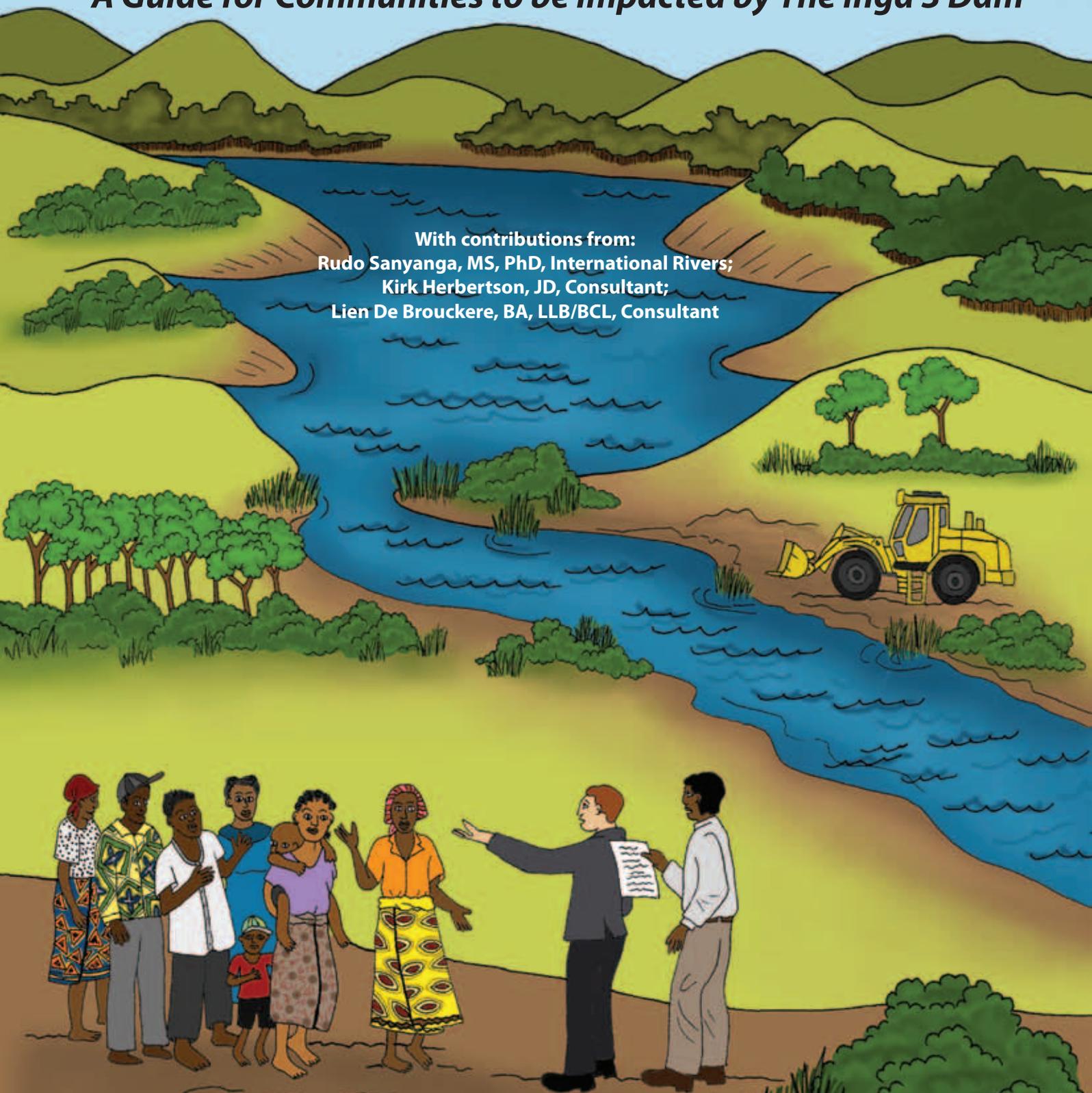


# AFRICAN DAMS, RIVERS AND RIGHTS

*A Guide for Communities to be Impacted by The Inga 3 Dam*

With contributions from:  
Rudo Sanyanga, MS, PhD, International Rivers;  
Kirk Herbertson, JD, Consultant;  
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## *A Guide for Communities to be Impacted by The Inga 3 Dam*

**Based on the World Bank Group- International Finance Corporation  
Performance Standard 5 for Land Acquisition and Involuntary  
Resettlement.**



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# Table of Contents

<b>Introduction</b>	<b>4</b>
<b>About the Inga 3 Dam Project</b>	<b>5</b>
<b>Stakeholders and Actors</b>	<b>7</b>
<b>Phases of a Dam Project</b>	<b>9</b>
<b>Requirements to Protect Community Rights &amp; Interests</b>	<b>10</b>
<b>Requirement No. 1 - Information &amp; Consultation</b>	<b>10</b>
Minimum Standard: "Disclosure Of Information"	12
Basic Standard: "Meaningful Consultation"	14
Heightened Standard: "Informed consultation and participation"	17
<b>Requirement No. 2 - Resettlement &amp; Compensation</b>	<b>19</b>
Phases in a Typical Resettlement & Compensation Process	23
Persons Eligible for Compensation	27
Types of Compensation for Eligible Persons	29
Negotiating Compensation	31
<b>Grievances</b>	<b>38</b>



# Introduction



This guide is for communities who risk being displaced, whether physically (losing access to land or home) or economically (losing assets or access to resources for income and livelihood) by the construction and operation of the Inga 3 dam project, which may begin construction as early as 2016. Economic displacement occurs when, for instance, farmland is taken for construction, or when communities or individuals who relied on fishing are no longer able to fish because the river or stream where they fished becomes too polluted.

More than 10,000 people (not counting those in Camp Kinshasa) could be physically displaced – forced to leave their homes – by the construction of Inga 3 Basse Chute. Many more people are likely to be economically impacted – to lose assets, income or livelihoods.

## What is in this guide?

This guide provides a summary of an industry best practice standard for resettlement: the

World Bank Group International Finance

<sup>1</sup> IFC PS, last updated January 1, 2012.

Corporation (IFC) Performance Standard 5 (PS5). PS5 is one of the eight Performance Standards on Environmental and Social Sustainability (IFC Performance Standards).<sup>1</sup> This guide was developed to focus on the aspects that are relevant to the communities whose lands and livelihoods may be affected and who may be displaced by the Inga 3 Basse Chute project.

## What are the IFC Performance Standards?

The IFC Performance Standards are requirements that clients must apply in projects funded by the IFC. The IFC is part of the World Bank Group, and it invests in private companies in developing countries. The IFC Performance Standards are also widely considered industry best practice for resettlement projects, and many banks have adopted them. This means that even if a bank other than the IFC funds a project, that bank may require its client to apply the IFC Performance Standards.

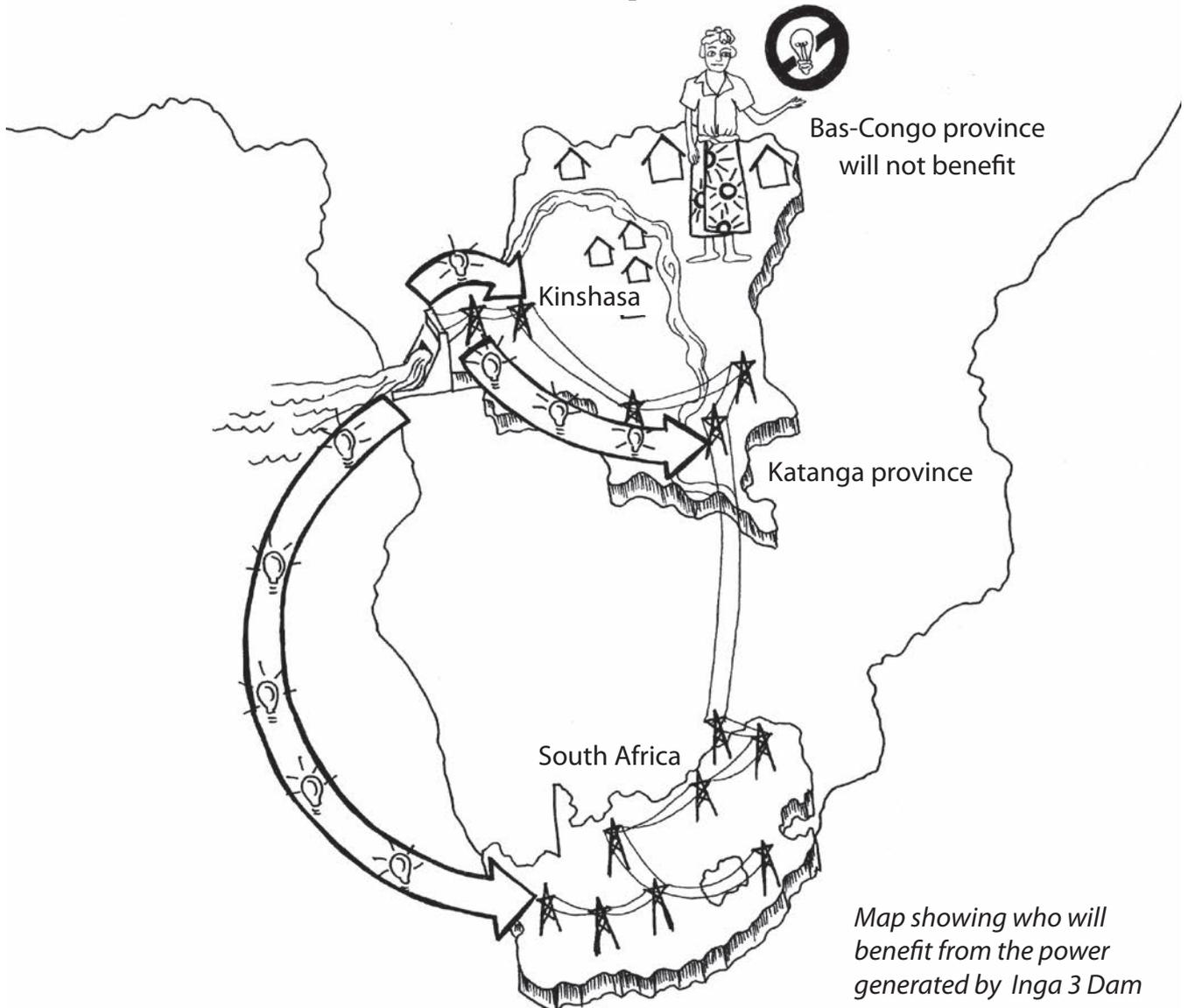
The IFC Performance Standards were designed to help identify, avoid and minimize harm to people and the environment that often results from large-scale development projects. There are eight Performance Standards in total: environmental and social impact assessment (PS1), labor and working conditions (PS2), pollution (PS3), community health, safety and security (PS4), land acquisition and involuntary resettlement (PS5), biodiversity (PS6), indigenous peoples (PS7) and cultural heritage (PS8). PS5, for example, requires clients to prepare a Resettlement Action Plan, consult with affected communities about potential project impacts, and restore the livelihoods of displaced people.

# About The Inga 3 Dam Project

## What is the Inga 3 dam project?

The Inga 3 dam project involves the planned construction of a dam and a 4,800 MW hydroelectric plant at Inga Falls on the mighty Congo River, located 225 kilometers (km) from Kinshasa, and 150 km upstream of the mouth of the Congo, where it meets the Atlantic Ocean. Inga 3 is the first phase in the construction of the Grand Inga hydropower project. If the Grand Inga scheme is completed as planned, it will be the largest hydropower project in the world.

