



European Bank
for Reconstruction and Development

Guidance note

EBRD Performance Requirement 5:

Land acquisition, restrictions on land use and involuntary resettlement

March 2023

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1. Introduction and objectives

1.1. Purpose of this guidance note

The European Bank for Reconstruction and Development (EBRD) is committed to promoting environmentally sound and sustainable development in the full range of its activities, pursuant to the Agreement Establishing the Bank.¹ The Environmental and Social Policy (ESP) is one of the Bank's three good governance policies and a key document that guides this commitment to promoting “environmentally sound and sustainable development” in the full range of its investment and technical cooperation activities.² The EBRD's Board of Directors approved the 2019 ESP and its 10 related Performance Requirements (PRs) on 25 April 2019. They apply to projects started after 1 January 2020.

The EBRD's 2019 Performance Requirement 5 (PR5) on land acquisition, restrictions on land use and involuntary resettlement recognises that “unless properly managed, involuntary resettlement may result in long-term hardship and impoverishment for affected persons and communities”.³ International financial institutions such as the EBRD often regard resettlement as one of the main risks to projects: the livelihoods, health, well-being and human rights of real people are at stake. This is why, like other, similar multilateral institutions, the EBRD has dedicated a Performance Requirement, PR5, to the management of displacement impacts, involuntary resettlement and livelihood restoration.

This note provides EBRD clients and stakeholders with practical guidance on interpreting and implementing PR5. It is intended as a reader-friendly guide that will enable EBRD clients, their consultants and other stakeholders to understand and interpret its requirements.

This guidance note does not supersede the *Resettlement Guidance and Good Practice* note published by the EBRD in 2016, which remains valid, providing valuable practical guidance and examples useful to those involved in projects with resettlement.

In case of any inconsistency or conflict between this document and the previous guidance, the PR5 will prevail will prevail. Questions of interpretation will be addressed solely in respect of this policy.

1 See EBRD (1990), Article 2.1(vii).

2 See EBRD (2019).

3 See EBRD (2019), p. 27.

1.2. Key changes since the 2014 PR4

The 2019 version of PR5 has a more user-friendly structure, clarifies the requirements and provides additional content. The general objective of PR5, however, remains the same – to protect affected people, projects and the Bank against the social and economic risks of displacement. Key changes include the following:

- PR5 was restructured to ensure that the requirements flow more logically, in line with key steps and tasks in the resettlement planning and implementation process.
- A new section (paragraph 8) was introduced to clarify what is not within the scope of PR5, including, for example, the settlement of internally displaced people (IDPs) resulting directly from conflict. Similarly, it clarifies that impacts to livelihoods not caused by land acquisition fall within the scope of PR1⁴ and that the mitigation of such impacts on livelihoods is to be planned and undertaken in accordance with the principles of PR5 (paragraph 62).
- A clearer distinction was made between compensation (in respect of lost assets) and livelihood restoration (in respect of lost livelihoods).
- The definition of “forced evictions” was clarified and their prohibition was strengthened (paragraph 13 and footnote 53).
- Requirements related to vulnerable groups (paragraph 15) were strengthened and clarified.
- A new gender section (paragraphs 16 to 19) was added to consolidate and clarify previously existing provisions.
- New requirements pertaining to voluntary land donations were introduced (paragraph 35).
- Requirements relating to past land acquisitions (prior to the EBRD’s involvement) were clarified (paragraph 7).
- Requirements for the preparation and disclosure of resettlement planning documentation were clarified (paragraphs 41 to 44).
- The roles and responsibilities of EBRD private-sector borrowers were clarified in the case of government-managed land acquisition (paragraphs 46 to 48).
- Monitoring and evaluation requirements were also clarified (paragraphs 49 to 53).

1.3. Key objectives of PR5

The key objectives of PR5 are stated in paragraph 4 and are in line with the overall “mitigation hierarchy” required by the ESP and PR1:

- Avoid displacement and, where this is not possible, implement additional measures to minimise, mitigate and, as a last resort, compensate for potential residual adverse impacts (see section 3.1.3).
- Forced evictions are prohibited, in line with international law (see section 3.1.4).
- Unavoidable residual displacement impacts have to be mitigated by (i) timely compensation at full replacement cost and (ii) ensuring meaningful consultation in accordance with PR10.⁵
- Livelihoods have to be improved or, at a minimum, restored (see section 3.1.6).
- Living conditions have to be improved by the provision of adequate housing with security of tenure (see section 3.15.4).

