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## A human rights based approach to project induced displacement and resettlement

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### ABSTRACT

Respecting, protecting and fulfilling human rights must become more prominent in both the processes and outcomes of resettlement. We have developed a Human Rights-Based Approach to Resettlement for use by project operators, rights holders and governments so that they can better understand what the corporate responsibility to respect human rights entails in situations of involuntary resettlement and expropriation. We outline the procedural human rights principles and resettlement outcomes that must be achieved in order for resettlement to be considered human rights compliant. We also consider how human rights are addressed in the International Finance Corporation Performance Standard 5 on land acquisition and involuntary resettlement. We suggest that the International Finance Corporation's largely silent approach towards the private sector's human rights responsibilities potentially understates the significant human rights risks that characterize displacement and involuntary resettlement.

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Development-induced displacement and resettlement; human rights impact assessment; social impact assessment; forced eviction; livelihood restoration and enhancement; human rights risks

### Introduction

Around the world, development projects have led to an estimated 10 to 15 million people being displaced every year (Terminski 2015). From the 1980s on, international financial institutions have adopted practice standards that typically require the livelihoods of displaced people to be restored and preferably improved. Noteworthy are the International Finance Corporation (IFC) Performance Standard 5 on Land Acquisition and Involuntary Resettlement (IFC 2012a); the World Bank Operational Policy 4.12 on Involuntary Resettlement (World Bank 2016a); the standards of the African Development Bank (AfDB 2003), the Asian Development Bank (ADB 1995) and the Inter-American Development Bank (IDB 1998). Other multilateral development banks (e.g. EBRD, EIB) have also developed similar policies. Furthermore, over recent years, many countries have introduced or updated their national resettlement policies, notably India, Mozambique and Sri Lanka (Perera 2014).

The unanimous adoption by the United Nations Human Rights Council in 2011 of the *United Nations Guiding Principles on Business and Human Rights* (UNGP) (United Nations 2011a) has led to a growing awareness of the human rights responsibilities of business enterprises (O'Brien & Dhanarajan 2016). Involvement in human rights violations and abuse now constitutes a business risk for companies (Kemp & Vanclay 2013; Franks et al. 2014; Vanclay et al. 2015). This is recognized

by many companies, particularly multinational enterprises, as evidenced by their adoption of policy statements and procedural guidelines (BHRR 2016), and sometimes guidance documents on human rights (see for example Rio Tinto 2013). There has also been much attention given to the development of methodologies for project-based human rights impact assessment (Götzmann 2014; Götzmann et al. 2016; van der Ploeg & Vanclay 2017).

A major social and human rights risk for companies comes from the need to undertake resettlement in order to be able to satisfy land acquisition requirements (Vanclay 2017). To manage the risks, companies need to understand how to comply with their human rights responsibilities when resettlement is undertaken. There is a need to consider whether existing international resettlement standards and industry practice are in line with international human rights standards and expectations (United Nations 2015; Owen & Kemp 2016).

There are only a few publications about human rights in the context of project-induced displacement and resettlement. Those that exist tend to focus on the involuntary nature of the resettlement and how this itself may constitute a violation of human rights (e.g. Morel 2014; Hoops et al. 2015; Tagliarino 2016). Expropriation and involuntary resettlement are contrary to fundamental human rights such as the right to freedom of movement and choice of residence, the right to private

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and family life, the right to property, and the right to housing (Terminski 2015; Morel 2014; Penz et al. 2011). In addition, the right to self-determination, which allows Indigenous peoples to choose their own development path, can be adversely impacted by land acquisition that requires Indigenous peoples to move away from their traditional lands and homes, which in turn affects their livelihoods, personal and spiritual attachments (Anaya 2004, 2005; de Schutter 2009; Hanna et al. 2014). From a legal and human rights perspective, expropriation and involuntary resettlement can only be justified when: (1) the project is in the public interest (substantiated by justification and as determined by established procedure); (2) the principle of proportionality is satisfied (when the harm created is proportional to the benefits that derive from the project); (3) when due process has been observed (affected people have adequate access to legal advice and the ability to challenge the decision); and (4) the affected people have been given full and fair compensation (that they are not worse off) (Hoops et al. 2015; United Nations 2014b; BverfG 2013).

The purpose of this paper is to outline the rights of project-affected peoples and discuss how human rights should be respected in resettlement procedures and outcomes. We specifically focus on the responsibilities of private operators in project-induced displacement and resettlement. Private actors have a corporate responsibility to respect human rights, which encompasses many human rights principles and standards. Even where project proponents have obtained legal rights over land (by government grant or market acquisition), any displaced families and communities have human rights under international law that must be fully respected and fulfilled by project proponents and contractors (de Schutter 2009). In practice, in some if not all countries, meeting these international obligations will likely require exceeding the specifications of the national legal context (United Nations 2011a).

By drawing on a range of key international human rights documents and instruments, we outline a Human Rights-Based Approach to Resettlement (HRBAR). We clarify and describe the relevant human rights and human rights principles regarding resettlement procedures and outcomes. We contrast the HRBAR against the requirements of the IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement (IFC 2012a), considered the gold standard for private operators in resettlement practice (Reddy et al. 2015; Vanclay 2017), and make recommendations for how the IFC objectives could be made consistent with a human rights perspective.

### Key terms and concepts

Human rights are commonly understood as being those 'inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being' (Sepulveda et al. 2004, p. 3). They are widely

accepted as being generally agreed values and exist to ensure human dignity and the fulfilment of basic human needs. Human rights are characterized as being universal and inalienable (all people are entitled to them); indivisible (human rights all have equal status and cannot be ranked); and interdependent and inter-related (the realization of one right often depends on the realization of others) (HRBA Portal 2016a). Human rights become established by international law, and are articulated in international treaties and court rulings. Box 1 provides a listing of some of the human rights that are implicated in resettlement actions.

**Box 1.** List of human rights that should be considered in resettlement actions

(This is not an exhaustive listing of human rights potentially affected by resettlement.)

Right to an adequate standard of living and to continuous improvement in living conditions

Right to culture

Right to education

Right to food

Right to freedom from cruel inhumane or degrading treatment or punishment

Right to freedom of movement and choice of residence

Right to freedom of opinion and expression

Right to health and well-being

Right to housing

Right to information

Right to life

Right to participation

Right to peaceful assembly and association

Right to private and family life

Right to property

Right to religion

Right to remedy

Right to self determination

Right to water and sanitation

Right to work

Rights of the child

The equal rights of women and men to the enjoyment of their human rights

From a human rights perspective, involuntary resettlement may constitute 'forced eviction'. Forced eviction is defined as: 'the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection' (United Nations 2014b, p. 3). Forced eviction is prohibited under international law particularly when: there are no safeguards (i.e. legal and other protections) provided to affected people; adequate alternative housing and adequate compensation

and/or replacement productive land are not provided; or the eviction is executed without due process (United Nations 2014b). Forced eviction is a gross violation of human rights and, where people are rendered homeless, specifically the right to adequate housing (United Nations 2014b). In some cases, the resettlement of affected peoples has resulted in the deprivation of their rights to food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, or freedom of movement (United Nations 2007a, 2014b; Wright 2008).

