



Planning and Managing for Positive Legacies



Chapter 2.4 Resettlement



[flag]

Issue in brief: In some cases, by virtue of the location of a mineable ore body, proposed mining projects are located in close proximity to where people live. The situation where those affected do not have the legal right to refuse land acquisition and displacement is referred to as involuntary resettlement.

The current approach of the IRMA resettlement chapter does not prohibit involuntary resettlement, although it encourages mines to avoid it if possible. When avoidance is not possible, IRMA, like other internationally recognized standards on resettlement (e.g., IFC Performance Standard 5) requires that companies strive to minimize impacts on affected people, implement mitigation measures such as fair compensation and improvements to livelihoods and living conditions that are discussed ahead of time with affected peoples. Active engagement of affected peoples and their advisors is required throughout the process, from the earliest stages of resettlement risk and impact assessment through the monitoring of resettlement outcomes.

During its Launch Phase, IRMA will be encouraging mines that have been through resettlement processes to help test this chapter, and determine if the metrics used are robust and comprehensive enough to ensure that if the displacement of individuals and communities occurs, it can be carried out in a fair and respectful way that leads to improvements in quality of life and economic opportunities for affected peoples.

BACKGROUND

There are well-documented economic, social and environmental risks related to resettlement. People may be economically displaced from their livelihoods as well as physically displaced from their lands, homes, communities, and social and cultural ties. If planned or executed poorly resettlement may lead to increased impoverishment of affected households.

Resettlement is considered involuntary when people do not wish to move but do not have the legal right to refuse land acquisition that results in their displacement.⁶⁰ The International Finance Corporation's (IFC) Performance Standard 5 on Land Acquisition and Involuntary Resettlement states that involuntary resettlement should be avoided where possible.

TERMS USED IN THIS CHAPTER

Affected Community ■ Associated Facilities ■
Baseline ■ Collaboration ■ Competent Professionals ■
Consultation ■ Displacement ■ Economic
Displacement ■ Existing Mine ■ Forced Eviction ■
Free, Prior and Informed Consent (FPIC) ■ Grievance ■
Grievance Mechanism ■ Host Community ■
Indigenous Peoples ■ Involuntary Resettlement ■
Livelihood Restoration Plan (LRP) ■ Mining Project ■
Mining-Related Activities ■ Mitigation ■ New Mine ■
Operating Company ■ Remediation ■ Replacement
Cost ■ Resettlement Action Plan (RAP) ■ Stakeholder ■
Vulnerable Group ■

*These terms appear in the text with a dashed underline.
For definitions see the Glossary of Terms at the end of
the document.*

⁶⁰ According to the International Finance Corporation, "This occurs in cases of (i) lawful expropriation or temporary or permanent restrictions on land use and (ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail." (IFC. 2012. IFC Performance Standards on Environmental and Social Sustainability. Performance Standard 5: Land Acquisition and Involuntary Resettlement. Para. 1)

The IFC encourages its clients to use negotiated settlements, even if they have the legal means to acquire land without the seller's consent.⁶¹ Negotiated settlements typically give affected persons a greater role in planning the resettlement, help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly.⁶²

When deemed unavoidable, involuntary resettlement, like other evictions, must only be carried out under exceptional circumstances and in accordance with international human rights law.⁶³

OBJECTIVES/INTENT OF THIS CHAPTER

To avoid involuntary resettlement, and when that is not possible, equitably compensate affected persons and improve the livelihoods and standards of living of displaced persons.

SCOPE OF APPLICATION

RELEVANCE: This chapter applies if mining-related activities could result or have resulted in the physical or economic displacement and involuntary resettlement of people.

This chapter does not apply to voluntary resettlement (i.e., market transactions in which the seller is not obliged to sell and the buyer cannot resort to expropriation or other compulsory procedures sanctioned by the legal system of the host country if negotiations fail). As with involuntary resettlement, however, there are risks such as impoverishment that accompany voluntary resettlement. IRMA therefore encourages companies to implement measures to maximize benefits for any household voluntarily resettled as a result of project activities.

NEW VS. EXISTING MINES: New mines shall meet the requirements in this chapter. At existing mines, where resettlement occurred in the past, operating companies are not required to demonstrate compliance with all of the requirements in this chapter. It is possible, however, to evaluate the outcomes of resettlement projects even years after resettlement occurs, and, if necessary, take steps to restore or improve the living conditions and livelihoods of those affected. Therefore, IRMA expects that any mine applying for IRMA certification that carried out a resettlement project after 30 April 2006⁶⁴ will have carried out a completion audit or evaluation (See 2.4.7.3.b) prior to applying for IRMA certification, if the resettlement posed a risk of significant social impacts.