1.4. Terminology: compensation, resettlement, livelihood restoration

This guidance note includes a detailed glossary (Appendix 1) of key terms used in PR5 and in the note itself. The following table provides clarification on the following key terms:

- Compensation – which is meant to offset the loss of physical assets such as land or buildings.
- Livelihood restoration – which addresses economically displaced people with measures meant to improve or restore their livelihoods and income sources.
- Resettlement – which covers all activities PR5 requires where either physical assets or livelihoods are affected (including compensation, physical relocation of physically displaced people and livelihood restoration). In short, resettlement can be defined as the sum of compensation and livelihood restoration.

⁴ See EBRD (2019), p. 13.

⁵ See EBRD (2019), p. 47.

Table 1: Compensation, livelihood restoration, resettlement

Question	Compensation	Livelihood restoration	Resettlement
What is it?	Compensation is what a project has to provide (in cash or in kind) to offset loss of assets such as buildings, land, trees and crops.	Livelihood restoration includes measures meant to support economically displaced people in restoring their livelihoods.	Involuntary resettlement refers to both physical displacement and economic displacement impacts, as well as to the processes to mitigate and compensate for 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, other assets and natural resources, even if compulsory acquisition is used only as a last resort after a negotiated process.
What is it meant to mitigate?	Loss of assets.	Loss of livelihood (also called economic displacement).	Loss of shelter/residential buildings caused by physical displacement and loss of livelihoods caused by economic displacement.
Examples	A piece of agricultural land, with trees on it, has to be purchased to build a pumping station (loss of assets). A certain sum of money will be paid to the owner to offset this loss (compensation), or the land and trees or structures can be replaced in kind.	A farmer's income is affected by loss of land and of the ability to farm on that land. The operator and employees of a roadside restaurant are economically affected by road widening that requires the removal of that restaurant. In both cases, measures will have to be devised to support affected people, not only by offsetting the physical loss through compensation, but also by restoring their livelihoods.	A house has to be removed to make way for a road (physical displacement) and the homeowner's livelihood is affected (economic displacement). The homeowner is provided with a replacement house and supported through livelihood restoration activities.
What drives it?	Local law typically has detailed provisions in relation to compensation of assets.	International standards, such as PR5.	International standards, such as PR5.
Is it an obligation or a "nice to have"?	It is an obligation as long as there is land acquisition or restrictions on land use and natural resources.	It is an obligation as long as there is economic displacement.	It is an obligation as long as there is either physical or economic displacement.
Is it part of community development?	No	No	No
	Company- or project-provided community development or social investment programmes with an aim to bring additional benefits to communities for various reasons (that is, to obtain a "social licence to operate"), but these are beyond the mitigation and compensation measures required in PR5. Impacts of land acquisition should be avoided or mitigated, if not compensated, to comply with PR5 requirements. However, in some cases, community development projects can also help to enhance the livelihoods of people affected by land acquisition in addition to livelihood restoration measures.		

2. Applicability and scope of PR5

2.1. Applicability of PR5

The vast majority of projects with land acquisition trigger PR5. The conditions under which it applies are spelled out in paragraphs 6 and 7 of PR5. PR5 applies to projects that entail physical or economic displacement regardless of their magnitude and whether permanent or temporary, resulting from one of the following types of transaction:

- land rights and/or assets acquired through expropriation or other compulsory procedures
- land rights and/or assets acquired through negotiated settlements, if expropriation or other compulsory processes can be initiated in case negotiation fails
- restrictions that result in people experiencing loss of access to land, assets, natural resources or livelihoods, irrespective of whether such rights of restriction are acquired through negotiation, expropriation, compulsory purchase or by means of government regulation
- relocation of people without formal, traditional or recognisable usage rights under national laws, who are occupying or utilising land prior to the cut-off date
- displacement of people as a result of project impacts that render their land or assets unusable or inaccessible.