People who have been subject to forced eviction, including in situations of project-induced displacement and resettlement, can be regarded as being internally displaced persons (IDPs) (United Nations 2014b). IDPs are people

who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, **violations of human rights** or natural or human-made disasters, and who have not crossed an internationally recognized State border. (United Nations 1998, p. 5, emphasis added)

Large-scale projects would create people who qualify as being IDPs in any situation where expropriation or involuntary resettlement was enacted and there was not a compelling case of public interest or due process (see also Robinson 2003). In such situations, even if quality replacement housing was provided, people relocated could still be regarded as IDPs (United Nations 2014b).

According to the United Nations (2014b) (see also Morel 2014), evictions are permissible, but only in very specific circumstances. To be permissible, evictions must be fully justified and only carried out in exceptional circumstances when all feasible alternatives to eviction have been fully considered. The project requiring the eviction must be clearly in the public interest, and there must be appropriate proportionality and reasonableness. Where people are legally evicted, the *United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement* (here after: Basic Principles) (United Nations 2007a, p. 6) provides for a right to be resettled 'which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential public services such as health and education'. In resettlement, due process must be applied. This requires that there be adequate consultation and the participation of the affected community, and that appropriate legal protections are in place. The Basic Principles also require that an eviction impact assessment be undertaken so that the likely consequences of the eviction can be assessed in advance, and there must be a monitoring process. Adequate grievance mechanisms must be provided

and evictions must not be carried out in a discriminatory manner, and must pay careful attention to people who are vulnerable. So, for any eviction to be permissible, the process and outcomes of resettlement must not result in affected people experiencing any detriment to their human rights, and it is intended that they should experience a general improvement in their standard of living (United Nations 2007a).

In response to the severe impoverishment and trauma that has been caused by project-induced resettlements (see Cernea 1997; United Nations 2014b), and especially by groups who were particularly vulnerable (e.g. Indigenous peoples, minorities, informal settlers, people in extreme poverty), in 1980 the World Bank introduced a resettlement policy (World Bank 2004). Subsequently, the IFC and many other development banks developed their resettlement policies and procedures, with progressive improvement over time. The 2012 version of the IFC Performance Standard 5 *Land Acquisition and Involuntary Resettlement* (short form IFC PS5) is now considered to be international best practice (Reddy et al. 2015; Vanclay 2017), partly because the IFC Performance Standards are embedded in the requirements for Equator Principles Banks (Vanclay et al. 2015). Within the private sector and among resettlement and social performance practitioners, the IFC PS5 represents the common understanding of the concepts, objectives and requirements regarding displacement, involuntary resettlement, and livelihood restoration and improvement (Vanclay 2017).

IFC PS5 (2012a) primarily refers to situations of involuntary resettlement. Technically, resettlement is considered to be involuntary whenever project-affected peoples do not have the right of refusal, or where the government's power of expropriation can be invoked. In such situations, the IFC expects that its clients design and implement resettlement to be consistent with the following objectives (IFC 2012a, p. 1–2):

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

PS5 (2012a) aims to protect affected peoples from the negative consequences of forced eviction. Besides requiring adequate compensation, the IFC objectives entail a promise to affected peoples that their standards of living will be improved at the new resettlement sites. The relocation of people to new locations is intended to result in an improvement in their well-being, which means that development projects should bring more equal and balanced outcomes than was previously the case. Thus, projects should contribute to fulfilling the development objectives of sustainability and poverty reduction as represented in the United Nations' sustainable development goals (World Bank 2013; Smyth & Vanclay 2017). In this way, development projects are more likely to be socially legitimate and to gain a social licence to operate (Jijelava & Vanclay 2014a, 2014b). The IFC's resettlement objectives are intended to guide the drafting of a Resettlement Action Plan (RAP) and Livelihood Restoration Plan (LRP), which are required to be developed by each project proponent. The RAP and LRP are the key documents used by project proponents in undertaking resettlement, and should describe the relevant national legal framework, the characteristics of the affected population, the anticipated losses, and the mitigation measures to be implemented. The IFC PS5 does not require that these documents provide any information regarding human rights risks and impacts, or the various relevant human rights that must be respected.

From a human rights perspective, involuntary resettlement must not result in a detriment to project-affected people's human rights, nor should it create obstructions to the right to continuous improvement of living conditions (United Nations 2007a). Whereas under international law, governments are the duty-bearers with the primary obligation to respect, protect and fulfil human rights, in project-induced resettlements most human rights responsibilities tend to be transferred to (private) project operators (Reddy et al. 2015). The UNGP (United Nations 2011a) established that companies have a responsibility to respect human rights, regardless of the human rights obligations of governments, and that companies must avoid doing harm. Considering the severity and variety of the human rights risks that characterize project-induced resettlement, private operators arguably have a responsibility to contribute to fulfilling human rights (van der Ploeg et al. 2017) in order to bring about socially desired sustainable development outcomes (World Bank 2016b). The responsibility to respect and fulfil human rights in resettlement requires that private actors undertake pro-active steps to contribute to the enjoyment of the human rights of all affected persons, groups and communities.

The economic and/or physical displacement of project-affected peoples implies the loss of (aspects of) livelihoods. The IFC PS5 (2012a, p. 1) describes a livelihood as: 'the full range of means that individuals, families, and

communities utilize to make a living such as wage-based income, agriculture, fishing, foraging, and other natural resource-based livelihoods, petty trade and bartering'. However, the loss of livelihoods comprises not only economic and physical displacement (loss of income-producing activities and homes), but also social, cultural and spiritual displacement, in effect a loss of place attachment and sense of place (Vanclay 2002, 2008; Vanclay et al. 2015). Private actors need to understand which human rights are relevant to displacement and the livelihood losses experienced in each situation, and how the human rights principles can be applied in involuntary resettlement procedures (van der Ploeg & Vanclay 2017). Project operators need to ensure that the actions they undertake in response to the IFC requirements also result in compliance with human rights standards.

The notion of 'project-affected people' describes those groups, communities, families and individuals who are economically and/or physically displaced by a project. Project-affected peoples also include the host communities, that is, the communities that receive the people who are being relocated (IFC 2012a, 2012b). Typically, host communities are economically displaced to make way for the relocation of people who are physically displaced (Mathur 2006). For example, the land needed for resettlement sites often requires the expropriation of the land of farmers and may result in their economic if not physical displacement. Thus, host communities need to be included in compensation and livelihood arrangements and they must have similar access to grievance mechanisms and remedy (World Bank 2016b).

Because human rights standards establish obligations to protect persons from expropriation and eviction, and explicate how human rights must be respected and fulfilled when these occur, in situations where people experience severe project-related impacts and governments or companies are reluctant to resettle people, there may be a right to be resettled that can be claimed by affected people (Marshall 2005; United Nations 2011a; Perera 2014; Terminski 2015; Kothari & Vasquez 2015). In addition to the land that is required for the construction of a project, the size of safety buffer zones partly determine the extent of displacement and resettlement that is necessary. The size of buffer zones can be minimized so as to avoid displacement and resettlement, but in avoiding resettlement communities may remain close to the operational site and can therefore experience significant adverse impacts (noise, dust, vibration, pollution) that affect their health and livelihoods (Smyth & Vanclay 2017). These negative impacts may also have a significant adverse effect on property values, resulting in the inability of families to sell their houses. If families wished to move away, their freedom of movement would therefore be restricted. For example, as an unexpected consequence of conventional gas extraction, in Groningen, the Netherlands, frequent small,

local earthquakes have resulted in significant damage to houses and feelings of insecurity (van der Voort & Vanclay 2015). The prospect of continuing earthquakes has made it practically impossible for families to sell their houses. When these adverse impacts are so significant that they violate human rights (for example the right to health and the right to freedom of movement), there may exist a right to be resettled consistent with international human rights standards (Marshall 2005; Terminski 2015).