The Inga 3 dam project is just one of the seven phases of the Grand Inga scheme, and Inga 3 itself is divided into two phases: “Basse Chute” and “Haute Chute”. The first “Basse Chute” phase involves a 12 km canal, a 100-meter-high dam wall, a large power plant, several thousand kilometers of power lines (through Zambia and Namibia to South Africa), and a 15.5 km<sup>2</sup> reservoir. In the second “Haute Chute” phase, the dam wall height would be raised to 150 meters, the reservoir increased to 40 km<sup>2</sup>, and flooding forced as far as 180 km upstream.<sup>2</sup>



*Map showing who will benefit from the power generated by Inga 3 Dam*

<sup>2</sup> World Bank Group [WBG], Congo, Democratic Republic of—Inga 3 Basse Chute and Mid-Size Hydropower Development Technical Assistance Project, Project Appraisal Document No.77420 (Mar. 5, 2014), <http://documents.worldbank.org/curated/en/2014/03/19201720/congo-democratic-republic-inga-3-basse-chute-mid-size-hydropower-development-technical-assistance-project>.



## Who will benefit from the electricity generated by Inga 3?

Under the current plans, about half of the power will be sold to South Africa,<sup>3</sup> one third will be sold to industrial mining companies in Katanga province, and the remainder will be sold to Société Nationale d'Electricité (SNEL) in Kinshasa. There are currently no plans to sell or share the electricity from the Inga 3 dam with local affected communities in Bas-Congo province.

## What happened with Inga 1 and Inga 2?

In 1972 and 1982, the Mobutu government of the Democratic Republic of Congo, then called Zaire, built the Inga 1 and 2 hydropower schemes, with a total potential generation capacity of 2,132 MW. The two dams currently operate at around 50% capacity because they were not maintained for many years.

The site of Inga 1 and Inga 2 was inhabited by families from six clans who were forced to leave the site in 1920 under Belgian colonial orders. The six clans displaced by Inga 1 and 2 were absorbed into 12 pre-existing villages and one new village around the area. In addition, Camp Kinshasa, which was a camp for dam workers, is now inhabited by a mix of displaced families from the six clans, and by former project workers and their children and grandchildren. In 2006, the population of Camp Kinshasa, an estimated 9,000 people, was told to abandon the camp. However, after intervention from local and international NGOs, the authorities indefinitely ceased their order to communities.

The DRC government has never fulfilled its obligations to compensate communities originally displaced by the Inga 1 and 2 Dams, who were promised compensation in 1958. Some of those people are still living in Camp Kinshasa.



**The communities affected by the Inga 1 and 2 dams have never been compensated for the loss of land and homes.**



<sup>3</sup> South Africa has committed to buy 2,500 MW of the 4,800 MW to be generated by the Inga 3 project. A treaty sealing this deal was concluded in October 2013 and ratified by the DRC in 2014, making South Africa the key purchaser of the Inga 3 electricity.

# Stakeholders and Actors Involved

## Who is involved in the Inga 3 project?

Large projects like the Inga 3 project can include a large number of different stakeholders. You and your community are "stakeholders" involved in this project.

Stakeholders who could be involved in the Inga 3 Project are:

- The affected communities (women, men, business owners, elderly people, children, farmers, etc.)
- Development partners
  - a. The World Bank Group, which may lend money to the project developers through the IFC
  - b. The African Development Bank
  - c. Other development banks who may provide loans or other funding for the project
  - d. Private banks and financiers
- Actors
  - a. The Government of the Democratic Republic of Congo (DRC), including the Société Nationale d'Electricité (SNEL); ministries of environment, labor, local government, rural development, foreign affairs and immigration
  - b. Other governments, such as the government of South Africa, who finance the Inga 3 project or agree to buy electricity produced by the dam
  - c. Engineering and construction companies and other contractors, including private companies and companies that are owned (in full or in part) by another country, like China
  - d. Other institutions such as the Congo-Oubangui-Sangha Bassin (CICOS), who are responsible for water management in

- the Congo Basin
- e. Agence pour le Développement et la Promotion du Projet Grand Inga (ADPI)

**You and your community  
are stakeholders involved  
in this project**

## Who are "affected communities"?

People whose land, farms, homes or livelihoods may be harmed by a project. This includes those who are required to move to a new location or who lose access to farms, streams, cultural sites and/or common resources such as

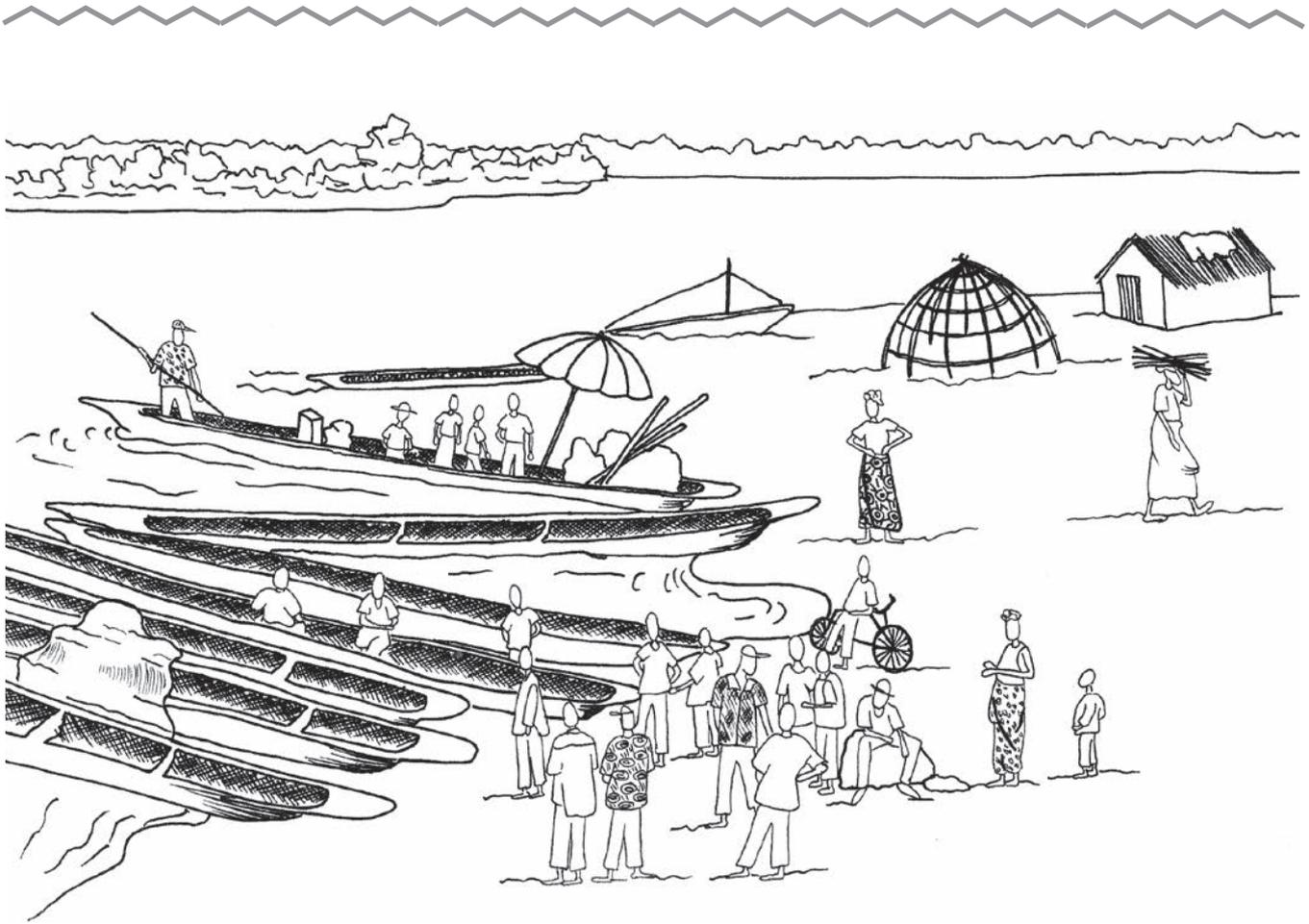
forests, or who are impacted by noise or dust as a result of construction. Importantly, "affected communities" does include those who lack a formal legal title to their land. At times host communities may also be considered as affected communities, depending on the impacts that will arise from the incoming community.

## Who are "project developers"?

Those entities that plan, fund and build the Inga 3 Dam. Project developers include, for example, the government of the Democratic Republic of Congo; one or more development banks (such as the World Bank or the African Development Bank); any countries and private banks or investors who lend money to build the dam; the engineers who design the dam; and the contractors who build the dam.

## Why does it matter if the World Bank Group is involved in the Inga 3 project?

If the World Bank Group is involved in the Inga 3 project, then the government or project developer will need to meet the requirements of the IFC Performance Standards (or a similar set of standards). To date, the World Bank and the African Development Bank have already approved \$80.9 million to the DRC



*You and your way of life will be affected by the Inga 3 Dam*

government to undertake technical studies, including studies around impacts on local communities and the environment. As such, the World Bank already has a stake in Inga 3, and the ensuing studies are required to meet the World Bank's environmental and social standards.

The World Bank and its private sector arm, the International Finance Corporation (IFC), which lends money to governments and companies for development projects around the world, may provide additional funding for the construction or operation of the Inga 3 project.

In sum:

- The World Bank has a process to make sure that its projects do not harm the environment and local people;
- In order to receive money, the project developer (Government of DRC) needs to meet the World Bank's requirements; and

- One of these requirements states that people who are resettled by the project need to be protected from harm and their standard of living restored or improved.

### **What if the World Bank Group is not involved in implementation of the Inga 3 project?**

Even if the World Bank Group is not involved in Inga 3 going forward, this guide will still be helpful to your community. The IFC Performance Standards, upon which this guide is based, are considered industry best practice for resettlement projects, and your community should demand that these standards be met regardless of who is financing the project.

# Stages of Dam Building

## 1. PRE-CONSTRUCTION

- Time frame: 2-3 years
- 1. Feasibility study and detailed design
- 2. Social and Environmental Impact Assessment
- 3. Resettlement plan



Surveyors and drilling rigs are often the first signs that a dam is being planned in your area



## 2. FUNDING

- 1. Meeting with governments and banks
- 2. Secure funding

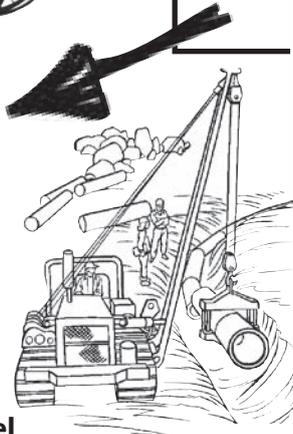


## 3. CONSTRUCTION

Can take up to 5 years

RESETTLEMENT SHOULD BE COMPLETE BEFORE THE NEXT STAGE BEGINS

### 1. Cofferd dams

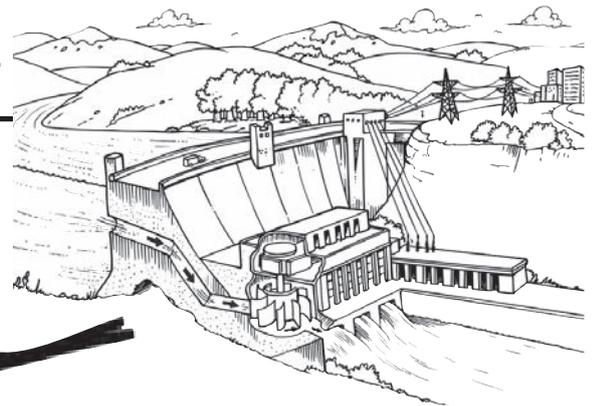
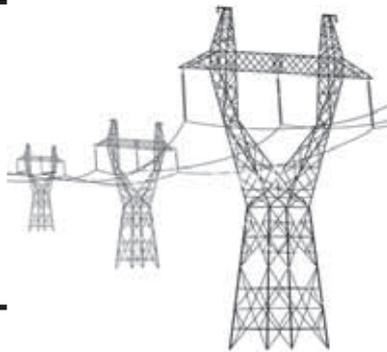


### 2. Diversion channel

### 3. Future reservoir

## 4. OPERATION

Lifetime of the dam is 50 years



# Requirements to Protect Community Rights and Interests

## What requirements do the IFC Performance Standards impose on project developers to protect community rights and interests?