If the evaluation demonstrates that the objectives of this chapter have not been met, the company is expected to develop and implement mitigation strategies in collaboration with the affected peoples and continue mitigation until the objectives have been met. Mines that are in the mitigation development/implementation phase are eligible for certification.

For mines that involved resettlement prior to 30 April 2006, IRMA will not require evidence of such evaluations. It should be noted, however, that if there are human-rights-related impacts from historic resettlement programs that have not been mitigated or remediated, they will need to be addressed as per Chapter 1.3; and other unremediated impacts may be raised by stakeholders and addressed through the operational-level grievance mechanism as per Chapter 1.4. (See "Cross References to Other Chapters" table at the end of this chapter for more information).

Additionally, all mines shall apply the requirements of this chapter if there are proposed changes to mining-related activities, or if direct impacts become significantly adverse, such that communities or individuals have no alternative other than physical and/or economic displacement. In such cases, requirements of this chapter shall apply even where no initial project-related land acquisition or resettlement was involved.

⁶¹ IFC Performance Standard 5. Para. 3

⁶² European Bank for Reconstruction and Development. 2014. Performance Requirement 5. Land Acquisition, Involuntary Resettlement and Economic Displacement. p. 30. www.ebrd.com/news/publications/policies/environmental-and-social-policy-esp.html

⁶³ See Kothari, M. 2007. "Basic Principles and Guidelines on Development-based Evictions and Displacement". A/HRC/4/18. www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

⁶⁴ This chapter is largely based on IFC's Sustainability Framework, and in particular, Performance Standard 5 on Land Acquisition and Involuntary Resettlement. In 2006, IFC adopted the Sustainability Framework, which articulated IFC's strategic commitment to sustainable development. http://www.ifc.org/wps/wcm/connect/9fb7150048855c138af4da6a6515bb18/2007%2BUpdated%2BGuidance%2BNotes_full.pdf?MOD=AJPERES&attachment=true&id=1322804281925

Resettlement Requirements

2.4.1. Risk and Impact Assessment

2.4.1.1. If there is the potential that a new mine (including associated facilities) or the expansion of an existing mine or associated facilities may require land acquisition that could result in the involuntary resettlement (for the remainder of this chapter, referred to as resettlement) of people, the operating company shall undertake an assessment process to evaluate the potential direct and indirect risks and impacts related to the physical and/or economic displacement of people.

2.4.1.2. The assessment shall:

- a. Be undertaken during the early stages of mining project planning;
- b. Include identification of alternative mining project designs to avoid, and if that is not possible, minimize the displacement of people;
- c. Identify and analyze the social, cultural, human rights, conflict, environmental and economic risks and impacts to displaced persons and host communities⁶⁵ for each project design alternative, paying particular attention to potential impacts on women, children, the poor and vulnerable groups; and
- d. Identify measures to prevent and mitigate risks and impacts, and estimate the costs of implementing the measures.

2.4.1.3. The assessment shall be undertaken by competent professionals with experience in resettlement related to large-scale development projects.

2.4.1.4. The operating company shall document decision-making regarding alternative mining project designs and efforts to minimize resettlement.

2.4.1.5. The assessment shall be made public, or, at minimum, be made available to potentially affected people and their advisors.

2.4.2. Community Engagement

2.4.2.1. The operating company shall disclose relevant information and consult with potentially affected people and communities, including host communities, during:

- a. The assessment of displacement and resettlement risks and impacts, including the consideration of alternative mining project designs to avoid or minimize resettlement;
- b. The development of resettlement and livelihood options; and
- c. The development, implementation, monitoring and evaluation of a Resettlement Action Plan (RAP) and/or Livelihood Restoration Plan (LRP).

2.4.2.2. The operating company shall facilitate access, if desired by potentially affected people and communities, including host communities, to independent legal or other expert advice from the earliest stages of project design and assessment, through monitoring and evaluation of the resettlement process.⁶⁶

⁶⁵ Host communities may also be called “receiving communities.”

⁶⁶ This may involve providing funding to enable affected people to select and consult with experts; work with government agencies and/or non-governmental organizations to provide free legal and other services to affected people; or other means.

