

Reforming the World Bank Policy on Involuntary Resettlement



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Submission to the World Bank Safeguards Review
April 2013



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March 2013

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Preface

In the decade since the World Bank last revised its Safeguard Policy on Involuntary Resettlement, rates of forced eviction and land grabbing in the name of ‘development’ have reached crisis levels across the Global South. While evictions may be necessary in ‘exceptional circumstances’, many of the projects causing displacement today have highly questionable development merits and do little to meet the development needs of the majority of citizens, and marginalized populations in particular.

In the current context in which forced eviction and land-grabbing have become a human rights crisis in the Global South, the World Bank cannot continue its current approach, which treats involuntary resettlement as an acceptable price to be paid by local people, and which assumes that the risks and rights violations can be mitigated by the requirements of the current safeguard policy. The reality on the ground shows that this is simply not true, and that the price being paid by affected people is unconscionably high. Large-scale resettlement has been shown—time and again—to be an exceedingly difficult activity to do in a manner that upholds human rights, and one that results in extreme poverty and injustice for affected people. It is thus an activity that the World Bank must view as anathema to sustainable development and realization of human rights. It is time for the World Bank to establish itself as a leader in supporting the design and implementation of development initiatives that truly serve the public interest, which actually prevent forced displacement, and which recognize people’s connection to their community and environment as a valuable asset to be preserved and strengthened.

There are numerous policy tools and innovations that can serve the Bank in making this shift, and we highlight several such policy options throughout these comments. The changes required must take place in the content of the safeguard policy, as well as in policy implementation and Bank staff attitudes. Across all these changes, our primary recommendation for the World Bank is to adopt a human rights-based approach to this issue. Involuntary resettlement poses grave risks to affected people’s fundamental human rights, and thus should be managed via a policy that is consistent with relevant standards and tools from international human rights law and best practice.

In this new era in which the Bank is positioning itself as a “knowledge broker” and source of expertise for sustainable development, the Bank has an opportunity to play a leadership role in demonstrating why excessive displacement threatens to undermine stability, development gains, and human rights—and why rights-based approaches that enable people to thrive in their original habitats offer win-win solutions for all involved. If the Bank successfully does this in the years to come, it could play an invaluable leadership role in stemming the global crisis of land grabbing and forced eviction, which currently threatens so many people’s human rights, lives and livelihoods, and future.

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1. Introduction

1. The rights to adequate housing and security of the person and home are basic tenets of human rights law, and serve to protect individuals and communities from being forcibly displaced from their homes, lands and livelihoods. Despite these guarantees in international law, every year approximately 15 million people are forcibly displaced to make way for development projects such as mines, oil and gas pipelines, urban renewal schemes, mega-dams, ports and transportation infrastructure.¹ Direct impacts from these projects, including land and real estate speculation, changes in land use and access to natural resources and environmental pollution, further escalate the number of displaced people.
2. While land acquisition and eviction may be necessary in exceptional circumstances, displacement caused by development largely occurs in a manner that violates human rights and leads to the increased impoverishment of the displaced. Evictions are often accompanied by egregious corruption, the use or threat of violence to force people from their homes, lands and livelihoods, and the undemocratic imposition of so-called “development” projects. Those impacted by forced evictions and displacement face a number of well-documented specific risks and human rights violations, including: homelessness; loss of livelihoods; food insecurity; psychological trauma; negative health impacts; loss of health status; increased morbidity and vulnerability, especially among women and children; economic and cultural marginalization; and, social disintegration. Forced evictions are also inherently discriminatory, as it is the poor and marginalized sections of the population, with few exceptions, who are required to move out of the way for development projects.
3. The objectives of the World Bank Policy on Involuntary Resettlement, now set out in Operational Policy 4.12, are to avoid or minimize involuntary resettlement; to make any resettlement activities a sustainable development program, including through project benefit-sharing and meaningful consultation of affected persons; and to assist displaced persons in their efforts to improve, or at least restore, livelihoods and living standards. The Policy requires a resettlement plan or a resettlement policy framework for projects that have displacement impacts. It extends assistance to people who do not own property but are nonetheless affected by development projects, including groups with communal and/or traditional tenure arrangements, renters, wage-earners and those without legally recognized rights to land and property that they occupy or use.
4. With more than one million people affected by forced displacement and involuntary

¹ See Cernea and Mathur (2008: 20): “Globally, the WB estimated in 1994 that, over a twenty-year period and counting only three economic sectors, up to 190-200 million people were displaced by public sector projects alone, at an average of 10 million people annually. By now, this estimate is outdated. Considering the pace of displacements not only in three sectors, but in all economic sectors, and not only in public but also in private sector projects, the conservative estimate of development displacements rises to about 280-300 million over 20 years or 15 million people annually.”

resettlement from active Bank projects at any given point in time,² the policy remains an important human rights safeguard for affected people living in countries with incomplete or inadequate legal and regulatory frameworks. However, evidence suggests that the policy often fails to achieve its core objective of avoiding or mitigating adverse impacts of displacement and that Bank projects have frequently caused violations of human rights. Problems related to involuntary resettlement have been the third most cited complaint in cases submitted to the Inspection Panel. The number of such cases is likely to rise in view of the expansion of the Bank's core business of infrastructure development, unless a concerted effort is made to strengthen mechanisms and processes for the implementation and supervision of the Policy.

5. It is imperative that with the World Bank's review of its safeguard policies, the protections that exist in OP 4.12 are not lost through the weakening of its scope and content. Rather, the review must be used as a process to identify areas in which the Policy falls short of human rights standards, and how the policy - and compliance with the policy - needs to be strengthened to ensure that it conforms to international human rights law and that marginalized people are not made to suffer the impacts of development, but rather become its primary beneficiaries.
6. As organizations dedicated to defending and promoting people's rights to adequate housing, land and natural resources, we submit these comments to the World Bank with a view to supporting the Bank in undertaking a rigorous review of its safeguard policies and ensuring that its future operations respect and help realize human rights, especially of the most vulnerable. We look forward to engaging with the World Bank throughout the Safeguards Review process to support the adoption of stronger policies, and we will do so in close collaboration with other groups with firsthand experience monitoring involuntary resettlement.
7. These comments highlight areas of the World Bank's policy and practice on involuntary resettlement that are in particular need of updating and aligning with international law and contemporary best practices. While some aspects of the current safeguards meet these standards and should be retained, other elements of the Policy are in urgent need of upgrading if the Bank is to ensure that it does not contribute to the global crisis of forced displacement. We recognize that it is not in the Bank's power to put an end to the epidemic of human rights abuses conducted in the name of development; however, when global public funds are used to finance development,

² The WB Independent Evaluation Group's 2011 Report, [Safeguards and Sustainability](#), indicates that persons affected in the 10-year portfolio sample were about 418,000, of which 41 percent were physically displaced, with the rest facing impacts on livelihoods. Extrapolating to the full Bank portfolio, the resettlement induced each year by new projects affects an average of 166,500 additional persons. Since the resettlement process lasts several years, IEG estimates that at any given time involuntary resettlement affects over 1 million people, two-fifths of which are likely to be physically displaced and three-fifths economically affected by active Bank-financed project. (see page xvi). We note that this figure is extrapolated from a sample that only includes affected people counted in publicly disclosed resettlement action plans. This excludes a potentially significant number of people who have been displaced but not been counted, particularly in Category B projects with Resettlement Policy Frameworks as opposed to Resettlement Action Plans (e.g. Cambodia LMAP).

the strongest possible international standards to protect human rights must apply. This will have direct impacts for people affected by Bank-financed projects and has the potential for catalytic effects on international resettlement policy and practice.

Limitations of these Comments and Recommendations

8. Due to time and resource limitations, these comments are not a comprehensive analysis of the Bank's Policy on Involuntary Resettlement. Significant resources would be needed for such an analysis. We also note that there is a dearth of public aggregate data and information on displacement and involuntary resettlement caused by World Bank-financed projects and that there has not been a Bank-wide review of involuntary resettlement since 1994. Without such information and analysis in the public domain, our ability to fully evaluate the Bank's approach to involuntary resettlement is limited and the rigor of the Bank's review of this critical policy remains questionable. We urge the World Bank to conduct, and make publicly available, a comprehensive evaluation of the implementation of its Policy on Involuntary Resettlement and the degree of success in achieving its objectives. At minimum, the Bank should follow the example of its peer institution, the Asian Development Bank (ADB), which undertook a *Special Evaluation Study* prior to initiating its Safeguard Policy Update, on implementation of involuntary resettlement in ADB-financed projects since the policy was last reviewed.³As a part of this research, and the Safeguards Review more broadly, the Bank should proactively seek out the perspectives of affected communities and other people, organizations, and social movements with diverse experience in the realities of forced displacement and resettlement.

Information Sources for the Submission and Recommendations

9. Despite the above-mentioned limitations in accessing relevant data, we have assembled these comments and recommendations based on: (i) international human rights standards and best practices, (ii) the consensus of the latest scholarly research on forced displacement and resettlement, (iii) our own experience monitoring forced displacement and resettlement connected to Bank and other IFI-financed projects, (iv) case studies provided by individuals and groups from around the world active in monitoring this issue, and (v) key findings of the Inspection Panel from investigations it has conducted over the past decade.

Organization of the Submission

10. The sections that follow provide specific recommendations to broaden the Involuntary Resettlement Policy's scope and strengthen the safeguard measures it prescribes. Section 2 discusses the scope of the policy and makes recommendations related to resettlement that occurs prior to Bank involvement in a project; temporary

³ Asian Development Bank, *Special Evaluation Study on Involuntary Resettlement Safeguards* (Sept 2006).

displacement impacts; restricted access to or use of resources that people depend upon; displacement caused by project externalities; human rights impacts of displacement; voluntary resettlement; and associated facilities. Section 3 recommends a clear prohibition on forced evictions and measures to ensure that involuntary resettlement is truly a last resort, allowed only for projects that stand up to rigorous assessment of their merit in serving the public interest. Section 4 recommends that resettlement under Category A projects with significant displacement impacts should be treated as a standalone project. Section 5 makes recommendations on the use of human rights impact assessments and due diligence. Section 6 recommends stronger measures to ensure access to information, meaningful consultation and active participation in decision-making. Section 7 recommends measures to ensure respect for and fulfillment of the right to adequate housing, including ensuring minimum housing conditions, adequate location and security of tenure at resettlement sites. Section 8 recommends deeper measures to ensure livelihood improvement and discusses the need to move beyond compensation as the primary policy tool and get serious about benefit sharing. Section 9 makes recommendations on cut-off dates and eligibility for benefits. Section 10 makes recommendations to improve resettlement supervision, monitoring and evaluation. Section 11 discusses the need to ensure access to an effective remedy.

2. Policy Scope

11. OP/BP 4.12 covers economic and physical displacement that result from Bank-financed projects and are caused by the involuntary taking of land.⁴ This reflects the impetus for the original version of the policy: the violent forced eviction of some 60,000 people to make way for the Bank-financed Sobradinho Dam in Brazil.⁵ In recognition that other activities connected to Bank projects in diverse sectors can cause displacement, the current policy also covers such activities when, in the judgment of the Bank, they are: directly and significantly related to the Bank-assisted project; necessary to achieve the project's objectives; and carried out contemporaneously with the project.⁶ The policy makes clear that it covers direct economic and social impacts of physical or economic displacement resulting from land acquisition or "other activities" described above.⁷ It also covers the involuntary restriction of access to legally designated parks and protected areas resulting in adverse impacts on livelihoods.⁸ All components of the project that result in involuntary resettlement, regardless of the source of financing fall under the scope of the policy.⁹
12. Despite the important expansion of the scope of the policy beyond displacement caused by land acquisition, the scope remains problematic and overly narrow because:
- It does not explicitly cover displacement that occurs in the project area prior to, or in anticipation of, Bank involvement in a project;
 - It does not explicitly cover temporary displacement or lost access to assets or resources;
 - It does not cover the involuntary restriction of access to resources that people depend upon other than those in legally designated parks and protected areas;
 - It does not cover displacement that occurs because of a project's adverse impacts on the environment or natural resources that people depend upon;
 - It does not cover indirect social and economic impacts, or indeed impacts on all human rights, despite the fact that addressing these can be critical to mitigating the risk of impoverishment, and failing to address them will place the burden of these impacts on those displaced; and
 - It does not cover resettlement that is voluntary in nature, but, nonetheless, requires measures to safeguard against impoverishment and other adverse impacts and to maximize development benefits.

⁴ OP 4.12, para 3.

⁵ Robert H Wade, 'Muddy Waters: Inside the World Bank as It Struggled with the Narmada Projects,' *Economic & Political Weekly*, Vol. XLVI No 40, October 1, 2011, page 40.

⁶ OP 4.12, para 4.

⁷ OP 4.12, para 3.

⁸ OP 4.12, para 3.

⁹ OP 4.12, para 4.

13. We also believe that the Sourcebook on Involuntary Resettlement has misinterpreted the policy scope in relation to associated facilities, and that this needs to be corrected in future guidance materials for Bank staff.

14. Each of these points is explained below.

Displacement Prior to Bank Involvement

15. Many Bank projects that require acquisition of land or natural resources will cause resettlement or displacement during a period prior to implementation of the project or the Bank's involvement. For example, a dam site may be identified and cleared years before a borrower presents the project to the Bank for appraisal. In some cases, resettlement and displacement will have occurred in anticipation of Bank involvement for the specific reason of avoiding compliance with Bank safeguard policies.

16. The Sourcebook on Involuntary Resettlement states: "If resettlement *for the project* begins before initial discussions with the Bank and the acquisition of the area is directly linked to the Bank project, then the substantive aspects of OP 4.12 apply retroactively. In other words, if an area is being cleared *in anticipation of, or preparation for, a project*, OP 4.12 would apply."¹⁰ This should be made explicit in the revised policy.

17. During project appraisal, the Bank should be required to determine whether displacement has already occurred to make way for the project. When this circumstance arises, the Bank should assess whether the objectives of the involuntary resettlement policy have been met for those displaced prior to approving funding for the project. To the extent that policy objectives have not been met, the implementation of a comprehensive remedial action plan should be required as a precondition to allowing disbursement of funds for the project. In the absence of these measures, the Bank will be viewed as complicit in the human rights violations and harms suffered by those displaced regardless of the temporal lapse.