The Basic Principles (United Nations 2007a) state that in a situation of eviction, there may be circumstances that allow the return of resettled families and communities. The right to return in project-induced displacement could be claimed, for example, when projects do not proceed in a reasonable timeframe after resettlement has taken place. The right to return also requires that responsible authorities assist families to recover any properties or possessions that were disposed of during the resettlement process (United Nations 2007a). Also, in situations where expropriated land becomes rehabilitated and is no longer needed for the project (such as in the context of mining), the farmers that were resettled should have the first priority to return to their previous farmlands if they wish so.

### A human rights based approach to resettlement

The corporate responsibility to respect human rights refers to the internationally established human rights, such as those established in the International Bill of Human Rights, and, depending on the specific circumstances, may require the consideration of additional standards (United Nations 2011a). An analysis of various human rights standards and instruments was undertaken to identify the human rights principles that are relevant for corporate human rights compliance in project-induced resettlement procedures and outcomes. The list of instruments and other documents we considered is provided in Box 2. Below we discuss the key points from these instruments and highlight how they apply to resettlement.

The Human Rights-Based Approach (HRBA) is a conceptual framework for applying a human rights lens in various settings. It is especially applied in a development context (HRBA Portal 2016). It seeks to not only mainstream human rights, but to make respecting and fulfilling human rights central to the development process and outcomes. The HRBA is based on a philosophy that human rights and development are compatible and mutually reinforcing. International human rights standards imply that an HRBA be applied in any situation involving evictions, and therefore resettlement (United Nations 2014b).

The HRBA has been codified in the Stamford Agreement (2003), which was the outcome of a high-level meeting intended to create clarity about what a human rights-based approach would comprise (Frankovits 2006;

**Box 2.** Human rights instruments and other documents considered in constructing the HRBAR

*Key human rights instruments and Standards*

International Bill of Human Rights, which comprises the: Universal Declaration of Human Rights (UDHR) (United Nations 1948); International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations 1966b); and International Covenant on Civil and Political Rights (ICCPR) (United Nations 1966a)

Convention on the Rights of the Child (CRC) (United Nations 1989)

United Nations Guiding Principles on Business and Human Rights (UNGPR)

United Nations Guiding Principles on Internal Displacement

United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles)

United Nations Declaration on the Rights of Indigenous Peoples

*Other key human rights documents*

Stamford Agreement (2003) otherwise known as The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies

Voluntary Principles on Security and Human Rights

UN Fact Sheet 9 Indigenous Peoples and the United Nations Human Rights System

UN Fact Sheet 21 The Right to Adequate Housing

UN Fact Sheet 25 Forced Evictions

UN Fact Sheet 34 The Right to Adequate Food

UN Fact Sheet 35 The Right to Water

HRBA Portal 2016). The Stamford Agreement specified that the objectives of the HRBA are: (1) to further the realization of human rights; (2) to integrate human rights standards and principles into all activities, by focusing on both processes and outcomes; and (3) to contribute to the development of the capacities of duty-bearers (e.g. governments and non-state actors) to meet their obligations, and to rights-holders so that they can be empowered to claim and exercise their rights. The HRBA emphasized that human rights principles apply at all stages in a project. This means that the HRBA objectives should drive the development of Resettlement Action Plans.

The *United Nations Basic Principles and Guidelines on Development-Based Evictions and Displacement* (United Nations 2007a) (the Basic Principles) and the *United Nations Guiding Principles on Internal Displacement* (United Nations 1998) provide guidance on how to address issues associated with internal displacement (and thus project-induced resettlement). The *Guiding Principles on Internal Displacement* specifically apply to a range of situations, including cases of ethnic cleansing, armed conflict, disasters, collective punishment, and where large-scale development projects have not been fully justified as being in the public interest. The Basic Principles (United Nations 2007a) provides more

specific assistance in making resettlement procedures, implementation and outcomes compliant with human rights. It established that 'no resettlement shall take place until such time as a comprehensive resettlement policy consistent with ... internationally recognized human rights principles is in place' (United Nations 2007a, p. 12).

Using the sources mentioned in Box 2, we delineated a HRBAR. Below, we identify the human rights that must be respected and fulfilled in relation to: (A) the principles and procedures underpinning resettlement, and (B) resettlement outcomes. Basically, a resettlement process must be guided by human rights principles and the resettlement outcomes must respect all relevant human rights and contribute to their fulfilment.

### **(A) Human rights principles and procedures**

In this subsection, we outline the primary human rights principles and procedures that should be applied in resettlement processes and decision-making in order to respect the dignity and rights of resettled people and host communities.

*The resettlement process should ensure the protection of the right to private and family life, and the protection of the rights of the child.*

Involuntary resettlement results in affected peoples having to accept significant risks in re-establishing their homes, social relationships, work and subsistence activities, all of which create multidimensional stress (Scudder 2005, 2011). In the process of being resettled, families and individuals typically become dependent on the company and/or government for their basic needs (Downing 2002; ICMM 2016). Often the social cohesion and quality of the relationships between and within families (including between parents and children) are disrupted (Cernea 1997; United Nations 2014b). All this creates an increased sense of insecurity, inequality and unfairness.

The right to private and family life is enshrined in Articles 17 and 23 of the ICCPR. The right to private and family life means that families, communities and children must be protected from the risks that characterize the various phases of a resettlement process including preparation, relocation and recovery. The protection of the family must be guaranteed through a predictable process in which families can anticipate what will happen to them, so that they can make plans to manage and restore their lives including daily activities such as childcare.

With regard to relocation, families must give consent to the actual timing of removal. The Basic Principles (United Nations 2007a, p. 12) stipulate that 'the right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed'. Furthermore, relocation must not take place in 'inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations' (United Nations 2007a,

p. 11). Thus, the relocation process must protect families from inhumane or degrading treatment and respect their dignity, security and right to life.

UNICEF (2012) has developed a guidance document on *Children's Rights and Business Principles* to help businesses understand where and how their activities might impact children. Every business activity should respect the right to protection and safety of the child, as articulated in the Convention of the Rights of the Child (CRC). A resettlement process can impact on children's mental and physical health as well as their ability to go to school (Downing 2002). The right to education is outlined in Article 28 of the CRC (and is also enshrined in Article 13 ICESCR). The right to health is reflected in various articles of the CRC, specifically Article 24. During the actual relocation process, the health and well-being of children must be included in monitoring and evaluation activities. While the IFC Guidance Note 5 (IFC 2012b) does refer to children as a vulnerable group, it does not require project proponents to specifically consider the resettlement risks to which children are exposed.