The IFC Performance Standards impose a wide range of requirements on project developers to protect community rights and interests.

In this guide, we focus on just two key aspects:

1. Information and consultation standards, and
2. Resettlement and compensation standards.

## REQUIREMENT NO 1 - INFORMATION AND CONSULTATION

### What information and consultation requirements do the IFC Performance Standards impose on project developers?

In general, the IFC Performance Standards require project developers to ensure the strong involvement of “**affected communities.**” This means project developers should:<sup>4</sup>

- Include you, the “**affected communities,**” in planning and evaluating the Inga 3 project;
- Disclose and give you information about the project;
- Consult with you and welcome your participation;
- Report the progress of the project to you and your community throughout the entire project; and
- Provide you with a **grievance mechanism**, meaning a way for you and other affected communities to raise and resolve concerns

and complaints about the project with the project developers.

More specifically, the IFC Performance Standards require project developers to apply one of **three standards** of information and consultation with affected communities that is commensurate with the scale of the project’s likely impacts: The more significant the project’s possible impacts, the higher the standard of information and consultation that the developer must apply.

### What is a “grievance mechanism”?

A grievance mechanism is a process for affected communities to submit their concerns to the project developers, and to receive a response from the developer addressing the concern. For the grievance mechanism to function, the project developer is required to:

- Inform your community of the specific project staff person who will receive complaints;
- Provide you with a confidential and secure process to raise sensitive issues without the risk of punishment.

Project developers must address your concerns. This means that project developers are required to review your concerns and deal with them in some way. They cannot just ignore them. Project developers must also track and document their responses to your concerns.

### What are the three standards of information and consultation that can be required?

The IFC Performance Standards provide for three different standards of information and consultation:

1. The minimum standard, required in all projects, is “**disclosure of information.**”

<sup>4</sup> WBG, Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts ¶ 25 (Jul. 1, 2012), [http://siteresources.worldbank.org/OPSMANUAL/Resources/OP4.03\\_PS1.pdf](http://siteresources.worldbank.org/OPSMANUAL/Resources/OP4.03_PS1.pdf) [hereinafter PS 1].

Project developers must include you in their plans



2. The basic standard, required when the project has risks of adverse social or environmental impacts, is “**meaningful consultation.**”
3. The heightened standard, required when the project has a high risk of adverse social or environmental impacts, is “**informed consultation and participation.**”

### **When is it determined which of these three standards applies?**

The standard of consultation is determined when project developers identify the environmental and social risks and impacts of the project.<sup>5</sup> Generally, the more likely it is that a project will harm you and your community or damage the environment, the more the project developers should include you in the planning process.

### **Which standard of information and consultation will be required for the Inga 3 project?**

The standard or level of consultation required for the Inga 3 affected communities will depend on the impacts and scope of the Inga 3 project. It is our opinion that the Inga

3 project poses potentially significant risks of social and environmental harm to the affected communities, so the highest standard of consultation (“informed consultation and participation”) should apply.

However, the project developer may likely argue that a lower standard applies. This means community leaders should be prepared to advocate with the project developer to apply the highest standard of “informed consultation and participation.”

## **IMPORTANT**

**When you and your community are involved in the planning process, you have a much better chance of receiving fair and positive outcomes.**

<sup>5</sup> WBG, Performance Standard 7: Indigenous Peoples ¶ 3 (Jul. 1, 2012), [http://siteresources.worldbank.org/OPSMANUAL/Resources/OP4.03\\_PS7.pdf](http://siteresources.worldbank.org/OPSMANUAL/Resources/OP4.03_PS7.pdf) [hereinafter PS 7].

# Minimum Standard: "Disclosure of Information"



## What is the "disclosure of information" standard?

The "disclosure of information" standard means project developers must give all affected individuals and communities information about the project risks, in a form they can understand, beginning before the project starts.<sup>6</sup>

## When is the "disclosure of information" standard required?

Disclosure of information<sup>7</sup> is required in all development projects where there are "affected communities," regardless of whether there is potential for harm from the project or not. This is a minimum standard that always applies.

## What information should project developers provide?

Project developers should provide you with access to relevant information on the Inga 3 project.

This information should include:

- The purpose, nature and scale of the project;
- The timeline for the project, including the date construction is scheduled to start and how long the project activities will go on;

- How the communities will be affected, including any risks to and potential impacts on your community and what can be done to minimize those risks and impacts;
- Who is involved in developing the project;
- The process for engaging stakeholders;
- What the resettlement process will look like; and
- The process for you or your community to file grievances about the project planning and project impacts.<sup>8</sup>

## How must they present the information?

The project developer must present all information orally in the local language(s) and written in plain language that is easy for you and other community members to understand.

You and your community can decide on the language(s) that will be used to consult with you and your communities. You should inform the project developer as early as possible in the process about your language and communication preferences.<sup>9</sup>

## When must the project developer provide you with information?

Project developers must share relevant information and ensure the participation of your community throughout the entire project. This includes during the planning and implementation of the project; the monitoring and evaluation; as well as during compensation, livelihood restoration and resettlement.<sup>10</sup>

<sup>6</sup> See PS 1, *supra* note 4, at ¶ 29.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at ¶ 30.

<sup>10</sup> WBG, Performance Standard 5: Land Acquisition and Involuntary Resettlement ¶¶ 10, 14 (Jul. 1, 2012), [http://siteresources.worldbank.org/OPSMANUAL/Resources/OP4.03\\_PS5.pdf](http://siteresources.worldbank.org/OPSMANUAL/Resources/OP4.03_PS5.pdf) [hereinafter PS 5].

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## How often must the project developer share information?

Your community should receive a report at least **once per year**. The greater your concerns, the more often project developers should provide updated reports.<sup>11</sup>

Project developers must also keep records of when and how they consult with your community.<sup>12</sup>

Communities can request information from the project developers, who should supply the requested information or explain why the information cannot be made available and when it will be available.

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*Project developers MUST communicate regularly with the affected people before the project starts*

<sup>11</sup> PS1, supra note 4, at ¶ 36.

<sup>12</sup> *Id.* at ¶ 30.

# Basic Standard: "Meaningful Consultation"

## What is the "meaningful consultation" standard?

"Meaningful consultation" is a two-way process between the project developers and you. This means that project developers should provide you and your community with information about the project, and that the project developer should listen to your community's questions and concerns about the project, its impacts and its benefits.<sup>13</sup>

More specifically,

- Meaningful consultation should be based on information about the project that is presented in a language and a way that your communities can understand.<sup>14</sup>
- Developers should give you opportunities to express your views on the measures that developers propose to address any negative impacts.<sup>15</sup>
- It should enable meaningful participation, described below, when affected communities face significant risks of harm to people and the environment.<sup>16</sup>
- The consultation process should be documented.<sup>17</sup>

## When does the "meaningful consultation" standard apply?

When a project poses social and environmental risks to affected communities, Project Developers must consult with your communities about the project and resettlement.<sup>18</sup>

## When and how often should "meaningful consultation" occur?

Meaningful consultation should begin before the project begins.<sup>19</sup> This begins with identifying environmental and social risks posed by the development and should continue throughout the project.<sup>20</sup>

The meaningful consultation process is an ongoing process. The exact number of communications you will receive, and how the information is communicated to you, will depend on the risk the Inga 3 project poses to your community. The higher the risk, the more frequently you should receive communications.

## Where should consultations take place?

Consultation meetings are normally conducted at the normal village/community venues or in a place that is easily accessible to all affected people. Consultations can also take place at the project site or proposed resettlement site. The project developers should provide transport for people to get to the meeting places if not within walking distance.

### EXAMPLE:

#### MEETINGS WITH GOVERNMENT OFFICIALS

A government official or representative comes to your community and makes a presentation about the Inga 3 project, and then listens to the questions and suggestions from your community. The official or representative will write down all of the questions and recommendations your community provides. A few weeks later, the official or representative will return with answers and responses to your community's concerns and questions from the first meeting.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*



*Meaningful consultation*

### **Who must be consulted and allowed to participate?**

Meaningful consultation should focus on people and communities directly affected by the project.<sup>21</sup> Project developers should be sure that they include disadvantaged and vulnerable groups, such as women, children, the elderly, ethnic minorities and displaced persons.<sup>22</sup> Because vulnerable groups are likely to be more affected by displacement and impacted differently, it is important that their separate perspectives and interests are captured in separate meetings during consultations.

### **Who is the community's representative?**

The project developers must make every reasonable effort to be sure that the representatives included in the consultation process actually represent you and your views. **Importantly, your community must be able to choose their representatives, rather than**

**project or government officials choosing them for you.**

The community's representatives – chosen in a transparent and consensual manner – should report back to community members and seek their input, so that decisions are made together rather than behind closed doors. This process of reporting back to your community will help lower the risk of project developers or government officials placing coercion, manipulation or undue influence on community representatives.



### **IMPORTANT:**

**The consultation process must be free from outside manipulation, interference, coercion or intimidation.<sup>23</sup>**



<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at ¶ 39 n. 27.

<sup>23</sup> *Id.* at ¶ 30.

**EXAMPLE:**

**UNACCEPTABLE CONSULTATION PROCESSES**

If project developers make your community an offer, then tell you that if you do not accept the offer you'll get nothing, that is coercion. Coercive consultation processes are not allowed by the IFC Standards.

Additionally, if project developers pay only certain members of your community to get their support for the Inga 3 project, that is manipulation, and not a fair consultation process. Receiving payment or a bribe has bad consequences for the overall project and the interests of the community, including those who received the payment.



*Unacceptable consultation*

# Heightened Standard: "Informed Consultation and Participation"

## What is the "informed consultation and participation" standard?

"Consultation" is the process of soliciting and listening to the opinions and perceptions of affected populations. Consultation can take multiple forms, including focus group discussions and interviews. "Participation" refers to deeper engagement that may imply the affected community's control and influence over decision-making, and/or contribution of labor, skills or material inputs. The process of participation is generally understood to follow a spectrum of increasing levels of engagement. For example, information sharing and consultation are considered stages of the participation spectrum.

The goal of the "informed consultation and participation" (ICP) process is to give information to your community to allow you to participate in the planning process. For example, representatives from your community can sit in on all meetings with the project developers and report information they learn to the rest of the community. Before any decisions are made that affect your communities, community representatives must be given enough time to go back to your communities, discuss the issues, and return to the project developers with a position or decision.