Temporary Displacement

18. During project implementation, such as construction or excavation, people may need to move their dwellings, refrain from accessing land or natural resources, or seek alternative livelihoods on a temporary basis. The impacts on people's lives as a result of temporary displacement are significant and warrant compensation, rehabilitation support and other measures scaled to the duration of the displacement impacts. This should be recognized in the updated policy through extension of its scope to temporary physical and economic displacement. We note that the ADB involuntary

¹⁰ World Bank Sourcebook on Involuntary Resettlement (2004), page 8.

resettlement policy requirements apply to “full or partial, permanent or temporary” displacement.¹¹

Restricted Access to or Use of Resources that People Depend Upon

19. OP 4.12 applies when the State restricts access to resources in “legally designated parks and protected areas” and this has adverse implications on livelihoods. The rationale for limiting this aspect of the scope to legally designated parks and protected areas is unclear. The policy should apply whenever access to or use of land and other natural resources that people depend upon for their physical, economic, social, cultural or spiritual well-being is restricted by a Bank-supported Project. This revision would harmonize the policy scope with other IFI policies. IFC’s Performance Standard 5, for example, covers all restrictions on land use,¹² while the ADB policy applies to involuntary restrictions on land use or on access to legally designated parks and protected areas.¹³

Displacement Caused by Project Externalities

20. The current scope of the policy excludes people who, due to severe social and environmental project impacts that threaten health, safety, livelihoods and food and water supplies, have no choice but to relocate.

21. The Sourcebook states that if environmental externalities “create conditions that pose a serious risk to health or safety, good practice is to include formal land acquisition in project specifications.”¹⁴ It further states that “people forced to relocate by environmental hazards directly related to the project-induced changes in land use are covered by the environmental management plan.”¹⁵ This plan “may have provisions similar to those in OP 4.12.”¹⁶

22. Such cases should fall within the scope of the revised resettlement policy. Displacement caused by these “externalities” hold the same magnitude of risks to affected people, including of impoverishment, landlessness, and homelessness, as involuntary resettlement caused by land acquisition. People who need to be resettled, or who are economically displaced, due to project externalities have the same rights under international law, and should be entitled the same safeguard measures, as those displaced for reasons currently covered by the policy. There is no valid justification for treating them differently since their displacement is caused by a Bank-financed project and their displacement experience is identical. It is not acceptable, therefore,

¹¹ ADB, Safeguard Policy Statement, 2009, Appendix 2, paragraph 5.

¹² IFC, Performance Standard 5, Paragraph 1.

¹³ ADB, Safeguard Policy Statement, 2009, Appendix 2, paragraph 5.

¹⁴ World Bank (2004), *Op cit*, page 11.

¹⁵ *Ibid*, page 11.

¹⁶ *Ibid*, page 11.

for their situation to be covered by an environmental management plan, which may or may not have provisions similar to those in OP 4.12. This is almost certain to translate into a badly handled resettlement and risk mitigation process, if any, and the impoverishment of affected persons.

Impacts of Displacement

23. OP 4.12 covers direct economic and social impacts of displacement. According to the Sourcebook, “direct impacts” means any consequence immediately related to the taking of land or to restrictions in the use of legally designated parks and protected areas.¹⁷ This artificial distinction between direct and indirect impacts contradicts the objective of the policy by precluding the possibility of conceiving and executing resettlement activities as sustainable development programs. Improvement, or even restoration, of livelihoods and living standards of displaced persons is unachievable unless the real and full impact of their displacement is assessed and addressed. As it currently stands, the many and multifaceted impacts that may be regarded as indirect and thus outside the scope of the policy by the borrower, must be shouldered by those displaced, who are almost always poor and least equipped to deal with these burdens.

24. As argued by Theodore Downing soon after the current policy was adopted:

*OP/BP4.12 arbitrarily limits the cost of resettlement to “direct economic and social impacts” resulting from the project’s taking of land, relocation of shelter and loss of assets and income sources. The revised policy permits the borrower to define their liability and responsibilities by drawing an arbitrary “direct/indirect” distinction. This leads to an understatement of total project costs. The policy ignores Bank and academic research that finds externalised costs, such as reintegration, repositioning of communities, loss of food security and ill health, are real and calculable. **The correct, economic litmus test should be: if the costs would not have accrued without the project, then they are project costs and must be factored in.***¹⁸

A sustainable development and human rights-based approach to resettlement, by its nature, does not only address the direct impacts of resettlement. As described at length in Section 5 below, the anticipated human rights impacts of resettlement should be assessed and then addressed through appropriate safeguard measures. This requires much more than an assessment of “immediate consequences” such as impacts on current assets, living standards, and incomes of affected persons. It also requires an assessment of, inter alia, the potential for lost access to resources and opportunities for self-development to which they would have otherwise had access. Without addressing these impacts, the short and long-term risks of impoverishment will not be mitigated.

¹⁷ Ibid, page 19.

¹⁸ Theodore E Downing, Creating poverty: the flawed economic logic of the World Bank’s revised involuntary resettlement policy, Forced Migration Review No 12, 2002, page 14 [emphasis added].

Voluntary Resettlement

25. Some Bank-supported projects provide an option for voluntarily resettling people to improve their living standards.¹⁹ Voluntary resettlement can occur as part of a community development project, for example to cultivate more fertile soil, to move away from a hazardous or polluted area, or to improve access to basic services and facilities. In other circumstances, people may agree to move, on freely negotiated terms, to make way for a project because they believe that the resettlement terms are better than their current conditions. In all of these situations, despite resettlement being voluntary, it remains necessary to safeguard against the materialization of impoverishment risks and implement measures to maximize benefits for resettlers. Thus the same policy objectives and entitlements should apply to voluntary resettlement as involuntary resettlement.
26. Extending the scope of the policy to voluntary resettlement will also close a “loophole” that has been used by governments to avoid triggering the policy requirements by asserting that programs of forced relocation are voluntary in nature.

Associated Facilities

27. When the Bank funds projects that are a part of an integrated system, it cannot ignore the impacts of the necessary associated facilities that allow its investments to function. This interconnectedness must be recognized, and associated facilities within the integrated system should be bound by the same high standards that the Bank demands in its policy.
28. OP 4.12 covers all components of the project that result in involuntary resettlement, regardless of the source of financing. It also covers activities that, in the judgment of the Bank, are: directly and significantly related to the Bank-assisted project; necessary to achieve the project’s objectives; and carried out contemporaneously with the project. This means that activities that fall outside the remit of “the project”, but are critical to the Bank investment in the ways defined above, are covered by the policy if they occur at around the same time as the Bank project. The current policy scope, understood in this way, should be maintained in the updated version in order to avoid Bank complicity in displacement that violates human rights and causes serious harm.
29. We believe that the Sourcebook misinterprets the policy by suggesting that only a due diligence approach is required in such circumstances:

¹⁹ World Bank (2004), Op cit, page 21.

...a Bank-financed power plant could certainly not deliver electricity or generate economic benefits without transmission lines. Similarly, a Bank-financed wastewater treatment plant could not function without a sewerage system. If such facilities are to be built contemporaneously with the Bank-supported project, [...] resettlement needed for them would be reviewed using the Bank's due diligence approach.²⁰

30. Applying the due diligence approach, as explained by the Sourcebook, is a far cry from applying the objectives and measures required by the policy:

When other facilities essential to the functioning of the Bank-financed works are to be constructed at the same time, or shortly after, the Bank-financed work, it is good practice to incorporate the resettlement arrangements for the non-Bank-financed activities into the RP. If the other facilities are newly constructed or are under construction at the same time as the Bank project is under preparation, it is recommended that these arrangements be reviewed for general consistency with Bank policy objectives and standards. If such reviews show that resettlement in these activities falls significantly short of Bank policy standards, good practice would be to discuss with the borrower some retroactive measures to mitigate the impacts of these shortcomings.²¹

31. New guidance materials for Bank staff should correct this misinterpretation of the scope to affirm that the policy objectives and measures apply in full to associated facilities that are directly and significantly related to the Bank-assisted project; necessary to achieve the project's objectives; and carried out contemporaneously with the project.

Recommendations on Policy Scope

1. The revised policy scope should explicitly state that the policy applies retroactively in cases in which resettlement for the project has occurred before initial discussions with the Bank and the acquisition of the area, or restrictions on land use or access to resources within the area, are directly linked to the project. Bank procedures should require the Task Team to determine whether any displacement has already occurred to make way for the project. When this circumstance arises, the Task Team should be required to determine whether the objectives of the involuntary resettlement policy have been met for those displaced. To the extent that policy objectives have not been met, a comprehensive remedial action plan should be required as part of project preparation, as a precondition to allowing dispersal of funds for the project.
2. The revised scope should clarify that the policy applies in cases of full or partial,

²⁰ Ibid, page 11.

²¹ Ibid, page 12 [underlines added].

permanent or temporary physical and economic displacement.

3. The revised policy should apply whenever a Bank-supported project restricts access to or use of land and other natural resources that people depend upon for their physical, economic, social, cultural or spiritual well-being.
4. The policy scope should be extended to cover displacement (including restricted access or use of resources) caused by project externalities that create hazardous conditions, or pollute or otherwise impede the use of resources depended upon by affected persons for their livelihoods and sustenance.
5. The revised policy should cover all direct and indirect impacts of displacement. The economic litmus test to be applied should be: if the costs would not have accrued without the project, then they are project costs and must be factored in. This should apply to both resettlement and restrictions on access to land and natural resources.
6. The policy should apply consistently across all projects that involve “voluntary” or “involuntary” resettlement, with policy entitlements serving as the minimum basis for any negotiated agreement.
7. New guidance materials for Bank staff should affirm that the policy objectives and measures apply in full to associated facilities that are directly and significantly related to the Bank-assisted project; necessary to achieve the project’s objectives; and carried out reasonably contemporaneously with the project.

3. Prohibiting Forced Evictions and Ensuring that Displacement is Truly a Last Resort

Prohibiting Forced Evictions

32. The International Finance Corporation (IFC) took an important step in its 2009 revision of its Performance Standards by adopting as an explicit policy objective the avoidance of forced eviction.²² Forced evictions constitute a gross violation of a range of internationally recognized human rights. The *UN Basic Principles and Guidelines on Development-Based Evictions and Displacement* [hereafter Basic Principles], the most comprehensive interpretation of international law obligations with respect to displacement of this kind, defines forced evictions as: “acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that they occupied or depended upon, thus eliminating or limiting [their] ability...to reside or work in a particular dwelling, residence or location, without the provision of, and access to appropriate forms of legal or other protection.”²³ The World Bank’s Safeguard Policy on Involuntary Resettlement must be revised, in order to operationalize the UN Basic Principles on Development-based Eviction and Displacement and ensure that Bank and borrower practice is consistent with this international law prohibition and best practice among development finance institutions.
33. The revised policy should contain a clear statement that no Bank operations will contribute directly or indirectly to forced evictions and that Bank funds cannot be used to carry out forced evictions. The use of this terminology is important, because it would demonstrate a commitment by the Bank to respect and comply with international human rights law and ensure that it does not contribute to, or facilitate human rights violations by borrower governments, or any project-related subcontractor.²⁴ The need for an unequivocal prohibition of forced evictions in connection with Bank-financed projects is exemplified by the case of the Protection

²² IFC Performance Standard 5, Objectives. While IFC adopts a definition of forced evictions in footnote 23 of Performance Standard 5 that is consistent with international human rights law (CESCR General Comment 7 and the UN Basic Principles), we note that its paragraph 24 is inconsistent with international law. *Forced evictions* constitute a gross violation of human rights and are prohibited under international law. *Evictions*, however, may be carried out in exceptional circumstances (see paragraph 21 of the UN Basic Principles) with the provision of appropriate forms of legal or other protection necessary to ensure that human rights are respected.

²³ UN Basic Principles, op cit., para 4.

²⁴ As a specialized agency, the World Bank is required at a minimum to respect the purposes set forth in Article 55 of the Charter, including the “universal respect for, and observance of, human rights.” Moreover as an international organization, the World Bank, is a subject of international law and, as such, is “bound by any obligations incumbent upon [it] under general rules of international law ...” (International Court of Justice, Interpretation of the Agreement of 25 March 1951 between the World Health Organization and Egypt, Advisory Opinion (20 December 1980), page 73, para 37. See also, Mac Darrow, *Between Light and Shadow*, The World Bank, The International Monetary Fund and International Human Rights Law (Oxford, 2003); Bahram Ghazi, *The IMF, The World Bank Group and the Question of Human Rights* (Ardsey, NY, 2005); S. Skogly, *Human Rights Obligations of the World Bank and the International Monetary Fund* (London, Cavendish, 2001.)

of Basic Services Project in Ethiopia, in which the project, administered and partly financed by the Bank, has been implicated in a violent campaign of forced relocations (see Box 1).

Box 1: Ethiopia Protection of Basic Services Project

A grave example of forced evictions in the name of development, indirectly financed by the World Bank, has been occurring over the past two years in Ethiopia. The Ethiopian government is forcibly moving tens of thousands of indigenous people, mainly Anuak, in the western Gambella region from their homes and traditional lands to new villages under its “villagization” program. The Ethiopian Government contends that the program is voluntary and that its objective is to “fight poverty and ignorance” by increasing minority peoples’ access to basic services and infrastructure. However, in its 2012 report, “Waiting Here for Death,” Human Rights Watch documents widespread human rights abuses at all stages of the program, including forced displacement, beatings, and arbitrary arrest and detention. The displaced families have also been denied their rights to food, education and adequate housing in the new villages, despite the fact that the program is justified on the basis of improving relocated people’s livelihoods.

Villagization is not limited to Gambella. A study published by the Ministry of Foreign Affairs of Finland, corroborated Human Rights Watch’s findings with respect to villagization in the Benishangul-Gumuz region. The study states that some members of affected communities said that they did not relocate of their own free will, but did so out of fear of imprisonment or to otherwise “avoid trouble”. It further reports that some women stated that officials demolished or threatened to burn down houses. Villagization is also reportedly occurring in the regions of Somali and Afar. According to published reports a total of 1.5 million people throughout the lowland areas of the country will be resettled under villagization programs.

Despite the serious human rights abuses that have accompanied the relocations, the villagization programs are being indirectly financed by the World Bank and other donors (collectively known as the Donor Assistance Group) through the Protection of Basic of Services (PBS) project. PBS constitutes the major source of funding to the budgets of local government responsible for carrying out villagization, and in particular, the salaries of public servants directly involved in carrying out the forced evictions. Yet, the Bank’s Involuntary Resettlement Policy does not explicitly prohibit the use of Bank funds to carry out forced evictions, paving the way for Bank complicity in the egregious crimes committed by the Ethiopian government.

