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# A JUST ALTERNATIVE TO DEVELOPMENT-FORCED DISPLACEMENT

Policy proposal to advance a just energy transition  
for project-affected communities



# ENDORISING ORGANIZATIONS



BRICS Feminist Watch | Centre for Human Rights and Development Mongolia | Oxfam | Pakaid  
 Center for Energy, Ecology and Development | EcoLur International | Pakistan Fisherfolk Forum  
 Freedom from Debt Coalition (Philippines) | Rivers Without Boundaries Mongolia  
 Legal Rights and Natural Resources Center (Philippines) | Oyu Tolgoi Watch (Mongolia)

## INTRODUCTION

*We are civil society organizations and legal and technical advisors who support communities affected by mines and other large-scale development projects. Many of these projects are justified by their developers as necessary for the renewable energy transition. The climate crisis demands a rapid shift away from the current fossil fuel-based energy system, but as the UN Secretary-General has declared, it is imperative that this transition be just, people-centered and equity-driven. Development projects that forcibly displace Indigenous Peoples and other land-connected communities are incompatible with those principles.*

*This proposal calls for a new approach to engaging affected communities, predicated on respect for their agency and their individual and collective human rights, which can truly contribute to a rapid and just energy transition.*

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## CURRENT APPROACHES FOR ADDRESSING THE RISKS OF DISPLACEMENT HAVE FAILED AFFECTED COMMUNITIES

In our work supporting communities physically and economically displaced by mining, energy and other large-scale projects, we have witnessed the disruption and devastation to their lives and the ecosystems they depend on. These impacts—[well documented](#) by half a century of empirical research—include landlessness, homelessness, food insecurity, increased morbidity, marginalization, social disarticulation and threats to Indigenous Peoples’ cultural survival. Even with the best mitigation strategies, the inherently destructive nature of extractive industry projects often makes it impossible to avert harm. And even when communities have been able to access the

strongest available accountability processes, we have seen how it is usually impossible to restore what was lost.

We therefore call on policymakers, lenders and businesses to avoid projects that cause displacement to the maximum extent possible and to invest in circular economy solutions that reduce the need for new resource extraction.

We recognize, however, that many mining and other large-scale, land intensive projects will continue to be developed in the coming years, including those required to transition to the clean energy systems the world urgently needs to avoid catastrophic climate change. This reality has motivated us to explore better approaches to community engagement than those currently applied under the predominant global standards.

International standards governing displacement and resettlement, like the “safeguards” first promulgated by the World

Bank, offer important protections. Their adoption in the 1980s and 90s, and subsequent updates, which have informed the development of national policies around the world, marked progress from the [historically abhorrent treatment](#) of communities as being “in the way” of development. However, [the evidence](#) is overwhelming that these standards, and their implementation, still largely fail to prevent impoverishment and other serious harms to displaced communities. The reasons for this include:

- **Assumption of legitimate expropriation:** Standards like the International Finance Corporation’s (IFC) Performance Standard 5 (PS5) presume a project’s purpose justifies land expropriation and displacement, without assessing the project’s contribution to the general welfare or weighing costs to communities and ecosystems.
- **Failure to consider feasible development alternatives:** Developers often fail to seriously consider alternative project designs to avoid or minimize displacement, while governments and lenders accept developers’ claims of “no feasible alternatives” without scrutiny.
- **Top-down implementation of standards:** Implementation relies on technocratic processes, often led by short-term consultants hired by, and accountable to, project developers rather than affected communities.
- **Community exclusion from decision making:** Indigenous Peoples and other land-connected communities are treated as passive stakeholders rather than rights-holders, who are typically only superficially consulted on a narrow set of options in the context of extreme power imbalances, without the support of independent advisors to verify developer claims and help shape decisions and

outcomes. Indigenous Peoples are frequently denied their right to give or withhold their Free, Prior and Informed Consent (FPIC).

- **Weak implementation and enforcement:** Even where decent resettlement or livelihood restoration plans are developed on paper, they are often not implemented effectively with a focus on outcomes for, and accountability to, affected communities.

As a result of these gaps in the prevailing standards and their implementation, distrust and resentment among affected communities and allied social movements continue to fester, [leading to complaints, conflict](#) and [costs](#) for everyone involved. Project developers, along with regulators, lenders and buyers, urgently need to adopt a better approach.