Project developers should listen to and incorporate your views when they make decisions that directly affect you, including:

- Implementing measures to lessen the impact of the project on your community;
- Explaining how the benefits and opportunities from the project can be shared with your community;

<sup>24</sup> *Id.* at ¶ 31

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at ¶¶ 30-31

<sup>27</sup> *Id.* at ¶ 30

- Describing how measures affecting your community will be implemented.<sup>24</sup>

## When does the "informed consultation and participation" requirement apply?

This heightened standard applies when a project has the potential for **significant adverse impacts** on your communities.<sup>25</sup>

When a project includes resettlement, this has significant adverse impacts and so this heightened standard applies. This means the government must also work with project developers to be sure that your community is involved in the **resettlement planning process**. If any part of the government's "**Resettlement Action Plan**" falls below the international standards, the project developers must supplement the plan in order to meet the minimum standards.<sup>26</sup>

## Who must be included in "informed consultation and participation"?

Project developers must also include vulnerable groups in the consultation and participation process, and tailor the consultation process to the needs of the vulnerable groups.<sup>27</sup> They should do this by:

- Holding separate meetings for women;
- Asking members of vulnerable groups to serve on committees that discuss and make decisions about resettlement;
- Leading meetings with vulnerable groups;
- Providing transportation and visits to individual households in order to ensure access to meetings and community
- discussions about the impacts of the Inga 3 project.<sup>28</sup>

<sup>28</sup> International Finance Corporation [IFC], Guidance Note 5: Land Acquisition and Involuntary Resettlement ¶ 29 (Jan. 1, 2012), [http://www.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated\\_GN5-2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/4b976700498008d3a417f6336b93d75f/Updated_GN5-2012.pdf?MOD=AJPERES) [hereinafter GN 5].

**How should the project developers proceed with “informed consultation and participation”?**

Project developers must design the consultation process to work with your community’s internal decision-making processes and leadership structure.<sup>29</sup>

**What can you do if you think the project developer is not meeting the information and consultation standard?**

If you don’t believe the developer is meeting the standard, you can first try raising the concern in an informal conversation with one of the developer’s staff. Then try submitting a complaint through the project grievance mechanism, and next write a more formal

**EXAMPLE:**

**VILLAGE ELDERS AND THE CONSULTATION PROCESS**

**If your community makes decisions through a vote by all of the village elders, the consultation process should permit your representative to return to the village with the relevant information.**

**Once the representative has given the village elders information about the project, your village can follow the regular decision-making process. Village elders can conduct a vote to decide how your village wishes to move forward. Your representative in the consultation process will then present the village’s decision to the developers at the next meeting of “stakeholders.”**<sup>30</sup>



*Village elders will relay information from the developers to the community members*

<sup>29</sup> PS 1, supra note 4, at ¶ 30

<sup>30</sup> *Id.*

letter of complaint to the project office and eventually also the other actors involved in the project.

When you raise the concern, you should be prepared for the developer to say that they are meeting the information and consultation standard, as they define it. They will likely provide documentation of all their “consultation” efforts. This is how they prove to auditors, the IFC and others that they believe they are meeting the information and consultation standard.

In order to counter the picture presented by the project developer, affected community representatives should carefully document all of their efforts to meet and talk with project developers, including government officials, and should take good notes at any meetings that are held.

Please also see the Guide’s section on grievances.



### **IMPORTANT:**

**Your community should keep its own records of the meetings, resolutions and decisions made regarding the Inga 3 project. These records could prove very important if project developers do not follow through on their promises or if your community needs to complain that the process is not fair or is not going according to the agreed plan.**



## **REQUIREMENT NO 2 - RESETTLEMENT AND COMPENSATION**

Inga 3 will **displace** people from their homes and livelihoods. Under the IFC Performance Standard, displaced people must be **resettled** and **compensated** for their losses. This section provides the meaning of these terms (**displacement, compensation and resettlement**) and how they are applied.

### **What is displacement?**

Displacement can take two forms: physical or economic.

- “**Physical displacement**” is when you or members of your community are forced to leave your land or your homes.
- “**Economic displacement**” is when you or members of your community lose **assets** or access to assets (such as farmland, a river or stream, clean water) that lead to a loss of income or **livelihood**.<sup>31</sup>

Families in the Inga communities will be affected by the Inga 3 project in different ways. Some people may be physically displaced - or moved - from their homes. Others may not be physically displaced, but may have their livelihoods or income levels harmed. **Most people in the Inga communities will be both physically and economically displaced by the Inga 3 project.**

### **What is compensation?**

“**Compensation**” is a way of making amends or reimbursing an affected person for what has been lost. In the case of dam-affected people, compensation means a) replacing lost assets or access to resources and b) restoring and improving livelihoods. Compensation may be in-kind (replacement land, benefit-sharing, etc.) or cash.

<sup>31</sup> PS 5, supra note 10, at ¶ 1

## What is resettlement?

“Resettlement” is the physical act of moving your community from one location to another. It can sometimes happen by force (which is a violation of international law), and it can happen involuntarily or voluntarily.

When is resettlement permissible under the IFC Performance Standards?

Resettlement should occur only as an option of last resort and in situations where it is unavoidable. It should also occur only when standards are fully applied. Project developers should carefully plan and carry out any involuntary resettlement, and minimize harmful impacts on affected communities and host communities.<sup>32</sup> They must restore or improve livelihoods and the standard of living for those who are resettled. For example, newly-provided resettlement sites for displaced persons must offer the same or better living conditions than the original sites.<sup>33</sup>

## What is forced eviction?

“Forced eviction”<sup>34</sup> is the permanent or temporary removal of people from their homes or the land they occupy against the will of individuals, families or communities, and



### IMPORTANT:

**People displaced by the Inga 3 project should not be made worse off. If you are displaced by the Inga 3 project, project developers should restore or improve your livelihood and standard of living.**

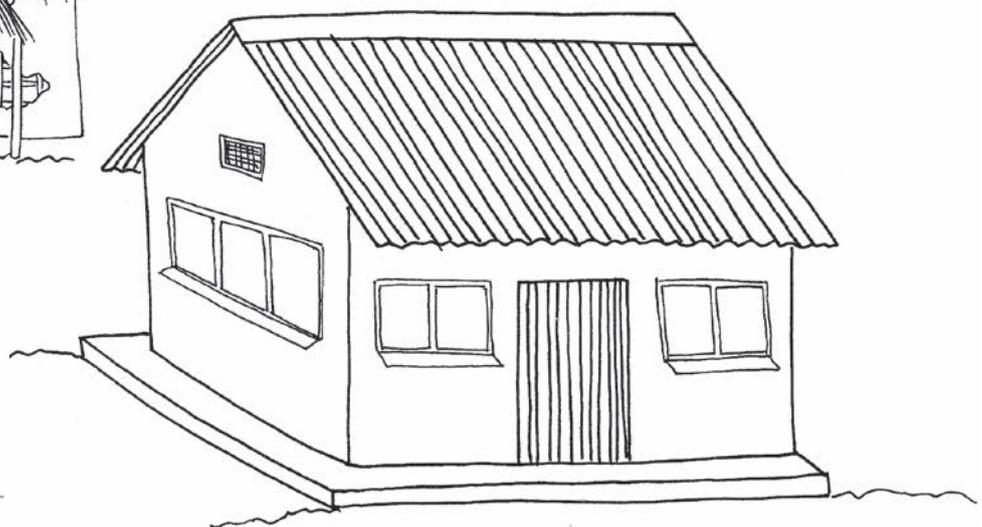


without appropriate forms of legal or other protection. Forced evictions could include:

- You are not paid at all for your land;
- You are not paid what the land is worth;
- There is no agreement from all communities involved about their removal from their land;
- You are forced to leave your land, but the project developers do not provide you with



*People that are displaced by the Inga 3 can expect their standard of living to be restored or even improved*



<sup>32</sup> *Id.* at ¶ 2.

<sup>33</sup> *Id.* at ¶ 20.

<sup>34</sup> GN5, *supra* note 28, at ¶ 55, (citing UN Office of High Commissioner for Human Rights, The right to adequate housing (Art. 11.1): forced evictions: 05/20/1997. CESCR General comment 7, ¶ 3, contained in document E/1998/22, annex IV).



*Forced evictions are illegal by international law*

alternative housing;

- You are forced to leave your land or home and there is no way for you to challenge the decisions; or
- You are made to leave your land or homes by force or threats.
- Forced evictions are a violation of human rights standards.

### **Is forced eviction permitted under the IFC Performance Standards?**

**No. Forced evictions** are prohibited under international law, by the World Bank Group, and by the IFC Performance Standards. Do not allow anyone to pressure or scare you and your community into forced agreement. Your community should have a chance to talk about any option that is offered and to be sure it is the best course for you. A resettlement is not “voluntary” if the project developer threatens you or leaves you with no choice but to move.

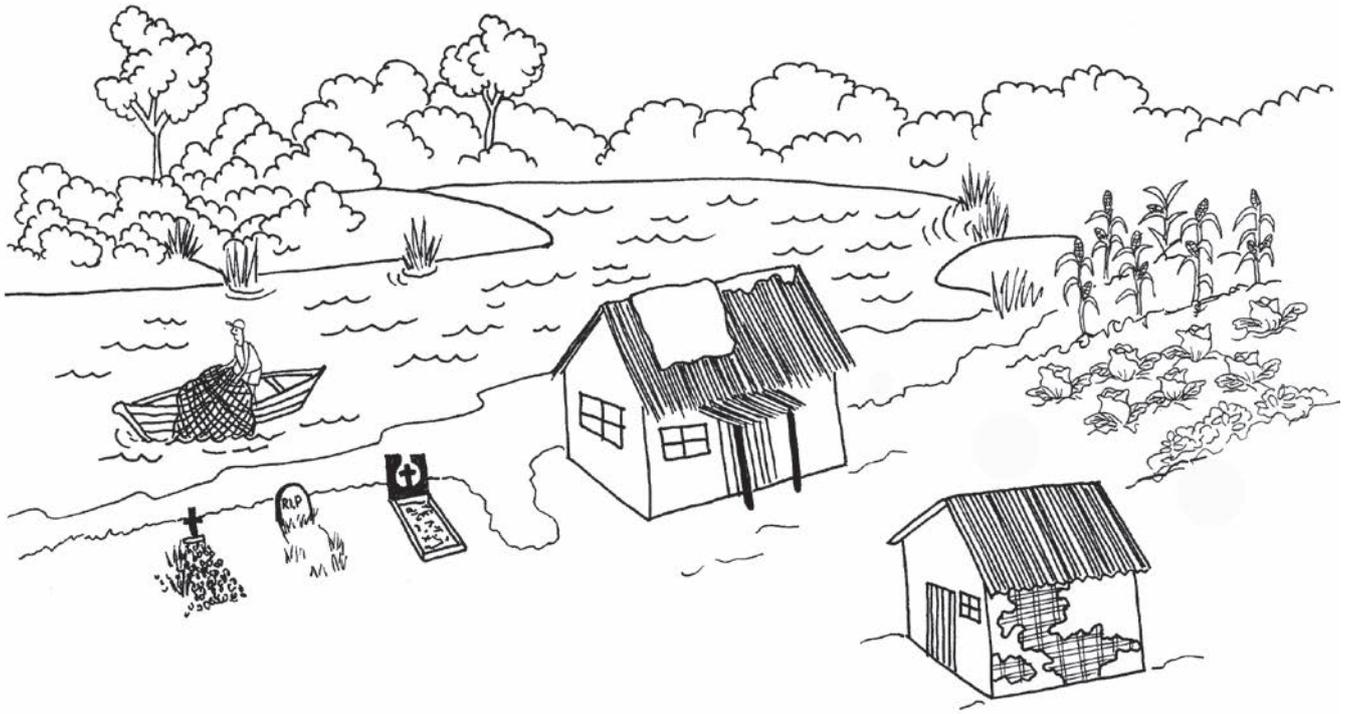
### **What can you do if you believe you are being forcibly evicted from your home?**

You should document all activities in detail, including the date, time and identities of the people involved, including with photo or video where possible. Obtain testimony from credible witnesses. Seek advice from a trusted lawyer, civil society organization, university or other advocates who can help you take necessary steps to protect you and your home. See the section on “Grievances” at the end of the Guide.