Sources: Human Rights Watch, “‘Waiting Here for Death’ Displacement and Villagization in Ethiopia’s Gambella Region,” (2012); Finnmap, “Socio-economic baseline study and assessment of the impact of villagisation”, (Ministry for Foreign Affairs of Finland), 2 May 2012.

Ensuring that Displacement is Truly a Last Resort

34. Under international law, evictions, including involuntary resettlement, are only permitted in exceptional circumstances, when, inter alia, the project causing the displacement is undertaken solely for the purpose of promoting the general welfare consistent with international human rights obligations, and no viable alternatives to meeting those general welfare objectives are available.²⁵ In such cases, legal protections must be put in place to ensure full respect for human rights before, during and after eviction.²⁶
35. The current involuntary resettlement policy pre-supposes that the project justifies the evictions or restrictions of access to resources and does not contain a requirement to first assess whether the project promotes the general welfare. Whether or not the project meets the international law criteria to justify involuntary resettlement should be determined based on an assessment by an independent third party, including through consultations with expected beneficiaries and potentially affected persons about their development priorities, with particular emphasis on the development priorities of the poorest and most marginalized groups. A project will not meet the “general welfare threshold” if it will violate affected people’s human rights or if the magnitude of displacement and the degree of risk of harms to affected persons is not reasonable and proportional to its public value.
36. In cases in which it turns out that acquired land will not be used for the general welfare purpose originally intended, the policy should guarantee a right of former inhabitants to return wherever feasible and within a stipulated time frame (see Box 2).
37. For projects that do not meet the “general welfare” threshold, resettlement or restrictions on access to resources can only occur on a genuinely voluntary basis predicated on free, prior and informed negotiations under conditions that establish a fair and level playing field. In such cases, where only voluntary resettlement is permitted under international law, policy objectives and entitlements should continue to apply as a minimum basis for the terms of any agreement to resettle.
38. The first objective of OP 4.12 is to avoid and minimize involuntary resettlement wherever feasible.²⁷ This objective reflects the Bank’s recognition of the “severe economic, social, and environmental risks” of displacement²⁸ Involuntary resettlement is a particularly complex and challenging undertaking for all actors involved and the global record in achieving successful human rights-compliant large-scale resettlement is dismal. Avoiding displacement thus translates into reduced risks

²⁵ Evictions must also be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) reasonable and proportionate; undertaken solely for the purpose of promoting the general welfare, (d) reasonable and proportionate... (UN Basic Principles, op. cit., para 21. See also Committee on Economic, Social and Cultural Rights, General Comments 4 and 7.)

²⁶ Ibid.

²⁷ OP 4.12, para 2(a).

²⁸ OP 4.12, para 1.

of human rights violations, and, often, lower overall project costs. Yet, despite the commendable policy objective, case research shows that efforts to avoid and minimize resettlement are often not robust.

39. According to current Bank procedures, the Bank must satisfy itself that the borrower has explored all viable alternative project designs to avoid involuntary resettlement and, when it is not feasible to avoid resettlement, to minimize its scale and impacts, for example, through the realignment of roads or reduction in the height of dams.²⁹
40. As illustrated by the case of the Second Urban Environment Sanitation Project in Ghana (Box 2), additional procedural requirements are needed in the new Policy on Involuntary Resettlement to better give effect to this fundamental objective of avoiding and minimizing displacement wherever possible. This is particularly the case given the reduced requirements to explore alternative project designs during project appraisal in OP/BP 10.00 on Investment Project Financing as compared to the operational policy and bank procedures that they replaced. Our recommendations below for more participatory, comprehensive and independent assessments of alternative project designs and options will more meaningfully give effect to the policy objective of avoiding and minimizing displacement, and explicitly extend these objectives to restrictions on access to land and natural resources.

Box 2: Second Urban Environment Sanitation Project Ghana

In 2004 the Bank approved a loan to the Government of Ghana for an urban environment and sanitation project. A sub-component of the project aimed to improve solid waste management, including through the development of the Kwabenya sanitary landfill intended to serve the greater Accra area. Despite recognition that a new landfill was necessary, there was considerable local opposition to the design of the project due to the significant displacement it would cause and the health risks it would pose to surrounding communities. This opposition resulted in a request for investigation to the Inspection Panel on behalf of the Agyemankata community.

The Panel found that the Bank did not comply with operational policy requirements for an analysis of alternatives, including a systematic analysis of feasible project sites. The Kwabenya site had been selected before the Bank became involved in the project. Rather than thoroughly reviewing this decision and the basis upon which it was made, the Panel found that the Bank “by and large [took] this site selection for granted.” However, several years had passed since the site had been selected and the conditions around the Kwabenya site had changed considerably, with many more people moving into its vicinity. The failure to review and assess the project design resulted in strong resistance to the project and ultimately to ongoing delays in project implementation.

Facing fierce and hostile opposition from local communities, the Ghanaian Government

²⁹ BP 4.12, para 2(b) and 5.

eventually decided to exclude Kwabenya from the Project. However, some taking of land and extinguishing of rights had already been carried out. Thus the government was still bound by the terms of the credit agreement and had to comply with the involuntary resettlement policy with respect to persons already affected. As of August 2011, Bank Management was trying to convince the government that it would need to either: a) return the land by rescinding the expropriation and compensating the owners for any losses suffered as a result of loss of control and use of the land during the intervening years, in a manner consistent with OP 4.12; or b) keep the land and compensate the affected persons in a manner consistent with OP 4.12.

These remedial actions, in cases in which land acquired will no longer be used for the identified public interest purpose, are not clearly stated in OP 4.12, which may pose a challenge to the Bank's entreaties to the Ghanaian Government.

Sources: World Bank Inspection Panel, *Investigation Report. Ghana: Second Urban Environmental Sanitation Project (UESP II) (2009)*; World Bank, *Progress Report to the Board of Executive Directors on the Implementation of the Management Action Plan in Response to the Inspection Panel Report on the Ghana Second Urban Environment Sanitation Project (2011)*.

Recommendations on Prohibiting Forced Evictions and Ensuring that Displacement is Truly a Last Resort

1. The policy should contain a clear statement that Bank operations will not contribute directly or indirectly to forced evictions and that Bank funds cannot in any circumstances be used to carry out forced evictions. The policy should adopt the definition of forced evictions contained in the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*.
2. The policy should require an independent assessment of the general welfare value of any proposed projects that will cause displacement, including restrictions on access to or use of land and/or other natural resources. A project will not meet the "general welfare threshold" if its public purpose cannot be affirmed through a democratic process, including meaningful consultation with expected beneficiaries and affected persons about their development priorities, with an emphasis on poor and marginalized groups; if it will violate affected people's human rights; or if the magnitude of displacement and the degree of risk of harms to affected persons is not reasonable and proportional to its public value.
3. The general welfare value of projects in which a private company has a substantial stake should be subject to additional scrutiny and extensive consultation processes, including with affected persons, independent experts and civil society.
4. The policy should make clear that for projects that do not meet the "general welfare threshold," resettlement can only occur on a genuinely voluntary basis predicated on free, prior and informed negotiations under conditions that establish a fair and level

playing field. In such cases, where only voluntary resettlement is permitted under international law, policy objectives and requirements should continue to apply, as a minimum basis for the terms of any agreement to resettle.

5. The policy should put in place practical mandatory procedures to ensure an inclusive, transparent, robust and participatory process of exploring alternative project designs and options, including a “no project option”, to ensure that involuntary resettlement and restrictions on access to or use of land and other natural resources is avoided and minimized to the fullest extent possible. *In situ* solutions should be explored in consultation with affected persons and adopted unless it is not technically feasible to do so, or the affected persons prefer resettlement to an alternative site. The “no project option” should be given serious consideration where the project will cause large-scale displacement or result in extensive economic, social and environmental costs, and in environments in which there is a high-risk that policy objectives and requirements will not be met. The assessment of alternatives, including the feasibility of *in situ* solutions, should be undertaken by an independent third party with no conflict of interest in the project. The assessment should be based on the views of a variety of stakeholders, with meaningful opportunities provided to expected affected persons to propose alternatives.
6. With respect to projects that impact upon territories, lands and natural resources of indigenous peoples, the policy should ensure that their right to free, prior and informed consent is respected.
7. The policy should explicitly state that land acquired under a Bank-financed project for a particular public purpose should not be utilized for a different purpose. If circumstances arise in which the land is no longer required for the project, the original land-users must be given the right to return. In case of land acquired in excess that is unutilized, the policy should require return of the land to the original land-users, or, if return is not feasible, its use as common property for the local community, or otherwise for the general welfare.

4. Category A Resettlement: Using a Twin-Project Approach

41. As early as 1994 the Bank resolved in a strategic conclusion to a review of 192 projects involving resettlement that: “Future infrastructural operations that displace a large number of people will normally be processed as twin projects” because “[t]reatment of major resettlement operations as full fledged projects will better mobilize the appropriate administrative framework and skills needed to carry out resettlement successfully.”³⁰ OP 4.12 allows for Bank financing of “a free-standing resettlement project with appropriate cross-conditionalities, processed and implemented in parallel with the investment that causes the displacement.”³¹
42. In practice, this option is almost never selected. The single case between 1986-2003 in which resettlement was processed from the outset as a freestanding project, the Xiaonloangdi Dam Resettlement project in China for which 160,000 people were resettled, was evaluated as one of the most successful resettlements financed by the Bank.³² Conversely, the Inspection Panel observed of the Mumbai Urban Transport Project that the decision to abandon the initial plan to treat resettlement of some 120,000 urban dwellers as a free-standing project had “profoundly detrimental and enduring” repercussions.³³

Box 3: Mumbai Urban Transport Project

The Mumbai Urban Transport Project (MUTP) sought to address the serious deficiencies in the city’s transport system. The project was expected to displace some 80,000 urban dwellers, and was later revised to 120,000, making it one of the Bank’s (and India’s) largest resettlement undertakings.

Reflecting the magnitude and complexity of the displacement impacts, the MUTP initially began as “twin projects”: one for building transport infrastructure and one for resettlement, each with distinct objectives and designs, and with separate project preparation teams. The Inspection Panel explains: “The [two] tasks lying ahead were of vast proportions, both socially and technically”, which “typically cannot be handled by the same implementation agency, given the fundamental difference in their nature,

³⁰ World Bank: Resettlement and Development, Report of the Task Force for the Bank-Wide Review of Involuntary Resettlement 1986-1993, ESSD Vice-Presidency, The Environment Department, p. 184.

³¹ OP 4.12, para 33.

³² Michael Cernea, “Compensation and Investment in Resettlement: Theory, Practice, Pitfalls, and Needed Policy Reform,” in *Can Compensation Prevent Impoverishment?* (2008), Eds. Michael Cernea and Hari Mohan Mathur, p. 30; and World Bank Inspection Panel, *Investigation Report. India: Mumbai Urban Transport Project* (2005), page 28.

³³ *Ibid*, para 40 and 41.

substance, objectives, institutional capacity requirements, skills, staffing, and anticipated implementation challenges.”³⁴ According to the Panel, the Bank and the Government of India agreed, after considerable analysis, that a successful infrastructure project could be responsibly undertaken only if a full-scale resettlement and rehabilitation project preceded the infrastructure’s construction and was carried out successfully. The approach was designed to handle resettlement through a freestanding project, rather than as a secondary “component” subordinated to the main infrastructure project.

This decision reflected one of the findings of the Independent Review of the infamous Narmada Sardar-Sarovar Project that the “narrow and under-financed framework” for addressing the Project’s massive displacement impacts as a mere *component* was “one of the key constraining factors that caused lack of institutional capacity, low implementation standards, transgression of Bank policy and procedures, and failure.”³⁵

Yet, before project implementation commenced, the Country Department Director “abruptly reversed course from Twin Projects to a single project” in which resettlement became a component of the “main” transport infrastructure endeavor.³⁶ This decision, according to the Inspection Panel, was “seemingly intended to diminish the resettlement’s “visibility” rather than to cater to its importance” and its effect was “profoundly detrimental and enduring.”³⁷ Key facets of resettlement were poorly executed, leading to a loss of income and severe hardships for some relocated households and shopkeepers.

Source: World Bank Inspection Panel, *Investigation Report, India: Mumbai Urban Transport Project (2005)*.

43. Since the success of resettlement in terms of impacts on people’s lives and livelihoods is irrelevant to the technical success of the investment project, there is often minimal incentive to give the resettlement component the attention and resources it deserves. The “main” investment project will always have completely different attributes, goals and schedules to the resettlement component. Treating resettlement as a stand-alone project will trigger a more exhaustive set of analytical, preparatory, costing, supervision, monitoring and evaluation activities than if the resettlement is addressed as an (ancillary) component of the investment project that is inducing the displacement.

44. Before a twin-project approach commences, the general welfare value of the original investment project must first be established, including an assessment of whether the magnitude of displacement and the degree of risk of harms to affected persons is reasonable and proportional to the project’s public interest benefits. However, once the decision to proceed with the project is made through independent assessments and democratic processes (as per Section 3 recommendations above), the task of addressing large-scale displacement impacts should be handled separately, including

³⁴ *Ibid*, page 26 and 27.

³⁵ *Ibid*, page 28.

³⁶ *Ibid*, page 29.

³⁷ *Ibid*, para 161 and 163.

through specialized staff, dedicated due diligence and impact assessments, economic and social analysis, and monitoring, supervision and evaluation processes. The resettlement schedule and budget should fully reflect actual required inputs to meet involuntary resettlement policy objectives.

45. The Independent Evaluation Group (IEG) found in its recent review of safeguards that the Bank’s monitoring and evaluation of social and environmental performance is poor, noting that, “...in the absence of clear indicators and baseline data, measurement of performance in most projects is limited or nonexistent.”³⁸ We provide detailed comments on supervision, monitoring and evaluation of resettlement in Section 10; however, we wish to underscore here that the recommendation of treating large-scale resettlement as a free-standing project seeks to address the Bank’s weaknesses in monitoring and evaluation of social impacts by ensuring that performance of resettlement cannot be sidelined to the “larger” development objectives of the original investment project. Since resettlement is elevated to “project-status,” rather than merely a component, institutional and staff incentives to achieve successful outcomes will be placed on par with other investment projects.