## BRINGING TOGETHER AND BUILDING ON INITIATIVES TO ADVANCE A JUST TRANSITION

There has been a [resounding call for respect for human rights and Indigenous Peoples’ rights in the context of a just energy transition](#), especially with regard to transition mineral mining. But not enough attention has been paid to what it would take, in practical terms, to engage communities from a premise of respect, to both prevent violations of, and fulfill, their individual and collective human rights.

Significant work is being done to secure the [effective implementation](#) of the right of Indigenous peoples to self-determination, including their authority to give or withhold their Free, Prior and Informed Consent (FPIC) for projects that could affect their lands, territories and resources. As this important work continues, attention must also be paid to respectful and rights-based



engagement with non-Indigenous communities, who often also have customary land rights and deep attachments to their land and natural resources, while maintaining the distinct international legal recognition of Indigenous Peoples' rights.

There are several important initiatives that can collectively create a foundation for a better approach:

- **Community-company agreements**, such as Impact Benefit Agreements (IBAs), are [common](#) in [several jurisdictions](#), such as Australia, Canada, the United States and South Africa, though rarely for non-Indigenous communities, and serious [limitations](#) in the implementation and enforcement of these agreements persist.
- **Intensive mediations between communities and project developers**, are offered by the accountability mechanisms of development finance institutions, such as the Compliance Advisor Ombudsman (CAO) of the IFC, to help reach agreements aimed at remediating harms. But these mechanisms are rarely used to influence project designs and [prevent harms](#) before decisions are made.
- **An initiative for pooled funding for independent technical and legal support to communities** so they can participate in decision-making and negotiate agreements is [at the conceptual stage](#) and gathering interest.
- **Rules for arbitration to enforce agreements and protect human rights** in the context of company-community conflicts have been developed in the [Hague Rules on Business and Human Rights Arbitration](#), but have rarely been put to use.
- **The Dublin Declaration on Fair and Equitable Land Access (FELA)**, developed by social scientists and human rights experts, including the authors of this paper, was endorsed at a special session of the 2024 annual conference of the International Association for Impact Assessment (IAIA). FELA outlines [six core principles](#) through which project developers, lenders and implementing agencies recognize, respect and empower affected communities, centralizing their agency, their decision-making role and their enhanced well-being.

Building on this work and drawing from our experience as community advocates, the policy proposal below seeks to provide a better framework for engaging communities based on the premise of respect and agency.

# OUR PROPOSAL FOR A JUST ALTERNATIVE TO DEVELOPMENT-FORCED DISPLACEMENT

We call for a new *just* approach to engaging communities with deep social, cultural or economic attachments to their land and natural resources, which stand to be significantly affected by large-scale investment projects. This approach is premised on respect for the dignity, knowledge and capabilities of project-affected people, and grounded in their [Right to Development](#), which includes the right to exercise agency over decisions that may fundamentally alter their lives.

Indigenous Peoples and other land-connected communities should be recognized as rights-holders, custodians of their land and environment, and capable agents in their own development decisions—including assessing risks, opportunities and trade-offs posed by external proposals for large-scale projects on their land.

It is only through a just approach to community engagement, rooted in respect, that projects can receive *genuine* broad community support, a principle already recognized, but poorly implemented, as a prerequisite for responsible development under the [IFC Sustainability Policy](#).

To operationalize this approach, we call for the incorporation of the following measures in the updated IFC Sustainability Framework and other relevant standards, and their adoption by project developers, lenders, investors and buyers.

## 1. Access to Information and Technical and Legal Support for Communities

- Project developers should provide at-risk communities with accessible information and independent technical and legal support—funded at arm's length—to assess impacts, explore alternatives, and design community benefits before any project decisions are made.

Early in a project's feasibility phase, and prior to any decision about the project proceeding, project developers should provide individuals and communities who are potentially at risk of physical or economic displacement with all information relevant to these risks, including project proposals, design options, maps and technical studies. This information should be provided in an accessible format in their local language.

