A Plethora of Standards, Guidelines and Frameworks: Making Sense of it All

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WHAT PLETHORA OF STANDARDS, GUIDELINES AND FRAMEWORKS?

- GOVERNMENT POLICIES, LEGISLATION AND REGULATIONS (NATIONAL, REGIONAL, LOCAL)

- INTERNATIONAL FINANCIAL INSTITUTION (IFI) REQUIREMENTS /STANDARDS, PROCEDURES AND GUIDELINES

- COMPANY POLICIES AND PROCEDURES

- BEST PRACTICE GUIDELINES AND HANDBOOKS
  - e.g., WB, IFC, ICMM, IPIECA

- SOME OTHER PRINCIPLES AND GUIDELINES:
  - Ruggie Report and the UN’s “Guiding Principles on Business and Human Rights”
  - Ethical Globalization Initiative: Realizing Rights
  - Voluntary Principles on Security and Human Rights
  - Global Reporting Initiative
SOME KEY IFI RESETTLEMENT AND LIVELIHOODS
RESTORATION STANDARDS AND REQUIREMENTS

- World Bank (WB) OP/BP4.12: Involuntary Resettlement

- International Finance Corporation (IFC) Performance Standard (PS) 5: Land Acquisition and Involuntary Resettlement

- European Bank for Reconstruction and Development (EBRD) Performance Requirement (PR) 5: Land Acquisition, Involuntary Resettlement and Economic Displacement

SOME KEY IFI RESETTLEMENT AND LIVELIHOODS
RESTORATION STANDARDS (cont.)

- **Asian Development Bank (ADB): Safeguard Requirements 2: Involuntary Resettlement**

- **Japan Bank for International Co-operation (JBIC): Guidelines for Confirmation of E&S Considerations: Involuntary Resettlement**

- **Inter-American Development Bank: Operational Policy-710: Involuntary Resettlement**

**EQUATOR PRINCIPLES:** “A credit risk management framework for determining, assessing & managing Environmental and Social Risk in project finance transactions globally”

- EQUATOR PRINCIPLES (EPs)
  - A voluntary private-sector initiative launched in 2003 based on IFC’s then E&S Safeguard Policies and WB EHS Guidelines.
  - Initially adopted by ten International Finance Institutions (IFIs).
  - Currently 79 global IFIs are members (18 from emerging markets).
  - Provide 70% of global Project Finance in emerging market countries.
  - EPs revised (EPII) in 2006, based on IFC’s then new Performance Standards (PS).
  - Second revision (EPIII) in June 2013 based on IFC’s 2012 PS.
Convergence of IFI Standards

- Current on-going convergence of environmental and social standards used by IFIs, particularly based on the Equator Principles and the IFC’s Performance Standards.

- Occurring amongst the following organizations:
  - Equator Principles Financial Institutions (79).
  - IFC’s Financial Intermediary Clients (70+).
  - OECD Export Credit Agencies (34).
  - European Development Financial Institutions (15).
  - MIGA and IDA (World Bank Group).
  - European Bank for Reconstruction and Development (EBRD).
  - Other Development Banks (African, Asian, etc).
An On-going Process of Convergence and Improvements to IFI Resettlement and Livelihood Restoration Standards and Requirements

- WB OD 4:30 (1990): Involuntary Resettlement
Improvements to IFI Resettlement and Livelihoods Standards and Requirements have included:

- Extending the scope of application to restrictions on land use
- Strengthening requirements for livelihood restoration planning
- Strengthening requirements regarding consultation and participation (including participatory monitoring)
- Stakeholder engagement beyond directly affected communities
- Addressing Human Rights Issues (including participation, transparency, non-discrimination, explicit requirements for grievance mechanisms)
- Free, Prior and Informed Consent (FPIC) for Indigenous Peoples under certain circumstances
- Gender Issues: more targeted measures to ensure women’s interests, land and property rights are addressed, in particular compensation benefits
- Requirements for completion audits under certain circumstances
Increasing Legal and Regulatory Requirements of National Governments Globally

- Generally more comprehensive and rigorous government attention being given to land acquisition, physical and economic displacement, stakeholder engagement and other social issues.

- Taking cognizance of resettlement and livelihood restoration issues, including standards and requirements of WB and other IFIs

- Increasingly being incorporated into the legal and regulatory requirements of national governments globally.
MAKING SENSE OF IT ALL
SO WHAT ARE THE KEY COMMONALITIES?

• RESETTLEMENT
  • Applies to physical displacement
  • Can also be caused by restrictions on land use

• MITIGATION HIERARCHY- UNDERLYING PRINCIPLE:
  • Anticipate and avoid displacement
  • Where avoidance is not possible minimize adverse impacts
  • Compensate for loss of assets

• CONSULTATION
  • Affected households
  • Other stakeholders-host communities

• COMPENSATION-REPLACEMENT COST:
  • Compensation of lost physical assets (land, built structures) at replacement cost
  • Plus compensation of transaction costs

• GRIEVANCE MECHANISMS
  • Establish grievance/ conflict resolution mechanisms outside the formal judicial/court system

• VULNERABLE GROUPS
  • Identify and address needs of vulnerable groups
MAKING SENSE OF IT ALL
SO WHAT ARE SOME KEY ISSUES THAT ARE ADDRESSED DIFFERENTLY?

