

EBRD COVID-19 Resilience Framework - Environmental and Social Assessment Training Programme

PR5 – Land Acquisition, Restrictions on Land Use and Involuntary Resettlement – ESDD Guidance

Introduction

PR5 addresses impacts of Project-related land acquisition, including restrictions on land use and access to assets and natural resources; which may cause physical displacement (relocation, loss of land or shelter), and/ or economic displacement (loss of land, assets or restrictions on land use, assets and natural resources leading to loss of income sources or other means of livelihood).

Resettlement is considered involuntary when affected persons or affected communities do not have the right to refuse land acquisition or restrictions on land use, other assets and natural resources, even if compulsory acquisition is used only as a last resort after a negotiated process.

Unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities, as well as environmental damage and adverse socio-economic impacts in areas into which they have been relocated. Projects involving land acquisition are often delayed due to incomplete or inadequate resettlement planning, and delays to the relocation of people.

It is important to note that the overall aim of any ESDD assignment, regardless of the specific characteristics of an individual Project, is to:

- identify and assess potentially significant, existing and future, adverse environmental and social impacts associated with the Client's current operations and the Project;
- assess compliance with applicable laws and EBRD's Environmental and Social Policy (2019);
- determine the measures needed to prevent or minimise and mitigate the adverse impacts; and
- identify potential environmental and social opportunities, including those that would improve the environmental and social sustainability of the Project and the current operations.

The ESDD process should be commensurate with, and proportional to, the scale and magnitude of the Project, and the associated environmental and social risks and impacts. The ESDD will cover, in an integrated way, all relevant direct and indirect environmental and social risks and impacts of the Client's operations, the Project and the relevant stages of the Project cycle (e.g. pre-construction, construction, operation,

and decommissioning or closure and reinstatement).

The guidance on PR5 is presented across each of the three ESDD tasks:

Task 1 – Review of existing documentation

The following documents should be requested from the Client for review:

- results of topographic surveys or routing reports for linear Projects, identifying suitable land for the Project's location;
- results of cadastral surveys identifying current ownership of identified land plots; census and asset inventories identifying affected people and assets;
- valuation records, land acquisition agreements, and compensation records;
- environmental and social impact assessment reports;
- records of information disclosure and consultation on land acquisition and resettlement activities; and
- land acquisition and resettlement plans or frameworks.

EBRD recognises three categories of affected persons:

Category 1: persons who have formal legal rights to the land (including customary and traditional rights recognised under national laws) or assets;

Category 2: persons who do not have formal legal rights to land or assets at the time of the census, but who have a claim to land or assets that is recognised or recognisable under national laws; or

Category 3: persons who have no recognisable legal right or claim to the land or assets they occupy or use.

There are certain resettlement topics where PR5 requirements are substantially different compared to national legislation, and this can often be a source of confusion and challenge. It is important that the Client has investigated the differences between PR5 and national legislation during the resettlement planning process, and identified necessary steps to address these differences.

Typical differences between PR5 and national legislation are the requirement to:

- prepare a resettlement planning document;
- recognition of the entitlements of affected persons that fall under Category 2 and Category 3;
- provide compensation for traditional and/or customary land, and customary access to assets and natural resources;
- value assets at 'full replacement cost' which is defined as a method of valuation that enables compensation to be calculated which is sufficient to replace assets, plus the necessary transaction costs associated with replacement of the asset;
- offer and provide where possible, 'like-for-like' compensation for land and a loss of access to assets and natural resources, rather than cash compensation;
- provide affected persons with livelihood restoration measures in addition with compensation for land and other assets;

- consult with a range of stakeholder groups, always including vulnerable people;
- consider gender and human rights issues;
- provide a range of support measures to vulnerable people ensure that they are not disproportionately affected by the Project;
- ensure a grievance mechanism is available;
- provide legal and other types of support to affected persons should they seek a judicial process to resolve a dispute; and
- establish a monitoring and evaluation framework to be able to demonstrate that livelihoods and standards of living have been improved or, as a minimum, have been restored to pre-displacement levels.

