DSA Panel 58 on *The Politics of Risk and Uncertainty in Aid*

Reducing Risks and Safeguarding People Amid Complexity, Uncertainty, and Change

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Abstract. Decades of experience and research make clear that, without proper management, impoverishment risks related to development-induced displacement and resettlement (e.g. landlessness, homelessness, joblessness, and others) will manifest as adverse social impacts that undermine development organizations' programmatic objectives and violate the fundamental ethical principle of 'do no harm.' Multilateral Development Banks, bilateral aid organizations, and private financial institutions have developed and implemented safeguard policies on land acquisition and involuntary resettlement as early as 1980 which detail what proper management entails. Specifically, safeguard policies and guidelines outline well-known methods for identifying, avoiding, minimizing and mitigating risks. Building on decades of experience and research across the development aid landscape, the US Agency for International Development has publicly released its own *Guidelines on Compulsory Displacement and Resettlement in USAID Programming*. Simultaneously, USAID, like many other aid organizations, is increasingly acknowledging the need for agile approaches to be effective in the complex, uncertain, and changing systems in which the Agency operates. Further, there is greater emphasis on innovation and increasing risk tolerance in order to achieve the audacious goal of eradicating extreme poverty in the coming decades. This paper highlights the principles underlying USAID's new Guidelines and contextualizes them within the ongoing organizational culture change within the Agency, specifically around complexity, systems approaches, innovation and risk management.

I. Introduction

Building on decades of experience and research across the development aid landscape, the US Agency for International Development (USAID) has publicly released its own *Guidelines on Compulsory Displacement and Resettlement in USAID Programming* ("CDR Guidelines" or "Guidelines"). Although the Guidelines are voluntary, until this year, USAID was the only major bilateral donor agency without a policy or formal position on compulsory displacement and resettlement (CDR). This despite the fact that under US law "resettlement projects" by the Agency require an Environmental Assessment or Environmental Impact Statement because such projects are presumed to have a significant effect on the environment (22 CFR 216).[1]

Moreover, in 1992 the OECD Development Assistance Committee adopted *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*. Many bilateral donor agencies

[1] USAID, Environmental Compliance Procedures. http://pdf.usaid.gov/pdf_docs/pbaad754.pdf

followed with their own guidelines and policies on CDR, including the German Federal Ministry for Economic Cooperation and Development (BMZ), Japan International Cooperation Agency (JICA), and the Australian Department of Foreign Affairs and Trade (DFAT)—but not USAID.

Why the omission until recently? Put simply, USAID has not generally been in the business of supporting, directly or indirectly, projects that involve CDR. That is, the Agency did not generally engage in what the literature calls development-induced displacement and resettlement (DIDR).[2] A recent review of USAID's construction portfolio found that only 24 of 758 construction projects (3%) are for large infrastructure (defined as valued at more than $50 million). And 80% of these are in Pakistan and Afghanistan.[3]

But the way USAID approaches development is changing. USAID, like many other aid organizations, increasingly acknowledges the need for agile approaches to be effective in the complex, uncertain, and changing systems in which the Agency operates. Further, there is greater emphasis on innovation and increasing risk tolerance in order to achieve the audacious goal of eradicating extreme poverty in the coming decades. These new and innovative approaches come in the form of new initiatives, such as Power Africa, but also a growing number of partnerships with the private sector. Consequently, there is an increased focus within the Agency on addressing risk. In addition to the CDR Guidelines, USAID is in the process of developing a Risk Management Policy and a Construction Risk Management Framework.

This paper highlights the principles underlying USAID's CDR Guidelines and contextualizes them within the ongoing organizational culture change within the Agency, specifically around complexity, systems approaches, innovation and risk management. Part II will discuss CDR risk within the donor community generally. Part III will provide a brief overview of the CDR Guidelines, highlighting its progressive nature, and situate the CDR Guidelines within the larger risk management conversations taking place within the Agency and proffer explanations for why these conversations are occurring now. Part V will conclude by discussing next steps for addressing CDR risk within USAID.

II. CDR Risk within other Donor Agencies

Decades of experience and research make clear that, without proper risk management, impoverishment risks related to development-induced displacement and resettlement (e.g. landlessness, homelessness, joblessness, and others) will manifest as adverse social impacts that undermine development organizations' programmatic objectives and violate the fundamental ethical principle of 'do no harm.' Multilateral Development Banks (MDB), bilateral aid organizations, and private financial institutions have developed and implemented safeguard policies on land acquisition

[2] Note that throughout this paper the terms CDR and DIDR are used interchangeably.
[3] USAID Construction Assessment: http://pdf.usaid.gov/pdf_docs/pbaab700.pdf

and involuntary resettlement as early as 1980 which detail what proper management entails. Specifically, safeguard policies and guidelines outline well-known methods for identifying, avoiding, minimizing and mitigating risks.

