

This document should be read in conjunction with the proposed World Bank Policy to understand the proposed responsibilities of the World Bank (in the Policy) and the Borrowing Country (in the Standards).

## SECOND DRAFT FOR CONSULTATION JULY 1 2015

# Environmental and Social Standard 5 Land Acquisition, Restrictions on Land Use and Involuntary Resettlement

### Introduction

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1. ESS5 recognizes that project-related land acquisition and restrictions on land use can have adverse impacts on communities and persons. Project-related land acquisition<sup>1</sup> or restrictions on land use<sup>2</sup> may cause physical displacement (relocation, loss of residential land or loss of shelter), economic displacement (loss of land, assets or access to assets, leading to loss of income sources or other means of livelihood),<sup>3</sup> or both. The term “involuntary resettlement” refers to these impacts. Resettlement is considered involuntary when affected persons or communities do not have the right to refuse land acquisition or restrictions on land use that result in displacement.

2. Experience indicates that physical and economic displacement, if unmitigated, may give rise to severe economic, social and environmental risks: production systems may be dismantled; people face impoverishment if their productive resources or other income sources are lost; people may be relocated to environments where their productive skills are less applicable and the competition for resources greater; community institutions and social networks may be weakened; kin groups may be dispersed; and cultural identity, traditional authority, and the potential for mutual help may be diminished or lost. For these reasons, involuntary resettlement should be avoided.<sup>4</sup> Where involuntary resettlement is unavoidable, it will be minimized and appropriate measures to mitigate adverse impacts on displaced

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<sup>1</sup> “*Land acquisition*” refers to all methods of obtaining land for project purposes, which may include outright purchase, expropriation of property and acquisition of access rights, such as easements or rights of way. Land acquisition may also include: (a) acquisition of unoccupied or unutilized land whether or not the landholder relies upon such land for income or livelihood purposes; and (b) repossession of public land that is used or occupied by individuals or households. “Land” includes anything growing on or permanently affixed to land, such as crops, buildings and other improvements.

<sup>2</sup> “*Restrictions on land use*” refers to limitations or prohibitions on the use of agricultural, residential, commercial or other land that are directly introduced and put into effect as part of the implementation of the project. These may include restrictions on access to legally designated parks and protected areas, restrictions on access to other common property resources, restrictions on land use within utility easements or safety zones.

<sup>3</sup> “*Livelihood*” refers to the full range of means 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>4</sup> Avoidance is the preferred approach in accordance with the mitigation hierarchy in ESS1. It is especially important to avoid physical or economic displacement of those socially or economically vulnerable to hardship as a result. However, avoidance may not be the preferred approach in situations where public health or safety would be adversely affected as a result. There may also be situations where resettlement can provide direct development opportunities for households or communities, including improved housing and public health conditions, strengthened security of tenure or other improvements to local living standards.

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persons (and on host communities receiving displaced persons) will be carefully planned and implemented.

### **Objectives**

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- To avoid involuntary resettlement or, when unavoidable, minimize involuntary resettlement by exploring project design alternatives.
- To avoid forced eviction.<sup>5</sup>
- To mitigate unavoidable adverse social and economic impacts from land acquisition or restrictions on land use by: (a) providing timely compensation for loss of assets at replacement cost<sup>6</sup> and (b) assisting displaced persons in their efforts to improve, or at least restore, their livelihoods and living standards, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.
- To improve living conditions of poor or vulnerable persons who are physically displaced, through provision of adequate housing, access to services and facilities, and security of tenure.<sup>7</sup>
- To conceive and execute resettlement as a development opportunity, including measures enabling displaced persons to benefit directly from the project as the nature of the project may warrant
- To ensure that resettlement activities are planned and implemented with appropriate disclosure of information, meaningful consultation, and the informed participation of those affected.

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<sup>5</sup> See paragraph 31.

<sup>6</sup> "Replacement cost" is defined as a method of valuation yielding compensation sufficient to replace assets, plus necessary transaction costs associated with asset replacement. Where functioning markets exist, replacement cost is the market value as established through independent and competent real estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined through alternative means, such as calculation of output value for land or productive assets, or the undepreciated value of replacement material and labor for construction of structures or other fixed assets, plus transaction costs. In all instances where physical displacement results in loss of shelter, replacement cost must at least be sufficient to enable purchase or construction of housing that meets acceptable minimum community standards of quality and safety. The valuation method for determining replacement cost should be documented and included in relevant resettlement planning documents. Transaction costs include administrative charges, registration or title fees, reasonable moving expenses, and any similar costs imposed on affected persons. To ensure compensation at replacement cost, planned compensation rates may require updating in project areas where inflation is high or the period of time between calculation of compensation rates and delivery of compensation is extensive.

<sup>7</sup> "Security of tenure" means that resettled individuals or communities are resettled to a site that they can legally occupy, where they are protected from the risk of eviction and where the tenure rights provided to them are socially and culturally appropriate. In no event will resettled persons be provided tenure rights that are weaker than the rights they had to the land or assets from which they have been displaced.

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### **Scope of Application**

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3. The applicability of ESS5 is established during the environmental and social assessment described in ESS1.
  