A discussion with the Client on these key differences can be challenging, as they may have completed previous Projects before that involved resettlement without needing to go beyond the requirements of national legislation. During Task 2, it may be useful to set aside time to provide the Client with a short presentation on the objectives of PR5 and present case studies of how EBRD's requirements have been applied to other Projects, so that they realise that these differences must be addressed and that they apply equally to all Projects.

The Client's documentation should be compared against applicable national legislation and EBRD's requirements which are summarised using the table below.

PR5 Requirement	Issues to consider
Where there are displacement impacts, the assessment process shall characterise the baseline socio-economic circumstances of displaced persons and the accompanying potential risks and impacts.	How old are the data being used by the Client for resettlement planning and are they still valid? <i>NOTE: the data should be no more than 12 months old if the process of implementing the plan has not yet started.</i>
Where the assessment has identified that the Project may entail material risks and impacts associated with physical and economic displacement of people and/or communities, the Client will engage resettlement expert(s) to assist in the preparation of a resettlement planning document, with the aim to develop and implement measures to address impacts on displaced people in accordance with the mitigation hierarchy.	Has the Client engaged suitably experienced and qualified experts? Do the experts have past experience in preparing resettlement planning documents to the standards of international finance institutions?
The Client shall consider feasible alternative Project designs and sites to avoid or at least minimise physical and/or economic displacement.	What evidence is there to reflect how displacement has been avoided or minimised to the extent possible? Have any changes in the Project's design been made to avoid or minimise displacement?
The Client shall not resort to forced eviction.	Has any forced eviction occurred?

PR5 Requirement	Issues to consider
The Client will seek to acquire land rights through negotiated settlements even if it has the legal means to gain access to the land without the consent of the seller.	Has the Client attempted to acquire land rights through negotiation with land owners/land users? What records are available to demonstrate the outcome of the negotiation process?
The Client shall identify, assess and address impacts on vulnerable groups.	Has the Client undertaken an analysis to determine the Project's impact on vulnerable groups? Have specific engagements been undertaken with vulnerable groups? Has the Client developed compensation and livelihood restoration measures that reflect the needs of vulnerable groups? Are the measures budgeted for in the resettlement planning documents?
The process of physical displacement or economic displacement has specific gender dimensions that shall be considered throughout baseline surveys, impact assessment, mitigation and monitoring processes.	Has the Client conducted an intra-household analysis to identify differences in men and women's sources of livelihoods, including informal ones? <i>NOTE: informal livelihoods refer to instances where person or groups of people operate without legal registration, social security coverage, employment contracts and typically rely on ad-hoc access to natural resources such as land and fishing grounds.</i> Has an analysis of women's rights over land, communal lands and other assets been conducted? Do resettlement planning documents include an analysis of the impact of the resettlement on women's ability to conduct work? Does the plan for compensation reflect gender issues associated with women's activities, equity in the distribution of cash compensation, and their share in property ownership?