PR5 also applies to any physical displacement or economic displacement carried out by the client or a government agency for purposes relevant to a project prior to EBRD involvement. For projects to which PR5 applies, all requirements of paragraphs 1 to 54 apply. Requirements contained in paragraphs 55 to 60 apply only to projects that entail physical displacement, while requirements in paragraphs 61 to 63 apply only to projects that cause economic displacement.

In the early stages of project development, and unless convincing information is provided to demonstrate non-applicability per the conditions below, it is safe to assume that PR5 applies to any project that involves land expropriation or acquisition and/or restrictions on people's access to resources, thereby affecting their livelihoods.

2.2. Non-applicability of PR5

2.2.1. Overview

PR5 does not apply in the following cases:

- where a project entails no acquisition or access to, or restrictions on land and/or assets and/or people living on it (and, as a result, no impact on livelihoods depending on this land or assets)
- where a project entails impacts on land and/or assets, if and only if all transactions are voluntary (also called “willing buyer–willing seller”) and if, in addition, no land user (other than the landowner) has their livelihood affected as a result of the transaction (see PR5 paragraph 8 and details in section 2.2.2)

- where people are displaced as a direct result of natural disasters, conflict, crime or violence, such as refugees or IDPs (see details in section 2.2.3).

2.2.2. Voluntary transactions

Purely voluntary transactions (or “willing buyer–willing seller”) are those where the affected landowner can refuse the transaction (for example, where the planned facility can easily be relocated to another land plot). PR5 does not apply to voluntary transactions, but the EBRD still expects reasonable compensation to be paid.

Negotiated transactions are not voluntary if the project sponsor can at some point resort to expropriation or another similar compulsory process to acquire land, either due to the unwillingness of landowners to reach an agreement or to legal and/or administrative technicalities, even if expropriation is eventually not used. In such cases, PR5 does apply.

Where transactions are purely voluntary, the livelihood impacts on land users other than the land owner (even if they are informal) need to be considered, as the presence of such users would trigger the application of PR5 (see PR5, paragraph 8 and FAQ 3). This applies regardless of the regime of tenure, whether formal or informal. For example, if there are herders informally using a plot of land that is voluntarily sold to the project by its owner, PR5 will apply, and adequate livelihood restoration measures will have to be developed for the herders.

Note that voluntary transactions (where compensation is paid) differ from voluntary land donations (where no compensation is paid), addressed in section 3.8.8.

2.2.3. Refugees, IDPs and victims of natural disasters

In cases where there has been displacement as a result of conflict, natural disasters, crime or violence prior to project-induced displacement, the involuntary resettlement process will be guided by the United Nations' Guiding Principles on Internal Displacement.⁶

2.3. Impacts on livelihoods unrelated to land acquisition

Where project impacts on livelihoods result from environmental and or construction impacts unrelated to land acquisition, temporary occupation or restrictions on resource use, such impacts will be addressed in accordance with PR1 requirements. However, specific compensation and livelihood restoration measures for such impacts will be undertaken in accordance with the principles of PR5 (see PR5, paragraph 62). For example:

- farming or other activities, such as beekeeping, affected by the fallout from industrial emissions or dust generated by construction activities along a road
- shops in a village centre that might be affected by a road by-pass that reduces their access to potential clients
- waste pickers that would be affected by the closure of an existing dumpsite (see PR5, paragraph 6).

⁶ See UN OCHA (2001).

Impacts on artisanal miners (minerals, sand, aggregates) affected by a project are to be addressed in accordance with PR5. In all of the above cases, the project⁷ would have to develop livelihood restoration measures in line with PR5.

2.4. Scope of PR5

PR5 covers the full range of impacts on people and their livelihoods resulting from land acquisition (including, but not limited to, land expropriation) or restrictions on access to resources and assets. In addition to permanent and temporary land acquisition from rightful owners (which is typically addressed by local law), it also includes the following types of land acquisition or restrictions:

