

SAFEGUARD GUIDANCE NOTE: DISPLACEMENT AND RESETTLEMENT PREPARING AND IMPLEMENTING RESETTLEMENT PLANNING INSTRUMENTS



Australian Government
Department of Foreign Affairs and Trade



This Guidance Note is one of a series that provide supplementary information on the management of displacement and resettlement in development investments. The notes complement the *Environmental and Social Safeguard Policy* and the *Environmental and Social Safeguard Operational Procedures*.



1. HOW TO SUPPORT PREPARATION OF RESETTLEMENT PLANNING INSTRUMENTS

Why resettlement planning is important – Under DFAT's *Environmental and Social Safeguard Policy*, a resettlement action plan is required for DFAT supported development investments causing displacement.

The purpose of a resettlement action plan is to ensure:

- ☒ The impacts of displacement are identified and mitigated
- ☒ Clear criteria exist for determining eligibility for compensation or other assistance
- ☒ Opportunities to improve, or at least restore, livelihoods are created to address economic displacement, and
- ☒ Measures are in place to improve living standards for the poor or other groups vulnerable to hardship.

Resettlement planning also establishes organisational responsibilities for action. Ensure costs of the resettlement process are estimated and included in budgeting and an implementation timetable for resettlement actions is prepared and linked to the overall implementation schedule.

Resettlement planning is a complex undertaking, and the contexts in which it takes place vary widely. To be successful, a resettlement action plan should be proportional to the scope and scale of the development activity and the potential impacts it may cause. Care is necessary in determining the nature of the resettlement action plan to be prepared as well as the schedule for making necessary information available and undertaking the resettlement.

This note provides guidance on how to prepare resettlement action plans. It also distinguishes among situations in which: it is appropriate to proceed with resettlement planning; it may be necessary to prepare a resettlement policy framework as an intermediate step before the resettlement action plan is prepared; or other exceptional planning measures may be warranted.



2. WHAT ARE DFAT'S RESPONSIBILITIES?

Preparing resettlement action plans is the responsibility of the partner government receiving DFAT support. DFAT provides support by:

- a. Ensuring partner government agencies are adequately informed about planning requirements and agree to undertake a planning process appropriate to the investment
- b. Reviewing draft resettlement action plans to ensure they are consistent with DFAT safeguard requirements and provide a feasible basis for achieving resettlement objectives, and
- c. Ensuring that resettlement action plans (in draft and final versions) are made available to affected people in a manner accessible to them.

In co-financed investments, multilateral or bilateral partner agencies are also likely to have specific resettlement planning requirements. Early in the investment concept process, DFAT should reach agreement with partner government officials and co-financing agencies, as relevant, on how displacement and resettlement policy provisions are applied. To reduce the planning burden on partner governments, DFAT's safeguard policy allows for use of the co-financing agency's safeguard policy if it has been found to be consistent with DFAT's safeguard policy objectives and principles. Where such a determination has not been made, agreement on application of displacement and resettlement policy provisions is necessary. Where policy provisions conflict, it is international good practice to adopt the most stringent provision if appropriate in the context of the investment.

3. FUNDAMENTAL ELEMENTS OF A RESETTLEMENT ACTION PLAN

A resettlement action plan is prepared once necessary information becomes available, and is finalised and agreed on prior to initiation of any actions causing physical or economic displacement. When sites that will be subject to impacts are known and detailed information can be obtained, DFAT reviews and accepts the resettlement action plan prior to providing its approval for the activity. The format, scope of coverage, length and title of a resettlement action plan can vary with the nature of the activity and the scale of the impacts the activity is expected to cause. The fundamental contents of the resettlement action plan include:

- ☒ A brief description of the investment activity and the displacement risks and impacts it is expected to cause
- ☒ A review of the partner government's legal and regulatory framework regarding land acquisition and provision of resettlement assistance, and identification of any special measures necessary to ensure compliance with DFAT safeguard policy requirements
- ☒ Field-based census, asset inventory, and socioeconomic survey data
- ☒ Identification of entitlements for all forms of resettlement-related assistance, including eligibility criteria for each
- ☒ Identification of valuation standards and methods, and categorical compensation rates for land, structures, and other fixed assets
- ☒ Determination of organisational and financial responsibilities for delivery of assistance and other resettlement-related actions
- ☒ An implementation timetable for all actions, linked to the overall implementation schedule



- ✓ Budget estimates including all forms of assistance and for all other necessary actions, with provision for contingencies
- ✓ Arrangements for consultations with affected people in the implementation process
- ✓ Arrangements for field-based implementation monitoring (including both internal monitoring and third-party monitoring where warranted) and for evaluation of results
- ✓ Arrangements for receiving and responding to grievances
- ✓ Measures to assist poor or vulnerable groups in improving livelihoods or living standards, as may be appropriate in the context of the development activity.