### **What are assets?**

**Assets** are not only land, but also buildings, crops, cultivation, irrigation, infrastructure, improvements to land, fish stocks, timber and other forest products, hunting and gathering grounds, grazing and cropping areas, fruit trees, medicinal plants, ancestral burial sites, and fresh water.<sup>35</sup>

<sup>35</sup> *Id.* at ¶¶ 3, 11.



*Communities that live off the land depend on natural resources for their survival*

### What is the difference between "livelihood" and "standard of living"?

"Livelihood" is defined as everything that individuals, families, and communities utilize to make a living, such as wage-based income, agriculture, fishing, foraging, other natural resource-based livelihoods, petty trade and bartering.<sup>36</sup> When looking at your livelihoods, project developers should take into account your access to assets. "Standard of living" is defined as the degree of wealth and material comfort available to a person or community.<sup>37</sup>

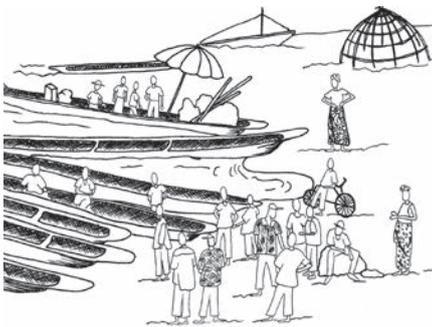
**"Livelihood" means everything that a family needs to make a living, including agriculture, fishing and natural resources.**

<sup>36</sup> *Id.* at ¶ 1, n. 1.

<sup>37</sup> New Oxford American Dictionary (Second Edition).

# Phases in a Typical Resettlement and Compensation Process

## 1. RESETTLEMENT ACTION PLAN



Dam developers design a compensation matrix and agree on institutional set-up

Developers consult with affected people

DEFINE A STRATEGY

VALIDATION

**Participation**   
Our assets and goods were all counted, right in front of us

## 2. RESETTLEMENT AND COMPENSATION AGREEMENT



**Participation**   
I participated in the negotiations and signed an agreement

Developers calculate losses suffered by affected people

DEADLINE

## 3. COMPENSATION

**Participation**   
I have received my monetary compensation and am happy with the proposed resettlement plan



## 4. RESETTLEMENT AND COMPENSATION AGREEMENT

**Participation**   
I have been resettled and have the same or better living conditions

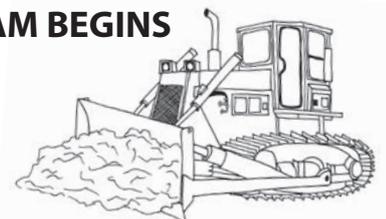


## 6. MONITORING AND EVALUATION

**Participation**   
Monitoring and support continues after resettlement

## 7. END OF THE RESETTLEMENT PROCESS (ABOUT 5 YEARS)

## 5. CONSTRUCTION OF THE DAM BEGINS



## What Is a Resettlement Action Plan?

A Resettlement Action Plan is a document that explains the steps and actions project developers will take to properly resettle and compensate you and your community when you're displaced. It is a requirement under the IFC Performance Standards.<sup>38</sup> It documents the commitment made by the project developers to affected communities around how they will meet the obligations that arise from displacement.<sup>39</sup> If, instead of the project developer, the Congolese government will be responsible for acquiring access to the land, then the government must develop a "Resettlement Action Plan" for Inga 3.

## Which consultation standard applies for resettlement?

The standard of "informed consultation and participation" applies to a resettlement process. Developers must provide you with regular project reports explaining what they are doing to minimize the risks the project poses to you and your community. If they make any significant changes to the Resettlement Action Plan on issues of concern to you and

your community, you should receive updated information.<sup>40</sup>

## What is in the Resettlement Action Plan?

A Resettlement Action Plan should include many details of resettlement, as summarized in Table 1 below:

### IMPORTANT:

**The "Resettlement Action Plan" is the main tool through which resettlement and compensation are determined. Your consultation and participation in the drafting and validation of the Resettlement Action Plan are key to ensuring respect for your rights. For the best outcome, you should have access to outside legal or technical advice during this process.**

Table 1. Contents of a Resettlement Action Plan<sup>41</sup>

Topic	Description
Introduction	<ul style="list-style-type: none"> <li>• Describes Inga 3 project, its components and associated facilities</li> <li>• Describes specific project components requiring land acquisition and resettlement</li> <li>• Defines overall estimate of land acquisition and resettlement</li> </ul>
Minimizing Resettlement	<ul style="list-style-type: none"> <li>• Describes <b>studies and efforts to minimize displacement</b>, showing it is unavoidable</li> <li>• Describes importance of reducing negative impacts of displacement</li> </ul>
Census and Socio-economic Surveys	<ul style="list-style-type: none"> <li>• Provides <b>results</b> of census, assets inventories, natural resource assessments and socio-economic surveys carried out, also identifying the need to regularly update these results</li> <li>• Identifies all <b>categories of impacts and people affected</b> (how many people, households, structures, buildings, businesses, croplands, etc. will be affected by the project)</li> </ul> <p>Summarizes consultations on results of surveys with affected people</p>

<sup>38</sup> PS5, supra note 10, at ¶ 19; GN5, supra note 28, at ¶¶ 66, 43.

<sup>39</sup> IFC, HANDBOOK FOR PREPARING A RESETTLEMENT ACTION PLAN 1 (April 2002), <http://www.ifc.org/wps/wcm/connect/22ad720048855b25880cda6a6515bb18/ResettlementHandbook.PDF?MOD=AJPERES> [hereinafter IFC, HANDBOOK].

<sup>40</sup> PS1, supra note 4, at ¶ 36.

<sup>41</sup> IFC Handbook, supra note 39, at 60-63.

<p><b>Legal Framework</b></p> 	<ul style="list-style-type: none"> <li>• Describes all relevant <b>local laws and customs</b> that apply to resettlement</li> <li>• Identifies <b>gaps</b> between local laws and World Bank Group policies, describing project's mechanisms to address conflicts between the two</li> <li>• Defines and identifies <b>entitlement policies</b> for each category of impact (meaning who will be displaced, and the factors project developers will use to decide who is eligible for compensation and other benefits)</li> <li>• Describes <b>method of valuation</b> for affected structures, land, trees and other assets</li> <li>• Defines <b>entitlement matrix</b> (proposed types and levels of compensation that each category of eligible persons will receive). The matrix should aim at full replacement cost for land and other assets lost, and ensure that vulnerable groups, especially women, also benefit as equals even if they do not head households.</li> </ul>
<p><b>Resettlement Sites</b></p> 	<ul style="list-style-type: none"> <li>• Describes resettlement site and alternative sites</li> <li>• Defines detailed plans to provide housing, infrastructure and social services in the resettlement site</li> <li>• Includes sketches of proposed buildings, identifying materials that will be used</li> <li>• Provides an acceptable strategy for involving the affected community in developing housing replacements and land allocation</li> <li>• Provides data on the quality and productivity of the agricultural land</li> <li>• Provides full details of the arrangements for site development for agriculture</li> <li>• Describes mechanism/process for consulting the host communities</li> </ul>
<p><b>Income Restoration</b></p> 	<ul style="list-style-type: none"> <li>• Defines how livelihoods will be improved or restored and/or what skills training will be provided, if necessary. The aim is to improve or at least restore the economic situation of affected communities.</li> <li>• Describes compensation entitlements sufficient to restore income streams</li> <li>• Identify the additional economic rehabilitation necessary to restore livelihood</li> <li>• Provides skill development programs that should be implemented ahead of time to restore income lost by the change in livelihood</li> <li>• Describes a process for monitoring the effectiveness of the income restoration measures</li> </ul>
<p><b>Institutional Arrangements</b></p> 	<ul style="list-style-type: none"> <li>• Describes the institutions responsible for each activity in the entitlement policy, the income restoration programs and the coordination of activities in the RAP</li> <li>• Describes the external institutions involved in the process of income restoration and the mechanism to ensure adequate performance of these institutions</li> <li>• States how the coordination of activities will be addressed when resettlement is implemented in stages over a long period of time</li> <li>• Discusses institutional capacity for and commitment to resettlement</li> <li>• Describes mechanism for ensuring independent monitoring, evaluation and financial audit of the RAP</li> </ul>
<p><b>Implementation Schedule</b></p> 	<ul style="list-style-type: none"> <li>• Lists chronological steps in implementation of the RAP, and identifies which agencies are responsible for which activity</li> <li>• Defines a month-by-month schedule of activities for implementation</li> </ul>

<p><b>Participation and Consultation</b></p> 	<ul style="list-style-type: none"> <li>• Identifies various stakeholders</li> <li>• Describes process of promoting consultation/participation of affected people in <b>preparing and planning resettlement</b></li> <li>• Describes process of involving affected people in <b>implementation and monitoring</b></li> <li>• Describes plan for <b>disseminating RAP information</b> to affected people, including information about compensation for lost assets, eligibility for compensation, resettlement assistance and grievance redress</li> </ul>
<p><b>Grievance Redress</b></p> 	<ul style="list-style-type: none"> <li>• Describes what to do and who is to be approached when affected communities have <b>complaints</b> (meaning the step-by-step process for registering and addressing grievances, including details about a cost-free process for registering complaints, response times and communication modes)</li> <li>• Describes mechanism for <b>appeal</b></li> <li>• Describes provisions for approaching <b>civil courts</b> if other options fail</li> </ul>
<p><b>Monitoring and Evaluation</b></p> 	<ul style="list-style-type: none"> <li>• Identifies how resettlement activities will be monitored, evaluated and reported.<sup>42</sup></li> <li>• Describes project developer's <b>internal monitoring</b> process, including indicators, responsible institutions and financial arrangements</li> <li>• Defines <b>external monitoring</b> methodology, key indicators, frequency, feedback loops</li> </ul>
<p><b>Costs and Budgets</b></p> 	<ul style="list-style-type: none"> <li>• Defines clear statement of <b>financial responsibility</b> and authority, identifying which agency, government entity or other institution is responsible for funding</li> <li>• Defines an <b>estimated budget</b>, by cost and by item, for all resettlement costs and activities</li> </ul>
<p><b>Annexes</b></p> 	<ul style="list-style-type: none"> <li>• Copies of census and survey instruments, interview formats and any other research tools</li> <li>• Information on all public consultation, including announcements and schedules of public meetings, meeting minutes and lists of attendees</li> <li>• Examples of formats to be used in monitoring and reporting on RAP implementation</li> </ul>

<sup>42</sup> GN5, supra note 28, at Annex A.

# Persons Eligible for Compensation

## Who is eligible to receive compensation?

Benefits and compensation depend on the nature of your rights to the land (your eligibility category) and whether you are

physically displaced, economically displaced, or both.

