

**PROCESS FRAMEWORK FOR MITIGATING POTENTIAL ADVERSE
LIVELIHOOD IMPACTS – KYRGYZSTAN NATURAL DISASTER AND
MITIGATION PROJECT**

Project Description

Mailuu-Suu is located near the Uzbekistan border upstream of the densely populated and highly productive agricultural Ferghana Valley of Kyrgyzstan and Uzbekistan. This area was actively mined for uranium from 1946 until 1976, when 23 tailing deposits (including uranium and heavy metal waste), were developed, often in close proximity to the Mailuu-Suu River, a tributary of the Syr Darya. If no attention is given to the tailings, it is likely that many of them will contaminate groundwater, river water, and soil, and will have long-term health and environmental effects. Many of the tailing dams suffer from compromised stability, with their collapse being a real possibility.

Potential landslides threaten a number of tailing impoundments, which could cause an environmental disaster, as far as the Ferghana Valley with catastrophic regional impact. A major landslide could damage tailings or push them into the Mailuu-Suu River, or block the river, which would not only submerge tailings, but would also cause major flooding in Mailuu-Suu town with a population of about 18,000 people.

The Natural Disaster Mitigation Projects seeks to address this dire confluence of circumstances. Components in the current phase of the project are largely geared to address the most imminent threats by:

- (i) Removing portions of Tektonik landslide looming over Tailing 3 and threatening to displace it into the river;
- (ii) Repairing and reinforcing tailings
- (iii) Introducing a drainage system on Koy Tash landslide to reduce landslide risks
- (iv) Establishing a landslide monitoring and warning system
- (v) Strengthening river banks to reduce tailing erosion and seepage of contaminants into the Mailuu Suu and Aylampasay rivers
- (vi) Conducting studies to determine if T3 can be reinforced and stabilized or whether moving it to a safer location is required
- (vii) Seismological, weather, hydrometric and radiological and water quality monitoring, establishing a baseline of current conditions and risks.
- (viii) Moving waste dumps located in the midst of South Karaagach village, posing major radiological risks to village residents.
- (ix) Conducting a health study and upgrading capacity of oblast or city Sanitary Epidemiological Service (SES) to monitor radiological contamination of water, soil and food.
- (x) Improving disaster preparedness and response capabilities
- (xi) Information and awareness campaigns addressing links between ecological risks and health.
- (xii) Capacity building of Ministry of Ecology and Emergency Situations.

Policy trigger

The purpose of the Process Framework is to establish a participatory mechanism by which members of potentially affected communities take part in: (a) the design of project activities and identification of the related restrictions of access that will be appropriate for achieving the objectives of the project, (b) the determination of necessary measures to help mitigate the adverse impacts associated with such restrictions, and (c) the implementation and monitoring of relevant project activities.

The main triggering impacts currently relevant are broadly those referred to in paragraph 3 (b) of the OP. 4.12., i.e. involuntary restrictions of resource access caused by project activities other than "the taking of land" and resulting in adverse impacts on the livelihoods of the affected or displaced people.

- Temporary restrictions may be imposed on access on or around tailings, now extensively used for livestock grazing by two villages. A social assessment underlined the importance of these areas for livestock owners even though, according to Law 57 (from June 26,2001), such areas are supposed to be off limits unless and until they are made safe for public use. Prior to 1991 these were fenced off and policed; subsequently, the fences were breached and policing ceased. Project planners regard re-instituting these sorts of restrictions as being neither practical nor wise. Instead, tailings will be re-capped and vegetation reintroduced to make them safe for grazing wherever feasible and economically viable. This is expected to increase the effective grazing area available, as well as improve the productivity of these areas. A study of radiological risks and repair requirements for all of the tailings will clarify precise interventions and measures for each. Any restrictions will be temporary, likely one cropping season, while the covered area re-vegetates.
- A handful of village families are known to be growing food crops on small parcels of land above and surrounding waste dumps, with dangerously high levels of radiological contamination. The waste dumps will be removed or sealed and covered to eliminate water seepage, which then flows to the river. The dumps and surrounding land will also be covered to reduce radiation emissions to safe levels. The project is expected to require farmers to cease cultivation for one or two seasons until the work is completed. Although the result will be to protect the families involved as well as to prevent contaminated products from entering the local food supply through sale, this limited restriction may impose a heavy economic burden on desperately poor families.
- Physical works may temporarily block the road between three up-stream villages and Mailuu Suu town. This would prevent access to schools and jobs. Unless prolonged road closures occur, economic impacts are likely to be negligible, however. Project designers are well aware of this issue and will schedule and locate work and dump sites to minimize disruption to normal activities. Alternate access roads will be provided if any prolonged closure is required, although this is not anticipated.
- Access to particularly dangerous landslide areas may have to be restricted during spring and fall. This could compromise access to grass cutting/haymaking areas leased from local authorities or access to coal mines, an important source of income for several families in Sari Bey and Kopru Bashi.