*The resettlement process should respect and fulfil the right to information.*

The Basic Principles (United Nations 2007a, p. 9) state that: 'All potentially affected groups and persons, including women, indigenous peoples, and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process'. All relevant information must be provided to affected communities prior to undertaking any decisions, and people must have sufficient time to process the information. The information provided must be inclusive and understandable by all groups including the vulnerable. The information should be provided in appropriate languages and in various formats, depending on the local context. Respecting the right to information requires that people are able to access all appropriate documentation and that they have access to independent advice (legal, technical and other) (United Nations 2007a). It also requires that information is regularly updated and that there be ongoing dialogue.

Project proponents should not underestimate the time and resources needed to ensure that the right to information is fulfilled. When the informing process is rushed, people are not adequately informed and they do not have sufficient time to process the information (Kemp & Owen 2013). Therefore, people can become confused and there is greater likelihood of conflict, which would damage the legitimacy of the process. Thus, a lack of information can result in grievances that may be difficult to solve later on. Project operators need to plan how all affected persons are going to be informed about all aspects of the resettlement process and its procedures, including: information regarding their rights and options, as well as about relevant government legislation; the procedures for participation in decision-making; the

formulae to determine compensation and/or methods used to value assets; how to gain access to independent advice; the complaints handling process and how they can have access to remedy; and the availability of a special process for vulnerable groups.

The IFC PS5 (IFC 2012a) states that resettlement should ensure the appropriate disclosure of information to project-affected people. However, 'sufficiently early' (IFC 2012b, p. 12) is too vague. In resettlement planning, respecting and realizing the right to information is vital and this may be many years in advance of the actual resettlement. For example, in Germany, the planning of the involuntary resettlement necessary for the expansion of the Garzweiler lignite mine (Phase 2) started more than 10 years in advance of the actual relocation (Hinzen 2012). Allowing enough time is necessary to enable affected families and communities to comprehend the situation and possible impacts, and to raise issues the project operator might have overlooked, as well as to reduce the stress associated with potentially excessive pressure to consent to compensation proposals. The IFC PS5 (2012a) does not adequately emphasize the long timeframe needed for the planning of adequate resettlement.

*The resettlement process should respect and fulfil the right of impacted people to participate in decision-making consistent with the principle of equality and non-discrimination, and must provide adequate attention to the needs of vulnerable groups.*

In resettlement practice, neglect of the basic human right of access to information and the right to participation occur regularly, hampering successful resettlement outcomes (AfDB 2015; World Bank 2016b). Participatory processes must become more strongly emphasized in resettlement practice so that resettlement activities and related programmes meet community needs, build public support and strengthen community cohesiveness. However, the notion of participation is not well understood by project proponents and is poorly implemented.

From a human rights perspective, processes are only truly participatory when they reflect the principle of 'active, free and meaningful' participation as established in the *United Nations Declaration on the Right to Development* under Article 2 (United Nations 1986; UNOHCHR 2006). Everyone is entitled to active, free and meaningful participation, and all individuals and groups should be enabled to contribute to their own economic, social, cultural and political development (Stamford Agreement 2003). The principle of inclusion is central to participation and requires that all people, including women, the elderly, youth and the disabled, be encouraged to be involved (Stamford Agreement 2003). Also, the principles of equality and non-discrimination are important, as they involve the consideration of the specific needs of each social group, especially those individuals, families or communities who are vulnerable or marginalized. It should be noted that participation does

not necessarily result in or imply consensus, nor does it mean that the community is always 'right' and the project is 'wrong', or vice versa. An active and free participatory process can reveal opposing positions and opinions of the various groups and individuals in society. Thus, the challenge is how these varying opinions can be considered and integrated into meaningful outcomes for all (Webler et al. 1995; Dare et al. 2014). Companies need to have skilled personnel to be able to do this.

The participation of all groups is required in all phases of the resettlement process, including: around the nature and acceptability of the overarching project; the design and choice of replacement houses; the appropriateness, extent and mechanisms for the payment of compensation; the design and implementation of any livelihood restoration programmes; the level and types of social services to be provided; and the extent to which there is an overall fair and transparent process (Stamford Agreement 2003; United Nations 2007a). Participatory processes should seek to empower project-affected peoples by providing possibilities for dialogue and learning. They should have the potential to influence decisions and contribute to achieving equitable outcomes. Among other benefits, enabling meaningful participation would reduce the uncertainty experienced by the affected people and it shows respect for their human dignity (Frankovits 2006).

With regard to resettlement risks and impacts, women, men, children, youth and the elderly are likely to have different questions and needs, and these differences must be taken into account (United Nations 2014b). To respect the principles of inclusion, equality and non-discrimination, the project operator must conduct a vulnerability assessment before the start of resettlement planning, information sharing and participation activities. The concept of vulnerability should be adapted to cater for each context, but should take into account families with elderly, mentally and physically disabled persons, single-headed households with children, and child-headed households (ICMM 2016). Because there typically are differential experiences of negative and positive social impacts (Vanclay 2012), the understanding of vulnerability also applies to the extent of the impacts likely to be experienced by each family or household.

Participation that involves Indigenous peoples must take the concept of Free, Prior and Informed Consent (FPIC) into account. The *United Nations Declaration on the Rights of Indigenous Peoples* (United Nations 2007b), ILO Convention 169 (ILO 1989), and various other conventions and agreements all require that where Indigenous peoples are present, resettlement can only take place when they have given their free, prior and informed consent (Goodland 2004). Thus, the participation of Indigenous peoples necessitates their ability to discuss, negotiate and freely give or withhold their consent to all or some aspects in a resettlement process. In certain circumstances, Indigenous peoples may have the

legal ability to deny approval to the project requiring the resettlement (Hanna & Vanclay 2013). In situations of unavoidable relocation, the IFC PS7 (IFC 2012c, p. 5) states, 'the client will not proceed with the project unless FPIC has been obtained'.

The IFC's (2012d, p. 2) *Access to Information Policy* requires IFC clients 'to engage with communities affected by their projects, including through the disclosure of information'. However, in this overarching policy, nothing is specifically stated regarding the need for the participation of project-affected peoples. IFC PS5 (2012a) and the IFC Guidance Note 5 (2012b) emphasize the informed participation of affected peoples in resettlement decision-making. However, no detail is provided on how participatory processes should be conducted. It seems that the IFC has not paid sufficient attention to what would constitute an adequate participatory process. From a human rights perspective, establishing and conducting such a process is paramount. The IFC should ensure that participation is well understood and implemented by project operators in a way that is meaningful to all affected people.

*The resettlement process should respect and fulfil the right to remedy through an operational grievance mechanism with an appropriately adapted process for vulnerable groups.*

Remedy for adverse impacts is fundamental to the existence of human rights, but there are significant difficulties in effectively identifying and implementing appropriate remedies (Knuckey & Jenkin 2015; Kemp & Owen 2016). The right to remedy is established in the ICCPR under Article 2(3). It requires that people be enabled to claim their rights, especially when they experience adverse impacts, and that any adverse impacts must be investigated and subsequently addressed.

A grievance can be understood as 'a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities' (United Nations 2011a, p. 27). Grievances often comprise a direct impact on human rights, for example, when financial compensation is delayed and a relocated family has no means to continue undertaking their livelihood or income-earning activities. Ignored grievances can result in protest and conflict, which can be further exacerbated by clashes with police or company security forces, potentially making the project operator complicit in human rights violations (Voluntary Principles 2000; Wright 2008). Analyses of the historical pattern of unaddressed grievances of project-affected peoples reveals manifest disregard of their human rights, leading to the strong recommendation that the right to remedy must be better implemented, especially through improving access to information, greater engagement, participation and dialogue (Ruggie 2013; Doyle 2015).