CDR issues in MDB projects are well-documented (Cernea 2003). The Bank's current Operational Policy 4.12 on involuntary resettlement has its origins in an "internal statement to staff" issued in February 1980. This was groundbreaking—marking the first time that a major development agency formally committed itself to safeguarding the interests of those resettled as a result of their projects (Cernea 1988). Following the World Bank's lead, other MDBs and international financial institutions have adopted similar standards, notably the European Bank for Reconstruction and Development, the International Finance Corporation, the African Development Bank, and the Inter-American Development Bank.

Interestingly, USAID played an informal, internal advocacy role in the development of the World Bank's first resettlement policy. As environmental organizations exerted external pressure on the Bank to reform amidst reports of adverse social and environmental impacts, within the Bank a voluntary informal group of senior social scientists met regularly to share their experiences and perspectives on the issue. This group also included USAID staff (Kardam 1993).

More formally, USAID serves a legislatively-mandated oversight role over the World Bank and other MDBs. This role includes investigations of potential negative social and environmental impacts of proposed MDB projects.[4] USAID also monitors project implementation to assess the adequacy of safeguard policy implementation and incorporation of any US government recommendations to mitigate negative social and environmental impacts.[5]

In 1992, USAID, along with numerous other bilateral donor agencies, adopted the *OECD Guidelines for AID Agencies on Involuntary Displacement.* Since then, many of the other signatories to the voluntary OECD Guidelines have adopted policies or standards on CDR. The substance of such policies and standards for three prominent bilateral donors is provided below.

BMZ established a specific set of guidance in YEARBMZ frames their resettlement guidance as a human rights risk, and makes the guidance binding on its wholly-owned company GIZ. If no alternative to resettlement exists, then the resettlement must:

- Serve a justifiable purpose;
- Be appropriate and proportionate;
- Guarantee appropriate legal protection, including comprehensive and intensive consultation;
- Cannot leave people homeless;
- Provide appropriate compensation for lost property; and
- Provide legal protection regardless of the types of land rights involved, whether lease, ownership, or informal settlement.

[4] Title XIII International Financial Institutions Act of 1977, as amended
[5] Public Law 113-235

CDR guidance for the Australian Department of Foreign Affairs and Trade (DFAT), of which AusAid is a part, states, "where DFAT investments involve development-induced displacement and resettlement, we aim to achieve positive outcomes for the displaced" (DFAT 2015). The guidelines apply to both physical resettlement and economic displacement from loss of assets or livelihoods. Potential displacement and resettlement is to be considered at all phases from program and activity development to implementation and monitoring. Moreover, regardless of whether the project involves direct aid to a partner government, co-financing with a MDB, or delegation to another implementing organization, the project must comply with DFAT's policy on DIDR (Id.). Consistent with the World Bank's Operational Policy 4.12, in the case of physical displacement DFAT may require a Resettlement Action Plan, whereas economic displacement may require a Livelihood Restoration Framework. Importantly, DFAT's policy applies to all types of land rights—formal legal rights, those who lose land access and use without formal legal rights but whose claims to the land and resources are recognized or recognizable under national law, as well as those without even recognizable legal claims such as informal settlers (DFAT 2015).

As part of its environmental and social safeguards, JICA requires that involuntary resettlement risk be assessed as part of the social impact of its projects. However, all projects are to comply with the following four involuntary resettlement principles:

- Avoid resettlement when feasible by exploring all viable alternatives. If resettlement is unavoidable then minimize the project's impact and provide agreed upon compensation.
- Compensation must cover, "as much as possible", full replacement costs for lost livelihoods and be provided in a timely manner. Affected peoples must be restored to pre-project levels, while countries "must make efforts" to improve standards of living.
- "Appropriate participation" by affected peoples must be "promoted" at each stage of the project, especially regarding resettlement. Grievance mechanisms must also be established.
- For projects that will result in large-scale involuntary resettlement, a Resettlement Action Plan must be prepared and made publicly available. It is "desirable" that the RAP comply with the World Bank's operational policy 4.12 on land acquisitions and involuntary resettlement.

Similar to JICA, in the relatively rare instances in which USAID funds large infrastructure projects, the Agency has applied the World Bank's Operational Policy 4.12. But there is no formal Agency requirement to do so. Nor is there any official guidance on how the Agency should handle resettlement issues when identified as part of its environmental compliance procedures—that is, until now. Albeit voluntary, the Guidelines on Compulsory Displacement and Resettlement in USAID Programming fill this critical gap.[6]

III. The CDR Guidelines: A Balancing Act

[6] For their part, the US Overseas Private Investment Corporation and Millennium Challenge Corporation have adopted IFC Performance Standard 5 (OIG 2012).

The Guidelines were written with the purpose of balancing the need to minimize risk and maximize flexibility while pushing for integration of CDR into development programming. The Guidelines can be viewed as a voluntary tool that synthesizes good practice around CDR but tailored to the needs of USAID.

Regarding terminology, while most policies and standards use the term 'involuntary' rather than 'compulsory' (and in fact, early drafts of the USAID Guidelines used 'involuntary'), discussions with experts convinced us that 'compulsory' is a more accurate descriptor for two reasons. First, it emphasizes that there must be a sound project logic that compels displacement. In other words, it must be clear that the societal benefits of a project are not possible to achieve without displacement. Second, 'compulsory' emphasizes that those affected have no genuine right or ability to refuse displacement.

The Guidelines also use the more recent term 'legitimate landholder' to describe those affected by displacement and resettlement. This reflects the advent of the *Voluntary Guidelines on the Responsible Governance of Tenure*, which endorses the more expansive focus on legitimacy rather than narrower categories. A legitimate landholder encompasses anyone affected by the project, provided they are not opportunistic.

The Guidelines set forth 6 distinct guidelines sequenced as a kind of check list when a project manager, technical expert, or USAID partner encounters a potential CDR issue.

1. Understand the legal and institutional context

The legal and institutional context is not just about who affected by a project has deeds or titles. These are not the only persons with which the project needs to concern itself. The predominant situation in the countries where USAID works involves government claiming legal ownership over land and resources with the smallholder and/or community users of the land granted limited use rights, tolerated, or even actively expelled. National laws are often insufficient. A recent review of 30 developing country's compulsory acquisition laws found that only 6 required public consultation prior to expropriation (Tagliarino 2016). Thus, understanding the legal and institutional context requires a firm empirical understanding of the legal pluralistic realities on the ground.

2. Identify all legitimate landholders and relevant risks

This guideline is concerned with who faces what risks. These are best identified through an assessment which benefits from the perspectives of all legitimate landholders and a thorough understanding of the tenure dynamics. Well understood risks, such as those described in Cernea's Impoversihment Risk and Reconstruction Model (2000) or Reddy et. al's Social Framework (2015), can help guide risk assessment.

3. If physical displacement is unavoidable, develop a Resettlement Action Plan

The Resettlement Action Plan (or RAP), a term used in various donor resettlement policies, should be developed when physical displacement is unavoidable and should include the results of the various distinct guidelines. It is the road map for how adverse impacts will be addressed. With a length and complexity proportional to the significance of the physical displacement, the RAP should include: 1) the legal and institutional analysis, 2) results of the assessment, 3) strategy for informed and meaningful engagement, 4) how the project will improve living standards and livelihoods, and 5) identification of vulnerable groups.

4. Promote informed and meaningful engagement

Eschewing the language of consultation or consent, the Guidelines focus on engagement in a way that is informed and meaningful. This necessitates a continuous, iterative process of back-and-forth between project staff and those adversely impacted.

5. Improve livelihoods and living standards

The Guidelines focus on improvement of livelihoods and living standards, rather than just restoration. The rationale is that a displacement and resettlement counter-risk strategy should no longer be viewed as a burdensome addition to a development project, but part and parcel to the project's goal of making those affected better off. In other words, when unavoidable, displacement and resettlement should be seen as a development opportunity. If done consistent with good practice, displacement and resettlement can bolster project goals rather than undermine them.

6. Provide additional protections to vulnerable groups, especially women and indigenous peoples

Finally, the guidelines recognize that not all affected persons are in the same position—some are inherently more vulnerable than others. In particular, special attention should be given to women and indigenous peoples who tend to suffer disproportionately from adverse impacts related to displacement and resettlement.

In applying these, the Guidelines endorse a risk management approach. That is, the risk that a project will impoverish those it purports to help needs to be appropriately managed. Impoverishment could be in the form of landlessness, homelessness, joblessness, marginalization, food insecurity, increased morbidity and mortality, lack of access to common property resources, loss of access to education, and community disarticulation (Cernea 2000). If the project is not mindful of these risks, and indeed induces them, the project may expose USAID to two types of risks—programmatic and reputational.

Programmatic risks are the possibility that an intervention will undermine or adversely affect expected outcomes. Reputational risks are the possibility of a loss of credibility or of public trust as a result of the way an intervention is implemented. Both these types of risks played a part in the World Bank adopting its first resettlement policy.

These risks are managed by relying on a mitigation hierarchy where avoidance of the risk takes pride of place, followed by minimization and, finally, as a last resort, mitigation. Through this hierarchical lens, counter-risk strategies are tailored to the nature of the risk at issue. For example, if there is a significant risk of landlessness as a result of CDR then the project would first assess project design alternatives that would avoid or, secondarily, minimize the amount of land acquisition. Land acquisition which cannot be avoided or minimized could then be mitigated by providing suitable alternative land combined with tenure security for those displaced. Tenure security could be provided by issuing a deed, certificate, or some other formal documentation recognized by the country's legal system.

Finally, given the changing nature of USAID's development programming, the Guidelines do not restrict its application to only USAID-managed projects. USAID increasingly is working within complex systems of development with multiple actors and various degrees of separation and control over project activities. Direct sources of risk, where USAID is directly implicated in displacement and resettlement, are comparatively rare outside large infrastructure projects, which are also rare. The real source of risk for USAID is indirect, or through government partners, innovative initiatives, sub-contractors, and "non-traditional resource partners" (i.e. private sector actors).

This new source of indirect risk is one reason why USAID has increasingly focused on risk management. A recent review found an extraordinary amount of partnerships with the private sector within the Agency. Seventy out of 89 missions and bureaus have recently had partnerships with the private sector. Active partnerships with the private sector number 365, 66% of which leverage private sector resources at a 1:1 ratio with USAID funds. These partnerships represent $5.9 billion in leveraged private sector resources. Indeed, 75.9% of USAID's resource partners are from the private sector, including for-profit and private philanthropy.

One of the most public initiatives through which USAID partners with the private sector is Power Africa. The initiative focuses on addressing constraints in energy project development and investment in Sub-Saharan Africa to facilitate transactions that meet the region's energy needs. As part of Power Africa's Beyond the Grid sub-initiative, over 40 private sector partners focus primarily on developing mini-grid and distributed power services and infrastructure.

Power Africa acknowledges that the projects it supports may involve CDR risk. Power Africa deals with this risk in one of two ways. It conducts its own environmental and social review, which includes assessing land tenure and resettlement issues. Alternatively, Power Africa confirms that one of its partners, whether another USG agency, MDB, or international financial institution, conducts an environmental and social impact screening or assessment in accordance with that partner's policies.

Meanwhile, the reputational risks to bilateral donors stemming from CDR are becoming more apparent. The UK Department for International Development DFID is reviewing allegations of abuses around the resettlement of more than 1 million rural farmers in Ethiopia under the Protection for Basic Services Project (Kelly 2014). USAID is not immune to these risks, which may become more pronounced as the Agency continues to capitalize on private sector partners and innovative approaches.

In 2012, AusAID was scrutinized by Oxfam and others for its role in a Cambodian railway project that could potentially physically displace more than 4,000 households (Bugalski & Medallo 2012). In this case, AusAID did not directly displace anyone, but they provided financial support to a project that did.

USAID also encounters these issues, where a government partner is responsible for resettling an affected population, which may subject USAID to reputational (and programmatic) risks. For instance, as part of USAID/Indonesia's Aceh Road Reconstruction Project, under the Mission's Tsunami Program, the Government of Indonesia was charged with acquiring land through which the new road would be built. USAID/Indonesia met with government officials to expedite the land acquisition process while ensuring that the land was acquired through an inclusive process. (OIG 2007).

Within this changing context, USAID has started taking a number of steps to address risk. Discussions are under way on development of a risk management policy. The Policy will provide a general framework through which Missions, Bureaus, and Offices can view risk and develop subject-matter specific tools and standards—like the CDR Guidelines. In addition, USAID is in the process of creating a construction risk management framework as a way to monitor and assess risk within its construction portfolio.

IV. Conclusion

So where does USAID go from here? Key will be sensitizing USAID Missions and Bureaus to the issue of CDR risk given the Agency's commitment to innovative approaches to development. This will include training and internal outreach and communications through regular conferences and field support. The time is ripe for elevating the issue of CDR risk within the Agency, given the focus on risk management writ large, construction risk management, and social safeguards generally.

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