PR5 Requirement	Issues to consider
The consultation process shall ensure that women's perspectives are obtained and their interests factored into aspects of resettlement planning and implementation. Women's and men's preferences in terms of compensation mechanisms, replacement land or alternative access to assets and natural resources rather than cash, will be explored and documented.	Has resettlement planning involved a set of specific engagements with women? Has compensation preferences from both men and women been explored and documented?
Assistance to livelihood improvement or restoration, such as improvement of existing agriculture activities, skills training, access to credit, entrepreneurship and job opportunities shall be made equally available to men and women and adapted to their respective needs.	Are livelihood improvement or restoration measures being offered equally to men and women?
The Client shall carry out socio-economic surveys to describe the baseline circumstances of affected people where the Project may entail physical displacement or economic displacement. Such surveys will use a combination of quantitative and qualitative methods and will be designed to facilitate further social and economic monitoring of the circumstances of affected persons.	Has the Client prepared a social and economic profile of the affected communities and people? If yes, was the survey sample size adequate for the Project? If yes, does this include data disaggregated by sex and age, identity of sources of livelihoods that are affected and their significance to affected people, identity of land tenure regimes in the affected area, identity of any gender issues, and a list of vulnerable groups?
The Client shall carry out a census of affected people to: (i) identify persons who are affected by the Project; and (ii) determine who will be eligible for compensation and assistance. The census shall also take into account seasonal resource users who may not be present in the Project area at the time of the census.	Has a census been completed? Did the census capture all formal and informal land users present throughout the year, including, for example, herders or seasonal agricultural workers? Did the census identify any absentee landowners, instances of shared ownership, or conflicting ownership between people?
The Client shall carry out an inventory of affected assets, including land, structures, crops, communal amenities and natural resources to establish the basis for further valuation of such assets.	Did the inventory capture information on assets such as houses, crops, natural resources, irrigation networks, public infrastructure such as water pipes, communally used areas e.g. hay pasture etc.? Did the inventory include any photographic or video records documenting the status of the existing facilities and any existing damage?

PR5 Requirement	Issues to consider
The Client shall establish a cut-off date for eligibility either: (i) as foreseen in applicable legislation; or (ii) using the end date of the census or of the inventory (whichever is the latest).	Has the Client established a cut-off date? Was the cut-off date the same date as the completion of the census or inventory, or was it established by national legislation? Has the purpose of the cut-off date been disclosed to the affected persons and communities? What stakeholder engagement records are available to demonstrate this disclosure?
Valuation shall be at full replacement cost and shall be performed by qualified valuers. The valuation methodology for determining replacement cost shall be documented and included in relevant resettlement planning documents.	Does the method for calculating compensation include all of the factors that are included in EBRD's definition of 'full replacement cost'? Is the method of calculating replacement cost clearly described in the resettlement planning documents? Has the valuation of assets been conducted by a qualified external expert?
The Client will provide resettlement assistance to all physically displaced persons and livelihood improvement or restoration assistance to economically displaced persons, regardless of the categories of eligibility.	Do resettlement planning documents include, where necessary, compensation for each of the three categories of affected persons?
Compensation will be provided before displacement or imposition of access restrictions on land or assets.	Has any displacement or access restrictions taken place? If yes, were affected persons compensated beforehand, either through cash or through the provision of like-for-like compensation? What evidence is available to support this?
Where livelihoods of displaced persons are land-based or where land is collectively owned, the Client shall offer land-based compensation, unless proven unfeasible or unacceptable to affected persons.	If the Project is affecting land-based livelihoods, has the Client offered land-based compensation? If not, are reasons provided to justify this approach valid? What stakeholder engagement records are available to demonstrate that land-based compensation was offered?

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Where livelihoods of displaced persons are land-based or where land is collectively owned, the Client shall offer land-based compensation, unless proven unfeasible or unacceptable to affected persons.	If the Project is affecting land-based livelihoods, has the Client offered land-based compensation? If not, are reasons provided to justify this approach valid? What stakeholder engagement records are available to demonstrate that land-based compensation was offered?
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.	Is this relevant to the Project? If yes, check that the Client has met the eight conditions that are specified in PR5 paragraph 35.
Where a Project involves the loss of community facilities, utilities or public amenities, or access thereto, the Client shall replace these to ensure a better or similar level of service, based on consultation with the affected community and relevant government stakeholders to identify and agree upon suitable alternatives.	Is this relevant to the Project? If yes, has the Client replaced them or agreed on the provision of alternatives?
Meaningful consultation of affected persons and communities, including host communities, shall be organised by the Client throughout the process of resettlement planning and implementation in accordance with principles and processes outlined in PR 10, and shall be supported by disclosure of relevant information.	What evidence is there showing engagement activities with affected persons and their communities during the process of preparing resettlement planning document? <i>NOTE: this should include men, women, vulnerable groups and other stakeholders.</i> Are affected persons aware of the resettlement choices that are available to them (these typically include cash compensation or like-for-like land compensation, and choice of livelihood restoration measures)? Have resettlement planning documents been publicly disclosed in a culturally appropriate manner, reflecting local languages and customs?