2.4.2.3. People from affected communities, including host communities, shall have access to an effective mechanism to raise and seek recourse for concerns or grievances related to displacement and resettlement.⁶⁷

2.4.3. Resettlement and Livelihood Restoration Planning and Preparation

2.4.3.1. When project-related displacement is deemed unavoidable, a census shall be carried out to collect appropriate socio-economic baseline data to identify the people who will be physically or economically displaced by the project and determine who will be eligible for compensation and assistance.

2.4.3.2. In the absence of host government procedures, the operating company shall establish compensation eligibility criteria and a cut-off date for eligibility. Information regarding the cut-off date shall be well documented, and disseminated along with eligibility information throughout the mining project area.

2.4.3.3. In the case of physical displacement, the operating company shall develop a Resettlement Action Plan. If the project involves economic displacement only, a Livelihood Restoration Plan shall be developed. In either case, these plans shall, at a minimum:

- a. Describe how affected people will be involved in an ongoing process of consultation throughout the resettlement/livelihood restoration planning, implementation and monitoring phases;
- b. Describe the strategies to be undertaken to mitigate the negative impacts of displacement and improve or restore livelihoods and standards of living of displaced people, paying particular attention to the needs of women, the poor and vulnerable groups;
- c. Describe development-related opportunities and benefits for affected people and communities;
- d. Describe the methods used for valuing land and other assets;
- e. Establish the compensation framework (i.e., entitlements and rates of compensation for all categories of affected people, including host communities) in a transparent, consistent, and equitable manner;
- f. Include a budget and implementation schedule; and
- g. Be publicly available.

2.4.4. Mitigation Measures Related to Physical Displacement

2.4.4.1. In all cases, when people are physically displaced as a result of the development or expansion of a mine or its associated facilities:

- a. The operating company shall provide relocation assistance that is suited to the needs of each group of displaced peoples and is sufficient for them to improve or at least restore their standard of living at an alternative site;
- b. New resettlement sites built for displaced people shall offer improved living conditions; and
- c. Displaced people's preferences with respect to relocating in pre-existing communities and groups shall be taken into consideration and existing social and cultural institutions of displaced peoples and any host communities shall be respected.

⁶⁷ The operational-level grievance mechanism developed as per Chapter 1.4 may be used as a mechanism to receive and address resettlement related grievances, or a mechanism may be created to handle only resettlement-related concerns. If a separate mechanism is developed, it shall be done in a manner that is consistent with IRMA Chapter 1.4 (in particular, it shall be developed in a manner that meets the UNGP effectiveness criteria for grievance mechanisms).

2.4.4.2. In cases where physically displaced people have formal legal rights to the land or assets they occupy or use, or do not have formal legal rights but have a claim to land that is recognized or recognizable under national (host country) law:

- a. The operating company shall offer the choice of replacement property (land and assets) of at least equal value and characteristics, security of tenure, and advantages of location; and
- b. If cash compensation is appropriate and preferred by the affected people, compensation shall be sufficient to replace lost land and other assets at full replacement cost in local markets.⁶⁸

2.4.4.3. In cases where physically displaced people have no recognizable legal right or claim to the land or assets they occupy or use, the operating company shall:

- a. Offer options for adequate housing with security of tenure; and
- b. Compensate for the loss of assets other than land at full replacement cost, provided that the people had been occupying the project area prior to the cut-off date for eligibility.

2.4.5. Mitigation Measures Related to Economic Displacement

2.4.5.1. If project-related land acquisition or restrictions on land use result in economic displacement, regardless of whether or not the affected people are physically displaced, the operating company shall apply the following measures:

- a. When commercial structures are affected, the business owners shall be compensated for the cost of re-establishing commercial activities elsewhere, for lost net income during the period of transition, and for the costs of the transfer and reinstallation of the plant, machinery or other equipment, and the employees shall be compensated for lost income;
- b. When affected people have legal rights or claims to land that are recognized or recognizable under national law, replacement property of equal or greater value shall be provided, or, where appropriate, cash compensation at full replacement cost; and
- c. Economically displaced people who are without legally recognizable claims to land shall be compensated for lost assets other than land at full replacement cost.