- The displacement of people without formal, traditional or recognisable usage rights under national law, who are occupying or utilising land, assets or natural resources prior to the cut-off date. Typical examples include:
 - persons using public land informally for agricultural purposes, including animal grazing; for example, affected persons using land based on an unregistered written or verbal agreement with a municipal authority, or high mountain pasture land used informally and seasonally by transhumant herders (a situation that is relatively common in Caucasus and Northern African countries)
 - informal tenants or sharecroppers of private land
 - people using land based on an informal customary regime, a situation commonly encountered in Northern Africa, Türkiye, the Caucasus and Central Asia
 - informal renters or other occupiers of dwellings affected by a project, which would not typically be eligible for compensation or assistance under local legislation
 - fishermen in near-shore or continental waters, who may be registered as businesses but have no registered right to the use of a certain body of water, which is usually deemed state property
 - gatherers of natural products (mushrooms, berries, grass, straw, fuel or wood)
 - temporary users of a given space, which could include beekeepers moving from one area to another, transhumant or nomadic herders, or mobile communities such as the Roma in Europe.
- Economic or physical displacement of people as a result of project impacts that render their land, assets or resources unusable or inaccessible. Typical examples include:
 - residents that have to be relocated due to environmental impacts (such as noise) exceeding acceptable standards for residency (for instance, near a high-speed rail line)
 - fishermen that have to move from a landing site due to dam construction in continental waters or due to port construction (and/or associated ship manoeuvring areas) in sea waters
 - temporary or permanent restrictions on access to businesses caused by road or other construction activities
 - waste pickers on dump sites
 - gatherers, herders, hunters using natural resources on communal or state-owned land (forest, meadows, wetlands) affected by a project.
- Restrictions on land use that result in a loss of access to land, assets, natural resources or livelihoods, irrespective of the process to acquire the rights to impose restrictions (be it through negotiation, expropriation, compulsory purchase or government regulation). Typical examples include:
 - rights of way required for the construction of linear or other projects (transmission lines, pipelines), where land is occupied temporarily during construction and a permanent restriction is then imposed during operation (for example, no building or trees)
 - restrictions on use in “sanitary protection zones” around potentially hazardous industrial facilities, water storage reservoirs and other facilities; this may result in the loss of value of assets if building or residency are prohibited, or even in the loss of the assets themselves if they are not usable any longer
 - restrictions on use imposed in or around biodiversity conservation areas, such as national parks and reserves
 - severance of access to certain lands or natural resources, with associated impacts on livelihoods (for example, a linear project, such as a high-speed railway, which is fenced off for safety reasons, preventing community access to grazing areas).

⁷ Whether by land acquisition or indirectly, as the prohibition of artisanal mining is enforced by the state when a new mining project takes place.

3. Requirements

3.1. General requirements

3.1.1. Project categorisation

Displacement is one of the criteria driving project categorisation per the EBRD ESP. “Projects which may involve significant involuntary resettlement or economic displacement” are categorised as “A”, as established in the EBRD ESP (EBRD 2019, Appendix 2). “Significant” here is context-specific and will be assessed by the EBRD on a case-by-case basis, taking into account project and displacement risks.

However, all PR5 principles apply equally to category A and category B projects. As long as projects entail physical or economic displacement, PR5 is deemed applicable.

3.1.2. Process

3.1.2.1. Integration of resettlement scoping and planning into the ESIA process

For category A projects, which require an environmental and social impact assessment (ESIA), it is desirable (but not mandated) to integrate the resettlement scoping and planning process into the ESIA (or even into a pre-feasibility stage prior to the ESIA). This has a number of advantages, most notably, allowing a comprehensive and holistic review of project design and siting alternatives (see section 3.1.3) that integrate all aspects, including both environmental considerations and potential displacement.

However, this is not always possible. Specifically, some jurisdictions require a project to be permitted first – which would typically require an ESIA (or an environmental impact assessment (EIA) – so that a Declaration of Public Interest can then be passed. This is the necessary legal trigger for statutory asset and valuation surveys related to resettlement planning. In such cases, clients must engage with the EBRD to identify a mutually agreeable solution. Such situations would typically require a client to provide the EBRD with an update of the permitted ESIA (for example, in the form of a “supplementary lender information package”)⁸ when the resettlement planning process is complete and the resettlement plan can be submitted. Some aspects of the resettlement planning process may then need to be “retrofitted” into this updated ESIA, including, for example, the environmental assessment of resettlement site development.

For category B projects, early resettlement scoping is also necessary to drive further planning and, in particular, to trigger the impact avoidance and minimisation process described in section 3.1.3.

3.1.2.2. Baseline studies

The baseline studies required by PR5, paragraph 10 are addressed in further detail in section 3.4.