The human rights responsibility of business enterprises requires the establishment of effective operational level grievance mechanisms, consistent with the criteria elaborated in the UNGP (United Nations 2011a). At a project level, such mechanisms are needed not only to identify human rights abuses, but also to investigate and respond to any non-frivolous claims. Such claims can result in adverse human rights impacts, especially when they are not detected or addressed at early stages. Grievance mechanisms must be rights compatible by ensuring that the processes, outcomes and actual remedies respect the human rights principles set out by the HRBA and the various other standards.

A remedy may itself create adverse impacts on human rights, especially if it is not thought through properly. For example, the payment of compensation in cash as a form of remedy for adverse environmental impacts cannot make good the harm when affected people are unable to effectively use the money for restoring their health, livelihoods or cultures (Cernea & Mathur 2007). Or, the giving of jobs (as a remedy for loss of livelihoods) to certain groups of people could lead to (gender) inequality or conflict in a community, and may well be discriminatory. Thus, the decision on the type of remedy to be provided must be very well considered by the project proponent in order to make sure that the remedy is satisfactory to the affected persons and makes good the harm that was created.

Whereas project operators are required to have a grievance mechanism for the overall project (United Nations 2011a; see IFC PS1 and PS2), the resettlement subproject(s) must also have specific grievance mechanisms in place to effectively address resettlement and compensation-related grievances. Grievances vary, as they may relate to different aspects of the resettlement process, for example the adequacy of the compensation, information access, negotiation process, relocation process, housing provision, health services or stress management. Ideally, grievances should be avoided whenever possible, although when they arise they form an important source of input for the project operator to continuously learn and improve the resettlement process (IFC 2009; United Nations 2011a). Thus, due process in terms of grievance handling is one of the core aspects in resettlement to ensure people's right to remedy as well as their dignity.

The IFC PS5 (IFC 2012a) and Guidance Note 5 (IFC 2012b) require that grievance mechanisms be established early in the resettlement process in order to capture and address issues in a timely manner. PS5 also recognizes that an effective grievance mechanism is essential to ensure successful resettlement outcomes, and that they should be adjusted to enable the voices of all groups to be heard. However, PS5 should make reference to the UNGP's criteria for effective grievance mechanisms to better inform project operators about how they should manage and address grievances in order to be human rights compliant.

*The whole resettlement process must be governed by transparency and accountability.*

As established in the Human Rights-Based Approach (HRBA Portal 2016b), the principle of accountability demands that 'States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments'. Governments have a primary obligation to protect citizens from the harm done by others including corporations (United Nations 2011a). However, a governance gap (Ruggie 2013) exists, meaning that governments often have conflicting interests and/or are unwilling or unable to hold companies accountable for the human rights violations they may cause or in which they are involved.

The corporate responsibility to respect human rights (United Nations 2011a) established that companies (i.e. project operators) are responsible for their adverse impacts on human rights, independently from government human rights obligations, and can thus be held accountable when human rights have been breached. In situations of involuntary resettlement, private operators are accountable for resettlement outcomes that result in detriment to any of the human rights. Unfortunately, there exists a lack of ongoing independent monitoring of the processes and outcomes of resettlement (AfDB 2015; World Bank 2015; ICMM 2016). In practice, any monitoring tends to be conducted internally or by consultants paid by the company, and the results are not necessarily made public.

The IFC (2012d, p. 1) *Access to Information Policy* states that: 'the IFC believes that transparency and accountability are fundamental to fulfilling its development mandate'. However, how project proponents might be held accountable is not explicitly mentioned in PS5. In PS5, it is stated that a monitoring process should be undertaken and that after the resettlement is completed there should be a completion audit at which time resettlement outcomes must be compared against the IFC resettlement objectives and the RAP. IFC PS5 (2012a) states that resettlement can be considered complete only when all the adverse impacts of resettlement have been addressed and the achieved resettlement outcomes are in line with the PS5 objectives. However, the IFC does not firmly establish that project proponents remain accountable until satisfactory outcomes are achieved. In addition, the IFC does not stress the participation of affected people in the monitoring and evaluation of the resettlement process.

National human rights institutions (NHRIs) should play an important role in strengthening the monitoring of project-induced resettlement (ICC 2010). This means that they need to have strong mandates to be able to perform as the national watchdog of involuntary resettlement practices. NHRIs could be an independent party in resettlement by having access to all documentation, conducting resettlement observations, and by making

demands for adjustment to the process where necessary. They should fulfil the role of neutral observers (United Nations 2007a) so that they can report on any inhumane or degrading treatment, and ensure that the project operator respects people's right to peaceful assembly and protest. In order to fulfil this mandate, NHRIs require adequate training to improve their expertise of resettlement and related human rights issues (United Nations 2007a; ICC 2010).

### **(B) Human rights pertaining to the outcomes of resettlement**

Project operators need to consider various human rights to ensure that the outcomes of resettlement are compatible with human rights principles and standards. This means that all relevant human rights must be respected and realized at individual, household and community levels. Below we discuss the expected resettlement outcomes that should result in respecting the full range of human rights, including the rights to food, water, housing, work, health, education, culture, religion and an adequate standard of living.

*Full and fair compensation for individuals, families and communities must be provided in advance of relocation taking place.*

Insufficient compensation and/or poor implementation hamper people's ability to restore their livelihoods and get on with their lives (Cernea & Mathur 2007; Perera 2014; ICMM 2016). Typically, national frameworks require that compensation for loss of land and/or physical assets be paid in the form of cash (either paid into bank accounts or directly into the hands of the affected people). There are many problems with payments in cash (Cernea 2003). Firstly, it is especially problematic when the affected people are not used to dealing with relatively large amounts of money. Secondly, national frameworks frequently do not consider the need for compensation for the loss of many non-tangible assets that form an important part of people's livelihoods (Price 2008, 2009). Other particularly problematic aspects of the compensation process are the risk of assault, theft, corruption and fraud in relation to the disbursement of payments, as well as substantial delays in the provision of compensation (Perera 2014; Tagliarino 2016). Also, the use of generic compensation formulae (flat fees for various items) rather than determining entitlements on an individual or household basis can result in perceptions of unfairness.

Compensation programmes that are not adequate in protecting families from impoverishment can adversely impact on the right to an adequate standard of living established in ICESCR Article 11: the right of everyone to an adequate standard of living for themselves and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. More specifically, the Basic Principles (United

Nations 2007a, p. 13) states that ‘persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing’. Compensation programmes should become human rights based, which means that they must fully and fairly compensate for the loss of all assets, livelihoods and opportunities.

The IFC PS5 (2012a) requires compensation for the loss of assets at full replacement cost. Replacement cost includes the market value of the lost asset and the costs involved for the recovery and transport of the affected assets (IFC 2012a). The Guidance Note 5 (IFC 2012b) explains that the criteria for replacement cost can involve compensation for agricultural or pasture land, fallow land, land in urban areas, houses and other structures, and loss of access to natural resources. The replacement cost criterion is regarded as an improvement over most national legislation standards, which typically only require compensation at local market value and no compensation for restoring the assets or for transaction cost (Price 2008; Tagliarino 2016). It can be difficult to establish the market value of physical assets such as houses and other types of properties. Formal markets can be non-existent or distorted, and the market value defined for a house or a crop may not ensure that the person or family is able to acquire equivalent assets to re-establish their livelihood effectively (Cernea & Mathur 2007; Tagliarino 2016).