Recommendations on Category A Resettlement: Using a Twin-project Approach

1. For Category A projects with significant displacement impacts, the policy should require resettlement to presumptively be treated as a separate project in order to trigger the full set of analytical, preparatory, supervision, monitoring and evaluation activities. The separation of projects, however, should only occur (a) after the general welfare value of the investment project causing the displacement has been established, based on meaningful consultations and taking into account the displacement impacts – material and non-material, and short-term and long-term; and (b) once the original investment project has been designed to minimize displacement to the fullest extent possible. A resettlement project cannot be considered for financing without the prior verification of the general welfare value of the investment project.
2. Disbursements of funds for the original investment project should be linked to regular independent audits of the resettlement activities and their compliance with the policy.

³⁸IEG, Safeguards and Sustainability Policies in changing World: An Independent Evaluation of World Bank Group Experience, The World Bank, Washington D.C., 2010, p. 43.

5. Human Rights Impact Assessment and Due Diligence

46. The state-of-the-art in impact assessments has advanced considerably since the World Bank last reviewed its Involuntary Resettlement Policy. In particular, the importance of conducting human rights impact assessments of development investments has been broadly acknowledged.³⁹ Given the unusually high risk of human rights violations during involuntary resettlement, and conversely, the opportunities for advancing the enjoyment of a range of human rights through a well planned and executed resettlement project, the revised policy should require human rights impact assessments be conducted during project preparation. Undertaking human rights impact assessments is a precondition for ensuring that the Bank is not complicit in human rights violations as a result of displacement caused by its projects. It is also an essential foundation for designing Resettlement Plans and Process Frameworks that effectively achieve policy objectives, including conceiving and executing resettlement as a sustainable development program and improving the livelihoods and standards of living of those resettled.
47. An assessment of potential impacts on human rights looks not only at current assets, living standards, and incomes of affected households and communities, as currently required by the policy,⁴⁰ but it also covers the potential for lost resources and opportunities for self-development to which they would have otherwise had access. These resources and opportunities relate to economic development, social and cultural fulfillment, and civil and political activity and protections. In other words, they relate to the full range of civil, political, economic, social and cultural rights. The way in which the enjoyment of these rights is likely be affected by displacement, for individuals, households and disaggregated groups – *both positively and negatively* - is thus the subject matter of a comprehensive human rights impact assessment. Anything short of this is failing to capture the real and full implications of involuntary resettlement on people's lives. Without the kinds of questions and scoping human rights impact assessments elucidate, many critical risks - and opportunities - can remain invisible.
48. A comprehensive human rights impact assessment of a resettlement process involves the following:
- The collection of disaggregated baseline data on household organization, assets, living standards, productive activities and skills, incomes and access to basic services.
 - The collection of disaggregated baseline data on household access to resources and opportunities, including sustenance and livelihood opportunities; educational

³⁹ For example, in 2005, the United Nations Human Rights Commission requested that the UN Secretary-General appoint a Special Representative with a mandate for three years, to among other things, develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises. Numerous human rights impact and risk assessment tools have been developed over the past decade, such as the Human Rights Compliance Assessment, developed by the Danish Institute for Human Rights, and Human Rights Risk Tools, developed by Maplecroft.

⁴⁰ OP. 4.12, Annex A, para 6.

- and recreational facilities, especially for youth; health services and resources; community, social and cultural resources and facilities; and opportunities to participate in public and community affairs and to engage in mechanisms for State-citizen interface. Information on the barriers to accessing these resources and opportunities for all affected persons or particular groups is also collected.
- The collection of data on community organization and communal assets, productive activities, skills and resources.
 - The collection of data and studies on patterns of exclusion, marginalization and discrimination faced by affected persons, including for example affected women, children, disabled persons, the elderly, and ethnic and other minorities.
 - Studies on social and cultural characteristics, including systems and institutions that may be affected by displacement.
 - An assessment of the likely negative impacts on the current situation (assets, living standards, income, livelihoods, etc.) and opportunities for self-development (due to the level, range and quality of access to resources and opportunities) of affected persons as a result of physical and/or economic displacement or restrictions on access to natural resources, unless those impacts are mitigated. A variety of options for mitigation measures are identified and explored. Particular attention should be paid to the potential disproportionate impacts of displacement on vulnerable and marginalized groups such as people with disabilities, children, women, the elderly and minorities and the design on corresponding special mitigation measures.
 - An exploration of the possibilities for improving the current situation (assets, living standards, income, livelihoods, etc.), expanding opportunities for self-development (due to the level, range and quality of access to resources and opportunities) and reversing exclusion, marginalization and discrimination through a variety of tailored resettlement, rehabilitation and development options.
49. The human rights impact assessment should be conducted through participatory processes to the fullest extent possible, with all data verified at the household and community level. The options for mitigating losses, improving access to resources and opportunities and reversing marginalization should be presented in an accessible form to affected persons. The human rights impact assessment will thus inform the decision making of affected persons during the resettlement planning process or the development of a process framework to address impacts of restrictions on access to resources (see Section 5 below). The Bank should ensure that the findings of the impact assessment are ultimately reflected in Resettlement Plans or Process Frameworks. The absence of a comprehensive *ex ante* human rights impact assessment to inform Resettlement Plans and Process Frameworks will almost certainly preclude genuinely successful and sustainable outcomes.
50. A series of *ex post* human impact assessments at regular intervals are also necessary to ensure that policy objectives are being met and the human rights of affected persons, and disaggregated groups, especially those identified as (formerly) vulnerable and marginalized, are fully respected. *Ex post* impact assessments should measure the extent to which resources are being appropriately utilized to

progressively realize human rights for project-affected persons. Corrective action plans, if required, should be based on *ex-post* impact assessments.

51. In addition to the above, as part of its due diligence, the Bank should undertake an independent human rights risk assessment of the Resettlement Plan, Policy Framework or Process Framework once a draft is developed.⁴¹ Displacement carries significant risks of human rights violations, including forced evictions and regressions in the enjoyment of a range of human rights. These risks are heightened by poor resettlement planning and implementation due to capacity constraints and/or a lack of political will to respect people's rights. The level of such risks in the given governance environment needs to be thoroughly assessed by the Bank, including by examining the borrower and responsible agency's record and experience with resettlement, and mitigated accordingly.
52. The Bank's record on conducting impact assessments and socioeconomic studies, even when required by policy, is poor. OP 4.12, Annex A requires that socioeconomic studies be conducted in the early stages of project preparation with the involvement of potentially displaced people.⁴² In practice, however, thorough studies are often not conducted. The last review of resettlement undertaken by the Bank in 1994 found that only 45 percent of active projects over the prior eight years had completed baseline income surveys.⁴³ In the absence of a more recent review, we can only assume that this practice has not improved, as suggested by the failure to collect disaggregated census data for people affected by the Nigeria Western African Pipeline Project (see Box 4.)
53. Comprehensive household baseline data and other socioeconomic studies as required in Annex A, as well as human rights risk assessments as described above, are indispensable both for resettlement planning and budgeting and for monitoring and evaluation of resettlement outcomes. Shortcuts on gathering data and conducting analyses and assessments are thus unacceptable.

⁴¹ In addition to current requirements set out in BP 4.12 paragraph 10.

⁴² OP 4.12, Annex A, para 4 and 6.

⁴³ Michael Cernea, "Compensation and Investment in Resettlement: Theory, Practice, Pitfalls, and Needed Policy Reform," in *Can Compensation Prevent Impoverishment?* (2008), Eds. Michael Cernea and Hari Mohan Mathur, citing World Bank (1994/1996), *Resettlement and Development: Report on the Bank-Wide Review of Projects Involving Involuntary Resettlement*, Task Force report, p. 130.

Box 4: Ghana/Nigeria Western African Pipeline Project

The West African Gas Pipeline Project involves the construction of a new pipeline system that will transport natural gas from Nigeria to Ghana, Togo and Benin. In Nigeria, the development of the pipeline involves the displacement of people associated with the acquisition of 144 hectares of land for the right of way (ROW) and ancillary facilities. The 25-meter-wide ROW traverses 23 communities made up of approximately 90,000 people.

In 2006 the Inspection Panel received a request for investigation by affected communities asserting that the Project would cause irreparable damage to their land and destroy their livelihoods.

In its investigation report the Panel observed that “[m]any of the problems... can be linked to the lack of adequate socio-economic data gathered as a foundation for actions relating to resettlement.”⁴⁴ Inadequate information had been collected on, inter alia, the number of displaced persons, and relatedly, the local land tenure systems that determined who had user rights to the acquired land; the proportion of each family’s holdings that had been acquired and thus the impact on land-based livelihoods; and the socioeconomic risks to vulnerable persons. Averages and aggregates were used to inform the socio-economic analysis and safeguard measures, rather than specific individual and household data. A small subset of households was used to estimate the Project’s impact on all displaced households. The failure to collect sufficient and appropriate data, and to undertake comprehensive socio-economic analyses of the data, resulted in extremely insufficient compensation payments, well below replacement value, as well as an absence of other measures to ensure the restoration of living standards. In short, the lack of data meant that the actual impoverishment risks were not measured or mitigated by the resettlement action plan. As articulated by the Panel, “the absence of adequate baseline information makes it impossible to ensure that the impacts and potential impoverishment risks facing local people are properly addressed.”⁴⁵

Moreover, despite the fact that the operation of an existing pipeline was essential for gas to flow through the new pipeline, the environmental and socioeconomic secondary impacts “upstream” and “downstream” of the Project were not assessed. The Panel found that associated facilities and supply areas should be viewed as an inter-connected system in defining the project’s area of influence for the purposes of socio-economic assessment.

The Panel also highlighted the lack of due diligence on the part of Bank Management in determining whether the agency responsible for resettlement had the capacity to carry out the resettlement action plan. The Panel was unable to find a formal assessment of the agency’s past experience and capacity, despite indications of a poor record that included direct warnings by civil society groups in an open letter to the Bank President about

⁴⁴ The World Bank Inspection Panel, *Investigation Report, Ghana: West African Gas Pipeline Project* (2008), page 29.

⁴⁵ *Ibid.*, page xv.

human rights violations and conflicts related to the project prior to the Bank's involvement.

The Panel found that these failures amounted to violations of current Bank policy and procedures. The case also underscores the need for both greater clarity on policy requirements with respect to the collection of data and socio-economic analysis, and greater scope and depth of impact assessments in order to inform mitigation measures that will effectively safeguard against risks of impoverishment and human rights violations.

Source: World Bank Inspection Panel, *Investigation Report, Ghana: West African Gas Pipeline Project (2008)*.

Recommendations on Human Rights Impact Assessment and Due Diligence

1. The revised policy should require that *ex ante* human rights impact assessments be conducted in the early stages of project preparation and *ex post* impact assessments at regular intervals for several years after resettlement or restrictions on access to resources has occurred.⁴⁶ All *ex ante* and *ex post* impact assessments must be publicly disclosed in full, and translated summaries in accessible language should be prepared and distributed to affected persons.
2. The World Bank should design an assessment tool or toolbox that is consistent with best practice in rights-based impact assessment. The assessment should collect and compile disaggregated data, regarding the human rights impacts on affected persons and communities, taking into account, inter alia, all assets, resources and opportunities expected to be lost as a result of displacement, as well as patterns of exclusion, marginalization and discrimination that must be addressed. Special attention should be paid to the impacts on vulnerable and marginalized groups, including people with disabilities, children, women, the elderly, minorities and other groups subject to discrimination.
3. Assessments should be conducted with full participation of affected people. Household specific information should be verified by affected households and they should be afforded opportunities to challenge any survey results with which they disagree.
4. Cumulative Impact Assessments, including upstream and downstream impacts from associated facilities, should be required wherever relevant.
5. Resettlement Plans and Process Frameworks should reflect the findings of the human rights impact assessment.
6. Bank procedures should require the Task Team to conduct its own human rights risk assessment of the draft Resettlement Plan, Policy Framework or Process Framework taking into account the capacity and commitment of the borrower to fully implement it.

⁴⁶ To be determined based on the magnitude and other particularities of the resettlement project.

6. Access to Information, Consultation and Active Participation in Decision Making

54. The importance of access to information and opportunities for participation and consultation for affected people during the resettlement process is firmly established. The magnitude of implications of involuntary resettlement on the lives of people displaced is of such high order that it would be manifestly unjust and unconscionable to exclude affected people from enjoying a significant degree of control over decision making. Moreover, the policy objective of conceiving and executing resettlement activities as sustainable development programs can only be met in practice if fundamental aspects of the process reflect the needs, priorities and choices of affected people. These notions are reflected to some degree in the current policy, which requires borrower-governments to include in their resettlement planning instruments “measures to ensure displaced persons are (i) informed about their options and rights pertaining to resettlement; and (ii) consulted on, offered choices among, and provided with [...] resettlement alternatives.”⁴⁷ The policy also requires that displaced persons and their communities, and any host communities, be “offered opportunities to participate in planning, implementing, and monitoring resettlement.”⁴⁸
55. Case research shows, however, that these policy requirements have not routinely translated into meaningful consultation of and active participation in decision-making processes by affected people. In 12 of 15 requests submitted to the Inspection Panel since 2001 that raised non-compliance with OP 4.12, inadequate access to information and consultation formed part of the complaint. In these instances, the failure to ensure the active participation of affected people in resettlement planning, implementation and monitoring resulted in poor resettlement results that did not meet policy objectives.
56. The policy also has some obvious lacunae that need to be addressed. First, there is no specific requirement that affected people are informed about their rights and entitlements under the policy at the earliest stages so that they can use this information to influence and check the design of the project and resettlement plan, including the economic analysis and general welfare justification for the project and the exploration of alternatives to avoid displacement. As noted above, evictions and displacement are only permitted under international law in exceptional circumstances. Only development projects that have been rigorously evaluated to ensure that they promote the general welfare and for which there are no viable alternatives to avoid displacement, are justified. In order for the Bank to comply with its international obligations and promote international best practice, it must ensure that meaningful, free, prior and informed public consultation - especially of those who stand to be directly affected - is carried out in relation to a project’s purpose, design and impacts and taken into account before the project is approved.

⁴⁷ OP 4.12, para 6(a).

⁴⁸ OP 4.12, para 13(a).