3.1.2.3. Engaging resettlement experts

For projects that entail “significant” resettlement, per Appendix 2 to the ESP, the EBRD requires the project to engage independent resettlement experts to support the resettlement planning process and to prepare associated documents. Where there are no local qualified resettlement experts with experience of international standards, the expertise of international specialists will be needed. In such cases, international specialists will have to be supported by local experts familiar with local regulations and social conditions.

In addition, many jurisdictions require that valuations be undertaken by independent and locally certified valuers. Certain tasks that are part of the resettlement planning process can be undertaken directly by the project or by a state agency responsible for land acquisition (for example, some components of survey processes or aspects of stakeholder engagement), but preferably under the supervision of independent, experienced experts hired by the project developer.

For projects that entail no “significant” resettlement in the sense of the ESP, it may be acceptable for the project developer to undertake the resettlement planning process directly and prepare resettlement planning documents in line with PR5, as long as they have sufficient capacity. This will need to be confirmed by the EBRD prior to the preparation of resettlement planning documents.

3.1.2.4. Resettlement planning documents

The resettlement planning documents required by PR5, paragraph 11 are addressed in further detail in section 3.10.

⁸ Which may cover other aspects/issues/impacts not addressed in local regulation but required by the EBRD’s Performance Requirements.

3.1.3. Avoidance and minimisation of displacement

Poorly planned and implemented physical and economic displacement usually poses a high risk to affected people (for example, losing one's home or livelihood) and projects (for example, delayed schedules or financial overruns). Whenever a project causes potential displacement, the first duty of the EBRD Client is to seek avoidance of this displacement, consistent with the mitigation hierarchy mandated by PR1. As stated in PR5, "avoidance is the preferred approach". Experience shows that alternative project designs are often possible, albeit too often discarded or not considered due to insufficient or inadequate scrutiny. Key reasons for this may include:

- insufficient consultation with potentially affected people
- old habits, whereby mainly engineering and financial considerations drive the project design
- late engagement with resettlement experts, after the design has been completed or already permitted
- poor or no cooperation between project social specialists and engineering teams, which generally stems from insufficient management attention
- poor or no cooperation between those in charge of resettlement and the environmental and social (E&S) team
- absence of cooperation between agencies in charge of land acquisition (often governmental organisations) and the project design team
- underestimation of resettlement costs, leading to the selection of designs that will end up costing more.

The EBRD requires a comprehensive assessment of alternative project designs, commensurate with the potential magnitude of impacts, including consultation with directly affected parties. This assessment and its effects on displacement avoidance or minimisation must be documented. Examples include:

- optimising the location and height of a dam to minimise land occupied by a reservoir
- looking for alternative routes for linear projects (roads, rail, transmission and pipelines) that avoid settlements or agricultural land
- identification of sites well away from settlement and agricultural land for plants, power production (including renewables), and so on.

Depending on the timelines of ESIA and resettlement plan preparation, the summarised outcomes of this assessment can be presented either in the ESIA as part of the overall assessment of alternatives, or in the resettlement plan. An important part of this assessment is a preliminary estimate of the cost of resettlement, compensation and livelihood restoration, which should be assessed early in the project design phase. Mitigation and compensation for physical and economic displacement can be costly, and these assessments need to be reviewed with utmost attention to ensure that a potential underestimation (often the case) does not bias the comparison of alternatives.

The process to avoid and minimise displacement is usually iterative and involves the following steps in chronological order:

- avoidance:
 - high-level identification of potential sites, routes, designs and comparison, with adequate weight given to environmental and social factors
 - selection of those options with the best technical, economic, financial, environmental and social combinations of outcomes
 - more detailed analysis of a few sites, routes and designs, including, but not limited to (i) the preliminary cost estimates mentioned above and (ii) the engagement of key stakeholders (government, local authorities, non-governmental organisations (NGOs), community leaders as warranted)
- minimisation:
 - fine-tuning of project site boundaries, ancillary facilities and construction-related facilities to minimise footprint and displacement.

However, avoidance and minimisation of displacement must not be undertaken at the expense of safety, health and/or the environment. This emphasises the need for integrated ESIA approaches rather than teams working in isolation. For example, safety buffers around potentially hazardous industrial facilities should be maintained per applicable regulation and sound ESIA assessment. Community cohesion is another important consideration; the social cohesion and economic sustainability of a community may require displacement and resettling as a whole, rather than just the part of the community that falls directly within the project footprint.