Resettlement action plans may also include these provisions in response to particular categories of displacement impacts:

- ✓ Livelihood improvement plans as necessary to address significant forms of economic displacement. Livelihood improvement measures should be based on the changed circumstances affected people are likely to confront following displacement – e.g., changes in land availability or soil conditions, changes in competitive environment, diminished access to resources, or necessity of acquiring different employment skills
- ✓ Site selection and development plans when resettlement sites are to be prepared as a result of physical displacement. This would include, for example, provision of moving assistance and appropriate housing, infrastructure and services; and measures for appropriate treatment of ‘host communities’ already in or near the proposed resettlement site
- ✓ Measures to improve, replace or restore public or community infrastructure and facilities, and access to public or community services, when these are destroyed or disrupted
- ✓ Compensation or alternative means of assistance to offset restrictions on access to, or use of, natural resources.

4. FUNDAMENTAL ELEMENTS OF A RESETTLEMENT POLICY FRAMEWORK

In some settings, it is impossible for the partner government to prepare, and for DFAT to review and accept, a full resettlement action plan prior to approval of support for the investment. This commonly occurs when sites for civil works have not been determined, or when the investment includes multiple sub-activities that will be chosen and designed during the implementation phase. When design uncertainties make it impossible to determine the scope and scale of impacts, or to otherwise obtain information necessary for planning, a resettlement policy framework is prepared by the partner government and agreed on with DFAT. Occasionally, a resettlement policy framework may be prepared and agreed on as a precautionary measure, when it is impossible to determine whether any displacement will be necessary at all. More commonly, it will be evident that the investment will require displacement, but siting uncertainties make it physically impossible to determine impacts, to identify and consult with the people who may be displaced, or to establish timetables or budgets for implementation.



The framework establishes provisions of the resettlement action plan that can be determined in advance – legal review, organisational arrangements, eligibility criteria, valuation standards and methods, consultation arrangements, monitoring and evaluation arrangements, and grievance procedures. This framework then guides subsequent preparation of the resettlement action plan when full information about the scope and scale of activity impacts can be obtained. Where siting information or other means of estimating the scope and scale of impacts is available, the framework also includes impact estimates by category.

The framework is prepared by the partner government and agreed prior to DFAT approval of the investment. When the framework approach is employed, DFAT phases its delivery of financial assistance or uses other means to ensure that a full resettlement action plan is submitted by the partner government. The submission needs to be approved by DFAT prior to initiation of investments causing physical or economic displacement. This can be done by making explicit provisions for DFAT approval of resettlement action plans prior to civil works in the formal agreement with the partner government, or for a requirement for DFAT to issue a ‘no objection’ to initiation of civil works. It is the responsibility of DFAT to track whether plans required under the terms of the framework are prepared and submitted for DFAT review and acceptance (and, subsequently, to monitor their implementation).

5. RESETTLEMENT PLANNING FOR EXCEPTIONAL CIRCUMSTANCES

Sometimes, DFAT may be asked to support an investment in which displacement has already occurred. DFAT may occasionally find that displacement is occurring in an investment it is supporting, even though a resettlement action plan has not been prepared and agreed on. In such circumstances, DFAT (in collaboration with the partner government and any co-financing partners) conducts and documents appropriate due diligence.

When DFAT is asked to support an investment where displacement has already occurred – Since displacement has already taken place, a ‘plan’ is not prepared. Instead, DFAT asks the partner government to provide all available information relating to the circumstances of displacement and any resettlement measures provided to affected people as a result. In its due diligence, the DFAT team assesses whether those affected by loss of land or other assets have been appropriately compensated; whether those whose livelihoods have been significantly affected have been provided with appropriate opportunities to at least restore them; and whether those required to relocate housing or businesses have received appropriate transitional support. Field-based assessment, including interviews with displaced people or tracer studies intended to evaluate livelihoods or living standards of those forced to relocate should be undertaken by DFAT to determine whether any patterns of hardship or grievances persist among the affected population.

When the investment will cause new displacement in the same general area where displacement has already occurred, it may be necessary to provide assistance retroactively to those affected earlier to make their treatment consistent with assistance to be provided under the investment. One key consideration is the length of time that has transpired between the displacement and the investment proposed for DFAT support. DFAT’s due diligence should be more intensive where displacement has occurred recently. As there may be relatively little that can be done to remedy displacement of a more historical nature, the scope of due diligence may be limited. As necessary, the partner government and DFAT agree to remedial planning measures to address any identified issues as a condition for DFAT approval of support.