In its current form, the project will not require expropriation of private land or permanent relocation of people, but these could become salient in connection with current and follow-on interventions and measures:

- The government has been encouraging a small number of families living in dangerous areas to relocate or desist from using land considered to expose them to dangerously high levels of radiological contamination or because high risk of landslides. Two areas could be affected: Koy Tash, where there are currently seven houses at risk of landslide; and North Karaagach and Sari Bey villages, where a handful of households living near waste dumps have been documented to be exposed to unsafe levels of radon. Families in North Karaagach and Sari Bey may be relocated temporarily while the dumps are removed or, in some instances, their houses will be demolished and rebuilt.
- If studies mandate the moving of T3, a road may have to be built to the destination site and heavy traffic of trucks may result in occasional, short-duration road closures. Selection of the alternate site will determine the extent to which expropriation, restricted access and property compensation may become issues. In addition to houses and garden plots, hay making areas could also be partially or wholly lost to those currently leasing them out for 3-5 year lease terms from the local government. If T3 is to be moved, the investment will undergo a complete environmental assessment and social assessment, and mitigation plans will be completed and submitted to the bank for review and approval before work is undertaken.
- Repair of the main Sari Bey—Mailuu Suu road on the left bank of the river emerged as one of the main desires of the local population. Because of occasional blockage and damage to that road due to landslides, as well as the need for alternate access on the opposite bank of the river both for economic and emergency evacuation and response purposes, the construction of a 3-4 km road on the right bank of the river is seen as one of the possible measures to be undertaken as part of a larger program. The local population is expected to welcome investment in the road, which would displace as many as 20 families located along the likely alignment. This investment is not part of the current project, but might be considered for future investment if resources are made available.

Current legal institutional framework for dealing with compensation for restricted property access or outright expropriation

A body of laws and regulations have take shape over the past decade which aligns Kyrgyzstan with many provisions of OP/BP 4.12, Involuntary Resettlement. Key elements include the following:

- Clear definition of circumstances under which land rights may be circumscribed. These are laid out in Articles 65-71 of the Land Code.
- The conditioning of expropriation for public purpose on the payment of fair compensation either in the form of money or alternate equivalent property. Article 68, para 3 of The Land Code sets the standard as market prices for land, buildings or other

losses. The next paragraph also provides for compensation in the form of land of equivalent value, if the owner agrees. Regulation 371 (1991) on compensation for agricultural land extends this principle to temporary loss of use and to renters as well as owners, although normative rather than market value is set out as the basis for determining compensation.

- Institutional mechanisms and standards for fixing the value of land; Regulation No. 47 Feb. 4 2002 on Setting the Normative Value of Agricultural Land applies explicitly to compensation for land expropriated for public purpose. This regulation covers farm land, pastures and land leased out by the State or local authorities for haymaking. Article 4 of Regulation 371 provides for the setting up of a broadly representative committee in with the deputy chairman of the local Kenesh serves as chairman. Also represented are Kenesh deputies, representatives of local financial institutions and utilities, landowners, users and renters, and those subject to loss of possession or use of land. The Committee prepares a document setting out the dimensions of financial or income losses sustained which is submitted to and approved by council members. Private appraisers operating in the project area can also be resorted to.
- A requirement for timely compensation within 3 months of any damages suffered (Reg. 371, 1991).
- Specification of means and mechanisms for repayment; Article 5 of Regulation 371, 1991 on Compensation to Landowners for Losses to Owners, Users and Renters of Agricultural Land specifies that those public bodies or organs or enterprises assuming control or ownership of a person's property are to transfer funds into a special bank account from which compensation is disbursed.
- Recourse to courts if property users or owners disagree with terms according to which their rights are either restricted or entirely abrogated
- Assistance both financial and material in salvaging and moving belongings and salvageable housing materials (Enactment 317, May 13, 2003)¹

Other elements present in Mailuu Suu which will facilitate dealing with land issues that may arise in conjunction with the project include:

- The presence of local appraisers and land tax records based on the market value of the land.
- Detailed records and maps covering all land and building properties in the Mailuu Suu area held by the State Land Registration Office
- Virtually all properties are registered, something that forms the legal basis for rights. Lease agreements of 3 years or more are also registered, mostly having to do with land allotted by local authorities for haymaking. Complications could arise in connection

¹ To provide delivery of local construction materials, motor transport with fuel and lubricant materials to transfer home belongings and construction materials from dismantling of dwelling houses which were under natural disasters' zone

with properties purchased from emigrants and still in the previous owners' names. These are estimated to account for about 5% of properties.