Even though the specifics of compensation packages may differ across various resettlement situations, the Basic Principles (United Nations 2007a, p. 13) states that compensation should be provided in the form of like-for-like or financial compensation that addresses ‘any losses of personal, real or other property or goods including rights or interests in property’. The Basic Principles further specify compensation should be provided for any damage taking into account the circumstances of each case, such as: ‘loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services’ (United Nations 2007a, p. 13). To provide compensation in a timely and appropriate manner, a company must be adequately prepared for the required logistics and expertise. The failure to address compensation fully could result in a claim that the resettlement was non-compliant with human rights standards and constituted a forced eviction.

Taking into account the range of compensation issues outlined in the Basic Principles, the IFC PS5 (2012a) compensation objective can be interpreted as being too narrow, as it primarily focuses on assets and income-related losses, rather than lost opportunities,

mental harm, inconvenience, loss of cultural assets and sense of place, and the loss of social networks. These losses may be difficult to express in monetary value, however, these are typically very important to people and to the restoration of their livelihoods. These losses could involve adverse impacts on human rights especially the right to health, culture and the right to continuous improvement of living conditions. Thus, as well as consideration for compensation for physical assets, more attention should be given to what might constitute replacement costs for other types of losses. The IFC PS5 (2012a) should provide a comprehensive list of all possible losses to be compensated by project proponents; with particular mention of compensation for mental harm.

Fair compensation requires that the project proponent should develop and implement a transparent and timely compensation process. An important aspect of this is to provide access to the valuation methods used by the company or the government, and to ensure access to free, independent expert assistance and advice. The IFC PS5 and the IFC Guidance Note 5 recognize that transparency in the compensation mechanisms and valuation methods used is important for the overall legitimacy of the process. Furthermore, ‘fair’, as recognized in PS5 (IFC 2012a), involves ensuring equality and non-discrimination, which means that all affected people are entitled to a form of compensation regardless of the nature of their land title or occupancy arrangements.

Article 3 in the ICCPR and ICESCR emphasizes the equal rights of women and men to the enjoyment of their human rights. Therefore, compensation packages must be gender sensitive and respect the rights of women as well as men (United Nations 2007a). This means that women and men living together in one household must be equal or co-beneficiaries of the compensation package, especially financial compensation, and single women and/or men as well as widows must be entitled to their compensation in their own right. This human rights aspect is duly recognized in the IFC PS5 (2012a).

Like-for-like compensation is of considerable importance in resettlement, particularly in relation to land-based livelihoods (IFC 2012a; ICMM 2016). The human rights that form the basis of such livelihoods, such as the rights to food, water and culture, must be respected. The Basic Principles (United Nations 2007a, p. 13) establish that ‘cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better’. With regard to housing, the appropriateness of cash compensation or like-for-like must be considered in each context. The expectation that displaced families can construct a new house or commission its construction generates considerable stress and creates a tremendous

burden on their daily lives which can adversely impact on the right to health. Therefore, each family should be enabled to choose between the options of: having a new house constructed for them; being able to move to an existing house of their choice; or building a house for themselves with adequate support from the company.

The IFC PS5 (IFC 2012a) requires replacement housing that is of improved quality and the Guidance Note 5 (IFC 2012b) refers to the Basic Principles (United Nations 2007a) for further details on the adequacy of housing. In the context of resettlement, the right to adequate housing involves criteria to be taken into account by project operators (see Box 3).

In practice, the options for replacement housing typically require the selection of resettlement site locations that involve significant trade-offs (Reddy et al. 2015). Families may receive improved housing in terms of material quality and value, and thereby it might be considered that the IFC requirement for an improvement in housing would be fulfilled (ICMM 2016). However, other characteristics of the new site such as increased distance to major centres may hinder access to work opportunities, places of cultural and religious importance, essential ser-

**Box 3. Criteria relating to the right to adequate housing**

(extracted from United Nations 2014a, p. 4)

Criteria	Description
Security of tenure	Housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats
Availability of services, materials, facilities and infrastructure	Housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal
Affordability	Housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights
Habitability	Housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards
Accessibility	Housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account
Location	Housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas
Cultural adequacy	Housing is not adequate if it does not respect and take into account the expression of cultural identity

vices, and to family and relatives (ICMM 2016; van der Ploeg & Vanclay 2017). An increased distance to essential services may adversely impact on the right to education and health. Also, reduced access to family and relatives can bring increased risks, especially to vulnerable groups such as the elderly.

Box 3 shows how the right to housing is linked to many other human rights issues that need to be taken into account. The selection of a resettlement site must not involve trade-offs in human rights – each right is equally important and each must be addressed (United Nations 2011a; Götzmann et al. 2016). A material improvement in housing must not make families worse off in other aspects of their livelihoods or well-being in human rights terms. Therefore, 'the choice of resettlement site is the single most important criterion in supporting the restoration of the livelihood of the impacted household' (ICMM 2016, p. 33).

*Resettlement should result in enhanced livelihoods in order to respect and fulfil the right to an adequate standard of living and other relevant human rights.*

The IFC PS5 (2012a) is not explicit on how livelihood improvement should be achieved. In many cases, project operators have not given adequate attention to the outcomes of livelihood restoration programmes and the ultimate goal of conceiving resettlement as a sustainable development programme has not been achieved (Perera 2014; Adam et al. 2015; AfDB 2015; World Bank 2015, 2016b). A major concern is that with the declining availability of land of similar or better quality, the traditional land-based livelihoods of communities cannot be (fully) restored. Often, communities have not received adequate support to adapt their livelihoods to their new environment (Smyth et al. 2015; ICMM 2016).

There are some problematic aspects in livelihood restoration thinking and practice. Firstly, as mentioned previously, suitable replacement land is often not available or adequate to restore traditional or land-based livelihoods. Access to forests, rivers and seas is often significantly reduced by large projects without operators fully considering options to restore access. Therefore, livelihood restoration programmes must become more strongly focused on *livelihood adjustment*, and there must be long-term support to families and communities in helping them to adapt their livelihood strategies to the new situation. Livelihoods that need to be adjusted to income-producing activities require more thinking about how project-affected people can overcome the problems associated with this disturbance of their livelihoods. They may need to learn new skills for other types of income activities, which must also be culturally appropriate (World Bank 2016b). Thus, families and communities might need to be assisted to change from land-based to wage-based livelihoods in a relatively short time (Kemp & Owen 2013). With regard to the social aspects of livelihood restoration, a stronger emphasis is needed on how social networks and social cohesion can be restored (Price 2009). This could be through social projects, cultural activities and sports events, which can strengthen relationships within the community and establish relationships with host communities.

Second, livelihood restoration programmes tend to be based on the ideas of social development experts without sufficient input from the affected people themselves. As a consequence of this, these programmes do not always work in practice, especially in the longer term (ICMM 2016; Hanna, Vanclay, et al. 2016). From a human rights perspective, livelihood restoration programmes must be participatory; ideally designed and implemented by the affected communities themselves, with logistical, material and financial support provided by the project operator. To ensure the success and continuity of these programmes, the affected people must be involved in their implementation and ongoing operation. Also, there must be attention given to gaining the support and involvement of the larger community, including host communities. Project operators must realize that restoration programmes should not be developed and implemented with a top-down process. They will only generate successful outcomes when based on the ideas and needs of the affected people (Esteves & Vanclay 2009).