Communities should be offered resources to:

- **Conduct mapping and baseline studies of their land, resources and assets**, including descriptions of their uses, value and tenure arrangements, with the help of cartographers and other specialists.
- **Engage effectively with the project developer on participatory impact assessments of project design options.** In this process, communities should have the support of independent technical specialists, including mining engineers, and environmental and social specialists. Impact assessments should include an analysis of the viability and robustness of developers' proposals to avoid and mitigate impacts, and they should address how developers' proposals compare with community-led ideas, including alternative project designs, footprints and locations. For brownfield developments or greenfield projects on sites where there has been prior displacement to make way for the project, these assessments should also include measures to remediate legacy impacts. The assessments should be conducted with the meaningful participation of women and all other community groups, including those who are particularly vulnerable to harm.
- **Design a benefits package** they wish to attain from the project, with the support of development specialists. The benefits package may include employment, development of community infrastructure and facilities, access to education and skills training, a revenue stream, or any other benefits to give effect to their own development vision. The design of benefit proposals should be practicable, sustainable, gender-responsive, based on an inclusive decision-making process in which all community groups have participated, and ensure equitable benefits across the entire community decision-making process in which all community groups have participated, and ensure equitable benefits across the entire community.

The specialists and advisors that communities elect to work with should be selected by the communities themselves, with the support of NGO or legal advisors if the communities so choose. They should be highly qualified professionals, free of conflicts of interest, and accountable to communities rather than project developers.

## **2. Prioritization of Designs that Avoid Displacement and Other Impacts**

- **Project designs should avoid displacement and significant community impacts to the maximum extent possible. Only after fully exploring avoidance options should unavoidable impacts be addressed, with a focus on minimizing their duration, maximizing restoration and return, and delivering community-designed compensation and benefits.**

Project developers should design the proposed project in a manner that avoids displacement, destruction of resources, and other significant impacts, even if this increases up-front costs and reduces the project's access to land. Innovative engineering and technical solutions to

avoid and minimize impacts—including changes to project type, footprint and design—should be explored as a priority.

Priority should be given to options that avoid and minimize resettlement and disruption of community access to resources on which they rely, and that allow for the continuation of livelihoods, access to food, water, facilities and other aspects of community life.

Only after a full exploration of options to avoid harm should attention turn to strategies to address unavoidable impacts. For these impacts, the focus should be on exploring options for limiting their duration and severity. Wherever possible, impacts on land and resources should be temporary and time bound, with priority on restoration and return as soon as practicable.

Communities should then be supported in assessing options for replacement cost compensation, income restoration and other measures that will not only offset losses but provide benefits that will put communities in a better position, as determined by them and aligned with their own development goals.

These strategies should be grounded in existing land and resource tenure systems so that they are respected and maintained. For example, communities with communal land tenure systems may decide that certain parts of their lands can be used (in exchange for replacements, compensation and other benefits) for a limited period by a mining company, with clear requirements for restoration and return, while designating other parts of their land as off-limits entirely.

### 3. Rights-Based Mediation that Addresses Power Imbalances

- **Project developers should engage in equitable negotiations with affected communities based on a comprehensive understanding of the best available options to avoid impacts, limit their duration, restore land and resources and ensure sustainable community benefits. Negotiations should be facilitated by independent and neutral mediators with a view to reaching rights-respecting and mutually beneficial agreements.**

The goal should be a fair and equitable agreement that protects communities' land, resources and livelihoods, enables coexistence with the project and includes benefit-sharing arrangements designed by communities to improve their living standards and well-being. Ultimately, any agreement should respect human rights and Indigenous Peoples' rights and leave communities in a *better position*, even if they agree to trade-offs. The IFC Performance Standards should be regarded as the baseline upon which to build an equitable and mutually beneficial agreement.

In order to facilitate fair negotiations between communities and project developers—and with a view to leveling the playing field and preventing conflict and harm—independent mediation services should be made available. Neutral, expert mediators or other appropriate facilitators should be jointly selected by the parties. Mediators should have specialized expertise in human rights and asymmetric conflict resolution, including the skills to navigate complex inter-party and intra-community dynamics.



Mediation should provide a forum for the parties and their advisors to share information, clarify interests and positions, and exchange ideas and proposals. It should be conducted in a culturally appropriate manner and designed to [address power asymmetries](#) and ensure that the interests of all affected people are represented, including marginalized groups. While communities should be empowered to represent themselves, including through elected community representatives, they must be free to involve legal counsel, NGOs or any other support person of their choosing, in any manner they see fit.

In some cases, communities may require support to establish and register legal entities to enter into mediation and formal agreements.

## 4. Expropriation Only in Accordance with Human Rights Law Principles

- **Compulsory land acquisition or involuntary resettlement should only be carried out in the most exceptional circumstances, in strict accordance with international human rights law principles.**

It is possible that, even with the best avoidance, mitigation and benefit-sharing strategies available, communities will decide that the trade-offs are not worthwhile, and that they do not want the project to proceed. Any invocation by governments of “public interest” or a “public purpose” to justify expropriation and override community objections must be subject to a rigorous human rights assessment, including an assessment of necessity and proportionality. In the case of Indigenous Peoples, such expropriation [should not proceed](#) without their FPIC.