When DFAT finds that displacement is occurring in an investment it is supporting even though a resettlement action plan has not been prepared – This may occur as a result of design changes during the implementation phase that cause unanticipated displacement. Under these circumstances, a standard resettlement action plan is not relevant since the actions have already taken place. If displacement is ongoing, DFAT needs to ask the partner government to stop implementation until appropriate stopgap planning measures consistent with the objectives and key principles of DFAT's safeguard policy are in place. For displacement that has already occurred, the partner government is asked to provide a retroactive assessment of the scope and scale of displacement, legal and regulatory provisions relating to displacement and resettlement that have been applied, and the effectiveness of compensation and other resettlement assistance in achieving satisfactory outcomes among the affected population. Field consultations should be undertaken to assess whether appropriate compensation and assistance have been provided, and whether unresolved grievances exist among the affected population. As necessary, the partner government and DFAT agree to remedial planning measures to address any identified issues as a condition for continued DFAT support.

6. MANAGING IMPLEMENTATION PROBLEMS

Unmanaged resettlement implementation problems can pose significant reputational risk to the partner government and to DFAT. Problems occur in varying degrees and forms in almost all investments that involve displacement and resettlement. Displacement and resettlement processes are inherently complex, especially when they are implemented over a time frame of several years; this means that resettlement action plans can almost never be implemented completely as written and agreed. To the extent they are implemented as agreed, their effectiveness is largely contingent on other factors operating in the broader socioeconomic environment. Finding and managing implementation problems is important to success. Despite the many challenges that may present themselves, implementation problems can be satisfactorily addressed in most circumstances.

To manage problems, DFAT teams must first distinguish between their primary forms.

- Implementation problems occur when a partner government agency implements measures specified in the resettlement action plan, but these agreed actions do not lead to satisfactory results.
- Compliance problems occur when the partner government fails to implement measures agreed in the resettlement plan.

With effective monitoring and evaluation, implementation problems can usually be identified during the implementation phase. However, it is not uncommon for problems to be identified only during ex-post evaluation. To address problems occurring during implementation, DFAT, in collaboration with the partner government should practice adaptive management. To address problems identified through ex-post evaluation, DFAT should conduct dialogue with the partner government to determine appropriate remedial measures.



Adaptive management – Even for investments with relatively minor impacts and relatively simple implementation arrangements, resettlement action plans should normally include provisions intended to promote adaptability under changing circumstances. Budgets should include contingency funds to address changing circumstances. Grievance redress mechanisms provide the means for addressing unusual circumstances. Implementation monitoring should spot problems while there is still time and resources to deal with them. For investments with more significant impacts and more complex implementation arrangements, resettlement action plans should also include explicit arrangements for adaptive management.

In general, these arrangements should describe the process by which implementation issues are raised for management attention and should identify the personnel (including among partner agencies) authorised to change implementation arrangements specified in resettlement action plans. The adaptive management arrangements should also explicitly state which changes to resettlement action plans cannot be made without DFAT concurrence, such as reductions in compensation rates or restrictions on eligibility criteria that would further disadvantage those affected by displacement.

A well-functioning grievance redress mechanism can also serve as a form of adaptive management. Where impacts or circumstances arise that have not been anticipated in the resettlement planning process, the grievance redress mechanism provides an opportunity for formulating a response satisfactory to those affected.

Remedial measures – In some instances, implementation of measures in the agreed resettlement action plan, despite being completed, fail to achieve the desired results within the life of the investment. This usually reflects factors at work in the broader environment that are beyond the control of the implementing agency. An economic slowdown or changes in local market prices may undermine assumptions regarding livelihood restoration measures, for example. Other government programs may induce unanticipated changes in the area, or political or legal changes can promote in-migration or other changes in local behaviour.

If agreed measures are implemented but unsuccessful, DFAT discusses with the partner government the resettlement objectives that have not been achieved, and any feasible remedial measures. As part of this process, DFAT determines whether additional DFAT resources (both technical and financial) may be available as an incentive to undertake remedial measures.

The significance of the implementation problem should be assessed in order to prepare an appropriate response. Minor or isolated issues may be addressed in a location and/or issue specific manner. Major and widespread problems relating to livelihoods and living standards, however, are likely to require new planning based on consultation with those affected. It may also be important to assess sources of responsibility for implementation problems. For example, an implementing agency provides sufficient opportunity to restore livelihoods as specified in the resettlement plan, but some of those affected do not avail themselves or are not able to avail themselves of the opportunity provided. The partner government is more likely to assist those in the latter category than those in the former.