Third, the significant mental stress that tends to be experienced by persons and families throughout the resettlement process (Scudder 2005) obstructs successful livelihood restoration and improvement. Severe stress and trauma that keeps people from doing their daily activities, such as going to work and taking care of their families, has adverse impacts on the right to health, the right to family life, and potentially the right to life (United Nations 2014b). Therefore, livelihood restoration programmes should help individuals and families improve their feelings of security, reduce stress and deal with any emotional harm experienced. The programmes should continue until such time that all affected people, particularly vulnerable persons, have fully adapted to the new environment. As previously indicated, the IFC PS5 (2012a) does not discuss mental harm as a consequence of involuntary resettlement, and there are no clear requirements for private operators with regard to managing mental harm and the risk of (enduring) trauma.

Fourth, another complex human rights issue is that decades of resettlement practice has shown that the payment of large amounts of financial compensation has led to impoverishment and subsequent adverse impacts on the right to an adequate standard of living, the right to food and the right to life (Cernea 1997, 2003; Scudder 2005, 2011; Cernea & Mathur 2007). This has especially affected people who are regarded as vulnerable including the poor and/or illiterate, women and children, and Indigenous peoples (Perera 2014). Poor families in displaced communities are usually ill-prepared to negotiate and manage relatively large amounts of money, especially when it is given cash-in-hand (Penz et al. 2011; Terminski 2015). Compensation paid solely in cash is a major risk to affected families and individuals,

as it is often spent on short-term luxury products such as cars, motorbikes, refrigerators, televisions, or spent on alcohol or other amusements, or is used to pay for lavish weddings or pilgrimages. As a result, families quickly run out of money and, having lost access to their means of subsistence, typically experience a degradation of their livelihoods (Perera 2014). An important part of livelihood restoration, therefore, is that project operators should establish cash management programmes that provide support to families (especially the vulnerable groups) in managing the relatively large amounts of money.

Finally, livelihood restoration should not be articulated as an 'encouragement' or 'aim', as suggested by the IFC Guidance Note 5 (2012b, p. 17), rather adequate livelihood restoration programmes should be seen as being essential to respect and fulfil the basic rights of affected families. From a human rights perspective, the objectives of livelihood restoration and improvement address many human rights, all of which must be respected and fulfilled. Thus, livelihood enhancement is an absolute minimum standard that must be complied with.

*Resettlement should result in the restoration of access to work and to markets in order to respect the right to work.*

Resettlement outcomes must respect the right to work, which is established in Article 6 ICESCR, and can be understood as 'the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts'. An adverse impact on the right to work can occur when access to existing jobs or job opportunities is obstructed. Respect for this right means that people's access to jobs (for example in the nearby city), shops or other business activities must be restored at the new resettlement site. A significant increase in transport costs can obstruct a person's ability to go to work, to markets, or to seek job opportunities, which adversely impacts on the right to work. Additionally, a person may lose their job due to stress or to the time needed to reorganize their lives after being resettled, which comprises an adverse impact on the right to work.

The right to work is closely related to the right to food and the right to water. Impacting on the right to work can result in obstructed access to adequate food and water, which subsequently can adversely affect other basic human rights such as the right to health. The right to food is interpreted broadly and can be understood as every man, woman and child, alone or in community with others, having physical and economic access at all times to adequate food or means for its procurement (United Nations & FAO 2010). Resettlement sites must be carefully selected taking into account the affordability of all families to continue to go to their place of work, to access their lands and to markets, so that their right to food is respected. Waged agricultural workers can be particularly vulnerable, especially when the choice of a resettlement site location means an increase in distance, additional costs and therefore obstructed

access to farms that offer job opportunities (Reddy et al. 2015).

Project operators need to take into account the criteria of the right to adequate housing (see Box 3) to make sure that resettlement outcomes respect and fulfil the right to work. Furthermore, more attention must be given to respecting and fulfilling human rights that are essential to human life and dignity, which can be infringed when access to work is obstructed. The IFC Guidance Note 5 (IFC 2012b) does mention the issue of work in relation to compensation for wage-based livelihoods and expresses concern for restoring access to work in resettlement sites. However, the IFC is not stringent in demanding that resettlement sites likely to negatively impact on people's right to work should not be selected.

*Resettlement should result in the improvement of access to essential public services to respect and fulfil the right to health, water and education.*

Essential public services include education and health facilities, as well as utilities such as water and electricity. Essential public services are deemed necessary for the enhancement of individual and societal well-being, and to respect and fulfil human rights (Hesselman et al. Forthcoming 2016). The relevant human rights include the right to the highest attainable standard of health (Article 12 ICESCR), the right to education (Article 13 ICESCR), and the right to water and sanitation (CESCR 2003; United Nations 2010).

Project operators often do not adequately consider the need to improve access to essential services, or the challenges associated with doing so (Human Rights Watch 2013; ICMM 2016; van der Ploeg & Vanclay 2017). Similar to the issue of access to work, the resettlement site location is of tremendous importance to ensure that access to essential public services is adequate, and that the corresponding human rights are respected and fulfilled. Where families did not have access to basic household utilities in their original dwellings, enabling access to these services in the new housing is a way to fulfil human rights. When private operators construct new health or school facilities, long-term access to these services should be taken into account, including responsibility for ongoing maintenance (van der Ploeg & Vanclay 2017). The Availability, Accessibility, Acceptability and Quality (AAAQ) framework provides guidance in determining what 'adequate' entails to ensure enjoyment of human rights particularly with regard to the right to health, water and sanitation (UNOHCHR 2000; Jensen et al. 2014). The issue of accessibility is also important in terms of how freedom of movement is ensured in the new site. By taking into account the mobility patterns of the resettled population, project operators need to plan closely with government in providing the necessary public infrastructure, including access roads and public transport facilities, so that communities do not become isolated.

Attention for the health and future prospects of resettled children seems an ignored aspect in resettlement planning. Children are especially vulnerable to diseases when there is a lack of adequate sanitation or potable water in resettlement sites (UNICEF/WHO 2009). Also, children's rights can be affected when schools are not accessible or affordable due to remote resettlement sites, or because of insufficient places being available at existing schools in the area. The right to education can be respected and fulfilled by making sure that displaced children become enrolled in local schools and that youth have access to higher education and skills training (Robinson 2003; UNICEF 2012).

Project-affected people should participate in the establishment of the various services as much as possible so that they can contribute to, and feel responsible for, the management of these services, and thereby become less dependent on the project operator and/or the government for their basic needs. The IFC Guidance Note 5 (2012b) addresses the aspect of access to essential public services only by stating that social services should be replaced, but it does not further explicate the risks and challenges relevant from a human rights perspective. In addition to the IFC PS5 objective of ensuring adequate housing, the IFC must explicitly require project proponents to ensure adequate access to essential public services at resettlement sites.