57. Currently, there is also no requirement that affected people are informed of their right to access the Inspection Panel and the method for doing so. This omission must be corrected: Creating awareness about these rights and channels for claiming them is an essential measure to address prevailing power asymmetries and improve accountability.
58. Second, there is no definition or explanation of “meaningful consultation” in the current policy. Consultation in practice often amounts to little more than top-down information sessions, carried out by parties with a financial stake in the outcome, during which affected people are told what they will be offered and where they will be resettled. In the worst cases the requirement for consultation devolves into manufacturing “consent” through duress. A clear articulation of the components and characteristics of meaningful consultation in Bank policy would constitute an obvious and simple step in facilitating improved practice. The ADB 2009 Safeguard Policy Statement contains a definition of meaningful consultation,⁴⁹ while the EBRD has a standalone policy on Information Disclosure and Stakeholder Engagement. Both could inform the Bank in developing its approach to consultation in its new integrated safeguards framework, though these policies fail to incorporate requirements to avoid the conflict of interest inherent in consultations that are carried out by parties with a stake in the project. We also refer the Bank to the Voluntary Guidelines on the Responsible Governance of Tenure, which define consultation and participation as “engaging with and seeking the support of those who [...] could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.”⁵⁰
59. Third, both the weaknesses in current practice and the policy objective of treating resettlement as a sustainable development program, point to the need for a new approach to engaging affected people in the process of resettlement. For certain elements of the process, there should be a shift beyond the notion of merely consulting affected people, to the provision of independent advice and technical assistance to give people greater control over decision making related to resettlement. This shift should support greater inclusion of marginalized groups in decision making processes. It should also incorporate proactive efforts to elevate the degree of control in decision making exercised by women, in recognition of the disproportionate impacts of evictions and displacement that they face.

⁴⁹ “Meaningful consultation” is a process that: “(i) Begins early in the project preparation stage and is carried out on an ongoing basis throughout the project cycle; (ii) Provides timely disclosure of relevant information that is understandable and readily accessible to affected people; (iii) Is undertaken in an atmosphere free of intimidation and coercion; (iv) Is gender inclusive and responsive, and tailored to the needs of disadvantaged and vulnerable groups; and (v) Enables the incorporation of all relevant views of affected people and other stakeholders into decision making, such as project design, mitigation measures, the sharing of development benefits and opportunities, and implementation issues.” - ADB, Safeguard Policy Statement (June 2009), Appendix 2, para 26 and 27.

⁵⁰ The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, 2012, 5.

60. Done properly, this could change the paradigm of resettlement processes by providing affected people with the knowledge, resources and tools necessary to enable them to develop and implement, with all necessary support, appropriate parts of the resettlement plan. Resettlement activities, as envisaged, would evolve into a genuine community-driven development initiative based on the priorities set by beneficiaries. This would require corresponding planning methodologies, the injection of appropriate resources and ongoing investment in the communities over a sufficient time period.
61. The value of participatory resettlement planning and implementation is illustrated by Scott Guggenheim's case study on the Mexico Hydroelectric Project in the World Bank Participation Sourcebook (see Box 5).

Box 5: Mexico Hydroelectric Project

The Mexico Hydroelectric Project involved the construction of the Aguamilpa and Zimapan hydroelectric dams and the resettlement of 3000 people. The Bank Task Team included Scott Guggenheim, a field anthropologist with years of experience working in central Mexico. Although the project was already in negotiation, the team set out to implement "a new approach to resettlement – an approach based on creating an institutional capacity for consultation and participation." This included the introduction of "tight conditions" to require the national power company to "develop an organizational structure and obtain professional skills that would be conducive to participatory planning."

In Aguamilpa, where the affected people were mostly Huichol Indians, the company's first attempts to organize group meetings and discussions about resettlement were met with complete failure. After the project's independent advisor recognized the need for a more culturally appropriate approach, the company increased the number of small field teams and began house-to-house visits to the remote settlements, enlisting the help of local community leaders. The project built in a series of basic service programs, such as health, cultural recreation, and basic needs that developed *trust* before they moved into the resettlement discussion. "After years of 'top-down' planning," Guggenheim writes, "the Huicholes for the first time began contributing their ideas about good locations, proper housing designs, and where to find the right priests (mara 'kames) for a proper inauguration."

The participation strategy in Zimapan was more sophisticated, according to Guggenheim, because the strategy itself was negotiated locally:

"Community antagonism toward the first resettlement proposals had been so intense that people had repudiated their official leaders, who had acceded to the company's plan, and formed their own leadership. This evolved into a "negotiating committee" that developed a protocol for all resettlement discussions with CFE [the national power company]: full disclosure of information, joint financial audits, no individual deal making, and so on.

Although the new resettlement unit was allowed to field social workers, the only binding agreements were those signed jointly in the monthly meetings in the assembly halls. Saul Alinsky would be proud.”

According to Guggenheim, institutional resistance and community factionalization and stratification made the participation strategy difficult to implement. It also proved challenging as the process went on to ensure that the voices of women were heard in negotiations with the company. However, the task team managed to foster a process whereby affected people were able to select their resettlement land, design their own housing and negotiate fair compensation rates. As a result of the greater control that they had over resettlement planning and implementation, resettlement outcomes were largely successful.

While this case illustrates that the up-front costs of participatory resettlement are higher – negotiation forces compensation rates up considerably – these costs must be weighed against the benefits gained from getting local buy-in. Guggenheim points out that Aguamilpa and Zimapan are among the few large dams ever completed on time in Mexico, while many others have been delayed due to factious resettlement: “Because of the enormous costs of dam construction – nearly a billion dollars for the two projects – each year’s delay in project commissioning would have implied foregone benefits that exceeded the total cost of our entire participatory resettlement package by orders of magnitude.” At roughly the same time that Aguamilpa and Zimapan were being constructed, two other large dams – not financed by the Bank – were cancelled entirely because of resettlement protests that blossomed into armed confrontations and marches into Mexico City.

In the end, Guggenheim reflects that the program’s social benefits exceeded the economic savings:

“The project’s ‘participatory stance’ led to happier people, not just among the resettlers but among the technical staff as well. During supervision we repeatedly met field engineers and supervisors who commented how relieved they were to be working on a project in which they didn’t feel surrounded by hostile, bitter people...Resettlement colonies in other projects we visited were often squalid places, mired in poverty and unhappiness. The children of Aguamilpa and Zimapan are already back in newly built schools, on their way to becoming the country’s next generation of engineers, economists, and perhaps even anthropologists.”

Source: Guggenheim S. (1996) *Mexico Hydroelectric Project*, The World Bank Participation Sourcebook, pp.67-73.

62. Finally, the World Bank must bring its resettlement policy into line with international human rights standards for indigenous peoples, codified in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Indigenous peoples must be accorded the right to say “no” to projects that they do not want. The IFC and ADB have both adopted the application of free, prior and informed consent of indigenous

peoples on projects that may cause their displacement or otherwise affect their land, territories, resources or cultural heritage. It is time for the World Bank to follow suit.

63. To build on the standards established by the IFC and ADB, and to ensure that these matter in practice, the World Bank must establish implementation, supervision and redress mechanisms that will ensure that free, prior and informed consent standards and the collective decision-making processes of indigenous peoples are respected. Such mechanisms are particularly important in political, economic, and social environments where the public and/or particular marginalized groups are unable to offer views that differ from those of the State and other power holders regarding a project.
64. The Nam Theun II Hydropower Project in Laos (Box 6) provides an example of a project that has resulted in deleterious impacts on the livelihoods of indigenous peoples who were unable to give or withhold their free, prior and informed consent to the project at the time it was designed and approved.

Box 6: Laos Nam Theun II Hydropower Project

The World Bank and Asian Development Bank approved joint financing for the Nam Theun 2 Dam, Laos' largest hydropower project, in 2005, and the dam became fully operational in March 2010. Preparations for the project, however, began in the late 1980s when the World Bank and UNDP commissioned the first feasibility study of the project. In 1993, the Build, Own, Operate and Transfer concession was awarded to Transfield, one of Australia's largest construction companies, which then formed the Nam Theun 2 Electricity Consortium (NTEC), consisting of itself, the Lao government and several private partners. Impact assessments for the project indicated that it would result in significant economic, social, and environmental impacts, including the involuntary resettlement of approximately 5,700 mostly indigenous ethnic minority people from the reservoir area and downstream livelihood impacts on more than 110,000 people.

From the start it was apparent that the private sector would be unwilling to support a project of this size in a country like Laos without the involvement of the World Bank. For the Bank to finance a project, it requires that specific social, environmental and economic standards be met and that all "stakeholders" be involved in decision making. Bank staff informed NTEC that they would need to comply with Bank policies on public consultation, in order for the Bank to provide a loan guarantee or other support. Thus, NTEC's Public Participation Process for Nam Theun 2 was initiated in 1995.

Free?

NTEC's challenge was to overlay a public consultation process that would meet World Bank requirements onto a country with no political, cultural, historical, or institutional structures for such participation. Laos was in 1995, and remains today, a one-party state in which local NGOs are for the most part banned and in which no independent local environmental, human rights, farmer, labor or other advocacy-oriented civil society institutions are permitted to operate. All media are State controlled.

Rather than attempting to thoroughly analyze this situation and then devise a structure of participation that might work in Laos, NTEC, with World Bank encouragement, chose instead to simply ignore the political and cultural reality of the country and to pretend that they were working in a much more pluralistic environment. This was an expedient decision that allowed NTEC to craft a carefully stage-managed participation show, intended to ratify and reinforce predetermined outcomes and conclusions.

A series of high profile consultation workshops were held at the national level to which foreign embassy staff and donor agencies were invited. Lao participants came almost exclusively from the government or the State controlled media. Several carefully coached village leaders from the Nakai plateau were paraded out to express how much they were looking forward to being resettled. Presentations were invariably strongly favorable to the project, opportunities for real debate limited, and potential problems or impacts were downplayed. The lack of substantive criticism was taken as consensus, even though no Lao citizens dared to speak openly against the project and international NGOs did not want to risk getting expelled from the country by openly criticizing the project.

Prior?

One of the root problems in trying to carry out anything like a real consultation was that, while the World Bank may not have made a final decision on whether or not to support Nam Theun 2, the central Lao government clearly had. From 1993 on, support for Nam Theun 2 was official policy and this decision was repeatedly emphasized in the State media and in the pronouncements of party and national leaders. In the face of this strong support, it was simply impossible, given the Lao political context, for real debate to occur within the country.

The majority of the public consultation and participation efforts were launched after 1995, when the scope of the project had already been worked out. Teams of experts had started to visit the watershed area and conduct a range of studies at least five to six years before the Lao public was invited to provide input into the process. These early studies were primarily extractive—the gathering of information from plateau residents, but without the provision of information or discussions of the proposed project in any detail. It was only much later, well after the central government approved the project, that substantive input from affected communities and the public at large was solicited—and that was primarily within the parameters of developing resettlement options and mitigation measures.

As if local people needed any further confirmation that the decision to proceed with the dam had already been taken, the proposed reservoir area began to be aggressively logged, by a well-connected, military-controlled company, almost immediately after the central government decision to proceed with the project. This, in turn, accelerated the deterioration of the natural resource base upon which local communities depended.

Anyone experienced at working at the village level in Laos will recognize that it is challenging to break through the barriers of power and culture to gain real input from local people. Breaking through and eliciting real dialogue is possible—but it takes time, understanding and a sincere commitment. But on the Nakai plateau the content of discussions in the consultations were, as they had been in Vientiane, very much within

the framework of a decision already taken.

Informed?

At no time in the participation process has the Lao public had access to information about the project in a form that sufficiently enabled them to assess its merits and demerits for themselves. During initial discussions with local communities, the teams themselves did not have sufficient information about the scale, complexity and impacts of the project, or how negative impacts might be best mitigated. Discussions at the district and province level were conducted primarily with local government officials in an attempt to create awareness about the project and mobilise support for it. The larger financial and economic challenges of the project, particularly in relation to mitigation costs and long term financial liability of the Lao public were not even fully known, let alone discussed during these meetings.

The tremendous amount of information collected by a series of wide ranging studies carried out by outsiders was not accessible to directly affected communities, province and district residents, or even government officials. This is due to a large knowledge gap between the foreign experts and consultants on the one hand, and the local people on the other hand. Many participants in consultation meetings were unable to engage in comprehensive discussions with policy and decision-makers about the project's risks.

This gap was even greater at local levels, where language and comprehension were further complicated by vast differences between the experiences of local residents and the project teams. A 1998 report of public consultation and participation on the Nakai plateau about resettlement options cautioned against expecting "too much" from villagers' participation because of their "limited experience of the outside world." According to the report's author, it was only when communities experienced events themselves (such as "farm extension activities" and the "actual move") that "real participation" would begin in earnest (NTEC, April-May 1998). Records of meetings in a 1997 review of local consultations (Franklin, 1997) also reveal that language, cultural and educational barriers were significant in limiting local communities' understanding about the project. Further, both reports highlight how gaps in understanding were significantly higher among women, who were often not present in meetings at all, or took back seats in meetings when they were present.

Consultations regarding "decision making for Nam Theun at all stages and levels were elaborate. Recommended guidelines appear to have been duly followed, external resource persons called in to guide, conduct, and monitor consultation meetings, hundreds of meetings held, and national and local government staff trained in how to conduct such meetings in the future. But in the end it was mostly a farce, an elaborate show for foreign consumption, out of step with the reality of the country and the decision-making process that had already occurred. For people to truly participate in decision making about a proposed project, they must be accorded due process, which recognizes that they have certain basic rights. If these rights are denied, or do not exist to begin with, public involvement is a process of justification rather than participation.

Is it possible to overlay a truly participatory process for one project decision on top of a social, cultural, and political reality that is very different? The Nam Theun 2 case tends

to argue against this. It is too easy for project proponents to exploit that reality to their own advantage. NTEC obviously already had their own agenda and had no real incentive to carry out a fair process, particularly when it was so easy to manipulate the existing situation in favor of the conclusion they wanted. Whether it would be possible for a more neutral, truly well-intentioned party to structure a decision-making process that works in the context of Laos—and that would meet universal standards of transparency and accountability—remains to be seen.

Source: Adapted from Guttal, S. and Shoemaker, B. (2004), *A Large Dam in a Small Country*, unpublished.

Post-script: Three years after being relocated by the project, more than 6,200 ethnic minority people are still struggling to recover their livelihoods after they lost access to their paddy and swidden fields, forests and grazing lands. While the relocated families undoubtedly have better housing and local infrastructure, the project's plans for ensuring that their livelihoods recover and are sustainable have failed to come to fruition. The poor quality of the land in the resettlement sites continues to cause problems for villagers, who are unable to grow sufficient food to feed their families, the long-term production of the reservoir fisheries is in doubt, and outsiders are encroaching on the villagers' community forest areas.