DFAT cannot require a partner government to undertake remedial measures, especially in the absence of clear compliance issues. It is appropriate, however, to encourage consideration of remedial measures and to suggest that partner government responsiveness to unaddressed impacts may be a factor in DFAT's consideration of support for future investments. DFAT may also seek supplemental financial support for remedial measures or suggest that remedial measures be incorporated into design of a future DFAT investment in the same area or sector.



7. MANAGING PARTNER GOVERNMENT COMPLIANCE PROBLEMS

The approach to be taken by DFAT in response to compliance problems by a partner government requires consideration of several factors: when the compliance problem is detected, the nature or extent of the problem, whether partner government obligations are clearly specified and the overall program relationship between DFAT and the partner government. Regardless of these circumstances, the opportunity to achieve desired results will likely be increased through dialogue focusing on development objectives or unintended impacts. This is opposed to more stringent attempts to enforce compliance, which can lead to adversarial roles and hardened positions.

Timing of detection – In general, compliance problems detected earlier in an implementation process are easier to resolve than compliance issues that arise in ex-post evaluation. That is because funds may not yet be expended and a wider range of alternatives may remain feasible. From the DFAT perspective, earlier detection may strengthen DFAT's leverage in a situation – especially if some portion of DFAT financial support has not yet been transferred to the partner government. DFAT supervision, especially when coupled with third-party monitoring of implementation, is key to early detection of non-compliance. Even when non-compliance is inadvertent, a partner government's own internal monitoring process may not be set up to bring non-compliance to DFAT's attention. Review of issues raised through the grievance redress mechanism can also help to identify recurring compliance problems. Resolving compliance issues in investments with minor impacts is likely to be far simpler than in more complex cases, in part because most compliance aspects are rooted in compensation processes that occur early in the implementation process.

Nature and extent of non-compliance – It may be important to understand why and how a compliance issue has materialised. In some instances, compliance problems may be inadvertent, linked to coordination or communication problems among multiple implementing agencies or jurisdictions. In other instances, non-compliance may represent a deliberate choice, rooted in an attempt to avoid political issues, practical precedents or financial costs. Non-compliance may also be an isolated incident, a recurring trend, or a widespread departure from agreed arrangements. The strategies or options available to DFAT are likely to vary with these circumstances. An appeal to development objectives or determining remedies for unintended impacts is more likely to succeed where compliance problems are inadvertent. A more direct and legal approach may be necessary where compliance problems reflect deliberate choices.

Partner government obligations – For all investments involving physical or economic displacement, the obligation to fully implement an agreed resettlement action plan is clearly established in the basic program agreement document signed by DFAT, or a co-financing partner, like a multilateral development bank, and the partner government. In some cases, specific actions may also be listed among partner government requirements. This may be advisable in circumstances where potential impacts are particularly significant or complex, or where significant performance gaps have been identified. As it is impossible to use a standardised approach that addresses all of the actions that may be necessary in the resettlement process, the resettlement plan should specify means for 'adaptive management' – the process by which issues arising in the course of implementation can be addressed. If these requirements and processes are not specified among partner government obligations, it will be more difficult for DFAT teams to make a compelling case that the government is not in compliance.



8. WHAT DFAT SHOULD DO ABOUT COMPLIANCE PROBLEMS

As stated above, a DFAT team facing compliance problems should first seek constructive dialogue with the partner government, emphasising development objectives and mitigation of unintended impacts. Where constructive dialogue does not generate a satisfactory response, DFAT should bring the failure to implement agreed resettlement measures to the attention of the government as a compliance issue. This indicates that DFAT is obliged to seek a return to compliance as a condition of further support. As a practical matter, it may be advisable to inform partner government counterparts that arrangements for bringing an activity back to compliance status can often be decided in a more flexible manner between the team and the primary implementing agency; flexibility is often diminished as issues rise to greater visibility at more senior management levels.

If compliance issues cannot be resolved between DFAT and the implementing agency, DFAT brings the issues to the attention of its delegate and to the Resettlement Desk. The team leader, delegate and Resettlement Desk representative should then make a joint recommendation for future action to DFAT management.

Occasionally, a DFAT team may face a situation in which partner government compliance problems are aggravated by the consequent failure of a co-financing partner to fully implement its resettlement policy. As a first step, a team facing such circumstances should pursue constructive dialogue.

If co-financing partner compliance issues cannot be resolved at the level of the DFAT and co-financing partner teams, DFAT should inform the Resettlement Desk about the outstanding issues and seek advice regarding how to proceed.

GET HELP IF YOU ARE UNSURE

For assistance please contact: resettlement@dfat.gov.au