- **TRIGGERS**
- **Involuntary Resettlement**
  - Land rights or land use rights acquired through expropriation or other legal compulsory procedures
  - IFC PS 5 is most clear that it does not apply to: “market transactions in which the seller is not obliged to sell, and the buyer cannot resort to expropriation”
  - So called “willing buyer/willing seller” negotiated settlements are still regarded as “Involuntary Resettlement” if the buyer can resort to compulsory legal procedures if negotiations fail.

- **Legal Rights to land and Assets**
  - Those with formal rights to land (compensation)
  - Those who do not have formal rights, but have a claim to such land (compensation)
  - Those who have no recognizable legal right or claim to land (compensation not necessarily required by governments, but is a requirement of some other standards) e.g.
    - OP/BP 4.12 requires resettlement assistance, but not compensation for land
    - IFC PS 5 requires compensation for assets other than land, and options for adequate housing with security of tenure.
MAKING SENSE OF IT ALL
SO WHAT ARE SOME KEY ISSUES THAT ARE NOT SO CLEAR/ADDRESSED DIFFERENTLY?

- **ECONOMIC DISPLACEMENT**
  - Standards and guidelines are not so clear with regard to economic displacement and livelihood restoration

- **COMPENSATION**
  - Compensation for common property resources (not always covered by government legislation and requirements)
  - Compensation rates (government authorities tend to oppose over generous compensation rates since it sets a precedent. Conversely civil society organizations tend to lobby for higher rates).
  - Cash compensation v. land -for-land replacement (companies often prefer cash compensation because it is easier—but a risk if households spend the cash unwisely and become impoverished and potentially dependent on the company)
**MAKING SENSE OF IT ALL**

**PLANS, PROCEDURES or FRAMEWORKS?**

- **RESETTLEMENT ACTION PLAN (RAP):** In cases where land acquisition or restrictions on land use cause **physical displacement**

- **ABBREVIATED RAP:** In cases where there are **fewer than 200 displaced** people (OP/BP.4.12)

- **LIVELIHOOD RESTORATION PLAN (LRP):** In cases where land acquisition or restrictions on land use do not cause physical displacement, but have adverse impacts on incomes and/ or livelihoods (**economic displacement**)  

- **COMPENSATION PROCEDURES:** In cases where land acquisition or restrictions on land use **only cause loss of assets**, but not physical or economic displacement

- **FRAMEWORKS:** In cases where the exact nature or magnitude of land acquisition or restrictions on land use **are unknown due the stage of project development.**
MAKING SENSE OF IT ALL

GUIDE/ HANDBOOKS AND SOURCE BOOKS, BEST PRACTICE

• KEY GUIDE/ HAND BOOKS AND SOURCEBOOKS :

  • IFC HANDBOOK FOR PREPARING A RESETTLEMENT ACTION PLAN (2002). Based on OD 4.30 Involuntary Resettlement


• BEST PRACTICE APPROACH:

  • GUIDE TO LAND ACQUISITION AND COMPENSATION (GLAC): Approach first used on the Baku-Tbilisi-Ceyhan (BTC) Pipeline.
    • Specifically aimed at directly affected communities and households
    • Concise summary of project impacts, land acquisition compensation measures, compensation rates, grievance mechanism, etc.
    • Now used on many large scale complex projects affecting large numbers of land right holders.
MAKING SENSE OF IT ALL
WHAT ARE SOME KEY ISSUES?

• PRINCIPLES AND OUTCOMES BASED APPROACH v. STEP-BY-STEP PROCEDURES
  • An outcomes based approach allows more flexibility and ways to achieve the end goal; step-by-step procedures tend to have less flexibility (tick-box approach)
  • Implementing a RAP/LRP is a process which requires flexibility
  • A RAP/LRP is a ‘living document’ (out-of-date the day after it is produced)

• MANAGEMENT SYSTEMS v. FRAMEWORKS
  • Management systems (as required by IFC PS) provide a means of overall implementation of management plans, including RAPs/ LRPs

• CLOSE-OUT / COMPLETION AUDITS
  • Relatively easy to assess and confirm if replacement of lost land and assets has been achieved, but much more difficult or impossible to confirm livelihood restoration
**MAKING SENSE OF IT ALL**

**SOME DISCUSSION POINTS**

- **WHAT ARE SOME OTHER KEY POINTS TO MAKE SENSE OF IT ALL?**

- **ARTISANAL SMALL SCALE MINERS**
  - Are issues concerning the displacement of artisanal miners adequately addressed in policies and standards?

- **NEED FOR AN UPDATED GUIDE TO LAND ACQUISITION AND LIVELIHOOD RESTORATION?**

- **NEED FOR A ‘LINE-BY-LINE’ GUIDE THAT HIGHLIGHTS DIFFERENCES IN STANDARDS AND GUIDELINES?**
  - This could be especially useful for consultants who work on a variety of projects in various countries, with different sponsors and standards.

**THANK YOU**