4. This ESS applies to permanent or temporary loss of land or assets, or restrictions on land use, resulting from the following types of land-related transactions:
  - (a) Land rights or land use rights acquired or restricted through expropriation or other compulsory procedures in accordance with national law;
  - (b) Land rights or land use rights acquired or restricted through negotiated settlements with property owners or those with legal rights to the land, if failure to reach settlement would have resulted in expropriation or other compulsory procedures;<sup>8</sup>
  - (c) Restrictions on land use and access to natural resources that cause a community or groups within a community to lose access to resource usage where they have traditional or customary tenure, or recognizable usage rights. This may include situations where legally designated protected areas, forests, biodiversity areas or buffer zones are established in connection with the project;<sup>9</sup>
  - (d) Relocation of people without formal, traditional, or recognizable usage rights, who are occupying or utilizing land prior to a project-specific cut-off date;
  - (e) Restriction on access to land or use of other resources including communal property and natural resources such as marine and aquatic resources, timber and non-timber forest products, fresh water, medicinal plants, hunting and gathering grounds and grazing and cropping areas;
  - (f) Land rights or claims to land or resources relinquished by individuals or communities without full payment of compensation;<sup>10</sup> and

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<sup>8</sup> Notwithstanding the application of this ESS to such situations, the Borrower is encouraged to seek negotiated settlements with affected persons in a manner meeting the requirements of this ESS in order to help avoid administrative or judicial delays associated with formal expropriation, and to the extent possible to reduce the impacts on affected persons associated with formal expropriation.

<sup>9</sup> In such situations, affected persons frequently do not have formal ownership. This may include freshwater and marine environments.

<sup>10</sup> In some circumstances, it may be proposed that part or all of the land to be used by the project is donated on a voluntary basis without payment of full compensation. Subject to prior Bank approval, this may be acceptable providing the Borrower demonstrates that: (a) the potential donor or donors have been appropriately informed and consulted about the project and the choices available to them; (b) potential donors are aware that refusal is an option, and have confirmed in writing their willingness to proceed with the donation; (c) the amount of land being donated is minor and will not reduce the donor's remaining land area below that required to maintain the donor's livelihood at current levels; (d) no household relocation is involved; (e) the donor is expected to benefit directly from the project; and (f) for community or collective land, donation can only occur with the consent of individuals

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- (g) Land acquisition or land use restrictions occurring prior to the project, but which were undertaken or initiated in anticipation of, or in preparation for, the project.

5. This ESS does not apply to impacts on incomes or livelihoods that are not a direct result of land acquisition or land use restrictions imposed by the project. Such impacts will be addressed in accordance with ESS 1.

6. This ESS does not apply to voluntary, legally recorded market transactions in which the seller is given a genuine opportunity to retain the land and to refuse to sell it, and is fully informed about available choices and their implications. However, where such voluntary land transactions may result in the displacement of persons, other than the seller, who occupy, use or claim rights to the land in question, this ESS will apply.<sup>11</sup>

7. Where a project supports land titling or other activities intended to confirm, regularize or determine land rights, a social, legal and institutional assessment will be required under ESS 1<sup>12</sup>. The assessment aims to identify potential risks and impacts, as well as appropriate design measures to minimize and mitigate adverse economic and social impacts, especially those that affect poor and vulnerable groups<sup>13</sup>. This ESS does not apply to disputes between private parties in land titling or related contexts. However, where persons are required to vacate land as a direct result of a project-supported determination that the land in question is state land, this ESS will apply (in addition to the relevant provisions of ESS 1 mentioned above).

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using or occupying the land. The Borrower will maintain a transparent record of all consultations and agreements reached.

<sup>11</sup> This may include situations where a project aims to facilitate voluntary transactions between communities, governments and investors involving significant areas of land (for example where a project is helping promote commercial investment in agricultural land, through leaseholds, partnerships, etc). In such cases, in applying the relevant provisions of this ESS, special care must be taken to ensure: (a) that all tenure rights and claims (including those of customary and informal users) affecting the land in question are systematically and impartially identified; (b) that potentially affected individuals, groups or communities are meaningfully consulted, informed of their rights, and provided reliable information concerning environmental, economic, social and food security impacts of the proposed investment; (c) that community stakeholders are enabled to negotiate fair value and appropriate conditions for the transfer; (d) that appropriate compensation, benefit-sharing and grievance redress mechanisms are put in place; (e) that terms and conditions of the transfer are transparent, and (f) mechanisms are put in place for monitoring compliance with those terms and conditions.

<sup>12</sup> ESS 1, para. 26(b).

<sup>13</sup> Land titling and related activities are intended to confirm or strengthen land rights of project beneficiaries and to lead to positive social and economic outcomes. However, due to the complexity of tenure issues in many contexts, and the importance of secure tenure for livelihoods, careful assessment and design is needed in order to help ensure that such activities do not inadvertently compromise existing legitimate rights (including collective rights, subsidiary rights and the rights of women) or have other unintended consequences. In connection with such an assessment, the Borrower will at a minimum demonstrate to the Bank's satisfaction that applicable laws and procedures, along with project design features (a) provide clear and adequate rules for the recognition of relevant land tenure rights; (b) establish fair criteria and functioning, transparent and participatory processes for resolving competing tenure claims; and (c) include genuine efforts to inform affected people about their rights and provide access to impartial advice.

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8. This ESS does not apply to land use planning activities or to the regulation of natural resources on a regional, national or subnational level (including watershed management, groundwater management, fisheries management, and coastal zone management). Where a project supports such activities, the Borrower will be required to conduct a social, legal and institutional assessment under ESS 1, in order to identify potential economic and social risks and impacts of the planning or regulation, and appropriate measures to minimize and mitigate them, in particular those that affect poor and vulnerable groups.

9. This ESS does not apply to management of refugees from, or persons internally displaced by, natural disasters, conflict, crime or violence.

### **Requirements**

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#### **A. General**

##### ***Eligibility Classification***

10. Affected persons may be classified as persons:

- (a) Who have formal legal rights to land or assets;
- (b) Who do not have formal legal rights to land or assets, but have a claim to land or assets that is recognized or recognizable under national law,<sup>14</sup> or
- (c) Who have no recognizable legal right or claim to the land or assets they occupy or use.