PR5 Requirement	Issues to consider
The Client shall establish an effective grievance mechanism as early as possible in the land acquisition and resettlement process, and at the latest prior to the census taking place in order to address specific concerns about compensation, relocation or livelihood restoration measures raised by displaced persons (or others) in a timely manner.	Has the Client implemented a grievance mechanism? How has the grievance mechanism been disclosed to affected persons and communities? Is the mechanism being used and what is the process in place to acknowledge, investigate and respond to grievances?
To address the risks and impacts identified in the environmental and social assessment, the Client shall prepare a resettlement plan proportionate to the risks and impacts associated with the Project:	Resettlement planning documents should be reviewed in detail to check they contain: • up-to-date and reliable information about the proposed Project and potential impacts on the displaced persons; • an entitlement matrix which defines compensation entitlements (whether in-cash or in-kind) for each category of loss and each group of affected persons; • appropriate cash/in-kind compensation and livelihood restoration measures for all impacts identified; • information disclosure and consultation on the documents, particularly with affected people; • the legal and institutional arrangements required for resettlement; • monitoring and evaluation requirements; and • a realistic budget and implementation schedule.
Land acquisition and resettlement may involve responsibilities of the government even where the Project is privately owned.	<i>NOTE: If the Project involves responsibilities from the government, check that the resettlement planning documents are consistent with the provisions of PR5 paragraph 46.</i>
The Client is responsible for identifying gaps between local legislation and government practice and the requirements of PR5.	Has the Client identified and documented gaps between PR5 and national legislation, along with the actions necessary to address them?
The Client shall establish procedures to monitor and evaluate the implementation of the resettlement plan and shall take corrective action if necessary during implementation to achieve the objectives of this PR.	Has the Client identified and defined a set of monitoring and evaluation indicators? Is the current status of resettlement being regularly reported using these indicators?

PR5 Requirement	Issues to consider
The Client shall offer physically displaced persons a choice between a 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 if it is demonstrated that replacement property options are not possible or not accepted by affected people.	For physical displacement, has the Client offered affected persons an appropriate range of choices for property replacement, along with security of tenure?
Resettlement sites built for displaced persons shall offer adequate housing as a minimum, living conditions and access to services at least equivalent to those existing before displacement, as well as sustainable and cost-effective opportunities to improve or at a minimum restore livelihoods.	Do resettlement planning documents include a budget for relocation costs and provision of utilities in new homes?
The cost of moving and re-establishing utilities in the new homes shall be borne by the Client.	Do resettlement planning documents provide assistance to cover the cost of relocating?
In the case of Projects affecting livelihoods or income generation, the Client shall plan measures to improve, or at least restore, affected persons' incomes or livelihoods.	Are livelihood restoration measures defined? Have these been designed with the active participation of affected persons?

A list of queries should be compiled following the review of all documentation received during Task 1. Use the 'Task 1 Key Findings' format presented in Module 1 of this training programme.

Task 2 – Site visit and discussions

The site visit and discussion with Client representatives should be used as an opportunity to discuss the list of queries compiled during Task 1. During Task 2, you may need to meet with the following (these meetings should be organised in advance):

- **Project Director** – for a brief introduction associated with the purpose and scope of your visit, to request the availability of other Client representatives that you need to meet, and to thank them for their general support;
- **Project Manager** – to discuss the current status of land acquisition and the Project, details of resettlement plans that have been prepared to date, and to request their support in the random selection of affected persons for interview during the site visit;
- **Environmental and Social Manager/Land Acquisition Team** – to interview them about the current challenges associated with the Project and land acquisition; discuss grievances which have been received
- **Individual affected persons** – to interview them about their experience of, and feedback on, the resettlement process and to check what actions the Client has undertaken during resettlement planning and implementation; and
- **Community leaders and representatives** – to interview them to check what actions the Client has undertaken during resettlement planning and implementation; their feedback on the process and understand if there are any on-going issues.