There are several different eligibility categories, described in Table 2:

Table 2. Categories of Persons Eligible for Compensation

Eligibility Category	Description
1	<p>People and families who have <b>formal legal title</b> to the land, buildings and other assets they live or work on. This generally means:</p> <ul style="list-style-type: none"> <li>• Legally recognized rights are entered into the land register.</li> <li>• The legal owner of the land might also have a written title to the land.</li> <li>• A Congolese court would recognize your rights to the land.</li> </ul>
2	<p>People and families who may not have a legal title to the land, but they still have a claim to the land that is recognizable under Congolese law. Examples of those who may be in this situation are <b>customary landowners</b>.<sup>43</sup> Generally, customary landowners are those who use the land, build structures on the land, farm the land, and can rent or sell the land. Indications of customary landowners include:</p> <ul style="list-style-type: none"> <li>• If land has been used by the same community for generations and everyone around generally accepts you as the owners, you may have rights under customary law.</li> <li>• If someone has occupied the same land for a longer period of time without being challenged, you may have rights under adverse possession law.</li> <li>• If your land is shared by the community and might contain natural resources on which the community depends, you may have communal rights to the land.</li> </ul>
3	<p>People and families with <b>no recognizable legal right or claim</b> to the land or assets they occupy or use.<sup>44</sup></p>
4	<p>People and families who may not live on the land affected by the project, but they stand to lose their (often seasonal) <b>use of the land and its natural resources</b>, such as its waters for fishing, or its forests for hunting or gathering food and forest products.</p>
5	<p>Owners of <b>business structures</b>, such as shops, kiosks, butcheries, bakeries and hair salons, and farm structures like barns, granaries, chicken houses and roadside markets.</p>
6	<p>People earning wages from groups above that qualify for compensation and whose jobs will be lost as a result of the dam construction.</p>

<sup>43</sup> PS5, supra note, at ¶ 17, (Defines the second category of displaced persons as people who have a claim to land recognizable under national law. Footnote 19 states that these claims could be derived from adverse possessions or from customary or traditional tenure arrangements).

<sup>44</sup> *Id.*

## When is it determined who falls into which category?

In any resettlement process, the project developers will set a date in the Resettlement Action Plan that cuts off eligibility for compensation and benefits. This is called the “**eligibility cut-off date.**” People with no recognizable legal claim to land or assets will be eligible for compensation and relocation assistance as long as they occupied the project area before the cut-off date.<sup>45</sup> This rule is designed to prevent opportunistic people from coming in just before the resettlement takes place and claiming that they should receive a resettlement allowance, compensation, etc.

## How is your family’s eligibility category determined?

An individual or family’s eligibility category is determined according to the procedures in the Resettlement Action Plan, before the eligibility cut-off date, according to the nature of their use of the land, and the documentation they can produce as evidence of their rights to the land, assets, natural resources, business structures, etc.

Because the State owns all land in DRC,

there will probably be few people, if anyone, from the affected communities who fall into Category 1. Whether affected families fall into Category 2 or 3 will depend on Congolese law and its interpretation by the government and the project developer. You should advocate for recognition of your customary land rights, as guaranteed and recognized under Congolese law.

## How can affected communities document their land rights and tenure?

There are different ways to document tenure. These include a “title deed” (owned by the individual or local government), “communal titles,” “leases” and any other “long-term occupancy arrangements.” Documenting tenure may not be possible in rural parts of the DRC because systems needed for this are not in place.

## What if you dispute the category your family receives?

Gather as much documentation, witness testimony and other evidence as possible to prove your category. Contact a lawyer, civil society organization, university or another advocate to assist you in presenting your case in a persuasive manner to the project developer. Document all meetings and negotiations to establish your classification, taking careful minutes indicating the date, time and identities of the people who participated, as well as what was discussed. See also the section on “Grievances” at the end of the Guide.



<sup>45</sup> There may be some people who were not present in the Inga communities on the cut-off date who should be considered part of the affected community. For example, if you are a migrant worker or a nomadic herder, and your family lives in an Inga community, you are likely a member of the affected community. (GN5, supra note 28, at ¶¶ 17, 32.)

# Types of Compensation for Eligible Persons

## What type and level of compensation are you entitled to?

The type and level of compensation you're entitled to depends on the nature of your rights to the land, assets, natural resources and such, that is, your eligibility category (see

Table 1). Table 3, below, lists the compensation each category is entitled to for physical displacement and economic displacement as defined in the above section on Resettlement and Compensation.

Table 3. Compensation for Displacement by Eligibility Category

Eligibility Category	Compensation for Physical Displacement	Compensation for Economic Displacement
	<i>Physical Displacement</i>	<i>Economic Displacement</i>
<p>1. Formal title &amp; 2. Customary</p>	<ul style="list-style-type: none"> <li>In-kind compensation (replacement land at equal or higher value, with security of tenure) or cash compensation (in the amount it would take to replace the lost land and assets at full replacement cost<sup>46</sup>) for your lost physical property, assets and access to assets.<sup>47</sup></li> <li>In-kind compensation (suitable replacement land, access to other areas) for your lost access to assets shared by your community, such as forests or fishing grounds.<sup>48</sup></li> <li>Resettlement site must have the same or improved living conditions.<sup>49</sup> Project developers must consider your preferences with respect to relocating, and respect your social and cultural practices when considering resettlement options.<sup>50</sup></li> </ul>	<ul style="list-style-type: none"> <li>Opportunities to improve, or at least restore, your ability to earn income, your ability to produce crops, and your standard of living, taking into account and supporting the way you and your community earn your livelihood now, including allowing continued access to hunting grounds, fishing spots and forest-related sources of livelihood.<sup>51</sup></li> </ul> <p style="text-align: center;"><b>IMPORTANT:</b> <b>Even those people without formal or customary rights to land should have their housing and quality of life restored or improved upon resettlement.</b></p>
<p>3. No recognizable rights</p>	<ul style="list-style-type: none"> <li>Acceptable housing or cash and relocation assistance, if needed, to cover full cost of replacing lost home and assets, including any improvements you made.<sup>52</sup> May have options for replacement housing.<sup>53</sup></li> <li>Project developer must provide you with options for adequate housing and security of tenure so you can resettle legally without the risk of forced eviction.<sup>54</sup></li> <li>Project developer must respect your cultural practices and institutions.<sup>55</sup></li> <li>Not entitled to in-kind (replacement land) or cash compensation for lost land you occupied.<sup>56</sup></li> </ul>	<ul style="list-style-type: none"> <li>Relocation assistance that will allow you to restore your lost livelihood.<sup>57</sup> This might include financial support (such as short-term employment, subsistence support, or salary maintenance) and/or skills and job training if you cannot make a living in the way you did in your old home.</li> <li>Relocation assistance to help you restore your standard of living at an adequate alternative site, such as paying for the cost of moving your movable property, building a quality house for each family, providing land tenure security, providing electricity and water for a set period, ensuring the new community is connected to a market, and providing roads and transport to nearby economic centers.<sup>58</sup></li> </ul>

Eligibility Category	Compensation for Physical Displacement	Compensation for Economic Displacement
	<b>Physical Displacement</b>	<b>Economic Displacement</b>
<b>4. Users of natural resources</b>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>Provide access to alternative resources that restore or improve your ability to earn an income (or achieve production levels) compared to what you lost, or provide alternative income earning opportunities, such as credit facilities, training, cash or employment opportunities.<sup>59</sup></li> <li>Project developers must also provide your community with options and alternatives related to resettlement and livelihood restoration.<sup>60</sup></li> </ul>
<b>5. Business owners</b>	<ul style="list-style-type: none"> <li>If the owner has legal or customary rights to the land, in-kind (replacement property of equal or greater value) or cash compensation at full replacement cost.<sup>61</sup></li> </ul>	<ul style="list-style-type: none"> <li>Relocation assistance or cash compensation for: <ul style="list-style-type: none"> <li>The cost of setting up a new business in the resettlement site;</li> <li>Lost income during the period of transition;</li> <li>The costs of the transfer and reinstallation of large tools, machinery or other equipment.</li> </ul> </li> <li>May provide loans and training (business planning, marketing, inventory and quality control) to expand their businesses and hire local people.<sup>62</sup></li> <li>Families and individuals who are living or doing business in areas that become occupied by roads and transmission lines or hazardous areas should be given the opportunity to move to a place that they can occupy legally.<sup>63</sup></li> </ul>
<b>6. Wage earners</b>	<ul style="list-style-type: none"> <li>Not applicable.</li> </ul>	<ul style="list-style-type: none"> <li>Compensation to fully replace your lost income and related costs (such as new transport costs, if you were able to walk to work before).<sup>64</sup> Full replacement means project developers must pay you the wages you would have made starting from when the business where you work is closed to when it is up and running at the resettlement site.<sup>65</sup></li> <li>Project developers should let wage earners continue to access their place of work during the resettlement process and after they are resettled. If access to the previous workplace is not possible, alternatives should be considered to secure household welfare.<sup>66</sup></li> <li>Project developers should take steps to lessen the disruption in workers' ability to work and earn a living, and should take steps to ensure that you and your community members maintain employment and your overall welfare.<sup>67</sup></li> </ul>

<sup>46</sup> PS5, supra note 10, at ¶ 21.

<sup>47</sup> *Id.* at ¶¶ 21-22, 27.

<sup>48</sup> GN5, supra note 28, at ¶ 60.

<sup>49</sup> PS5, supra note 10, at ¶ 20.

<sup>50</sup> *Id.* at ¶ 20.

<sup>51</sup> *Id.* at ¶ 28.

<sup>52</sup> *Id.* at ¶ 22 & n 8.

<sup>53</sup> GN5, supra note 28, at ¶ 15.

<sup>54</sup> *Id.* at ¶ 22.

<sup>55</sup> *Id.* at ¶ 20.

<sup>56</sup> *Id.* at ¶¶ 21, 22.

<sup>57</sup> PS5, supra note 10, at ¶ 5 n. 8; GN5, supra note 28, at ¶ 51.

<sup>58</sup> PS5, supra note 10, at ¶ 22; GN5, supra note 28, at ¶ 51.

<sup>59</sup> PS 5, supra note 10, at ¶ 28.

<sup>60</sup> *Id.* at ¶ 10.

<sup>61</sup> GN 5, supra note 28, at ¶ 52.

<sup>62</sup> PS5, supra note 10, at ¶ 28.

<sup>63</sup> GN5, supra note 28, at ¶ 52.

<sup>64</sup> *Id.* at ¶ 59.

<sup>65</sup> *Id.* at ¶ 12.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at ¶¶ 5, 12.

# Negotiating Compensation

## When do you negotiate?

The terms of compensation will have to be negotiated by your community with the project developers throughout the drafting and validation of the Resettlement Action Plan. To prepare for these negotiations, **it is a good idea for your community to visit the new location before you start negotiating with the project developers.** This will help you identify your needs at the new site, and answer questions like the ones above.

Even if you are economically displaced, but not physically displaced, the project developers must put into place the compensation and assistance they will give you and your community in the **Resettlement Action Plan.**<sup>68</sup>

## When must developers pay compensation?

Before the project developers take possession of the land and begin project activities, all communities and individuals who will be displaced by the project must receive compensation, including moving allowances, and be resettled.<sup>69</sup> This means that at the resettlement site, the houses must be completely built, there should be

immediate access to water or sanitation, and any jobs or job training to be provided as part of the compensation should be available when people arrive.<sup>70</sup>

## What can you do if your family has been moved, but compensation has not been paid or the resettlement site is not ready yet?

Document all steps of your resettlement, including the date, time and identities of the actors involved. Negotiate and advocate with the actors; make it clear they must respect your constitutional rights and adhere to the IFC Performance Standards, including the terms of the Resettlement Action Plan. Contact a lawyer, a civil society organization, university or other advocate who can help you negotiate and seek remedy for this violation. See also the section on “Grievances” at the end of the Guide.

What types of compensation can you negotiate for?

The matrix above shows which types of compensation each

eligibility category can negotiate for: in-kind or cash compensation.

Aside from specific compensation amounts for



### IMPORTANT:

### THINK AHEAD!

**To ensure that the project developers continue to pay for these benefits in the long-term, you and your community should negotiate for guaranteed free services.**

**Discuss and agree on each benefit that your community wants the project developers to provide up front. This information should then be included in the Resettlement Action Plan. Project developers are required to consult with you to develop a Resettlement Action Plan when people are physically displaced.**



<sup>68</sup> See GN 5, supra note 10, at ¶ 18 n. 20 (Stating where a project results in both physical and economic displacement, the requirements for economic displacement should be incorporated into the Resettlement Action Plan rather than having a separate Livelihood Restoration Plan.)

<sup>69</sup> *Id.* at ¶ 9

<sup>70</sup> *Id.*

families, the project developers may present many different aspects to you, which you can negotiate the terms of, such as:

- Alternative resettlement sites;
- The selection and eligibility standards for resettlement;
- The design and layout of replacement housing and social amenities, like schools, hospitals and common areas;
- The timing of relocation; and
- The identification of vulnerable and at-risk persons within your community.<sup>71</sup>

Project developers should ask displaced persons about their preferences for help with resettlement.<sup>72</sup>

### **What is “in-kind” compensation?**

In-kind compensation could be a down payment for land, building materials, or the construction of structures at the new site, like buildings or roads, rather than cash.

The project developers will, if possible, provide compensation where the livelihoods of the affected communities are land-based, or where land is collectively owned.<sup>73</sup> Thus, for you and your community, project developers should give preference to land-based resettlement strategies for both physically and economically displaced persons.<sup>74</sup>

### **What is “cash” compensation?**

Cash compensation is the monetary value of compensation due, whether paid in bills or into a bank account. The amount should be enough to replace the lost land and other assets, like schools, farms, trees, livestock, access to hunting and fishing areas, and so forth.<sup>75</sup>

Often, project developers may push to compensate you with cash because it is easier for them to distribute cash. Cash compensation can be attractive, because you may get the cash faster than in-kind compensation. However, cash compensation is a poor choice for

community members; it is usually ineffective to restore livelihoods and often leaves people worse off.<sup>76</sup>

### **Which type of compensation is better: in-kind or cash compensation?**

Experience with similar large development projects in the DRC and around the world has shown that land-based communities affected by dams and other large-scale development projects are much better off in the long run when they receive in-kind compensation rather than cash. In-kind compensation is more likely to lead to permanent housing and longer-term security than cash.

Cash compensation can worsen poverty and make vulnerable groups, like women, worse off. Cash may easily lose value in countries with high inflation before asset replacements are purchased or built. Cash payments are often used for immediate consumption,



#### **IMPORTANT:**

**In-kind compensation through land and structures is almost always better than cash compensation. Generally, it is better to be compensated through replacement land. Replacement land of equal or higher value means the land should have equal or better characteristics, such as suitability for growing crops, and location. You should insist that you have “security of tenure” on the replacement land.**



<sup>71</sup> GN5, supra note 28, at ¶ 27.

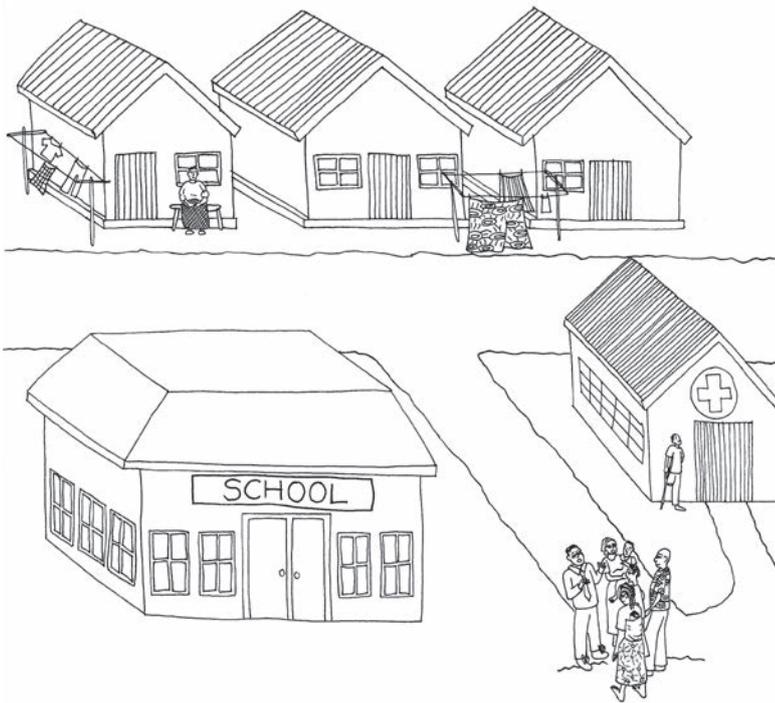
<sup>72</sup> *Id.* at ¶ 51.

<sup>73</sup> PS5, supra note 10, at ¶ 24.

<sup>74</sup> GN5, supra note 28, at ¶ 24.

<sup>75</sup> *Id.* at ¶ 42.

<sup>76</sup> *Id.* at ¶ 52.



instead of reestablishing their livelihoods. This can cause even greater poverty in the long run, because people tend to spend cash on food, alcohol, clothing, and other items right away. This leaves nothing for housing and other essentials.

If replacing the land is not your preferred option, or if there is not land available to replace your land, project developers should explore non-land-based options with you in addition to cash compensation.<sup>77</sup> These options include employment opportunities and assistance with establishing businesses.<sup>78</sup>

### **What if you dispute the project developer's calculation of the value of your lost land, assets or other resources?**

Ensure that the project developer has correctly applied the valuation formula you agreed to in the Resettlement Action Plan. Gather as much documentation about the value of your land, assets and other resources in the local market, especially any sales registers, inventories or other annual records. Seek technical advice from a civil society organization, university or other agency to conduct an independent

<sup>77</sup> *Id.* at ¶ 24.

<sup>78</sup> *Id.*

<sup>79</sup> S5, *supra* note 10, at ¶ 1-2.

assessment of your lost land, assets and resources, and to help negotiate the value with the project developer on the basis of their independent assessment. See also the section on “Grievances” at the end of the Guide.

### **How do you determine if livelihoods or standards of living are restored or improved?**

Living conditions are improved when displaced persons receive adequate housing and secure rights to occupy the land, or “**security of tenure**,” at the resettlement site.<sup>79</sup>

Project developers should especially try to provide you with “**security of tenure**” even if you have no legal

or customary rights to the land you lived or worked on before the resettlement.<sup>80</sup> Even if you didn't have access to education, if a school could be supported and sustained at the relocation site, the relocation site should offer access to a school because a school improves living conditions.

Project developers must try to relocate you to land where there is likely no threat of eviction in the near future. This could include resettlement on public lands with the agreement of the Congolese government, or on private land purchased by the project developers for resettlement.

### **What does “security of tenure” mean?**

“**Security of tenure**” means, at best, that residents are the legally recognized owners of their land and structures and are free to trade or borrow money against their land and structures. At a minimum, security of tenure affords residents protection from eviction. When people or communities are resettled to a site that they can legally occupy and where they are protected from the risk of eviction,

<sup>80</sup> GN5, *supra* note 28, at ¶ 13.

they are considered to be resettled with “security of tenure.”

### **How do you know if the replacement land and assets are of equal or higher value?**

To determine if replacement land is of equal or higher value,<sup>81</sup> the combined characteristics of the land are considered. Examples of these characteristics include the potential of the land to produce crops, the benefits of the land’s location, and the legal nature of your rights to own and use the land.<sup>82</sup> Affected communities should receive secure legal titles to the new land without the risk of eviction.<sup>83</sup>

- **Agricultural or pasture land** – Alternative land must have equal productive use or potential. It must also be located in the area near the new housing site. The cost of cultivating the land so that it is the same or better than the original land must also be included. For example, if the soil of the original land was tilled and fertilized for gardens, project developers must allow for the cost to prepare the alternative land so that it is of the same or better standard.
- **Unplanted (fallow) land** – Alternative land should have equal productive value.
- **Houses and other structures** – Replacement structures and the area around them should be of the same or better quality.
- **Natural resources** – Alternative access to the same or similar resources as displaced persons had on the land around the Inga 3 project.

### **How do you determine if the housing at the resettlement site is adequate?**

For persons who are physically displaced, your housing and your quality of life should be better than they were before you were removed from your land.<sup>84</sup> To do this, project investors should provide you with “adequate housing” at a resettlement site where you

can legally occupy the land without the risk of eviction.<sup>85</sup> Adequate housing is measured in different ways. The house itself as well as the living conditions of the area should be considered.

#### **Ways to assess housing:**

1. The quality and size of the house, including protection from weather and rain;
2. The number of rooms the house has;
3. How safe the house is;
4. How easy the house is to access;
5. Whether the house is fit for your cultural and religious needs;
6. How much it costs to take care of the house;
7. How fit the house is to live in;
8. Whether the resettlement site maintains community dynamics, like allowing family members to live nearby, and features public gathering areas.

#### **Ways to assess living conditions:**

1. Access to jobs and markets;
2. Access to agricultural fields, forests or other sources of subsistence;
3. Access to water, electricity, sanitation, health care and education;
4. Not situated in an area prone to flooding or other dangers;
5. Security of your right to the new house and land (“security of tenure”).<sup>86</sup>

### **How is the “replacement cost” for assets calculated?**

“Replacement cost” is the amount you will need to replace your assets with other assets of similar value.<sup>87</sup> These costs are the market value of the assets plus the amount it cost you to purchase the items, like transportation costs to the market or time away from your farming. Project developers must compensate you and your community as part of your resettlement allowance.

### **How can fishermen determine if**

<sup>81</sup> *Id.* at ¶ 23.

<sup>82</sup> *Id.* at ¶ 24.

<sup>83</sup> PS5, *supra* note 10, at ¶ 21.

<sup>84</sup> *Id.* at Objectives.

<sup>85</sup> *Id.* at Objectives.

<sup>86</sup> GN 5, *supra* note 28, at ¶ 13.

<sup>87</sup> PS5, *supra* note 10, at ¶ 1 n. 4.

**EXAMPLE:**

**What is the replacement cost for my chicken or goat house?**

**If you sell chickens or goats for your livelihood, and you keep your chickens or goats in a fenced-in area or a building, project developers must pay you for the fence or building if you are economically displaced. The amount they must pay you is the same amount it would cost you to buy the materials you need to rebuild the fence or building at the local market, in addition to payment for the time and effort necessary for you to rebuild the chicken or goat house.**

**they will be able to earn an income equivalent to what they earned before?**

If the fishermen are able to remain fishermen in the new place, they should ask many questions about the resettlement site, including:

1. In the new location, do the fisherman have rights to access the water?
2. Do the same types of boats and nets work for fishermen?
3. Do fisherman need a period of time when their income is automatically compensated while they learn the new waters?
4. Does the species of fish available in the new location get a similar or better price at the market?
5. Are others already fishing there? If so, does that drive down the price or make catch more difficult to obtain?

**How can hunters determine if they will be able to earn an income equivalent to what they earned before?**

Hunters should ask similar questions to fishermen, such as:

1. Can hunters catch the same kinds of animals at the relocation site?
2. If the animals are different, will the animals at the resettlement site get a similar or better price at market?
3. Can hunters catch the same number of animals in the same amount of time at the resettlement site?
4. If not, are there other livelihood options available to them at the resettlement site?
5. Do hunters need time when their income is automatically compensated while they learn to hunt on the new land?