- There said to be few serious disputes over land. Over 95% of disputes are resolved at the local registration office or Centers for Land and Agrarian Reform (CLAR) without the need for legal counsel. Most conflicts are resolved within hours at the local registration and CLAR offices. A very small number of disputes are taken to court.²

As important as all of these institutional elements and pieces of legislation may be, additional project safeguards and consultative mechanisms are needed to bring current practice into conformity with World Bank Guidelines.

Problematic elements include the following:

- Consultation and involvement of people subject to curtailment or outright loss of property rights leaves much to be desired. Public meetings with officials are infrequent. Grievances are responded to at the discretion of the authorities who are not held accountable for adequately handling them.
- People are inadequately informed about their rights.
- Resort to courts is not a meaningful option for individual families pitted against an official body or influential enterprise.

Of particular concern are issues associated with relocation of people from areas deemed to be in imminent danger from ecological risks.

Enactment # 277 (May 13, 2003) makes provincial and regional officials personally liable for any damages suffered by people under their jurisdiction for damages or loss of life suffered as a result of natural disasters for which adequate measures have not been taken. This increases the likelihood that coercive means may be used to force people to move. Loans for alternate housing are extended on terms which are difficult if not impossible for poor families to meet. Relocation often means having to give up livestock; this issue is not adequately being addressed by current procedures.

Project procedures and mechanisms to address deficiencies in current practices

- On-going consultation with communities and individuals most directly affected by the project began in the pre-project phase with a social assessment covering all communities. Findings of that assessment have been taken into account and incorporated into the shaping of project components. A pre-project public meeting attended by about 300 people was also held in the project area in which components of the proposed project were outlined and concerns of the public openly aired. A project coordinating committee has been established with an over-representation of rural interests. This was done in light of evidence from the social assessment of wide

² Nationally, during 2001 over 20,000 cases were resolved by CLAR, and a similar number by GosRegister, the State Agency that deals with registration of rights to real property.

discrepancies in interests and outlooks of urban and rural residents. During design and implementation phases of project, the frequency of public meetings between local authorities and the population will be increased from once per year to once every two months.

- Any instances of restrictions of access, relocation or land acquisition, whether temporary or permanent, will be discussed in an open community meeting which will initiate the process of negotiating with affected persons. Minutes of these meetings will be recorded. Response to specific issues raised will be tracked and followed up on until they are resolved to the satisfaction of the parties.
- Decisions and agreements related to temporary limitations or relocation will be discussed directly with affected persons and posted in a public place.
- Local officials and project managers will also be trained in participatory techniques.
- Project area residents will be informed about the land rights advocacy and information resources available through the Kyrgyz Land and Agrarian Reform Project, which has an office in Osh and can provide seminars on the full range of land rights related issues.
- Prospects for a favorable outcome for landowners and users in a dispute with the authorities over expropriation or compensation tend to be dim. Alternative dispute resolution through village elders or with the involvement of the Osh Center for Land and Agrarian Reform (CLAR) Agrarian will be offered as a way to resolve disputes.³ The Center also has the capacity to assist in land valuation issues.
- Grievance procedures and mechanisms will be introduced by the aйл okmotu administration to ensure that complaints are recorded and followed up in a timely and transparent manner. Copies of every complaint will be submitted to the aйл okmotu, the local project coordinating committee and to the PIU. The local coordinating committee and PIU will describe the status of each new and unresolved complaint in its regular reports.
- The PIU will prepare and submit for review by the Bank plans and agreements relating to restrictions of access or loss of assets by affected persons.
- Temporary or permanent loss of access or assets will be compensated by access to alternative resources (such as pastures and gardens) or in cash. The costs of temporary arrangements for alternative sites, if relevant, as well as the cost of relocation, temporary residence and, if needed, reconstruction of residences, will be paid from project grant funds.
- Although enactment 317, stipulates that families relocated from dangerous areas or displaced by a natural disaster are to be issued loans to use to reconstruct residences, any relocation related to the project will be compensated at full replacement cost or construction of an alternative residence, financed through the project grant.
- Because alternate pasture or hay making areas are in such short supply in areas most directly affected by project activities, the project will seek to identify alternative sites under jurisdiction of the mayoralty or areas in the adjacent Nooken Rayon. Expansion of available pasture areas may be possible by encouraging other donors with projects promoting pasture development to extend their activities to the Mailuu Suu area.
- The local project coordinating committee and PIU will monitor and oversee resolution of land-related issues that arise in conjunction with the project.
- The coordinating committee will be responsible for review and implementation of plans and ensuring that compensation is made before works begin.