NOTE: The questions below may need to be modified to reflect the current status of the Project.

Interview with the Environmental and Social Manager/Land Acquisition Team

The Environmental and Social Manager, or representatives from the Land Acquisition Team should be interviewed to respond to the list of queries generated during Task 1. During this meeting, the following questions could also be asked:

- What is the current and future status of land acquisition?
- What internal resources do they currently have available to manage resettlement issues, including the engagement with affected persons (i.e. community liaison officers, use of consultants)?
- Are these resources sufficient?
- Do you plan to increase your internal resources in the next 12 months?
- How realistic is the current Project schedule relating to resettlement? Is there a potential for delays to occur?
- What type of challenges (e.g. absentee owners; existing land ownership disputes; etc.) has the Project faced in relation to land acquisition, and what actions are being undertaken to address these challenges?
- Have you emphasised to affected persons the potential advantages of selecting like-for-like compensation for replacement land, rather than being given cash compensation?
- Are affected persons being provided with Project-related benefits such as employment?
- Will contractors be responsible for any land acquisition either temporary or permanent and how will this be managed?
- What grievances have been received regarding land acquisition? How have these been resolved, are there any pending grievances and what are the reasons?

Interviews with affected persons / community leaders and representatives

During the site visit a random selection of people affected by resettlement should be interviewed, if possible. A similar interview should be conducted with community leaders. During the interviews, record general characteristics about the person such as their gender, estimated age and note any obvious indications of vulnerability.

Before you interview an affected person or community leader introduce yourself, explain the purpose of your visit, and inform them that you have a short set of questions to ask. Indicate that they have been selected at random during your short visit to the site. State that the interview should take approximately 10 minutes to complete, that no personal identity details shall be collected so that the interview is confidential, and check that they are happy to continue before asking the first question.

You may wish to ask the following questions:

- What is your occupation?
- How are you expecting to be impacted by land acquisition?
- How were you informed about the Project and its impacts to land, and what information did you receive?
- In your view, has the information provided been sufficient to understand the need for land acquisition to occur?
- Were you present during the inventory survey? If not, explain the reason/s (e.g. busy harvesting season; existing childcare duties; hospitalisation; inconvenient timing; lack of information about the timing or the purpose of the survey, etc.)
- Are you aware of the cut-off date and the purpose of this date?
- Have you been made aware of your entitlements to compensation and the amount/s that you will receive? If yes, are the entitlements clear and are you satisfied with the compensation amount/s offered?
- If you are losing access to land or a property, have you been offered replacement land or replacement housing, as an alternative to cash compensation?
- Have you been offered any resettlement assistance to improve your future standard of living and livelihood?
- Has work started on your land or is your access to the land restricted? If yes, have you received compensation?
- Do you have copies of relevant documentation e.g. purchase agreement, lease contract signed by yourself and the Project?
- Are you aware of how to raise a grievance against the Project?
- If yes, in your view, is the Project's grievance mechanism accessible and fit for purpose?
- Have you been provided with any support by the Client to seek legal recourse from the courts or other type of judicial process?
- Have you been offered any direct benefits from the Project, such as employment opportunities?
- In general, how satisfied are you about the resettlement process undertaken by the Project to date?

Inspection of Project land to be acquired

During the site visit an inspection of land and other locations relevant to the resettlement process should be undertaken. This may include areas of land that are to be acquired in the future, households who have relocated into new structures provided by the Client, to evaluate the level of provision of public infrastructure and utilities to areas of new housing. Particular attention should be given to areas of land that is to be acquired for the Project, which is currently being used by many people as land acquisition may affect a large number of people.