*Resettlement should result in continuing access to places of cultural or spiritual significance and the commitment to preserve intangible and tangible cultural heritage to respect the right to culture and the right to religion.*

Worldwide, large-scale projects have had detrimental impacts on the ability of affected communities to preserve or safeguard their cultural heritage including cultural practices, specific ways of life, cultural sites and landscapes (Shaheed 2011). For many affected groups and communities, especially Indigenous peoples, the right to culture (Article 15 ICESCR and Article 27 ICCPR) is interlinked with the right to self-determination, embodying the right to continue practising traditional livelihoods and spiritual practices that are strongly connected to the lands they inhabit and use (Centre for Minority Rights Development 2003; ACHPR & IWGIA 2005; United Nations 2011b).

The high likelihood that agreeing to resettlement will result in irreversible impacts on their traditional lifestyles and will sever a community's relationship with ancestral spirits are major reasons why communities have resisted projects, and why resettlement has resulted in severe grievances, conflict and human rights violations (Centre for Minority Rights Development 2003; ACHPR & IWGIA 2005; United Nations 2011b; Hanna, Langdon, et al. 2016). By way of example, in a case brought by the Indigenous Endorois people of Kenya, the African Human Rights Commission reconfirmed the principle that access to

spiritual sites must be ensured and, as this had not been done in the case of the evicted Endorois people, that their right to culture and self-determination had been violated (Centre for Minority Rights Development 2003).

The IFC has a performance standard specifically addressing impacts on cultural heritage. Performance Standard 8 (IFC 2012e, p. 1) defines cultural heritage as:

- (i) tangible forms of cultural heritage, such as tangible moveable or immovable objects, property, sites, structures, or groups of structures, having archaeological (prehistoric), paleontological, historical, cultural, artistic, and religious values; (ii) unique natural features or tangible objects that embody cultural values, such as sacred groves, rocks, lakes, and waterfalls; and (iii) certain instances of intangible forms of culture that are proposed to be used for commercial purposes, such as cultural knowledge, innovations, and practices of communities embodying traditional lifestyles.

PS8 requires that cultural heritage in all its forms be protected from project impacts, that its preservation be supported and that there be equitable sharing of benefits from the use of cultural heritage. Cultural and religious practices form an important part of people's livelihoods and thus can comprise significant losses when they are interfered with. PS5 (2012a), however, does not elaborate on how cultural losses could or should be addressed at resettlement sites. In a situation of resettlement, respect for cultural and religious rights means that communities should have the freedom to choose to continue with their traditional lifestyles and practices, and that their access to important places, buildings, natural features (such as rocks, lakes, waterfalls) must be restored. While trees and graves can sometimes be relocated, it might not be feasible to remove buildings with cultural or religious importance, and they might need to be demolished. Primary data collection should include the identification all the places and buildings of cultural and religious significance. Subsequently, a participatory process should involve discussion with the affected community about how their heritage can be best preserved, relocated and/or (re)built.

## Conclusion

We have articulated the basis of a Human Rights Based Approach to Resettlement. We identified the specific human rights and human rights principles that should be implemented throughout resettlement planning processes and realized in the outcomes of resettlement actions. The HRBAR assists in the implementation of the corporate responsibility to respect human rights in the context of project-induced displacement and resettlement. The HRBAR shows how human rights can be respected through human rights-based resettlement procedures and outcomes. While the IFC Performance Standards provides best practice that is likely to lead to reasonable outcomes, they do not sufficiently emphasize the human rights dimensions of resettlement practice.

Project proponents should use the HRBAR in conjunction with best practice standards (such as the IFC performance standards) to ensure that human rights responsibilities are exercised in the design and implementation of resettlement action plans and livelihood restoration programs. In addition, stakeholders and rights-holders such as communities and civil society organizations can use the HRBAR to demand alignment of the plans and procedures developed by the government and/or proponent with international human rights standards. Stakeholders can also use the HRBAR to evaluate compliance of resettlement that has taken place with international human rights standards. This will provide evidence to assist them in demanding remedies when human rights have been violated.

Resettlement that is aligned with the HRBAR will contribute to the progressive realization of economic, social and cultural rights. Project proponents are expected to make positive contributions to sustainable development in the local communities in which they operate, in other words, they are expected to do more than only impact avoidance and mitigation. The realization of human rights in resettlement processes and outcomes can be achieved through the combined efforts and collaboration between communities, proponents, governments and civil society organizations.

The full realization of human rights in resettlement outcomes requires starting from the very beginning with a process based on human rights principles. Such a process needs to: be concerned with the dignity and rights of affected people; demonstrate fairness, transparency and accountability; facilitate the meaningful participation of all people and have appropriate mechanisms to enable vulnerable groups to participate; allow people to negotiate and receive adequate compensation packages that protect them from short and long-term loss of or detriment to their income, personal or community assets, culture, heritage, essential services and social relationships. Livelihood restoration programmes should provide possibilities to support individuals, families and communities to adjust and improve their livelihoods after relocation.

The whole process needs to be underpinned by a commitment to responding to community concerns, including through effective participation methods, inclusion of women and vulnerable people, and grievance mechanisms. Due to the limited availability of replacement land, in situations when subsistence activities need to be adjusted to cope with new environments, affected people must become much more empowered in decision-making, so that livelihood programmes designed to assist them can become better suited to their needs. Without such an approach, the hardships created by involuntary resettlement in the past will continue, along with the conflict and human rights violations that have been witnessed. With the growing international interest in human rights, there will be much greater scrutiny of project proponents, and much greater efforts will be taken to hold them responsible for their part in any violations.

Drawing on our comparison between the HRBAR and the IFC Performance Standards, we propose the following modifications (in italics) to the IFC resettlement objectives so that they become more compliant with human rights:

- To avoid, and when avoidance is not possible, minimize displacement by exploring alternative project designs *with the meaningful participation of affected communities*.
- To avoid forced eviction *in all circumstances*.
- To avoid, and when avoidance is not possible, minimize the adverse social, *environmental*, economic and human rights impacts from land acquisition or restrictions on land use by: (1) *obtaining the free, prior and informed consent of project affected peoples*; (2) *providing full and fair compensation for loss of livelihoods*; (3) *restoring and improving access to essential public services at resettlement sites*; (4) ensuring that the resettlement process is implemented based on the principles of *full access to information, the meaningful participation of those people affected, the right to remedy and the protection of the family, community and child*; (4) *ensuring that the resettlement process and activities are adapted to vulnerable groups, and*; (5) *establishing an accountability mechanism for ensuring successful resettlement outcomes*.
- To improve the livelihoods and standards of living of displaced persons *by respecting the human rights enshrined in the International Bill of Human Rights and other relevant human rights standards, and to contribute to the further realization of human rights of both economically and physically displaced*.
- To improve living conditions among physically displaced persons through *fulfilling the right to adequate housing and security of tenure, and to respect all other related human rights*.

The IFC standards for land acquisition and involuntary resettlement seem reasonably aligned with human rights expectations. But instead of being (optional) best practice, a human rights lens would regard them as a basic minimum requirement. Non-compliance with the IFC PS5 could potentially lead to human rights violations and expose the company to business risk. We firmly believe that the implementation of a HRBAR is essential to avoid this risk. We also contend that a HRBAR could lead to better outcomes to projects, communities and governments and is completely consistent with a shared value approach of business and their expected contribution to sustainable development.

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No potential conflict of interest was reported by the authors.

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