Downstream, over 110,000 people living in 71 riverside villages and 101 hinterland villages along the Xe Bang Fai River have been affected by the river ecosystem. Villagers have suffered poor water quality and declining fish catch, particularly in the Upper Xe Bang Fai River. These impacts have not been fully compensated for as of writing. Of great concern is the insufficient funding allocated to the NT2's downstream program and the unrealistic 2015 deadline for program's completion.

Source: Excerpted from International Rivers, *Nam Theun 2 Hydropower Project: The Real Cost of a Controversial Dam* (Dec 2010).

Recommendations on Access to Information, Consultation and Active Participation in Decision Making

1. The policy should require that all affected people are informed and meaningfully consulted on the project at the earliest stages and throughout the project cycle, using accessible communication methods and language. Informed and meaningful consultations should be conducted in relation to the public value of the project, the findings of impact assessments, the exploration of alternatives and the design of resettlement plans and process frameworks.
2. The policy should require that all affected people be informed, using accessible communication methods, about their rights and entitlements under the policy and their right to access the Inspection Panel.
3. A definition of meaningful consultation, or a standalone policy on consultation, should be included in the new integrated safeguards framework and be applicable to all relevant aspects of the safeguard policies, including in relation to resettlement. The policy should reflect the elements of the definition of meaningful consultation in the ADB Safeguard Policy Statement (2009) and the definition of consultation and participation in the Voluntary Guidelines on the Responsible Governance of Tenure. It should additionally require relevant consultations to be carried out by independent parties that do not have a stake in the project.
4. Affected persons should be provided with all necessary support and resources to enable them to actively participate in decision making and have greater control over the resettlement, rehabilitation and development process. The policy should require the provision of independent advice, technical assistance and ongoing support funded by the project to enable active participation in decision making and planning. The provision of support should, where appropriate, extend beyond the closure of the main Bank-financed project that has caused displacement.
5. Particular attention must be paid, through tailored support, to ensuring that vulnerable and marginalized groups, including minorities, landless persons, women, children, older persons, the infirm and persons with disabilities are able to fully participate in planning, decision-making and implementation processes.
6. Bank policy must respect the right of Indigenous Peoples to give or withhold their free, prior and informed consent (FPIC) to any resettlement or displacement impacts resulting from Bank-financed operations. Implementation, supervision and redress mechanisms must be established to ensure that FPIC standards and the collective decision-making processes of indigenous peoples are respected.

7. Respecting and Fulfilling the Human Right to Adequate Housing

64. The human right to adequate housing is a fundamental component of the right to an adequate standard of living and reflects one of the most basic human needs.⁵¹ Pursuant to international law, measures must be taken to realize the human right to adequate housing. A planned resettlement process under a development project offers an important opportunity to realize the right to adequate housing for people forced to relocate. Adequate housing is defined under international law to include, amongst other elements, a house of minimum basic quality that provides legal security of tenure; access to basic services, including water, sanitation, electricity, and waste disposal; accessibility, affordability; habitability, including protection from the elements and adequate space for household members; adequate location that provides access to livelihood opportunities, schools, health facilities and other social services; and cultural adequacy.⁵²
65. Both the IFC and the ADB have adopted policies that recognize essential elements of the right to adequate housing. An objective of IFC's Performance Standard 5 is "[t]o improve living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites." The ADB's Safeguard Policy Statement (2009) requires borrowers to provide, "secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, and civic infrastructure and community services as required."⁵³ Our recommendations call on the Bank to adopt at least equally progressive policy objectives and a set of required measures that will give effect to the right to adequate housing for people displaced by projects that it funds.

Housing conditions

66. OP 4.12 requires that either replacement cost compensation or actual replacements be provided to affected persons for lost housing structures and other assets.⁵⁴ It requires resettlement sites to be equipped with infrastructure and public services as necessary to restore or maintain previous levels of services and standards of living.⁵⁵ The principle of restoration therefore lies at the core of resettlement plans. This conceptual underpinning poses an inherent contradiction with both international law requirements of progressive realization of the right to adequate housing and the policy objective of conceiving and executing resettlement activities as sustainable development programs. Furthermore, for over two decades now, numerous studies have shown that a policy requirement for *restoration*, rather than *improvement*, of

⁵¹ International Covenant on Economic, Social and Cultural Rights (1966), article 11(1).

⁵² UN CESCR, General Comment 4: The Right to Adequate Housing, UN Doc. E/1992/23 (1991), para 8.

⁵³ ADB, Safeguard Policy Statement (June 2009), Appendix 2, para 11.

⁵⁴ OP 4.12, para 6.

⁵⁵ OP 4.12, para 13.

livelihoods leads to impoverishment of affected people.⁵⁶ Both human rights principles, and a large body of social science research, point to the restoration principle as being unacceptable and incapable of meeting the objectives of the policy. *Improvements* in people's living conditions, and in particular their housing conditions, will, by implication of the restoration principle, not be attained. The objective of improving resettlers' conditions is merely aspirational, and left to the discretion of the borrower-government, since it is not reinforced by mandatory policy measures.

67. It is most often the poor who are forced to move in the name of development. For poor families living in sub-standard housing prior to resettlement, replacement value compensation will, at best, return them to the same sub-standard conditions or result in indebtedness, often unmanageable, if families decide to upgrade (see Box 8.) This outcome is incompatible with international law⁵⁷ and the policy objective of OP 4.12 that resettlement activities should be conceived and executed as sustainable development programs. A family whose home prior to resettlement consists of a makeshift shelter that does not provide protection from the elements, privacy or security should be provided with resources to ensure access to adequate housing of at least minimum standards post-resettlement. This can occur either through the direct provision of housing to resettlers or the provision of sufficient funds for the purchase or construction of adequate housing, as set out in our recommendation below.

Box 8: Cambodia Railway Rehabilitation Project (ADB)

The Asian Development Bank is funding the rehabilitation of a railway across Cambodia. Some 4000 households living in the right-of-way need to be resettled or move back to make way for the tracks and the operation of the trains. Many families affected by the project were, even prior to resettlement, very poor, with some living on or below the poverty line. Housing conditions of many of these families before resettlement were woefully inadequate. Their basic shelters did not provide privacy, security, protection from the elements, or enough space for the family to live in a safe and healthy manner.

In accordance with resettlement action plans adopted under the 1995 ADB Policy on Involuntary Resettlement (which did not require the provision of adequate housing at resettlement sites), these households have only received a few hundred dollars in compensation on average and a plot of land at a project-sponsored resettlement site. The amount most families received is only enough to construct another inadequate shelter at the resettlement site. According to NGO Habitat for Humanity, the cost of the most basic 4 x 6 meter house in Cambodia is nearly USD 2000, considerably more than many affected households have received in total compensation calculated at replacement cost.

⁵⁶ Among many other studies on this topic, see the compilation by Michael M. Cernea and Hari Mohan Mathur (eds.), *Can Compensation Prevent Impoverishment?: Reforming Resettlement Through Investments and Benefit-Sharing*, Oxford 2008.

⁵⁷ UN Basic Principles, para 55.

In order to fulfill policy objectives and give effect to international human rights law, compensation based on replacement cost is not sufficient for households previously residing in inadequate conditions. A better method would include a minimum floor compensation rate adjusted for household size, with replacement cost for primary housing provided only where it is higher than the established minimum rate. This would reflect good practice as described in the ADB's Good Practice Sourcebook on planning and implementation of involuntary resettlement, which states: "The houses of the poor and vulnerable groups are often below minimum housing standards and should be replaced by habitations that at least meet these standards."⁵⁸

As for the railways project, more than two years after resettlement commenced, families are overwhelmed by crippling debt. It has been common for families to begin constructing better housing than their previous inadequate shelters and borrowing substantially from private loan sharks at usurious rates to do so. Inadequate compensation, new debt and a reduction in income have resulted in a situation of increasing impoverishment and insecurity, a far cry from the stated aims of the involuntary resettlement policy.

Source: Bridges Across Borders Cambodia, *Derailed: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway* (2012).

Resettlement sites: Location and Tenure Security

68. Two determinative aspects of successful resettlement are the location of resettlement sites and the degree of tenure security conferred over alternative land and housing. Reflecting their importance, both location and security of tenure are key elements of the right to adequate housing.
69. The current policy states that resettlement sites should have "a combination of productive potential, locational advantages, and other factors...at least equivalent to the advantages of the old site" and "adequate tenure arrangements" must be made.⁵⁹
70. To significantly raise the likelihood of successful resettlement, families who rely on the urban economy to derive income must be resettled as near as possible to their former locations, or in an alternative location with equivalent economic/livelihood opportunities. For resettlers whose livelihoods are land-based, the provision of productive, cultivable and irrigated land, with suitable characteristics to resuming livelihood activities, of at least equal size is crucial. Families with coastal or riparian-based livelihoods need to have access to the sea, river and other resources in order to maintain their livelihoods. While livelihood and income restoration support programs are an essential element of resettlement, even with the best livelihood development

⁵⁸ ADB, *Involuntary Resettlement Safeguards: A Planning and Implementation Good Practice Sourcebook – Draft Working Document*, March 2011, page 22.

⁵⁹ OP 4.12, para 6(b)(ii) footnote 13.

initiatives, learning new skills and making new enterprises profitable takes time and is not always successful. In many resettlement cases, income restoration programs are sub-standard. The selection of the right resettlement sites, based on the choices of resettlers, can overcome some of the main hurdles of resettlement and diminish exponentially the risks of impoverishment.

71. Despite the obvious benefits of selecting appropriate locations for resettlement sites, in practice governments refuse to allocate suitable sites because of their high monetary value. Inner-city land suitable for the resettlement of urban-dwellers is prime real estate. Productive agricultural land is reserved for commercial investors. Coasts and riverbanks are earmarked for tourism or other development. Almost invariably this competition for land is won by investors, leaving only inferior possibilities for resettlers. This represents a fundamental injustice because the very people that are displaced by development (almost always the poor) are often allocated alternative land that is non-cultivable or on the margins of the economy, greatly diminishing their access to livelihoods and opportunities and resources that would allow them to benefit from economic development. The revised policy on involuntary resettlement must adopt requirements that negate this unjust dynamic, which violates human rights and leads to inequality and greatly reduces the possibility of successful resettlement outcomes.

Box 9: Mumbai Urban Transport Project

The Bank-financed Mumbai Urban Transport project to improve Mumbai's rail transport system and roads required the resettlement of 120,000 urban dwellers, one of the largest urban resettlement projects that the Bank has ever undertaken. In 2004, the Inspection Panel received a series of requests for inspection that raised concerns and grievances on numerous issues, including on the location of resettlement sites and the polluted and dangerous conditions at the site.

One of the main grievances raised by the Requesters was that the site they were to be relocated to was "unsuitable and too far away (15 km) from their current location," and as a result, they feared that they would "suffer irreparable damage to their well-established businesses."⁶⁰ They asked to be relocated to alternative sites available near their present location.

In its Response, Management stated that relocation to the alternative sites suggested by the affected communities were either not suitable or, if available, were *earmarked for higher value purposes*. The implication was that the livelihoods of people displaced by the project was of a lower order value or importance than the alternative private use of the land and thus the only suitable land for the displaced was on less valuable land on the

⁶⁰ World Bank Inspection Panel, *Investigation Report, India: Mumbai Urban Transport Project* (2005), Executive Summary, page xiii.

margins of the economy. Management also argued that the maximum size limit for relocated businesses had to be set at 225 square meters, much smaller than many of the affected people's former shops, because of the limited space availability and high land costs in Mumbai. The Inspection Panel found that this may have made it impossible for some people to sustain their income levels or even to continue their businesses.

The case highlights the inequities of resettlement processes in which prime real estate most suitable for resettlement because of its proximity to former locations and livelihoods, is instead allocated to moneyed interests while those displaced are forced to relocate to inferior sites. Perhaps more than any other aspect of resettlement, the result is that the displaced, almost always the poor, are made to shoulder the costs of development.

Source: World Bank Inspection Panel, *Investigation Report, India: Mumbai Urban Transport Project (2005)*.

72. The language with respect to tenure must also be strengthened in the new policy in recognition of the fundamental importance of security of tenure that provides a legal protection against forced eviction in the future. Without this protection, resettled families remain vulnerable to further displacement and are less likely to invest in their own housing and other land-based assets and productive activities.

73. We refer the Bank to the Basic Principles, which state that relocation sites should fulfill the following criteria for adequate housing: (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups, (f) access to employment options, health care services, schools, childcare centers and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing.⁶¹

⁶¹ See General Comment No 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights (1991) and the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007), para 55.

Recommendations on Respecting and Fulfilling the Human Right to Adequate Housing

An objective of the new policy should be for all displaced persons to enjoy their human right to an adequate standard of living, including the right to adequate housing, following resettlement. To ensure this objective is met, the policy should contain the following requirements:

1. Provision of culturally appropriate adequate housing that provides inhabitants with adequate space, protection from cold, damp, heat, rain, wind, structural hazards, disease vectors or other threats to health, and ensuring the physical safety of occupants OR an amount of monetary compensation that is at least sufficient to enable access to adequate alternative adequate housing (adjusted for household size), in accordance with international human rights standards and established on the basis of independent expert advice. Replacement cost should only be used as the basis for compensation of lost housing when it exceeds the minimum amount necessary to purchase or construct an adequate house. When this is the case, full replacement cost should be required. All transaction and transitional costs must also be covered. Independent experts should be engaged to audit and verify compensation amounts or the adequacy of housing provided. The choice of housing or compensation should be made according to the preference of the affected community and, where feasible, of each household. All other lost assets, including common property resources should be replaced unless it is the preference of affected persons to receive compensation at full replacement cost. An independent third party should be engaged to ensure that affected households and communities have an opportunity to freely choose between the options presented based on all relevant information.
2. Suitably accessible housing and moving assistance must be provided to persons with disabilities, the infirm and the elderly.
3. In order to minimize disruption to livelihoods, families who rely on the urban economy to derive income must be resettled as near as possible to their former locations, or in an alternative location with equivalent economic opportunities. For resettlers whose livelihoods are land-based, the provision of alternative productive cultivable and irrigated land of at least commensurate size and value must be provided. Families with coastal or riparian-based livelihoods must be given land with equivalent access to the sea, river and other resources. Resettlement should not occur unless affected persons agree, and the Bank is of the opinion, that the location of the resettlement site will provide access to at least equivalent livelihood and other opportunities and resources as previous residential locations. Several options should be presented to affected households as possible sites with opportunities for affected people to nominate alternative sites themselves and participate in selecting their destination from the available options. If affected people choose to receive monetary compensation instead of replacement land, an independent third party should be engaged to verify that this

decision was made freely and on the basis of all relevant information about the implications of receiving cash rather than replacement land.