The census described in paragraph 20 will establish the status of the affected persons.

##### ***Project Design***

11. The Borrower will demonstrate that involuntary land acquisition or restrictions on land use are limited to direct project requirements for clearly specified project purposes within a clearly specified period of time. The Borrower will consider feasible alternative project designs to avoid or minimize land acquisition or restrictions on land use, especially where this would result in physical or economic displacement, while balancing environmental, social, and financial costs and benefits, and paying particular attention to gender impacts and impacts on the poor and vulnerable.

##### ***Compensation and Benefits for Affected Persons***

12. When land acquisition or restrictions on land use (whether permanent or temporary) cannot be avoided, the Borrower will offer affected persons compensation at replacement cost, and other assistance

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<sup>14</sup> Such claims could be derived from adverse possession or from customary or traditional tenure arrangements.

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as may be necessary to help them improve or at least restore their standards of living or livelihoods, subject to the provisions of paragraph 26 through 36 of this ESS.<sup>15</sup>

13. Compensation standards for categories of land and fixed assets will be disclosed and applied consistently (though compensation rates may be subject to upward adjustment where negotiation strategies are employed). In all cases, a clear basis for calculation of compensation will be documented, and compensation distributed in accordance with transparent procedures.

14. Where livelihoods of displaced persons are land-based,<sup>16</sup> or where land is collectively owned, the Borrower will offer the displaced persons an option for replacement in kind, unless it can be demonstrated to the Bank's satisfaction that equivalent replacement land is unavailable. As the nature and objectives of the project may allow, the Borrower will also provide opportunities to displaced communities and persons to derive appropriate development benefits from the project. In the case of affected persons under paragraph 10 (c), resettlement assistance will be provided in lieu of compensation for land, as described in paragraphs 29 and 34 (c).

15. The Borrower will take possession of acquired land and related assets only after compensation in accordance with this ESS has been made available and, where applicable, resettlement sites and moving allowances have been provided to the displaced persons in addition to compensation. In addition, livelihood restoration and improvement programs will commence in a timely fashion in order to ensure that affected persons are sufficiently prepared to take advantage of alternative livelihood opportunities as the need to do so arises.

16. In certain cases there may be significant difficulties related to the payment of compensation to particular affected persons, for example, when land ownership or the legal status of land use or occupation is the subject of lengthy disputes, where repeated efforts to contact absentee owners have failed, or where individuals have rejected compensation that has been offered to them in accordance with the approved plan. On an exceptional basis, with prior agreement of the Bank and where the Borrower demonstrates that all reasonable efforts to resolve such matters have been taken, the Borrower may deposit compensation funds as required by the plan into an escrow account and proceed with the relevant project activities. Compensation placed in escrow will be made available to eligible persons in a timely manner as issues are resolved.

### **Community Engagement**

17. The Borrower will engage with affected communities, including host communities, through the process of stakeholder engagement described in ESS10. Decision-making processes related to resettlement and livelihood restoration will include options and alternatives from which affected persons may choose, where applicable. Disclosure of relevant information and participation of affected

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<sup>15</sup> At the request of affected persons, it may be necessary to acquire entire land parcels if partial acquisition would render the remainder economically unviable, or make the remaining parcel unsafe or inaccessible for human use or occupancy.

<sup>16</sup> The term "land-based" includes livelihood activities such as rotational cropping and grazing of livestock as well as the harvesting of natural resources.

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communities and persons will take place during the consideration of alternative project designs referred to in paragraph 11, and thereafter throughout the planning, implementation, monitoring, and evaluation of the compensation process, livelihood restoration activities, and relocation process. Additional provisions apply to consultations with displaced Indigenous Peoples, in accordance with ESS7.

18. The consultation process should ensure that women's perspectives are obtained and their interests factored into all aspects of resettlement planning and implementation. Addressing livelihood impacts may require intra-household analysis in cases where women's and men's livelihoods are affected differently. Women's and men's preferences in terms of compensation mechanisms, such as compensation in kind rather than in cash, should be explored.

### **Grievance Mechanism**

19. The Borrower will ensure that a grievance mechanism for the project is in place, in accordance with ESS10 as early as possible in project development to address specific concerns about compensation, relocation or livelihood restoration measures raised by displaced persons (or others) in a timely fashion. Where possible, such grievance mechanisms will utilize existing formal or informal grievance mechanisms suitable for project purposes, supplemented as needed with project-specific arrangements designed to resolve disputes in an impartial manner.

### **Planning and Implementation**

20. Where land acquisition or restrictions on land use are unavoidable, the Borrower will, as part of the environmental and social assessment, conduct a census to identify the persons who will be affected by the project, to establish an inventory of land and assets to be affected,<sup>17</sup> to determine who will be eligible for compensation and assistance,<sup>18</sup> and to discourage ineligible persons, such as opportunistic settlers, from claiming benefits. The social assessment will also address the claims of communities or groups who, for valid reasons, may not be present in the project area during the time of the census, such as seasonal resource users. In conjunction with the census, the Borrower will establish a cut-off date for eligibility. Information regarding the cut-off date will be well documented and will be disseminated throughout the project area at regular intervals in written and non-written forms and in relevant local languages. This will include posted warnings that persons settling in the project area after the cutoff date may be subject to removal.

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<sup>17</sup> See Annex 1. Such inventory should include a detailed account, derived through a consultative, impartial and transparent process, of the full range of rights held or asserted by affected people, including those based on custom or practice, secondary rights such as rights of access or use for livelihoods purposes, rights held in common, etc.

<sup>18</sup> Documentation of ownership or occupancy and compensation payments should be issued in the names of both spouses or single heads of households as relevant, and other resettlement assistance, such as skills training, access to credit, and job opportunities, should be equally available to women and adapted to their needs. Where national law and tenure systems do not recognize the rights of women to hold or contract in property, measures should be considered to provide women as much protection as possible with the objective to achieve equity with men.



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21. To address the issues identified in the environmental and social assessment, the Borrower will prepare a plan<sup>19</sup> proportionate to the risks and impacts associated with the project:

- (a) For projects with minor land acquisition or restrictions on land use, as a result of which there will be no significant impact on incomes or livelihoods, the plan will establish eligibility criteria for affected persons, set out procedures and standards for compensation, and incorporate arrangements for consultations, monitoring and addressing grievances;
- (b) For projects causing physical displacement, the plan will set out the additional measures relevant to relocation of affected persons;
- (c) For projects involving economic displacement with significant impacts on livelihoods or income generation, the plan will set out the additional measures relating to livelihood improvement or restoration; and
- (d) For projects that may impose changes in land use that restrict access to resources in legally designated parks or protected areas or other common property resources on which local people may depend for livelihood purposes, the plan will establish a participatory process for determining appropriate restrictions on use and set out the mitigation measures to address adverse impacts on livelihoods that may result from such restrictions.

22. The Borrower's plan will establish the roles and responsibilities relating to financing and implementation, and include arrangements for contingency financing to meet unanticipated costs, as well as arrangements for timely and coordinated response to unforeseen circumstances impeding progress toward desired outcomes.<sup>20</sup> The full costs of resettlement activities necessary to achieve the objectives of the project are included in the total costs of the project. The costs of resettlement, like the costs of other project activities, are treated as a charge against the economic benefits of the project; and any net benefits to resettlers (as compared to the "without-project" circumstances) are added to the benefits stream of the project.

23. The Borrower will establish procedures to monitor and evaluate the implementation of the plan and will take corrective action as necessary during implementation to achieve the objectives of this ESS. The extent of monitoring activities will be proportionate to the project's risks and impacts. For all projects with significant involuntary resettlement impacts, the Borrower will retain competent resettlement professionals to monitor the implementation of resettlement plans, design corrective actions as necessary, provide advice on compliance with this ESS and produce periodic monitoring reports. Affected persons will be consulted during the monitoring process. Periodic monitoring reports will be prepared and affected persons will be informed about monitoring results.

24. Implementation of the Borrower's plan will be considered completed when the adverse impacts of resettlement have been addressed in a manner that is consistent with the objectives of this ESS. For all

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<sup>19</sup> See Annex 1.

<sup>20</sup> For projects with significant resettlement impacts and complex mitigation measures, the Borrower may consider preparing a stand-alone resettlement project for Bank support.



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projects with significant involuntary resettlement impacts, the Borrower will commission an external completion audit of the plan when all mitigation measures have been substantially completed. The completion audit will be undertaken by competent resettlement professionals, will assess whether livelihoods and living standards have been improved or at least restored and, as necessary, will propose corrective actions to meet objectives not yet achieved.

25. Where the exact nature or magnitude of the land acquisition or restrictions on land use related to a project with potential to cause physical and/or economic displacement is unknown during project preparation, the Borrower will develop a framework establishing general principles and procedures compatible with this ESS. Once the individual project components are defined and the necessary information becomes available, such a framework will be expanded into a specific plan proportionate to potential risks and impacts. Project activities that will cause physical and/or economic displacement will not commence until plans required by this ESS have been finalized and approved by the Bank.

### **B. Displacement**

#### ***Physical Displacement***

26. In the case of physical displacement, the Borrower will develop a plan that covers, at a minimum, the applicable requirements of this ESS regardless of the number of people affected. The plan will be designed to mitigate the negative impacts of displacement and, as warranted, to identify development opportunities. It will include a resettlement budget and implementation schedule, and establish the entitlements of all categories of affected persons (including host communities). Particular attention will be paid to gender aspects and the needs of the poor and the vulnerable. The Borrower will document all transactions to acquire land rights, provision of compensation and other assistance associated with relocation activities.

27. If people living in the project area are required to move to another location, the Borrower will: (a) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation; and (b) provide relocation assistance suited to the needs of each group of displaced persons. New resettlement sites will offer living conditions at least equivalent to those previously enjoyed, or consistent with prevailing minimum codes or standards, whichever set of standards is higher. If new resettlement sites are to be prepared, host communities will be consulted regarding planning options, and resettlement plans will ensure continued access, at least at existing levels or standards, for host communities to facilities and services. The displaced persons' preferences with respect to relocating in preexisting communities and groups will be respected wherever possible. Existing social and cultural institutions of the displaced persons and any host communities will be respected.

28. In the case of physically displaced persons under paragraph 10 (a) or (b), the Borrower will offer the choice of replacement property of equal or higher value, with security of tenure, equivalent or better characteristics, and advantages of location, or cash compensation at replacement cost. Where livelihoods

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of displaced persons are derived primarily from land, compensation in kind will, where possible, be offered in lieu of cash.<sup>21</sup>

29. In the case of physically displaced persons under paragraph 10 (c), the Borrower will provide arrangements to allow them to obtain adequate housing with security of tenure. Where these displaced persons own structures, the Borrower will compensate them for the loss of assets other than land, such as dwellings and other improvements to the land, at replacement cost.<sup>22</sup> Based on consultation with such displaced persons, the Borrower will provide relocation assistance in lieu of compensation for land sufficient for them to restore their standards of living at an adequate alternative site.<sup>23</sup>

30. The Borrower is not required to compensate or assist those who encroach on the project area after the cut-off date for eligibility, provided the cut-off date has been clearly established and made public.

31. The Borrower will not resort to forced evictions of affected persons. "Forced eviction" is defined as the permanent or temporary removal against the will of individuals, families, and/or communities from the homes and/or land which they occupy without the provision of, and access to, appropriate forms of legal and other protection, including all applicable procedures and principles in this ESS. The exercise of eminent domain, compulsory acquisition or similar powers by a Borrower will not be considered to be forced eviction providing it complies with the requirements of national law and the provisions of this ESS, and is conducted in a manner consistent with basic principles of due process (including provision of adequate advance notice, meaningful opportunities to lodge grievances and appeals, and avoidance of the use of unnecessary, disproportionate or excessive force).

32. As an alternative to displacement, the Borrower may consider negotiating in situ land development arrangements by which those to be affected may elect to accept a partial loss of land or localized relocation in return for improvements that will increase the value of their property after development. Any person not wishing to participate will be allowed to opt instead for full compensation and other assistance as required in this ESS.

### **Economic Displacement**

33. In the case of projects affecting livelihoods or income generation, the Borrower's plan will include measures to allow affected persons to improve, or at least restore, their incomes or livelihoods. The plan

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<sup>21</sup> Payment of cash compensation for lost land and other assets may be appropriate where: (a) livelihoods are not land-based; (b) livelihoods are land-based but the land taken for the project is a small fraction of the affected asset and the residual land is economically viable; or (c) active markets for land, housing, and labor exist, displaced persons use such markets, there is sufficient supply of land and housing, and the borrower has demonstrated to the satisfaction of the Bank that insufficient replacement land is available.

<sup>22</sup> Where the Borrower demonstrates that an affected person derives substantial income from multiple illegal rental units, the compensation that would otherwise be available to such person for non-land assets under this paragraph may be reduced with the prior agreement of the Bank, to better reflect the objectives of this ESS.

<sup>23</sup> Relocation of informal settlers in urban areas may involve trade-offs. For example, the relocated families may gain security of tenure, but they may lose locational advantages that may be essential to livelihoods, especially among the poor or vulnerable. Changes in location that may affect livelihood opportunities should be addressed in accordance with the principles of this ESS (see in particular paragraph 35 (c)).

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will establish the entitlements of affected persons and/or communities, paying particular attention to gender aspects and the needs of vulnerable segments of communities, and will ensure that these are provided in a transparent, consistent, and equitable manner. The plan will incorporate arrangements to monitor the effectiveness of livelihood measures during implementation, as well as evaluation once implementation is completed. The mitigation of economic displacement will be considered complete when the completion audit concludes that affected persons or communities have received all of the assistance for which they are eligible, and have been provided with adequate opportunity to reestablish their livelihoods.

34. Economically displaced persons who face loss of assets or access to assets will be compensated for such loss at replacement cost:

- (a) In cases where land acquisition or restrictions on land use affect commercial enterprises,<sup>24</sup> affected business owners will be compensated for the cost of identifying a viable alternative location; for lost net income during the period of transition; for the cost of the transfer and reinstallation of the plant, machinery, or other equipment; and for reestablishing commercial activities. Affected employees will receive assistance for temporary loss of wages and, if necessary, assistance in identifying alternative employment opportunities;
- (b) In cases affecting persons with legal rights or claims to land that are recognized or recognizable under national law (see paragraph 10 (a) and (b)), replacement property (e.g., agricultural or commercial sites) of equal or greater value will be provided, or, where appropriate, cash compensation at replacement cost; and
- (c) Economically displaced persons who are without legally recognizable claims to land (see paragraph 10(c)) will be compensated for lost assets other than land (such as crops, irrigation infrastructure and other improvements made to the land), at replacement cost. Additionally, the Borrower will provide assistance in lieu of land compensation sufficient to provide such persons with an opportunity to reestablish livelihoods elsewhere. The Borrower is not required to compensate or assist persons who encroach on the project area after the cut-off date for eligibility.

35. Economically displaced persons will be provided opportunities to improve, or at least restore, their means of income-earning capacity, production levels, and standards of living:

- (a) For persons whose livelihoods are land-based, replacement land that has a combination of productive potential, locational advantages, and other factors at least equivalent to that being lost will be offered where feasible. Where provision of suitable replacement land is not possible, economically displaced persons will be compensated at replacement cost for land (and other lost assets);

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<sup>24</sup> This includes shops, restaurants, services, manufacturing facilities and other enterprises, regardless of size and whether licensed or unlicensed.

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- (b) For persons whose livelihoods are natural resource-based and where project-related restrictions on access envisaged in paragraph 4 apply, measures will be implemented to either allow continued access to affected resources or to provide access to alternative resources with equivalent livelihood-earning potential and accessibility. Where common property resources are affected, benefits and compensation associated with restrictions on natural resource usage may be collective in nature; and
- (c) If it is demonstrated that replacement land or resources are unavailable, the Borrower will offer economically displaced persons options for alternative income earning opportunities, such as credit facilities, skills training, business start-up assistance, employment opportunities, or cash assistance additional to compensation for assets. Cash assistance alone, however, frequently fails to provide affected persons with the productive means or skills to restore livelihoods.

36. Transitional support will be provided as necessary to all economically displaced persons, based on a reasonable estimate of the time required to restore their income-earning capacity, production levels, and standards of living.

### **C. Collaboration with Other Responsible Agencies or Subnational Jurisdictions**

37. The Borrower will establish means of collaboration with any governmental agencies or subnational jurisdictions that are responsible for any aspects of land acquisition, resettlement planning, or provision of necessary assistance. In addition, where the capacity of other responsible agencies is limited, the Borrower will actively support resettlement planning, implementation, and monitoring. If the procedures or performance standards of other responsible agencies do not meet the relevant requirements of this ESS, the Borrower will prepare supplemental arrangements or provisions for inclusion in the resettlement plan to address identified shortcomings. The plan will also specify financial responsibilities for each of the agencies involved, appropriate timing and sequencing for implementation steps, and coordination arrangements for addressing financial contingencies or responding to unforeseen circumstances.

### **D. Technical and Financial Assistance**

38. The Borrower may request technical assistance from the Bank to strengthen Borrower capacity, or the capacity of other responsible agencies, for resettlement planning, implementation and monitoring. Such forms of assistance may include staff training, assistance in formulating new regulations or policies relating to land acquisition or other aspects of resettlement, financing for assessments or other investment costs associated with physical or economic displacement, or other purposes.

39. The Borrower may request the Bank to finance either a component of the main investment causing displacement and requiring resettlement, or a free-standing resettlement project with appropriate cross-conditionalities, processed and implemented in parallel with the investment that causes the displacement. The Borrower may also request the Bank to finance resettlement even though it is not financing the main investment that makes resettlement necessary.

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### **ESS5 – ANNEX 1. INVOLUNTARY RESETTLEMENT INSTRUMENTS**

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1. This Annex describes the elements of the plans addressing physical and/or economic displacement described in paragraph 21 of ESS 5. For purposes of this Annex, these plans shall be referred to as “resettlement plans”. Resettlement plans include measures to address physical and/or economic displacement, depending on the nature of the impacts expected from a project. Projects may use alternative nomenclature, depending on the scope of the resettlement plan – for example, where a project involves only economic displacement, the resettlement plan may be called a “livelihood restoration plan” or where restrictions on access to legally designated parks and protected areas are involved, the plan may take the form of a “process framework.” This Annex also describes the framework referred to paragraph 25 of ESS 5.

#### **A. Resettlement Plan**

2. The scope of requirements and level of detail of the resettlement plan vary with the magnitude and complexity of resettlement. The plan is based on up-to-date and reliable information about (a) the proposed project and its potential impacts on the displaced persons and other adversely affected groups, (b) appropriate and feasible mitigation measures, and (c) the legal and institutional arrangements required for effective implementation of resettlement measures.

#### **Minimum Elements of a Resettlement Plan**

3. *Description of the project.* General description of the project and identification of the project area.
4. *Potential impacts.* Identification of:
  - (a) the project components or activities that give rise to displacement, explaining why the selected land must be acquired for use within the timeframe of the project;
  - (b) the zone of impact of such components or activities;
  - (c) the scope and scale of land acquisition and impacts on structures and other fixed assets;
  - (d) any project-imposed restrictions on use of, or access to, land or natural resources;
  - (e) alternatives considered to avoid or minimize displacement and why those were rejected; and
  - (f) the mechanisms established to minimize displacement, to the extent possible, during project implementation.
5. *Objectives.* The main objectives of the resettlement program.
6. *Census survey and baseline socio-economic studies.* The findings of a household-level census identifying and enumerating affected persons, and, with the involvement of affected persons, surveying land, structures and other fixed assets to be affected by the project. The census survey also serves other essential functions:

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- (a) identifying characteristics of displaced households, including a description of production systems, labor, and household organization; and baseline information on livelihoods (including, as relevant, production levels and income derived from both formal and informal economic activities) and standards of living (including health status) of the displaced population;
- (b) information on vulnerable groups or persons for whom special provisions may have to be made;
- (c) identifying public or community infrastructure or services that may be affected;
- (d) providing a basis for the design of, and budgeting for, the resettlement program;
- (e) in conjunction with establishment of a cut-off date, providing a basis for excluding ineligible people from compensation and resettlement assistance; and
- (f) establishing baseline conditions for monitoring and evaluation purposes.

As may the Bank may deem relevant, additional studies on the following subjects may be required to supplement or inform the census survey:

- (g) land tenure and transfer systems, including an inventory of common property natural resources from which people derive their livelihoods and sustenance, non-title-based usufruct systems (including fishing, grazing, or use of forest areas) governed by local recognized land allocation mechanisms, and any issues raised by different tenure systems in the project area;
- (h) the patterns of social interaction in the affected communities, including social networks and social support systems, and how they will be affected by the project; and
- (i) social and cultural characteristics of displaced communities, including a description of formal and informal institutions (e.g., community organizations, ritual groups, nongovernmental organizations (NGOs)) that may be relevant to the consultation strategy and to designing and implementing the resettlement activities.

7. *Legal framework.* The findings of an analysis of the legal framework, covering

- (a) the scope of the power of compulsory acquisition and imposition of land use restriction and the nature of compensation associated with it, in terms of both the valuation methodology and the timing of payment;
- (b) the applicable legal and administrative procedures, including a description of the remedies available to displaced persons in the judicial process and the normal timeframe for such procedures, and any available grievance redress mechanisms that may be relevant to the project;
- (c) laws and regulations relating to the agencies responsible for implementing resettlement activities; and

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- (d) gaps, if any, between local laws and practices covering compulsory acquisition, imposition of land use restrictions and provision of resettlement measures and ESS 5, and the mechanisms to bridge such gaps.

8. *Institutional Framework.* The findings of an analysis of the institutional framework covering

- (a) the identification of agencies responsible for resettlement activities and NGOs/CSOs that may have a role in project implementation;
- (b) an assessment of the institutional capacity of such agencies and NGOs/CSOs; and
- (c) any steps that are proposed to enhance the institutional capacity of agencies and NGOs/CSOs responsible for resettlement implementation.

9. *Eligibility.* Definition of displaced persons and criteria for determining their eligibility for compensation and other resettlement assistance, including relevant cut-off dates.

10. *Valuation of and compensation for losses.* The methodology to be used in valuing losses to determine their replacement cost; and a description of the proposed types and levels of compensation for land and other assets under local law and such supplementary measures as are necessary to achieve replacement cost for them.

11. *Community participation.* Involvement of displaced persons (including host communities, where relevant)

- (a) a description of the strategy for consultation with, and participation of, displaced persons in the design and implementation of the resettlement activities;
- (b) a summary of the views expressed and how these views were taken into account in preparing the resettlement plan;
- (c) a review of the resettlement alternatives presented and the choices made by displaced persons regarding options available to them; and
- (d) institutionalized arrangements by which displaced people can communicate their concerns to project authorities throughout planning and implementation, and measures to ensure that such vulnerable groups as indigenous people, ethnic minorities, the landless, and women are adequately represented.

12. *Implementation schedule.* An implementation schedule providing anticipated dates for displacement, and estimated initiation and completion dates for all resettlement plan activities. The schedule should indicate how the resettlement activities are linked to the implementation of the overall project.

13. *Costs and budget.* Tables showing categorized cost estimates for all resettlement activities, including allowances for inflation, population growth, and other contingencies; timetables for expenditures;



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sources of funds; and arrangements for timely flow of funds, and funding for resettlement, if any, in areas outside the jurisdiction of the implementing agencies.

14. *Grievance redress mechanism.* The plan describes affordable and accessible procedures for third-party settlement of disputes arising from displacement or resettlement; such grievance mechanisms should take into account the availability of judicial recourse and community and traditional dispute settlement mechanisms.
15. *Monitoring and evaluation.* Arrangements for monitoring of displacement and resettlement activities by the implementing agency, supplemented by third-party monitors as considered appropriate by the Bank, to ensure complete and objective information; performance monitoring indicators to measure inputs, outputs, and outcomes for resettlement activities; involvement of the displaced persons in the monitoring process; evaluation of results for a reasonable period after all resettlement activities have been completed; using the results of resettlement monitoring to guide subsequent implementation.
16. *Arrangements for adaptive management.* The plan should include provisions for adapting resettlement implementation in response to unanticipated changes in project conditions, or unanticipated obstacles to achieving satisfactory resettlement outcomes.

### **Additional Planning Requirements where Resettlement Involves Physical Displacement**

17. When project circumstances require the physical relocation of residents (or businesses), resettlement plans require additional information and planning elements. Additional requirements include:
18. *Transitional assistance.* The plan describes assistance to be provided for relocation of household members and their possessions (or business equipment and inventory). The plan describes any additional assistance to be provided for households choosing cash compensation and securing their own replacement housing, including construction of new housing. If planned relocation sites (for residences or businesses) are not ready for occupancy at the time of physical displacement, the plan establishes a transitional allowance sufficient to meet temporary rental expenses until occupancy is available.
19. *Site selection, site preparation, and relocation.* When planned relocation sites are to be prepared, the resettlement plan describes the alternative relocation sites considered and explains sites selected, covering
  - (a) institutional and technical arrangements for identifying and preparing relocation sites, whether rural or urban, for which a combination of productive potential, locational advantages, and other factors is comparable to the advantages of the old sites, with an estimate of the time needed to acquire and transfer land and ancillary resources;
  - (b) identification and consideration of opportunities to improve local living standards by supplemental investment (or through establishment of project benefit-sharing arrangements) in infrastructure, facilities or services;

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- (c) any measures necessary to prevent land speculation or influx of ineligible persons at the selected sites;
  - (d) procedures for physical relocation under the project, including timetables for site preparation and transfer; and
  - (e) legal arrangements for regularizing tenure and transferring titles to those resettled, including provision of security of tenure for those previously lacking full legal rights to land or structures.
20. *Housing, infrastructure, and social services.* Plans to provide (or to finance local community provision of) housing, infrastructure (e.g., water supply, feeder roads), and social services (e.g., schools, health services); plans to maintain or provide a comparable level of services to host populations; any necessary site development, engineering, and architectural designs for these facilities.
21. *Environmental protection and management.* A description of the boundaries of the planned relocation sites; and an assessment of the environmental impacts of the proposed resettlement and measures to mitigate and manage these impacts (coordinated as appropriate with the environmental assessment of the main investment requiring the resettlement).
22. *Consultation on relocation arrangements.* The plan describes methods of consultation with physically displaced persons on their preferences regarding relocation alternatives available to them, including, as relevant, choices related to forms of compensation and transitional assistance, to relocating as individual households families or with preexisting communities or kinship groups, to sustaining existing patterns of group organization, and for relocation of, or retaining access to, cultural property (e.g. places of worship, pilgrimage centers, cemeteries).
23. *Integration with host populations.* Measures to mitigate the impact of planned relocation sites on any host communities, including
- (a) consultations with host communities and local governments;
  - (b) arrangements for prompt tendering of any payment due the hosts for land or other assets provided in support of planned relocation sites;
  - (c) arrangements for identifying and addressing any conflict that may arise between those resettled and host communities; and
  - (d) any measures necessary to augment services (e.g., education, water, health, and production services) in host communities to meet increased demands upon them, or to make them at least comparable to services available within planned relocation sites.

### **Additional Planning Requirements where Resettlement Involves Economic Displacement**

24. If land acquisition or restrictions on use of, or access to, land or natural resources may cause significant economic displacement, arrangements to provide displaced persons with sufficient opportunity to

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improve, or at least restore, their livelihoods are also incorporated into the resettlement plan, or into a separate livelihoods improvement plan. These include:

25. *Direct land replacement.* For those with agricultural livelihoods, the resettlement plan provides for an option to receive replacement land of equivalent productive value, or demonstrates that sufficient land of equivalent value is unavailable. Where replacement land is available, the plan describes methods and timing for its allocation to displaced persons.
26. *Loss of access to land or resources.* For those whose livelihood is affected by loss of land or resource use or access, including common property resources, the resettlement plan describes means to obtain substitutes or alternative resources, or otherwise provides support for alternative livelihoods.
27. *Support for alternative livelihoods.* For all other categories of economically displaced persons, the resettlement plan describes feasible arrangements for obtaining employment or for establishing a business, including provision of relevant supplemental assistance including skills training, credit, licenses or permits, or specialized equipment. As warranted, livelihood planning provides special assistance to women, minorities or vulnerable groups who may be disadvantaged in securing alternative livelihoods.
28. *Consideration of economic development opportunities.* The resettlement plan identifies and assesses any feasible opportunities to promote improved livelihoods as a result of resettlement processes. This may include, for example, preferential project employment arrangements, support for development of specialized products or markets, preferential commercial zoning and trading arrangements, or other measures. Where relevant, the plan should also assess the feasibility of prospects for financial distributions to communities, or directly to displaced persons, through establishment of project-based benefit-sharing arrangements.
29. *Transitional support.* The resettlement plan provides transitional support to those whose livelihoods will be disrupted. This may include payment for lost crops for agriculturalists, payment of lost profits for businesses, or payment of lost wages for employees affected by business relocation. The plan provides that the transitional support continues for the duration of the transition period.

### **B. Resettlement Framework**

30. The purpose of the resettlement framework is to clarify resettlement principles, organizational arrangements, and design criteria to be applied to subprojects or project components to be prepared during project implementation (see ESS5, para. 25). Once the subproject or individual project components are defined and the necessary information becomes available, such a framework will be expanded into a specific plan proportionate to potential risks and impacts. Project activities that will cause physical and/or economic displacement will not commence until such specific plans have been finalized and approved by the Bank.
31. The resettlement policy framework covers the following elements:

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- (a) a brief description of the project and components for which land acquisition and resettlement are required, and an explanation of why a resettlement policy framework rather than a resettlement plan is being prepared;
- (b) principles and objectives governing resettlement preparation and implementation;
- (c) a description of the process for preparing and approving resettlement plans;
- (d) estimated displacement impacts and estimated numbers and categories of displaced persons, to the extent feasible;
- (e) eligibility criteria for defining various categories of displaced persons;
- (f) a legal framework reviewing the fit between borrower laws and regulations and Bank policy requirements and measures proposed to bridge any gaps between them;
- (g) methods of valuing affected assets;
- (h) organizational procedures for delivery of compensation and other resettlement assistance, including, for projects involving private sector intermediaries, the responsibilities of the financial intermediary, the government, and the private developer;
- (i) a description of the implementation process, linking resettlement implementation to civil works;
- (j) a description of grievance redress mechanisms;
- (k) a description of the arrangements for funding resettlement, including the preparation and review of cost estimates, the flow of funds, and contingency arrangements;
- (l) a description of mechanisms for consultations with, and participation of, displaced persons in planning, implementation, and monitoring; and
- (m) arrangements for monitoring by the implementing agency and, if required, by third-party monitors.

### **C. Process Framework**

32. A process framework is prepared when Bank-supported projects may cause restrictions in access to natural resources in legally designated parks and protected areas. The purpose of the process framework is to establish a process by which members of potentially affected communities participate in design of project components, determination of measures necessary to achieve the objectives of this ESS, and implementation and monitoring of relevant project activities.
33. Specifically, the process framework describes participatory processes by which the following activities will be accomplished

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- (a) *Project components will be prepared and implemented.* The document should briefly describe the project and components or activities that may involve new or more stringent restrictions on natural resource use. It should also describe the process by which potentially displaced persons participate in project design.
- (b) *Criteria for eligibility of affected persons will be determined.* The document should establish that potentially affected communities will be involved in identifying any adverse impacts, assessing of the significance of impacts, and establishing of the criteria for eligibility for any mitigating or compensating measures necessary.
- (c) *Measures to assist affected persons in their efforts to improve their livelihoods or restore them, in real terms, to pre-displacement levels, while maintaining the sustainability of the park or protected area will be identified.* The document should describe methods and procedures by which communities will identify and choose potential mitigating or compensating measures to be provided to those adversely affected, and procedures by which adversely affected community members will decide among the options available to them.
- (d) *Potential conflicts or grievances within or between affected communities will be resolved.* The document should describe the process for resolving disputes relating to resource use restrictions that may arise between or among affected communities, and grievances that may arise from members of communities who are dissatisfied with the eligibility criteria, community planning measures, or actual implementation.

Additionally, the process framework should describe arrangements relating to the following

- (e) *Administrative and legal procedures.* The document should review agreements reached regarding the process approach with relevant administrative jurisdictions and line ministries (including clear delineation for administrative and financial responsibilities under the project).
- (f) *Monitoring arrangements.* The document should review arrangements for participatory monitoring of project activities as they relate to (beneficial and adverse) impacts on persons within the project impact area, and for monitoring the effectiveness of measures taken to improve (or at minimum restore) incomes and living standards.