Katie Reytar 2014. *Securing Rights, Combatting Climate Change: How strengthening community forest rights mitigates climate change*. Washington, DC: World Resources Institute.

Sunderlin, William, Jeffrey Hatcher and Megan Little 2008. *From Exclusion to Ownership*. Washington, DC: Rights and Resources Initiative.

Tagliarino, Nicholas 2015. *Balancing Property Rights with National Needs: A Comparative Analysis of Land Acquisition Laws Enacted in Asia, Africa, and Latin America*. World Bank conference on land and poverty March 23-27, 2015.

Tebtebba Foundation 2014. *Indigenous Peoples & the Extractive Sector: Towards a Rights-Respecting Engagement*. Tebtebba, Indigenous Links and Middlesex University.

The Munden Project 2015.

The Munden Project (TMP) 2014. *Communities as Counterparties: Preliminary Review of Concessions and Conflict in Emerging and Frontier Market Concessions*. TMP.

United Nations 2009. *State of the World's Indigenous Peoples*. New York: United Nations.

United Nations 2007. *United Nation's Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

UN General Assembly 2015. *Transforming our world: the 2030 Agenda for Sustainable Development*. Resolution A/RES/70/1.

United States 2015. *Quadrennial Diplomacy and Development Review*.

USAID. *Mission, Vision and Values*. Washington, DC: US Agency for International Development.

USAID 2016. *Guidelines on Compulsory Displacement and Resettlement in USAID Programming*. Washington, DC: US Agency for International Development

USAID 2012. *USAID Gender Equality and Female Empowerment Policy*. Washington, DC: US Agency for International Development.

USG 2010. *Announcement of US support for UNDRIP, Dec 2010*.

Vanclay, Frank et al. 2015. *Social Impact Assessment: Guidance for assessing and managing the social impacts of projects*. International Association for Impact Assessment.

World Bank 2014. *Advisory Review of the Bank's Safeguard Risk Management*. Washington, DC: The World Bank.

World Bank 2012. *World Development Report*. Washington, DC: The World Bank.

World Bank 2004. *Involuntary Resettlement Sourcebook: Planning and Implementation in Development Projects*. Washington, DC: The World Bank.

World Bank 2001. OP 4.12 *Involuntary Resettlement*. Washington, DC: The World Bank.

Cloudburst Consulting Group, Inc. produced this document for the United States Agency for International Development's E3/Land Office. It was prepared for the Evaluation, Research and Communication (ERC) Project under the Strengthening Tenure and Resource Rights (STARR) IDIQ.

Authors: Jenny Springer; February 2016

USAID Evaluation, Research and Communication Project Contracting Officer's Representatives: Mercedes Stickler

Yuliya Neyman (alternate)

Land Tenure and Property Rights Portal: <http://usaidlandtenure.net>