2.4.5.2. All economically displaced people whose livelihoods or income levels are adversely affected shall be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living, and transitional support shall be provided based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

Additionally:

- a. For people whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost shall be offered as a matter of priority;
- b. For people whose livelihoods are natural resource-based and where project-related restrictions on access apply, continued access to affected resources or access to alternative resources with at least equivalent livelihood-earning potential and accessibility shall be provided; and
- c. If circumstances prevent the operating company from providing land or similar resources as described above, alternative income earning opportunities shall be provided to restore livelihoods.⁶⁹

⁶⁸ According to IFC PS 5, footnote 21, "Payment of cash compensation for lost assets may be appropriate where (i) livelihoods are not land-based; (ii) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual land is economically viable; or (iii) active markets for land, housing, and labor exist, displaced persons use such markets, and there is sufficient supply of land and housing."

⁶⁹ E.g., Such as credit facilities, training, cash, or employment opportunities.

2.4.6. Resettlement and Livelihood Restoration Agreements and Implementation

2.4.6.1. In order to be certified by IRMA, if a new project will require the displacement of indigenous peoples the operating company shall obtain the free, prior and informed consent (FPIC) of affected indigenous communities before proceeding with the resettlement and mine development (as per IRMA Chapter 2.2).

2.4.6.2. If a new mine will require the displacement of non-indigenous peoples, the operating company shall make a good faith effort to negotiate agreements with all households that will be physically or economically displaced by the mining project before proceeding with the resettlement, even if the company has the legal means to acquire land or restrict land use without their consent.

2.4.6.3. Prior to negotiating with affected people, the operating company shall provide or facilitate access to resources necessary to participate in an informed manner. This shall include, at minimum:

- a. Copies of RAP and/or LRP;
- b. Details on what to expect at various stages of the resettlement or livelihood restoration process (e.g., when an offer will be made to them, how long they will have to respond, how to access the grievance mechanism if they wish to appeal property or asset valuations, legal procedures to be followed if negotiations fail); and
- c. Independent legal experts or others to ensure that affected people understand the content of any proposed agreement and associated information.

2.4.6.4. In cases where affected people reject compensation offers that meet the requirements of this chapter and, as a result, expropriation or other legal procedures are initiated, the operating company shall explore opportunities to collaborate with the responsible government agency, and, if permitted by the agency, play an active role in resettlement planning, implementation, and monitoring to mitigate the risk of impoverishment of those affected people.

2.4.6.5. Forced evictions shall not be carried except in accordance with law and international best practice,⁷⁰ and the requirements of this chapter.

2.4.6.6. The operating company shall take possession of acquired land and related assets only after compensation has been made available, and, where applicable, resettlement sites and moving allowances have been provided to the displaced people.

2.4.6.7. The operating company shall document all transactions to acquire land rights, and all compensation measures and relocation activities.

2.4.7. Resettlement and Livelihood Restoration Monitoring and Evaluation

2.4.7.1. The operating company shall establish and implement procedures to monitor and evaluate the implementation of a Resettlement Action Plan (RAP) or Livelihood Restoration Plan (LRP), and take corrective action as necessary until the provisions of the RAP/LRP and the objectives of this chapter have been met.

2.4.7.2. Periodically, the operating company shall report to affected people and other relevant stakeholders on progress made toward full implementation of the RAP or LRP.

⁷⁰ See: UN Committee on Economic, Social and Cultural Rights (CESCR). 1997. General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions. In particular, see Paragraph 15. Available at: www.refworld.org/docid/47a70799d.html

2.4.7.3. Where resettlement is deemed to pose a risk of significant adverse social impacts the operating company:

- a. Shall retain competent professionals to verify the operating company's monitoring information and provide advice on additional steps needed to achieve compliance with the requirements of this chapter; and
- b. Shall commission a completion audit that:
 - i. Occurs after the company deems that its RAP/LRP has been fully and successfully implemented;
 - iii. Is carried out by external resettlement experts;
 - iv. Includes, at a minimum, a review of the mitigation measures implemented by the operating company, a comparison of implementation outcomes against the requirements of this chapter, and a determination as to whether the commitments made in the RAP/LRP have been delivered and the monitoring process can therefore be terminated; and
 - v. Is made available to affected people and their advisors.

2.4.8. Private Sector Responsibilities Under Government-Managed Resettlement

2.4.8.1. Where land acquisition and resettlement are the responsibility of the government, the operating company shall collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this chapter.

2.4.8.2. The operating company shall identify government resettlement and compensation measures. If these measures do not meet the relevant requirements of this chapter, the operating company shall prepare a supplemental plan that, together with the documents prepared by the responsible government agency, shall address the relevant requirements of this chapter. The company shall include in its supplemental plan, at a minimum:

- a. Identification of affected people and impacts;
- b. A description of regulated activities, including the entitlements of physically and economically displaced people provided under applicable national laws and regulations;
- c. The supplemental measures to achieve the requirements of this chapter in a manner that is permitted by the responsible agency and an implementation schedule; and
- d. The financial and implementation responsibilities of the operating company in the execution of its supplemental plan.