**EXAMPLE: Fishing families**

**If a family spends four months out of the year fishing near land that will be used for the Inga 3 project, this family qualifies as a user of the fish. Project developers must recognize this, and provide this family with an alternative way to fish.**

**This alternative must allow the family the same access to fish. This means the fishing grounds must not be harder for the family to get to. The alternative fishing grounds must also provide the family with the same potential to catch fish. This means that the alternative fishing ground cannot have significantly less fish than the waters the family fished before the project.**

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6. Are others already hunting at the resettlement site?
  7. If so, will that lower the price of the catch or make hunting more difficult?

### **What additional benefits can be negotiated?**

If you are to be resettled and land compensation is not available to you or your community, the project developers must provide opportunities for you and your community so that you benefit from the project.<sup>88</sup> For example, project developers are encouraged to buy goods and services for the project from the local community members. Other benefits may include:

- Access to running water;
- Electricity;
- Sanitation;
- Paved roads;
- Micro-credit facilities;
- Job training;
- New employment opportunities related to the project; and
- New community facilities such as schools, churches and medical clinics.

You and your community could benefit from measures to increase your income through the Inga 3 project, for example, by:

- Adding irrigation for agriculture at the resettlement site;
- Constructing agricultural storage facilities;
- Providing micro credit opportunities;
- Supporting the formation of cooperatives; and/or
- Providing marketing strategies for the promotion of new commodities and enterprises.<sup>89</sup>
- Project developers can ensure you benefit from the project by creating new job opportunities.
  - Project developers could offer community members jobs to help with the project.
  - Project developers could invite

community members to sell goods and services to contractors who relocate to the project area.

- Project developers could also provide training in new skills like carpentry or building.
- Project developers should also provide service infrastructure, such as:
  - Increased access to paved roads;
  - Street lighting;
  - Electricity; and
  - Sanitation and clean water.

In order to restore livelihoods of the affected communities, the project developer should also provide affected people with financial support while they transition from the Inga 3 site to the resettlement site.<sup>90</sup>

Such support includes:

- Short-term employment;
- Subsistence support; and/or
- Salary maintenance.

Aside from compensation and benefits, how can project developers minimize adverse impacts?

When displacement cannot be avoided, the project developers should minimize the impacts of the Inga 3 project on your community. They should do this by choosing locations for the project facilities – like pipelines, access roads, plants and depots – in places that have the least impact on affected communities.<sup>91</sup>

<sup>88</sup> *Id.* at ¶ 9.

<sup>89</sup> IFC Handbook, *supra* note 39, at 24.

<sup>90</sup> IFC Handbook, *supra* note 39, at 35.

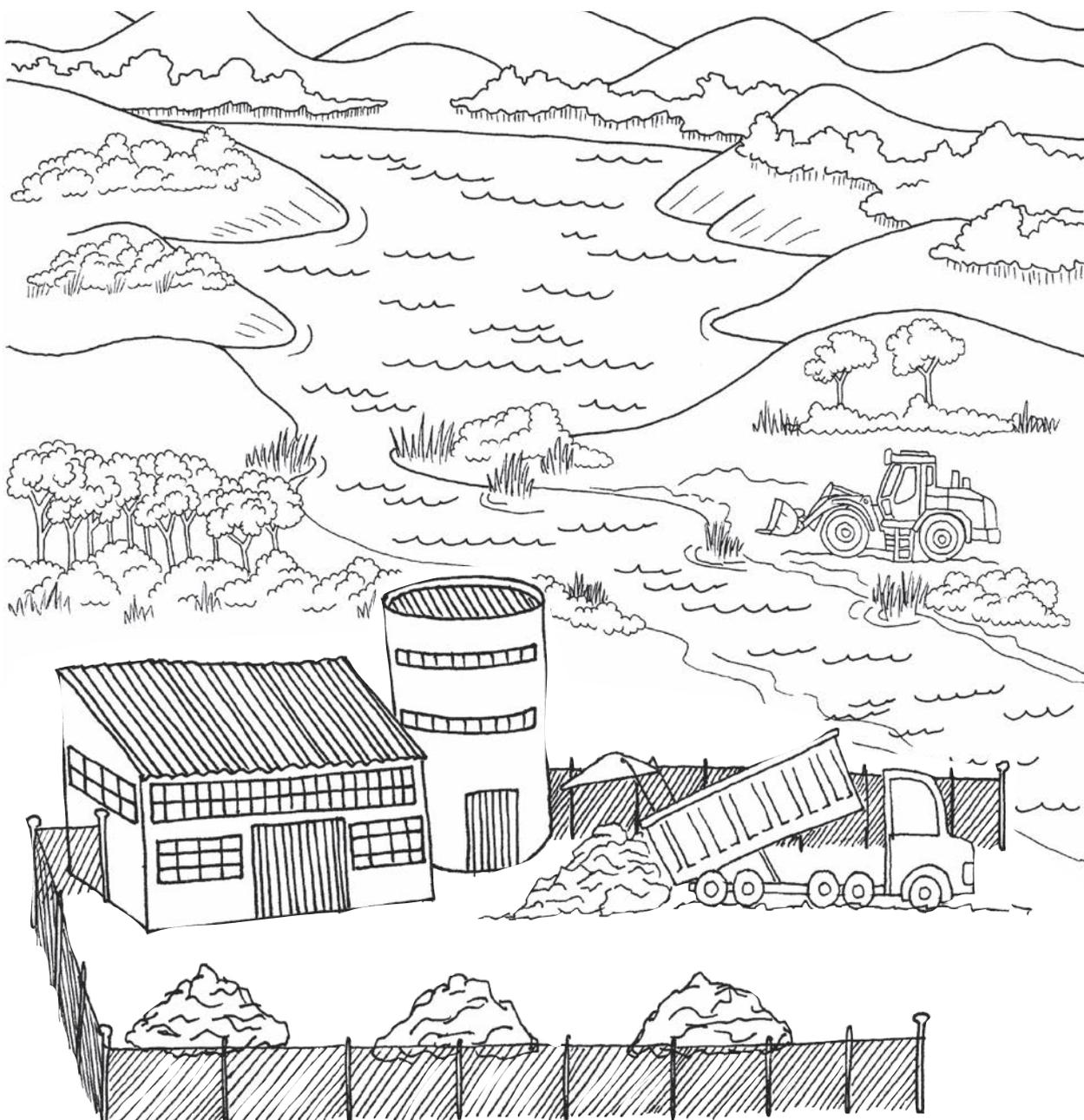
<sup>91</sup> GN5, *supra* note 28, at ¶ 5.

**EXAMPLE:**

**CHOOSING A GOOD SITE FOR A WASTE FACILITY**

The Inga 3 project developers may need to build a waste facility for the project. Through the consultation process, project developers should gather information about how you and your communities use the land.

If people from your community use the forest to hunt, project developers should learn this through meaningful consultation. Then, when the project developers are deciding where to put the waste facility, they should not build it in the forest if possible, because that would cause more harm to the livelihoods of people in your community.



*A waste facility*

# Grievances

What can you do if the project developers do not follow the policies in this manual?



If you are to be resettled and land compensation is not available to you or your community, the project developers must provide opportunities for you and your community so that you benefit from the project. For example, project developers are encouraged to buy goods and services for the project from the local community members.

Other benefits may include:

- Gather as much documentation as possible: minutes from meetings (date, time, identities of people attending, summary of what was discussed), correspondence, petitions, photos, videos, maps, etc.
- Try to informally contact the project developer to explain your concerns and see if they can be resolved. If they do not address the issue, formally request a meeting in writing.
- Submit a complaint to the project's site-level grievance mechanism.
- Draft a letter of complaint or petition addressed to the project developer, the government and any other actors involved who are in a position to correct the situation. Use local and national media wisely.
- Seek outside advice, such as from a lawyer,

civil society organization, university or other institution that can act as your advocate, help engage international media attention, and advise you on access to remedy.

- File a complaint with the IFC's independent accountability mechanism (the Compliance Advisor Ombudsman) or with the mechanisms of any other development banks financing the project.

## Which organizations can help address grievances concerning resettlement and compensation?

International civil society organizations such as International Accountability Project, Housing and Land Rights Network, or Inclusive Development International can help you conduct eviction impact assessments and advocate for you during the resettlement process.

## Which organizations can help you file grievances internationally?

African networks such as International Alliance on Natural Resources in Africa (IANRA) can often help, as can some international civil society organizations such as Amnesty International, Human Rights Watch, Fédération internationale des ligues des droits de l'homme (FIDH), International Accountability Project, and Accountability Counsel. International Rivers can help you connect with these networks.

## What other general recommendations could benefit Inga 3-affected communities?

In view of the complexity of displacement, resettlement and compensation, this community guide urges all stakeholders to consider the following recommendations:

- Practice extensive lobbying and advocacy – like writing letters to government officials, meeting with government



officials, and organizing public sit-ins or protests. The communities of Bundi Valley must participate in and receive informed consultation about all stages of the Inga 3 dam project.

- Guarantee legitimate community representation – ensure your community has procedures and protocols in place so that your community representative remains demonstrably legitimate. The representative should never meet with the project developer or government alone, and they should share information they receive widely within the community. The representative should hold community forums for input from community members (including vulnerable groups), etc.
  - Because the project is likely to attract a large population of workers and job seekers to the Bundi Valley over the course of the project development, concerned civil society groups and government agencies should create awareness of the effects of large and sudden population increases on your communities. These can include the spread of temporary informal settlements of workers, an increase in demand for commercial sex work, and the spread of diseases such as HIV/AIDS. Engaging health workers and educators to discuss these risks with community members may be very helpful. It may be necessary to secure an agreement that prioritizes local community members above immigrant workers for semi-skilled jobs that will arise from the project.
  - You and your communities should advocate strongly for the development of essential community infrastructure in the resettlement community such as roads, schools, health facilities, churches or religious structures, a clean water supply, sanitation and electricity.
  - You and your community members should carefully record and document everything that you own as individuals, as families, and as a community, such as your land (including crops and trees), homes, farm structures, animals, fishing boats, equipment and tools, shops, kiosks, and so forth.
  - You and your community members should think through and document how you make your livelihood from the natural resources (the river, forest, and so forth) in your area and what you will need to replace that livelihood if you no longer have access to these resources. This will help you to negotiate for the full value of lost access to these resources.
  - You and your community should advocate for scholarships for local children to attend primary school through university from project developers and the government. The children should learn engineering and other skills relevant to working at the Inga Dam site so that they may be employed at the site in the future.
  - We recommend affected communities negotiate with the project developer and government for a share of the dam's revenues (for example, a levy on the income from generating and selling the electricity) to be allocated to a development fund. This fund would be managed directly by affected community representatives and local authorities, to support their own future development. While such a fund is not a requirement under the IFC Performance Standards, it is a demand consistent with communities' constitutional rights to share in the country's riches and their right to development. The World Bank has supported this approach for other dams in Africa, and it is considered best practice. It is also a reasonable request and good practice for land-based communities who have lost access to natural resources because of development projects.
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***Based on the World Bank Group- International Finance Corporation Performance Standard 5 for Land Acquisition and Involuntary Resettlement.***

International Rivers- Africa Program  
ProEquity Court, 1250 Pretorius Street.  
Hatfield 0083. Pretoria, South Africa.  
[www.internationalrivers.org](http://www.internationalrivers.org)