4. Relocation sites should be unpolluted and free from health and safety risks to resettled families. All due care should be taken to ensure that resettlers - especially women, children, older persons and persons with disabilities - are not put in danger due to the location of the site, distance to amenities or schools, lack of services, such as water, sanitation or lighting, or other hazards. Communities/villages should be resettled together; relocation should not disperse community and family members. Resettlers should have opportunities to participate in evaluating sites and determine them to be free from health and safety risks.
5. Relocation sites should be equipped with: (a) basic services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; and (b) access to healthcare services, schools, childcare centers and other social facilities, whether in urban or rural areas.
6. A culturally and socially appropriate form of secure tenure, that provides legal protection from forced eviction must be provided to resettled households. Titles or other documents that record tenure rights should not automatically be registered on a "heads-of-household" basis. Women should be secured as the sole or joint holders of title, lease or other form of tenure. Collective tenure rights, including women's collectives, should also be secured through appropriate processes.

8. Livelihood Improvement and Benefit Sharing

74. The current policy objective is to assist displaced people “in their efforts to improve their livelihoods and standards of living or at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.”⁶² The objective is also to provide sufficient investment resources to enable the persons displaced by the project to share in project benefits.⁶³ These objectives are to be met, where necessary, by (i) offering support to displaced persons, “for a transition period, based on a reasonable estimate of the time likely to be needed to restore their livelihood and standards of living;” and (ii) providing them with development assistance “such as land preparation, credit facilities, training, or job opportunities.”⁶⁴
75. While the policy objectives hold the promise of investments and development for those displaced by Bank-financed projects, in practice the promise is made hollow by reductive policy prescriptions that require only the *restoration* of livelihoods and standards of living to their pre-displacement levels. Thus the objective of improvement is, unsurprisingly, seldom met. As Cernea astutely observes of IFI resettlement policies, “the high goals these policies proclaim are desperately unmatched by the low means these policies prescribe.”⁶⁵
76. As a development agency with a poverty reduction mandate, it is unacceptable for Bank-supported projects to merely restore people who are forced to resettle to a previous state of poverty. International best practice, including the policies and practices of other IFIs⁶⁶ and a growing number of national governments, has moved beyond the restoration principle. Bank Management has commented that the next generation of safeguards should move beyond “do no harm” to “doing good.”⁶⁷ Therefore the objective and requirements of the revised policy should unequivocally adopt a new paradigm in which livelihoods and living standards of affected persons are to be developed and *improved*. This is consistent with the Bank’s poverty reduction agenda and the international human rights obligation to progressively realize the human right to an adequate standard of living.

Moving Beyond Compensation

77. Displacement from homes, lands and livelihoods interrupts the process of growth and development towards an adequate standard of living because the displaced are

⁶² OP 4.12, para 2(c).

⁶³ OP 4.12, para 2(b).

⁶⁴ OP 4.12, para 6(c).

⁶⁵ Michael Cernea, “Compensation and Investment in Resettlement: Theory, Practice, Pitfalls, and Needed Policy Reform,” in *Can Compensation Prevent Impoverishment?* (2008), Eds. Michael Cernea and Hari Mohan Mathur, p. 15.

⁶⁶ For example, an objective of ADB’s 2009 Safeguard Policy Statement, Involuntary Resettlement Safeguard Requirements is “to improve the standards of living of the displaced poor and other vulnerable groups.” The EBRD policy recognizes “the right to continuous improvement of living standards.”

⁶⁷ World Bank safeguards review approach paper, October 2012, para 8.

deprived of resources and opportunities for self-development to which they would have otherwise had access. Their trajectory of progression is reversed, at least in the short and medium terms, and they are unwillingly thrown into a situation that calls forth coping strategies rather than growth strategies. The evidence shows that this setback to people's lives and the denial of opportunities cannot be prevented by a resettlement plan rooted in the concept of restoration through compensation or replacement of assets alone.

78. Furthermore, in practice, compensation amounts provided often do not meet current policy requirements for restoration - let alone improvement - due to a range of multidimensional distortions, from distortions in inventorying losses and valuation of lost assets to distortions in conveying payments.⁶⁸ The result is that the amounts displaced people actually receive are almost never truly restitution for what they lose through expropriation and displacement. Low compensation has the perverse effect of massively externalizing project costs and placing them on the shoulders of the displaced. Therefore, not only does the objective of improving people's lives become aspirational, and probably intangible, but even the base objective of restoration is rarely accomplished in practice.⁶⁹
79. In the past two decades of research on involuntary resettlement, perhaps the most salient finding that emerges time and again is that monetary compensation leads to impoverishment when it is relied upon as the main tool. It is unacceptable for the World Bank to continue to ignore this fundamental finding. Compensation for inflicted losses is, as Cernea has stated, indispensable for displaced persons and a legal and moral obligation; however, compensation *alone* is not enough to achieve just outcomes.⁷⁰
80. The new policy must contain strong requirements to ensure that Bank projects causing displacement do not rely primarily on compensation, but rather that, when cash compensation is used, that it is employed as simply one tool among an array of programs and investments that support affected people to improve their standard of living and realize their human rights, based on plans developed jointly with affected people. These investments should support development initiatives that aim to expand access to resources and opportunities and enhance capabilities, and thus contribute to the realization of human rights.
81. Social safety net payments should also be made to support displaced families to meet their basic needs until their income levels are either restored or above the poverty line. We note that the ADB Safeguard Policy Statement (2009) requires the

⁶⁸ Michael Cernea, "Compensation and Investment in Resettlement: Theory, Practice, Pitfalls, and Needed Policy Reform," in *Can Compensation Prevent Impoverishment?* (2008), Eds. Michael Cernea and Hari Mohan Mathur, pp. 48-56.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

borrower/client to “promptly compensate for the loss of income or livelihood sources at full replacement cost.”⁷¹

Getting Serious About Benefit Sharing

82. It is self-evident that resettlement budgets must properly reflect the real costs of necessary investments to meet policy objectives. Bank specialists affirmed some fifteen years ago that, “starving resettlement of resources is clearly the first step towards resettlement failure.”⁷² To supplement the significant upfront funds that must be committed to resettlement activities, innovative approaches have emerged to mobilize the initial and ongoing financing necessary for resettlers’ development through benefit-sharing.⁷³ In extractive industry projects, a fraction of economic rents is invested in the resettled community’s development. In other types of projects a proportion of the projected or actual “stream of benefits” is allocated to those who were displaced to make the project possible.⁷⁴

Box 7: Benefit-sharing in Canada’s St James Bay Hydropower projects

The Canadian government entered into a partnering and equity-sharing agreement with the tribal Cree Indian and Inuit groups inhabiting the St James Bay area, rich in hydropower potential. The key premise in the agreements reached is that local indigenous communities become direct investors in hydro projects, by contributing their land. The option of equity-sharing was offered even though upfront payment was made to the Inuit population to help them adjust their fishing activities. This equity stake enables the tribal Inuit communities to receive a share of project benefits as a partner, for the long-term proportionately with their land share in the project. The power utility provides the full financing and constructs the dam and power plant, the indigenous population provides the lands, and then they proportionally share the profits. This approach, now in full operation, avoided the economic displacement of local communities, and the risks of impoverishment by recognizing shareholding status.

Source: Michael Cernea, “Compensation and Investment in Resettlement: Theory, Practice, Pitfalls, and Needed Policy Reform,” in *Can Compensation Prevent Impoverishment?* (2008), Eds. Michael Cernea and Hari Mohan Mathur, p. 73.

⁷¹ ADB, Safeguard Policy Statement, Appendix 2: Involuntary Resettlement Safeguard Requirements, para 12.

⁷² Michael Cernea, “Compensation and Investment in Resettlement: Theory, Practice, Pitfalls, and Needed Policy Reform,” in *Can Compensation Prevent Impoverishment?* (2008), Eds. Michael Cernea and Hari Mohan Mathur, p. 64, citing World Bank (1994/1996), *Resettlement and Development: Report on the Bank-Wide Review of Projects Involving Involuntary Resettlement*, Task Force report, pp. 146-147.

⁷³ For example, China, Brazil and Colombia all have legally mandated benefit-sharing mechanisms for people displaced by major development projects, such as hydropower.

⁷⁴ Michael Cernea, “Compensation and Investment in Resettlement: Theory, Practice, Pitfalls, and Needed Policy Reform,” in *Can Compensation Prevent Impoverishment?* (2008), Eds. Michael Cernea and Hari Mohan Mathur, p. 64.

83. OP 4.12 envisages that persons displaced by Bank-financed projects will share in project benefits.⁷⁵ In order to give effect to this objective and achieve successful resettlement for affected people, the Bank must modernize its own approach and adopt a decisive shift toward investment in the livelihoods of displaced people, including through project benefit-sharing mechanisms. In this area more than any other, the World Bank has an opportunity to support and enhance cutting edge solutions and lead in implementing progressive approaches that have the potential to emerge as common practice.

Recommendations on Livelihood Improvement and Benefit-Sharing

1. The revised policy objective should be to improve the living standards of the displaced through commensurate investments in resettlers' development.
2. The revised policy should contain requirements to enable displaced people, including women, to share in project benefits by increasing their access to resources and opportunities and through investments in the development of their livelihoods, above and in addition to compensation for losses. Potential strategies and mechanisms for project revenue benefit sharing must be explored with the active participation of affected people, including women, during the project design and appraisal stage. The Bank should provide guidance to borrowers regarding potential strategies or mechanisms for effective benefit sharing.
3. Resettlement budgets must realistically reflect the actual financial and technical investments needed, upfront and over time, to fully replace lost assets and develop the living conditions and livelihoods of resettlers and achieve the policy objectives, based on sound economic analysis. Budgets should take into account whether, and the extent to which, a portion of project revenue will be allocated to investments in displaced communities to support their ongoing development. Justifications for all assumptions made in calculating compensation rates and other cost estimates must be included and disclosed in the Resettlement Action Plan.
4. Actual loss of income during the transition period should be compensated on a periodic basis through a social safety net system until such time as resettlers have been fully rehabilitated.
5. Benefit distribution should, wherever possible, accrue to the women members of the affected families.

⁷⁵ OP 4.12, para 2(b).

9. Cut-off Dates and Eligibility for Benefits

84. Under the current policy, people who settle in the project area after a designated cut-off date are ineligible for any compensation or assistance.⁷⁶ A footnote to the policy provision refers to the need for “an effective public dissemination of information on the area delineated, and systematic and continuous dissemination subsequent to the delineation to prevent further population influx” only when the cut-off date is the date the project area was delineated.⁷⁷
85. While the rationale behind this exclusion from entitlements - discouraging so called “encroachers” and rent-seeking behavior - has practical merit, the policy also has the effect of leaving legitimate settlers or purchasers of land in designated areas, who were ignorant about the looming resettlement process due to no fault of their own, without any compensation for lost investments whatsoever. In some cases, years can pass between the cut-off date and resettlement, and sometimes notice about the project and prohibition on settling in the area is not widely or appropriately disseminated.
86. The implication is that very poor families, victims of a non-existent or poorly conducted public information campaign, could be left completely destitute. The effect of the current policy is to authorize the forced eviction (without legal protections) of people who fall under this category. As a result, they could be made homeless, a gross violation of human rights and an undesirable public policy outcome.
87. In order to ensure that people who fall into this category are not left destitute, replacement cost compensation for housing and other lost assets should be provided. The provision of replacement cost compensation of assets would not incentivize rent-seeking behavior. All other due process rights must also be afforded to anyone subject to eviction, including an adequate notice period of at least 90 days.⁷⁸ Our recommendations seek to strike the appropriate balance between discouraging encroachers and addressing human rights concerns.
88. In some cases people are prohibited from planting crops and building essential structures between the designated cut-off date and the time of resettlement. Such prohibitions are impracticable and manifestly unjust since these improvements and investments are often made out of necessity: crops are planted to feed the family or earn a living and additional structures may be required when families grow or to start or grow small businesses. Affected people cannot simply pause their lives between the imposed cut-off date and resettlement, especially when this period is extensive. All such investments should be fully compensated.

⁷⁶ OP 4.12, para 16.

⁷⁷ OP 4.12, footnote 22.

⁷⁸ UN Basic Principles, op. cit., para 56(j).

Recommendations on Cut-Off Dates and Eligibility for Benefits

1. The policy should require the provision of replacement cost compensation for housing and other lost assets to those who settle or purchase property in the affected area after the cut-off date, so they are not left destitute. All other due process rights must be afforded to anyone subject to eviction, including an adequate notice period of at least 90 days.
2. The borrower should be required to demonstrate the effective, systematic and continuous public dissemination of information about the affected project area in which people are prohibited from settling after the cut-off date.
3. The policy should entitle households who have built structures or planted trees/crops, etc. after the cut-off date to full compensation for these assets and improvements, as there is often a significant time lag between the cut-off date and resettlement, and these investments are usually necessary to livelihoods or living conditions during that period.

10. Resettlement Supervision, Monitoring and Evaluation

89. The absence of accurate, verified and publicly available information regarding resettlement performance in World Bank projects has long been identified as a major problem by civil society. It is also confirmed in the Independent Evaluation Group (IEG) report, “Safeguards and Sustainability Policies in a Changing World”. According to IEG, “M&E of safeguards is the weakest aspect of Bank supervision, followed by a lack of candor in supervision reporting.”⁷⁹ IEG observes:

*The weaknesses lie in lack of specificity of monitoring indicators, underinvestment in client’s monitoring capacity and poor follow-up during supervision. Safeguards monitoring will not be effective until safeguards are integrated within the overall results framework of the project. Too often, safeguards activities are considered an add-on, and left to environmental and social specialists who are under resourced and not well integrated into supervision teams.*⁸⁰

90. IEG found that supervision quality differed substantially depending on the risk classification of the project, with category A receiving much more attention than category B.⁸¹ IEG’s findings on the differences in supervision quality by project classification are again worth quoting in full:

*While this reflects better attention to high-risk projects, IEG findings support the concern expressed by environmental and social staff and management that category-B projects, most of which are delegated to respective sectors, are not being adequately supervised and monitored in one-third to one-half of projects where safeguards are triggered. Delegation of project to the sectors is thus having a perverse effect of leaving safeguards aspects of a large number of projects unsupervised, raising the likelihood that the next generation of reputational risks could arise from low-risk projects financed by the Bank.*⁸²

91. Of particular concern to IEG is the Bank’s increasing reliance on policy frameworks. IEG notes that projects relying on Resettlement Policy Frameworks (RPFs) have lower success rates for mitigating impacts, and are less well supervised than projects that require Resettlement Action Plans.⁸³ It recommends that if the Bank relies on RPFs during preparation it needs to invest proportionally greater resources in supervising these projects to help the client implement them well. The Bank’s experience with the Cambodia Land Management and Administration Project underscores the importance of this recommendation (see Box 10).

