



(COP 34) RESETTLEMENT

A *Definitions and applicability*

Resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood as a result of project-related land acquisition and/or restrictions on land use).

Involuntary Resettlement occurs when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in physical or economic displacement. This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.

Source:

- *International Finance Corporation (IFC) Guidance Note 5: Land Acquisition and Involuntary Resettlement (2012)*
www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES

The **Resettlement** section of the COP is applicable to Members in the Mining Sector where resettlement is planned or occurring. The requirement is triggered at Mining Facilities where these circumstances are present either during the period since joining the RJC or through changes since the last Verification Assessment, whichever is most recent. Retrospective conformance is not expected.

Note: resettlement of Indigenous Peoples will trigger the requirement for a Free, Prior and Informed Consent (FPIC) process under the **Indigenous Peoples and Free Prior Informed Consent** provision of the COP.

See also the Guidance chapters for **Community Engagement**, **Indigenous Peoples and Free Prior Informed Consent**, and **Impact Assessment**.

B *Issue background*

Mining projects are developed where commercially viable ore is found and this can sometimes lead to development-related displacement of local communities. However experience has shown that involuntary resettlement can result in long-term hardship for affected persons and communities. Unless properly managed, involuntary resettlement may result in long-term impoverishment, as well as environmental damage and social stress in areas to which they have been displaced. For these reasons, involuntary resettlement should be avoided or at least minimized. Where it is unavoidable in exceptional circumstances, it is essential that appropriate measures to mitigate adverse impacts on displaced persons and host communities are carefully planned and implemented.

Negotiated settlements help avoid expropriation and eliminate the use of governmental authority to remove people forcibly. Negotiated settlements can usually be achieved by providing fair and appropriate compensation and other incentives or benefits to affected persons or communities, and by mitigating the risks of asymmetry of information and bargaining power. Members are encouraged to acquire land rights and/or access through negotiated settlements wherever possible. However consideration should be given to the rights of vulnerable people, such as those renting land from a landholder who is involved in negotiations.

On the issue of compensation for resettlement, land for land should be a starting point for agricultural based livelihood communities, rather than cash based compensation. Resettlement should ensure that re-settlers have improved livelihoods and economic well being and not undermine local food security. Resettlement negotiations should take place with the participation of all affected persons and communities, including women, and be based on full impact assessments.

All resettlement decisions and plans should be informed by the views and needs of the affected communities, including any artisanal miners operating within the concession. Key issues to consider include compensation, livelihoods, housing and living conditions at new sites, as well as social and cultural continuity of the community. There may also be a need to develop agreed strategies for protection or safe movement of sites or objects of special historical, spiritual or cultural significance. Gender is a critical dimension of the above issues and women's interests, expectations and participation should be sought. Resettlement and mine closure planning should consider the possibility of individuals and/or communities returning to post-mining land.

C Key International Instruments

The updated International Finance Corporation (IFC) Performance Standard 5 (January 2012) provides an international standard for Land Acquisition and Involuntary Resettlement that is referenced in the RJC standard. The objectives of IFC Performance Standard 5 are to:

- Avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs.
- Avoid forced eviction.
- Anticipate and avoid, or where avoidance is not possible, minimize adverse social and economic impacts from land acquisition or restrictions on land use by
 - providing compensation for loss of assets at replacement cost and
 - ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected.
- Improve, or restore, the livelihoods and standards of living of displaced persons.
- Improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites.

IFC Guidance Note 5 (January 2012) corresponds to Performance Standard 5 and provides additional guidance on the requirements of the standard.

Note that IFC Performance Standard 5 does not apply to resettlement resulting from voluntary land transactions (i.e., market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures if negotiations fail).

The right to adequate housing is the subject of a 2007 United Nations High Commission on Human Rights guidance directed to States, 'UN Basic Principles and Guidelines on Development-Based Evictions and Displacement'. The Guidelines focus on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards, and are referenced in IFC Performance Standard 5.

D Suggested implementation approach

The Suggested implementation approach provides general guidance for implementing the mandatory requirements of the Code of Practices. The guidance is not normative and should be seen as a starting point for information and support.

COP 34.1: RESETTLEMENT:

Members in the Mining Sector shall avoid Involuntary Resettlement. Where resettlement is unavoidable, it shall be minimised and appropriate measures to mitigate adverse impacts shall be carefully planned and implemented, consistent with International Finance Corporation (IFC) Performance Standard 5.

Points to consider:

- Feasible alternative project designs should be considered that avoid, or where avoidance is not possible, minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits.
- Resettlement activities should be implemented with appropriate disclosure of information, documentation, consultation, and the informed participation of those affected, during design, implementation and after the move.
- Compensation standards should be transparent and applied consistently to all those affected, and ready for implementation by the time of the resettlement.
- Opportunities should be provided to displaced communities and persons to derive development benefits from the project.
- When considering resettlement locations and housing, consider the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.
- A census should be undertaken to establish baseline information and determine those eligible for compensation and assistance.
- An accessible complaints or grievance mechanism should be established as early as possible to address concerns in a timely fashion, including a recourse mechanism to resolve disputes in an impartial manner.

D *Suggested implementation approach (cont)*

- Monitoring and evaluation procedures should be established, commensurate with the project's risks and impacts. Local government officials and independent observers, as appropriate, should be present during the resettlement.
- Entitlements for the applicable classifications of affected persons, depending on the type of displacement and their formal legal rights, should be consistent with IFC Performance Standard 5.

See IFC Performance Standard 5 and its supporting Guidance for further information on implementing the COP requirements.

CHECK

- Have you undertaken all appropriate measures to avoid any involuntary resettlement?
- If resettlement is unavoidable, have you undertaken measures to mitigate adverse impacts consistent with International Finance Corporation (IFC) Performance Standard 5, including appropriate disclosure, compensation standards, census data, monitoring procedures etc.?

E *Further information*

The following websites have further information on Involuntary Resettlement:

- International Finance Corporation (IFC) Performance Standard 5 – Land Acquisition and Involuntary Resettlement (2012) www1.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) Guidance Note 5 – Land Acquisition and Involuntary Resettlement (2012) www1.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated_GN5-2012.pdf?MOD=AJPERES
- International Finance Corporation (IFC) – Handbook for Preparing a Resettlement Action Plan (2002) www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/publications/publications_handbook_rap_wci_1319577659424United Nations Office of the High
- Commissioner of Human Rights (OHCHR) – Basic Principles and Guidelines on Development-Based Evictions and Displacement www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf