



COLLECTIVE OF CIVIL SOCIETY ORGANIZATIONS FOR ADVOCACY RELATING TO LEGAL REFORM OF  
THE PROCESS FOR COMPENSATION, INDEMNIFICATION AND RESETTLEMENT OF COMMUNITIES  
IMPACTED BY DEVELOPMENT PROJECTS IN GUINEA

**Analysis of the Document Entitled “National Framework  
for Acquisition of Lands and Relocation: A Guide to  
Managing Involuntary Physical and Economic  
Displacement for Public and Private Sector Projects in  
Guinea”**

Conakry, March 21, 2019

## Table of Contents

<b>INTRODUCTION</b> .....	<b>3</b>
<b>OBJECTIVES OF THE ANALYSIS</b> .....	<b>3</b>
<b>HUMAN RIGHTS-BASED ANALYSIS</b> .....	<b>4</b>
<b>Procedural Concerns</b> .....	<b>4</b>
• The lack of prior consultation of the local populations.....	4
<b>Substantive Concerns</b> .....	<b>5</b>
• The document will not achieve its objectives.....	5
• Absence of a prohibition on forced evictions .....	6
• Weak access to information, consultation guarantees, and active participation in decision-making.....	6
• No mention of legitimate tenure rights and failure to fulfill the right to adequate housing.....	7
• No access to effective remedy .....	8
• Weak measures to ensure compensation and valuation of property .....	8
• No measures to identify and protect various social groups.....	9
• An insufficient institutional framework.....	9
<b>RECOMMENDATIONS</b> .....	<b>10</b>
<b>ANNEX</b> .....	<b>11</b>

## **Introduction**

Guinea has great mining, water and agricultural potential which provide the country an opportunity for development. In the past ten years, there has been significant growth in applications by investors in Guinea to acquire land. Considering the major projects underway today - from dams such as Fomi, Souapiti or Koukoutamba, to mining projects in the Boké regions, forest or other regions - there are approximately 100,000 people in Guinea threatened by resettlement in the next 12 to 24 months. It is clear that such major projects cause negative environmental, social, and cultural impacts in terms of dislocation or displacement of populations.

In recognition of this reality and of the urgent need to clarify and define the legal framework in this area, the Guinean government, through the Ministry of Mines and Geology, launched a reform process in order to establish norms for the resettlement, indemnification and compensation of persons affected by major projects. This has resulted in the establishment of an interministerial committee to address this process.

Given the importance of this legal framework in ensuring that the human rights of the communities in the country's rural zones are respected, the community came together in a coalition of civil society organizations for advocacy relating to legal reform of the process for compensation, indemnification and resettlement of communities impacted by development projects in Guinea ("NGO Coalition") with a view to supporting the interministerial committee in order to better achieve its objectives.

At a workshop held in Conakry on March 5, 2019, the interministerial committee presented a first draft of a document entitled "National Framework for Acquisition of Lands and Relocation: A Guide to Managing Involuntary Physical and Economic Displacement for Public and Private Sector Projects in Guinea". This document was prepared by the South African consulting firm, SRK Consulting, with funding from the German Development Cooperation (GIZ). The committee invited the participants, including the members of the NGO Coalition, to provide their comments on the project.

## **Objectives of the Analysis**

This human rights-based analysis by the NGO Coalition aims to identify the procedural and substantive concerns about the draft document entitled "National Framework for Acquisition of Lands and Relocation". Whereas this analysis focuses on the deficiencies in said document, the technical memorandum of the NGO Coalition, attached to this analysis, presents a comprehensive review of the legal standards applicable to all resettlement situations, and lists the problems and challenges related to resettlement in Guinea. The technical memorandum also proposes a draft law on fair compensation,

transparency in land acquisition and protection of the rights of communities impacted by major projects.

The NGO Coalition's approach remains in a spirit of supporting the interministerial committee and therefore, the government, to achieve its goals of defining a clear legal framework to govern resettlement in the implementation of major projects. It is, above all, a legal framework that complies with Guinean legislation, the obligations of the State with regard to human rights, and the socio-cultural realities of the country.

### **Human Rights-Based Analysis**

The human rights-based analysis of the draft document entitled "National Framework for Acquisition of Lands and Relocation" is on two levels: procedural concerns and substantive concerns.

#### **Procedural Concerns**

- **The lack of prior consultation of the local populations**

In accordance with established standards and directives on human rights, States are required to carry out consultations and assessments prior to making legislative or policy changes that might affect human rights. The draft policy in question will have a significant impact on the human rights of approximately 100,000 people in rural areas threatened by resettlement. Of particular concern are the further impoverishment of displaced persons, lost livelihoods, homelessness, food insecurity, negative impacts on health and the disproportionate impact on women and vulnerable groups.

The prior assessments made by the State must allow for public participation and their results must be made public and must also report on the measures that the States must adopt to prevent violations or to ensure that any violations cease, as well as to ensure effective remedies. The voluntary guidelines for responsible governance of land tenure systems applicable to land, fisheries and forests in the context of national food security ("VGGTs") reaffirm, among other things, as guiding principles of human rights:

*"Consultation and participation: Before decisions are made, engage with those who hold legitimate land rights and who could be affected by these decisions, seek their support and take into account their contribution; take into consideration the imbalance of power among the different parties and ensure active, free, effective, meaningful and informed participation in the decision-making process by the individuals or groups." (VGGTs, Part 2, General Questions, 3B Implementation Principles, P. 6).*

Adoption of the compensation and resettlement framework in its current form without prior consultation signifies that GIZ itself risks violating its own human rights policy, as well as the commitment of the Federal Ministry for Economic Cooperation and Development (BMZ) to apply voluntary land guidelines in the course of its cooperation and development activities and to adopt a human rights-based approach.

Our principal concern is that the government has not ensured the active, free, effective, significant and informed participation of those who will be affected by the document entitled “National Framework for Acquisition of Lands and Relocation”; that is, those who live in the rural areas of the country where the major projects are carried out. While the interministerial committee has demonstrated its willingness to communicate with a range of interested parties, including the NGO Coalition, only one presentation was made outside of Conakry - to an audience of 12 people whereas the country’s population is over 12 million people - to announce the government’s plans to prepare and adopt a national policy with respect to resettlement. Given the lack of consultation, it is unlikely that the companies and the local authorities will apply this policy once adopted.

### **Substantive Concerns**

- **The document will not achieve its objectives**

Multiple independent studies have shown that the lack of a clear legal framework harmonized across the different laws, codes and implementing regulations (such as the Constitution, the Land Code, the Environmental Code, the Mining Code, the Local Government Code, the Water Code, the Public Health Code, etc.), together with the lack of a legally binding instrument, is at the heart of conflicts caused by human rights violations at the time of resettlement, compensation and indemnification tied to major projects.

The country’s overly relaxed legal framework gives project sponsors today insufficient directives for how to acquire land and allows them to disregard the communities. The local communities, the project developers, the local elected representatives and the decentralized administration all want a more predictable framework that creates a fair and uniform approach to manage land acquisition and resettlement. In the worst case, project sponsors simply make short-term cash payments to those affected - payments that will never succeed in replacing the lands, while the most progressive sponsors have difficulty finding a way to provide replacement lands or other long-term solutions.

We have serious concerns that the draft document entitled “National Framework for Acquisition of Lands and Relocation” will not change anything in this regard, and therefore, will not accomplish its objectives. The document simply creates further confusion. It is not a legally binding instrument and, in any case, its language is so weak and flexible that companies will be able to find justification for their current practices. For example, the document allows for cash payments to continue to be made if it is not possible to provide replacement lands, without any guidance as to how to identify options.

What is needed, rather, is a set of clear and binding principles that will govern the acquisition of lands but that will also make it possible to find solutions tailored to each community. All of this requires technical input, time, extensive consultations and testing.

- **Absence of a prohibition on forced evictions**

We are deeply concerned that the document does not prohibit forced evictions, does not prohibit the use of force, and does not guarantee that resettlement only occur as a last resort, on completion of a study that clearly shows that there is no other way to design the project and that the benefits of the project outweigh the negative impacts, including the social and cultural impacts.

According to international human rights law, involuntary resettlement and evictions in general are only authorized under exceptional circumstances; in particular, when the project that led to the resettlement is undertaken only to promote general well-being in accordance with international human rights obligations and when no viable alternative is feasible. In these situations, legal protections must be established to ensure the full respect of the human rights of those affected before, during and after the eviction. According to the United Nations basic principles and guidelines on development-based evictions and displacement, any relocation must be a) authorized b) carried out in compliance with international human rights law c) undertaken only to promote the common interest d) reasonable and proportionate to its objective e) regulated in such a way as to ensure total and equitable compensation and rehabilitation and f) carried out in accordance with the United Nations basic principles and guidelines on development-based evictions and displacement.

The text does not prohibit the use of force in the context of resettlement and it does not specify how it aligns with national laws governing expropriation in the public interest. These considerations are particularly urgent in Guinea, where thousands of people have been expelled by force in order to have access to lands for mining operations, hydroelectric dams or other large-scale infrastructure projects.

- **Weak access to information, consultation guarantees, and active participation in decision-making**

We note with some worry that there are no defined, mandatory mechanisms for ensuring an informed consultation of the affected people and for guaranteeing that such information is made accessible beforehand, in local languages using appropriate communication channels, in particular to inform women and vulnerable populations. The draft text does not set out any requirements or quotas for ensuring women can

access information and participate, which is especially important given the prevailing sociocultural norms that marginalize women.

The importance during the relocation process of getting the affected people access to information as well as the chance to participate and be consulted has been firmly established. Involuntary resettlement has such large impacts on the lives of the displaced people that it would be manifestly unjust and unacceptable to prevent the affected people from having significant control over decision-making.

- **No mention of legitimate tenure rights and failure to fulfill the right to adequate housing.**

We find it especially troubling that the draft text violates the VGGTs. The document fails to mention legitimate tenure rights, the roles and responsibilities of land commissions, or ways of identifying the affected persons' legitimate tenure rights, and makes no suggestions for securing the tenure rights of the relocated. Most importantly, the issue of the roles and responsibilities of land commissions is one of the key problems facing project developers, and there is no standardized solution. As indicated in the VGGTs: "States should protect legitimate tenure rights, and ensure that people are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed." (Principle 4.5)

The draft policy also fails to fulfill the right to adequate housing, which is a fundamental aspect of the right to an adequate standard of living and reflects one of the most fundamental human needs. Under international law, measures must be taken to fulfill the fundamental right to adequate housing. A resettlement process planned as part of a development project offers a major opportunity to secure the right to adequate housing for the relocated.

According to the United Nations Committee on Economic, Social and Cultural Rights, the criteria for the right to adequate housing include, among other things, basic quality housing that ensures security of tenure; access to basic utilities, including water, sanitation, electricity, and waste disposal; affordability; habitability, to ensure the physical safety of the occupants, including protection from the elements and sufficient space for the members of the household; accessibility to account for the special needs of underprivileged and marginalized groups; location in an appropriate place for accessing means of subsistence, schools, health care facilities and other social services; and cultural adequacy. We find it troubling that the text does not lay out clear measures that are fit to ensure compliance with all aspects of the right to adequate housing at the new site.

- **No access to effective remedy**

We note that the text utterly lacks any robust, accessible mechanisms that would enable the affected persons to obtain redress, seek justice, or access effective recourse. This is especially important in a country that is trying to improve its governance and effectively fight corruption. For instance, the document does not lay out any measures to ensure independent legal assistance to those who cannot read or write, which is particularly important when the illiteracy rate in rural areas is so high.

The document does not mention any consequences for failing to meet these terms. The UN's Basic Principles and Guidelines on Development-Based Evictions and Displacement state that: All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (paragraph 59).

- **Weak measures to ensure compensation and valuation of property**

Under international standards, compensation and restitution must cover all losses suffered, including the value of the land; the value of buildings and crops; non-market values, such as social, cultural, religious, spiritual, and environmental values; redress for past wrongs; and temporary losses. Complete restoration should be the chief goal of compensation and restitution. The method for calculating restitution is that of the replacement cost, i.e. the method of valuing assets that makes it possible to determine how much is enough to replace the losses suffered and cover the transaction costs.

However, the value of the compensation must not be left up to the project's developers; rather, it must be decided jointly with the affected populations in accordance with standards. The issue of restitution is a topical one in the country, as different operating companies each use different systems and mechanisms of compensation, sometimes even in the same communities. These practices have caused tensions in some communities, leading to conflicts between the companies and communities affected.

We note with great concern that the proposed document gives only a general overview of the basic principles and best practices in the matter, while failing to translate them into enforceable procedures. Additionally, the document does not identify who is responsible for ensuring that these procedures are enforced, or any binding indicators.

Effective, equitable, fair restitution is only possible if the assets and property lost can be carefully appraised. The communities' assets are not limited to what can be monetarily quantified. The proposed document focuses entirely on economically quantifiable losses and ignores these non-quantifiable losses. Furthermore, the document considers the country as a whole, ignoring regional and economic specifics. It is also important to note the absence of any variables and indicators that could guide communities toward an improved understanding of valuation procedures. This weakness of the proposed document shows the desperate need for cooperation with communities in order to better understand the various key factors.

- **No measures to identify and protect various social groups**

Exploiting a country's natural resources should have as its primary goal the improvement of the lives of its citizens, particularly populations living at the site of those resources. Improving citizens' lives in such a way should include protecting them from unsustainable practices. Protecting citizens necessarily requires identifying all categories/strata of the population and what makes each one unique. Taking all of these unique features into account in a transparent way would help design risk-mitigating measures in order to reduce or eliminate potential conflicts between populations and project developers. The proposed document is marked by a failure to identify or take into account the various social strata and the people living in the country.

The document proposes the term "affected populations/households" but does not define the "project zone". Although the definition mentions anyone adversely affected by the project, the characteristics of "adversely affected" by the project and the "project zone" could do more to specify the scope and extent of the persons affected.

Besides "local affected populations", the proposed document classifies the communities in a specific way. For example, women, children, minorities, etc. The proposed document does not clearly identify these categories of people, thereby exposing them to potential violations. Laws which protect a particular class of people must identify the class, indicate their vulnerabilities, and plan protective measures. Otherwise, those categories of vulnerable people will still be exposed to unmitigated risks and violations.

- **An insufficient institutional framework**

Generally, a document is only effective if it states which institutions are qualified to ensure its implementation and punish violations, and the parameters by which they do so. The effectiveness of legally binding documents relies on implementation mechanisms, the identification of institutions, and the ability and means to act. Consequently, the proposed frame of reference must identify which stakeholders are

involved in the displacement, resettlement, and compensation procedures. Identifying stakeholders thereby makes it possible to define the extent and scope of their roles during the displacement, resettlement, and compensation processes.

We have serious concerns that the document identifies numerous processes and procedures, but does not identify the ministry department, nor the technical agencies tasked with enforcing them.

## **Recommendations**

The NGO Coalition recommends that the Interministerial Committee:

1. Conduct inclusive, expanded consultations with those who will be affected by the document. Test the procedures set out in the draft National Framework in the frontline communities.
2. Survey the weaknesses in the current legal framework governing land access and acquisition. Analyze the discrepancies between Guinean laws and international standards and obligations. Harmonize the land acquisition procedures with the country's legal framework and its human rights obligations.
3. Assess the gap between the draft National Framework text and the proposed draft law on fair compensation, transparency in land acquisitions, and protecting the rights of communities affected by major projects.
4. Identify and take into account the various social groups and people living in Guinea. Account for the sociocultural realities and specifics of each geographical region and social stratum, and provide protective measures against all forms of violations.
5. Identify each process and procedure and link each one to a ministry tasked with enforcing it. Identify the agencies and organizations tasked with relocation, restitution, and resettlement as well as their responsibilities.
6. Make a clear distinction between the environmental and social impact studies and the processes for resettlement, compensation, and restitution.
7. Highlighting the variables and indicators to help communities better understand the valuation, displacement, resettlement, site selection, and resettlement procedures.
8. Require free, prior, informed consent, including it in the binding legal instrument and making it enforceable.
9. Make access to information mandatory, including it in the binding legal instruments and making it enforceable.
10. Submit the text for the analysis of members of Parliament, etc.

## **Annex**

Technical note on the rights of communities in the context of compensating and resettling populations affected by major development projects in the Republic of Guinea, March 2019, *Avant-projet de loi portant sur la compensation juste, la transparence dans les acquisitions terres et la protection des droits des communautés impactées par les grands projets*, which can be downloaded at: [https://communitiesfirst.net/note-technique-du-collectif-reinstallation-guinee\\_201903/](https://communitiesfirst.net/note-technique-du-collectif-reinstallation-guinee_201903/)