[Human rights law](#) allows for expropriation (in the case of non-Indigenous people) only in the most exceptional circumstances, solely for the purpose of promoting general welfare (i.e., to support the realization and protection of human rights), and where all feasible alternatives to achieve the same goal have been exhausted. The principle of proportionality requires that the project’s positive human rights impacts be weighed against the impacts on the rights and well-being of communities whose land and resources would be affected. [International law](#) sets a high bar and requires due process, access to legal remedies and other safeguards to uphold human rights.

Even in the rare cases where governments seek to exercise legitimate human rights-compliant expropriation, project developers should seek good-faith agreements with communities to avoid adverse impacts and provide meaningful benefits. In such cases, the [minimum necessary land and resources should be affected](#), and communities should retain the right to designate certain areas—such as those with cultural or spiritual significance or of high value to their livelihoods—as “no-go zones.”

## 5. Mechanisms for Monitoring and Enforceability of Agreements

- **The terms of any agreements should be clear, specific, time-bound and understandable to communities. They should be legally binding and include mechanisms for independent monitoring (e.g., by mediators or a panel of experts). They should be enforceable by communities themselves—with the support of legal counsel—through courts, human rights-compliant arbitration, such as under the [Hague Rules on Business and Human Rights Arbitration](#), or other accessible and effective enforcement mechanisms.**

Legal and technical support should be provided to communities throughout the duration of the agreement to support its implementation, including the distribution and execution of benefits in a manner that is fair and equitable for the entire community.

Implementation of, and compliance with, agreements should be regularly monitored throughout the lifecycle of the agreement or project, including, for example, by multi-stakeholder committees or independent experts.

Where project developers breach or fail to perform measures required under the agreement, communities must have an accessible and effective means for dispute resolution and enforcement. This may include mediation, the intervention of a panel of experts or, if necessary, access to courts or human rights-compliant arbitration.

The costs of implementing and enforcing the agreement, including accessing judicial, administrative or arbitral proceedings, should not be borne by the communities. Funding for legal and technical support to communities and monitors could be set aside upfront as part of the agreement.

## 6. Enabling and Using Leverage to Ensure a Just Approach to Community Engagement

- **Development finance institutions, commercial lenders, investors and buyers should enable this approach by contributing resources for independent technical and legal support for communities and by offering mediation services for upfront agreement making.**

These actors should establish pooled funds to finance technical and legal support for communities throughout the project cycle, including to negotiate, monitor and enforce fair and equitable agreements with project developers. To avoid conflicts of interest, a third party that is independent of the project developer must be responsible for the administration of funds. The case for private funding for community legal and technical support, and private sector and civil society consensus on the principles and design elements for an independent fund, was laid out in a [brief published in 2024](#).

If development finance institutions are considering investing in the project or already hold investments in companies involved, they should make their independent accountability

investments in companies involved, they should make their independent accountability mechanisms (IAMs) available to mediate *upfront* agreement-making between communities and project developers. In other cases, mediators could be funded through the pooled fund described above.

- **Development finance institutions, commercial lenders, investors and buyers should use their leverage to ensure a just approach to community engagement throughout the project cycle.**

Project financiers should withhold loans for projects with significant impacts on land-connected communities in the absence of this approach, or they should require the measures outlined above and the demonstration of broad community support (which, in the case of Indigenous Peoples must take the form of FPIC) as a condition for loan disbursements.

Shareholders of project developers should exercise their leverage, including through engagement and shareholder resolutions, to ensure adoption of these measures.

Buyers and entities that process or utilize the commodity derived from the project should ensure that these measures are adopted through their due diligence, engagement and procurement policies, including through cascading requirements throughout the supply chain.

Corporate end users, such as automotive and renewable energy companies, should engage directly with project developers (as well as their more direct suppliers) including through site visits and meetings with affected communities to understand their perspectives.

All actors along the investment and supply chain should ensure that they have effective grievance mechanisms in place to give effect to their responsibilities under the United Nations Guiding Principles on Business and Human Rights. In addition to their responsibilities to enable or contribute to remedy when harms occur, these stakeholders should also institute material consequences for project developers that fail to respect agreements with local communities.



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