⁷⁹ IEG, Safeguards and Sustainability Policies in changing World: An Independent Evaluation of World Bank Group Experience, The World Bank, Washington D.C., 2010, p. 38.

⁸⁰Ibid, p 31.

⁸¹ IEG, op. cit., p. 28.

⁸² Ibid.

⁸³ Ibid., 29-30.

Box 10: Cambodia Land Management and Administration Project

The Cambodia Land Management and Administration Project (LMAP) was established with the stated aim of improving security of tenure for the poor and reducing land conflicts in Cambodia by systematically registering land and issuing titles across the country. However, a 2009 complaint to the Inspection Panel by representatives of the Boeung Kak Lake community in central Phnom Penh alleged that the Bank's failure to supervise implementation of safeguards related to the project left them less secure and more vulnerable to forced eviction. Despite strong evidence to prove their legal rights to their land, Boeung Kak residents were arbitrarily excluded from the titling system when land registration was carried out in their neighborhood in 2006. Shortly thereafter, the Cambodian Government granted an illegal 99-year lease over the area to a well-connected private developer. Residents of the area covered by the lease – many of whom have lived lawfully in the area since 1979 - were suddenly accused of being illegal squatters on State land. Over the next several years, more than 3500 families were forcibly evicted from their homes without resettlement assistance.

The Inspection Panel found that the Bank breached its operational policies by failing to supervise implementation of the Project's Resettlement Policy Framework, which was required to be applied in any instance when people are displaced from State land in project areas. In response to the complaint, Bank Management acknowledged "significant shortcomings in past Project implementation and supervision" and conceded, "supervision of safeguards and other social measures should have been more robust."

By the time the Bank acknowledged that its safeguards had been breached, seven years had passed in which it had consistently rated the Project's social performance as satisfactory in its regular supervision reports. The Cambodian government responded angrily to the Bank's hasty attempts to bring the project back into compliance in 2009, and it terminated its agreement with the Bank on the Project, citing the Bank's "complicated conditions" as the reason.

The displaced Boeung Kak families have yet to receive any remedy for the grave harms they suffered as a result of the Bank's failure to supervise implementation of the Resettlement Policy Framework (see Box 11).

Sources: World Bank Inspection Panel, *Investigation Report, Cambodia Land Management and Administration Project (November 2010)*; World Bank Management Report and Recommendation in Response to Inspection Panel Investigation Report No. 58016-KH (January 2011); Bridges Across Borders Southeast Asia et al., *Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector (2009)*.

92. One of the most troubling findings in IEG's report is that the Bank does not consider environmental and social performance a significant dimension of a project's

development outcome.⁸⁴ As a result, about one-fifth of category-A and half of category-B projects do not track or report on safeguard performance.⁸⁵ IEG asserts that “the absence of provisions for reporting on social and environmental performance in ICRs [investment completion reports] means that despite the exhortations of the policies, completion reporting remains weak and outcomes are either unreported or hard to verify.”⁸⁶ The IEG also confirms that the involuntary resettlement policy, as one of two social safeguards with “more explicit guidance on supervision, monitoring and evaluation of impacts,” has more rigorous reporting and evaluation than do safeguard policies that lack these requirements.⁸⁷ Taken together, these observations indicate the importance of adopting an updated policy with explicit and clear requirements and procedures for monitoring and evaluation of resettlement outcomes.

93. IEG recommends that the World Bank should include performance indicators on resettlement outcomes (amongst other social and environmental outcomes) in project results frameworks and ensure systematic collection of data to monitor and evaluate safeguards performance.⁸⁸ IEG also recommends that “investment completion reports and IEG reviews of those reports rate and report effectively on the outcomes of safeguards and, for projects with significant environmental and social effects, ensure that the results are incorporated as an essential dimension when assessing achievement of the project’s development objective, as has already been done for IFC and MIGA.”⁸⁹
94. We agree with IEG’s recommendations on incorporating safeguards results into project development objectives and ratings, and we would add that these ratings should be factored into the Bank’s staff assessment and incentive system. Currently, the World Bank evaluates and rewards its staff in largely the same way as any other investment bank: based on the amount of money that staff move out the door. While this may be appropriate for an investment bank whose mission is only to maximize profit, this is hugely incongruous for an institution with a mandate to promote sustainable development and alleviate poverty. The Bank is long overdue for an overhaul of its staff training, assessment and incentive systems. While it is beyond the scope of these comments to address this issue in detail, we wish to underline that if these crucial issues of institutional culture and systems are not addressed, even the most far-reaching improvements to the safeguard policies will not be able to accomplish much.
95. One way to ensure better resettlement monitoring and evaluation is to require borrowers to engage advisory panels of independent experts (PoEs) for all high-risk resettlement projects. The World Commission on Dams has recommended that PoEs

⁸⁴Ibid, p 44.

⁸⁵Ibid, p. 44.

⁸⁶Ibid., p. 44.

⁸⁷Ibid, p. 45.

⁸⁸Ibid. p. 105.

⁸⁹ Ibid.

be established to monitor implementation of resettlement plans, compensation schemes and rehabilitation measures.⁹⁰ A footnote in the existing World Bank policy on involuntary resettlement states, “the borrower should normally engage an advisory panel of independent, internationally recognized resettlement specialists to advise on all aspects of the project relevant to the resettlement activities” for projects that are “highly risky or contentious, or that involve significant and complex resettlement activities.” However, a review of Inspection Panel reports related to involuntary resettlement indicates that PoEs are not routinely engaged on high-risk projects. The new policy should make this an explicit requirement. The PoE should be empowered to conduct regular audits of resettlement and rehabilitation activities and impacts and their compliance with the policy requirements and objectives. Where needed, the PoE could advise the Bank and borrower on strategies for facilitating improved resettlement outcomes and developing corrective action plans. PoE members should be selected through a consultative process, including project affected people and civil society.

96. In addition to the need for stringent requirements and explicit procedures for supervision, independent monitoring and evaluation, and tying outcomes to staff incentives, the revised policy should also require that supervision, monitoring and evaluation reports be verified and publicly disclosed. These requirements will help to address both conflict of interest in fulfilling reporting requirements and gaps in accountability to project-affected people and the public. In the IFC’s Performance Standards, evaluation of outcomes relies heavily on the self-monitoring reports produced by the borrowing client. This creates a conflict of interest, whereby the borrower has a strong incentive to downplay or omit any challenges or failings. The IEG acknowledges that concerns about the “relative lack of disclosure and the absence of independent verification of implementations results in IFC projects are valid”.⁹¹ Given that IEG has identified that monitoring of safeguard policy implementation by borrowers remains deficient, the Bank must put in place procedures that will ensure accurate and impartial reporting of resettlement outcomes. The retention of independent experts tasked with verification of this data would help to address the conflict of interest inherent in borrower self-reporting. In addition, the requirement for regular public disclosure of these reports would increase accountability to project-affected people, civil society and other stakeholders, as well as consistency with the Basic Principles.⁹²

⁹⁰ World Commission on Dams. “Dams and Development: A New Framework for Decision-Making”, Earthscan Publications, London, 2000, p. 299.

⁹¹ *Ibid.*, p. 90.

⁹² Basic Principles, para. 69.

Recommendations on Resettlement Supervision, Monitoring and Evaluation

1. The revised policy should require the borrower to retain a qualified independent monitoring organization to verify the borrower's own monitoring information through regular publicly disclosed monitoring reports.
2. For any resettlement project that is deemed high-risk during the Bank's risk assessment, a Panel of Experts (PoE) should be engaged to provide regular independent review of, and guidance on, all aspects of resettlement, and in particular whether safeguard policy requirements and objectives and project resettlement plans and goals have been met. PoE members should be selected through a consultative process, including project affected people and civil society. PoE reports should be publicly disclosed.
3. If any significant resettlement issues are identified by the external monitor or Panel of Experts, the Bank and the borrower should jointly develop a remedial action plan to address the issues, which should include measurable, time-bound actions and be publicly disclosed.
4. The revised Bank procedures should stipulate that in cases of serious non-compliance, the borrower should be prevented from implementing the specific project components for which displacement impacts are identified until the remedial action plan is implemented.
5. The revised Bank procedures should require the Task Team to include performance indicators on resettlement outcomes in project results frameworks and ensure systematic collection of data to monitor and evaluate policy performance. Investment Completion Reports and independent reviews of those reports should rate and report on resettlement outcomes, and for projects with significant resettlement impacts, ensure that the results are incorporated as an essential dimension when assessing achievement of the project's development objective.
6. The Bank should, for relevant staff, factor resettlement outcomes into its staff assessment and incentive system.
7. The Bank must invest significantly greater resources in supervision and implementation support, regardless of the risk classification of the project, and particularly in projects that rely on Resettlement Policy Frameworks.

11. Reparations and Access to an Effective Remedy

97. The World Bank's Safeguard Policies are designed to prevent Bank-financed operations from causing adverse impacts. Nonetheless, history has demonstrated that some Bank-assisted activities inflict substantial harm upon people, constituting a gross violation of human rights. Project-affected persons and communities are entitled under international law to remedy and reparations for violations of human rights.⁹³ These entitlements involve a range of measures that States have a duty to ensure.⁹⁴ Even in well planned and resourced resettlement processes, backed by good intentions – mistakes are made and unanticipated harms are caused. In these cases, affected people have a right to a timely and effective remedy.
98. There is currently no guaranteed right to remedy within the World Bank safeguards and accountability framework. Even when the Inspection Panel concludes that harm has been caused to affected people as a result of non-compliance with operational policies, there is no mechanism in place to ensure that the harm is redressed. Without such a mechanism, those whose rights have been violated must rely on Bank Management and the Board's goodwill to take appropriate remedial action, as well as the cooperation of borrower governments, which is not always forthcoming, as illustrated by the Albania Coastal Zone Management Project and the Cambodia Land Management and Administration Project (see Box 11). This fundamental accountability gap threatens to render the safeguard policies and Inspection Panel meaningless for people who are harmed as a result of Bank-supported operations.
99. The UN Basic Principles and Guidelines on Development-based Evictions and Displacement state:

All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (para 59).

⁹³ International Covenant on Civil and Political Rights, Article 2, para 3.

⁹⁴ See "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," A/RES/60/147, 21 March 2006, at: <http://www2.ohchr.org/english/law/remedy.htm>.
http://www.hlrn.org/img/documents/A_RES_60_147%20remedy%20reparation%20en.pdf

Box 11: Cambodia and the Limits of World Bank Accountability

The Inspection Panel released an investigation report in March 2011, which found that the Bank breached its operational policies by failing to properly design and supervise the Cambodia Land Management and Administration Project (LMAP), contributing to “grave harm” to affected families. The Bank’s Inspection Panel found that the Bank’s failures contributed to the forced eviction of some 20,000 people living around Phnom Penh’s Boeung Kak Lake. Residents were wrongly denied the right to register their land ownership under the Project shortly before the government leased the area to a private developer and began a campaign of intimidation to force more than 4,000 affected families to sell their property for a fraction of its market value.

As described in Box 10, the Inspection Panel also found that the Bank breached its operational policies by failing to supervise the government’s implementation of a resettlement policy framework, which was included in the LMAP loan agreement. Despite acknowledging that the safeguard policies had been breached in the Boeung Kak case, Bank Management was unable to persuade the Cambodian government to rectify the harm done even after it offered to provide the resources to do so. Because of the Bank’s reliance on the cooperation of borrowing governments, including unaccountable regimes like the Cambodian government, there are serious practical limitations on its ability to be accountable to those harmed by its projects – even when it wants to be.

After more than a year of attempting to work with the Cambodian government to implement remedial measures, in May 2011, the Bank president Robert Zoellick took the extraordinary step of suspending all new lending to Cambodia until a resolution is found. By affirming the mandatory nature of Bank operational and safeguard policies, Zoellick’s bold decision had important implications, both within Cambodia and for the Bank as a whole. It sent a rare but bright signal about the sanctity of policies intended to protect people and the environment from harms resulting from development finance. It also appeared to work.

Within a week after this lending freeze became public knowledge, in August 2011 the Cambodian government issued a sub-decree granting title to most of the remaining families over their land in the Boeung Kak area. This marked a significant human rights victory in Cambodia. Thousands of people who were facing the prospect of forced displacement and impoverishment for the first time have formal legal security to their homes and land. Moreover, in a country where powerful people routinely act above the law with impunity, and where poor and marginalised people have no access to justice, ordinary Cambodian families were able to access an impartial accountability mechanism and obtain a just and meaningful remedy. Although the Bank’s decision was undeniably only one contributing factor to the outcome, it was critical in both laying down the law and vindicating and empowering the community.

Despite this considerable victory, the case is by no means closed. At least 90 families have been excluded from the land concession, and over the past few years more than 3,000 families were displaced from their homes in the area after accepting inadequate compensation, often under extreme duress. These families are not benefiting in any way from the government's new policy and since the eviction many have experienced negative social and economic impacts, including impoverishment. The Bank currently is not obliged by its own policies to unilaterally guarantee an effective remedy, such as compensation, for Bank failures to comply with its safeguards in cases. As a result people harmed by its projects are left to bear the consequences.

Sources: Bugalski, N. and Pred, D., *Cambodia and the limits of World Bank accountability*, Bretton Woods Project, 5 April 2011; Bugalski, N. and Pred, D., *Accountability squandered?*, Bretton Woods Project, 22 July 2012.

Recommendations on Ensuring Access to an Effective Remedy

1. The revised policy should guarantee the right to an effective remedy, including the right to reparations, for people who have suffered human rights violations and other harms resulting from displacement and resettlement. Special provisions should be made to enable women to access their right to remedy, including through legal aid.
2. The policy should require that independent, accessible and transparent grievance mechanisms are established at the local level for every project that induces involuntary resettlement.
3. The policy and Bank procedures should provide recourse for affected people to seek remedies, including where appropriate compensatory damages, if they are found by the Inspection Panel to have suffered harm as a result of a Bank operation. These provisions should be stipulated in the legal agreement with the borrower.