NOTES

This chapter uses, as its basis, the International Finance Corporation's (IFC) Performance Standard 5 – Land Acquisition and Involuntary Resettlement, which applies to physical displacement and/or economic displacement resulting when land rights or land use rights are acquired by the operating company: through expropriation or other compulsory procedures in accordance with the legal system of the host country; or through negotiated settlements with property owners or those with legal rights to the land if failure to reach settlement would have resulted in expropriation or other compulsory procedures.

CROSS REFERENCES TO OTHER CHAPTERS	
CHAPTER	ISSUES
1.1—Legal Compliance	As addressed in criterion 2.4.8, in some jurisdictions governments may oversee resettlement projects. As per Chapter 1.1, if there are <u>host country laws</u> that pertain specifically to land acquisition and resettlement, a company is required to abide by those laws. If IRMA requirements are more stringent than <u>host country law</u> , the company is required to also meet the IRMA requirements, as long as complying with them would not require the operating company to violate <u>host country law</u> .
1.2—Community and Stakeholder Engagement	Engagement with <u>stakeholders</u> (including <u>rights holders</u>) regarding resettlement shall conform to the requirements in Chapter 1.2. In particular, criterion 1.2.3 is important to ensure that <u>stakeholders</u> have the capacity to fully understand their rights and engage effectively in the resettlement assessment and the development of prevention/mitigation plans and monitoring processes. Also, 1.2.4 ensures that communications and information are in culturally appropriate formats and languages that are <u>accessible</u> and understandable to affected <u>stakeholders</u> , and are provided in a timely manner. (See Chapter 1.2 for explanations of these terms)
1.3—Human Rights Due Diligence	If the timing works, the resettlement risk assessment required in 2.4.1 may be done in coordination with or as part of the assessment of <u>human rights risks</u> and impacts in Chapter 1.3, rather than as a stand-alone assessment. If the infringement of human rights is predicted, or actually occurs as a result of a resettlement program, a company will be expected to prevent, <u>mitigate</u> and <u>remediate</u> the impacts as per Chapter 1.3. This includes the <u>mitigation</u> or <u>remediation</u> of human-rights-related impacts from past resettlement programs at <u>existing mines</u> .
1.4—Complaints and Grievance Mechanism and Access to Remedy	Requirement 2.4.2.3 requires that a mechanism be available for affected people to raise <u>grievances</u> related to resettlement. If appropriate, <u>grievances</u> or concerns during resettlement may be addressed through the operational-level <u>grievance mechanism</u> as outlined in Chapter 1.4. If a <u>grievance mechanism</u> is developed for the specific purpose of resettlement, it shall conform to the requirements of Chapter 1.4. There may be impacts related to past resettlement programs that have not been <u>remediated</u> . Complaints or <u>grievances</u> related to unremediated or unsatisfactory <u>mitigation</u> of impacts may be addressed through the operational-level <u>grievance mechanism</u> as per Chapter 1.4.
2.2—Free, Prior and Informed Consent	Resettlement of <u>indigenous peoples</u> shall only occur if the <u>free, prior and informed consent</u> requirements in Chapter 2.2 have been followed.
3.6—Artisanal and Small-Scale Mining	When <u>artisanal and small-scale mining (ASM)</u> activities are occurring in the same area as proposed large-scale mining projects, <u>ASM</u> entities should be engaged by the company, included as part of the resettlement risk assessment and baseline studies, and should be afforded <u>mitigation</u> , compensation and alternative livelihood opportunities in the <u>Resettlement Action Plan</u> and/or <u>Livelihood Restoration Plan</u> .
4.6—Biodiversity, Ecosystem Services and Protected Areas	Resettlement may lead to impacts on <u>biodiversity</u> , <u>ecosystem services</u> , or <u>protected areas</u> depending on the location of resettled communities. The potential impacts of resettlement impacts on <u>biodiversity</u> , <u>ecosystem services</u> , or <u>protected areas</u> should be identified during the Resettlement Risk and Assessment Process (See 2.4.1.2.c), and any necessary <u>mitigation</u> developed accordingly to Chapter 4.6, criteria 4.6.4.