NOTE: Before leaving complete the checklist overleaf to ensure that the EBRD's key requirements under PR5 have been covered

Task 3 – Analysis and reporting using the EBRD format

The findings of Task 1 and 2 need to be analysed and presented using EBRD's Reporting Framework presented in Module 3 of this training programme.

During the analysis of the data collected consider the following:

- What are the current land uses at locations where Project facilities and infrastructure are to be located?
- Is there a potential for additional impacts on land to occur from other sources of third-party Projects within the same area of influence? If yes, is the Client coordinating and aligning, resettlement planning and compensation activities with these other parties?
- Has the Client made sufficient efforts to explore the way in which displacement (particularly physical displacement involving the relocation of people) can be avoided or minimised by exploring alternative designs?
- Have measures been taken to identify all categories of affected persons, not just those with legal rights in place?
- Have affected persons been adequately engaged with during the process of resettlement planning?
- Has the Client emphasised to affected persons the potential advantages of selecting like-for-like compensation for replacement land, rather than being given cash compensation?
- If the Client is providing replacement housing, is this of suitable quality and size and does it have similar levels of access to local infrastructure and utilities?
- If the Client is providing cash compensation for assets such as a residential house, does the valuation method reflect EBRD's definition of 'full replacement cost'?
- Are the livelihood restoration measures included in resettlement planning documents' practical and realistic? Have these been designed through close engagement with affected persons?
- Have all members of the household (including women) been adequately consulted during resettlement planning?
- Do resettlement planning documents describe ways in which displacement may impact women differently than men, and contain robust actions to address this impact?
- Are affected persons being provided with Project-related benefits such as employment, as part of a broader strategy to restore their livelihoods and increase their standard of living?
- Are grievances being managed in line with the Client's mechanism and resolved within a reasonable time period?
- Is the Project schedule for resettlement realistic, given the scale and magnitude of displacement?
- Is there a risk that the Project could be delayed by land acquisition? Are all necessary steps being taken to avoid delay?
- Have vulnerable people been adequately consulted?
- Has the Client taken all necessary steps to ensure that vulnerable people are not disproportionately impacted?

Additional guidance, tools and reference documents

Additional EBRD guidance on the implementation of PR5 is provided here (the Resettlement Guidance Note Annex 2-4 contains templates for resettlement frameworks and plans):

- Resettlement Guidance Note: <https://www.ebrd.com/publications/resettlement-guidance-good-practice.pdf>
- Example Table for a Gap Analysis: <https://www.ebrd.com/publications/resettlement-guidance-good-practice-example-table-gap-analyses.docx>
- Example Socio-Economic Survey Forms: <https://www.ebrd.com/publications/resettlement-guidance-good-practice-example-socio-economic-survey-form.docx>

EBRD COVID-19 Resilience Framework - Local Environmental and Social Due Diligence Skills Capacity Building

PR5 – Land Acquisition, Restrictions on Land Use and Involuntary Resettlement – ESDD Checklist

Please confirm all of the actions have been completed		Yes / No
<i>Existing documentation relevant to land acquisition</i>		
5.1	Copies of existing routing and site surveys; cadastral surveys, ESIA Reports, Resettlement Plans and Framework documents have been requested and, where available, reviewed.	
<i>Client's grievance mechanism</i>		
5.2	The Client's grievance mechanism, the grievances recorded and a sample of the grievance investigation reports and responses have been reviewed.	
<i>Key informant interviews and site visit</i>		
5.3	Client representatives responsible for managing land-related impacts have been interviewed.	
5.4	A random selection of affected persons has been interviewed to gather information from people about their current level of satisfaction with the resettlement process.	
5.5	A selection of land to be used by the Project has been inspected.	
<i>Vulnerability, and monitoring and evaluation</i>		
5.6	The way in which the Project could impact vulnerable people has been discussed with Client representatives.	
5.7	The way in which resettlement is being monitored (either now, and/or in the future) has been reviewed.	