3.1.4. Forced evictions

3.1.4.1. Prohibition of forced eviction

Forced evictions are prohibited by international human rights law,⁹ by the EBRD's ESP and by PR5. This prohibition is absolute and applies regardless of circumstances and the extent of the evictions.

3.1.4.2. What constitutes a forced eviction

Forced eviction, according to the definition in PR5,¹⁰ refers to the “acts and/or omissions involving the coerced or permanent or temporary involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources which they occupy or depend on, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protections provided for under PR5”.¹¹

The following elements are key to what constitutes a forced eviction:

- coercion or involuntary character
- absence, inadequacy or lack of access to legal remedies and protections. Such legal remedies and protections include, but are not limited to: access to a lawyer; adequate formal notifications; access to temporary housing; transitional food support, healthcare and access to a school for children of school age; and specific support for vulnerable individuals, including the sick and disabled.

The right not to be forcibly evicted is an element of the human right to adequate housing.

As specified in PR5, the exercise of expropriation is not a forced eviction provided it complies with the conditions stated in PR5, paragraph 13.

3.1.4.3. Avoiding evictions

Projects can face situations in which groups of ineligible people (for example, people having encroached on the project's footprint after the cut-off date) or people having already received their compensation refuse to leave even though all commitments under local legislation and PR5 have been met. In such cases, the project will have to get them to leave the area while avoiding an eviction that might constitute a forced eviction.

The first way of avoiding an eviction is to consider in a fair manner any claims by the community that refuses to leave. Sometimes the refusal to leave stems from valid claims that had been disregarded previously. Grievance redress mechanisms and access to legal remedies need to be in place. Mediation by independent parties, such as humanitarian and/or human rights NGOs, could be helpful in certain situations.

The second way to avoid an eviction is through information and consultation. Informing and consulting local political leaders, community elders, moral and religious opinion leaders, traders' associations, women or youth societies and communities at large will typically help solve most issues, with affected people eventually leaving of their own accord after a certain period of time and repeated information efforts. In speaking with such leaders and groups, it is important to stress that providing compensation to ineligible people would backfire on the whole community from a reputational and cohesiveness perspective, by fuelling anger and jealousy among bona fide claimants, as they would deem such compensation unfair. Community leaders are often very sensitive to such arguments. Claims by ineligible people can be addressed by other mitigation measures, including community development initiatives.

Lastly, clients can resort to the courts to obtain formal adjudication, followed by law-enforcement actions by the relevant judicial organs, in line with processes and procedures set out in law. Where such a route is followed, any potential risks to human rights associated with public interventions by force should be assessed and mitigated.

A firm approach does not involve threats to resort to public force. Where there are potential security issues during this consultation phase, it is important to engage security forces to avoid any use of force and seek compliance with the Voluntary Principles on Security and Human Rights¹² or similar guidelines.

3.1.4.4. Unavoidable evictions as opposed to forced evictions

Where all avenues to reach amicable outcomes have been exhausted and a project ends up having to proceed with unavoidable evictions, the obligation to avoid a forced eviction still applies. The United Nations 2014 Fact Sheet on Forced Evictions¹³ recognises that evictions are sometimes unavoidable. This guidance note, therefore, distinguishes between “forced evictions” (absolutely prohibited) and “unavoidable evictions” (permissible as a last resort under certain conditions).

9 Based on the fundamental principle in the Universal Declaration of Human Rights (Article 17) that “no one shall be arbitrarily deprived of his property”. See OHCHR (1948).

10 This definition was originally proposed by the UN Basic Principles and Guidelines on Development-based Evictions and Displacement. See OHCHR (2007).

11 See EBRD (2019), p. 27.

12 See Voluntary Principles Initiative (n.d.).

13 See OHCHR (2014), in particular, the section entitled “Obligations when an eviction is unavoidable”, pp. 26-35.

The United Nations 2014 Fact Sheet provides detailed directions on how to conduct unavoidable evictions of ineligible dwellers and/or encroachers while ensuring fundamental human rights are respected. Key guidelines include, but are not limited to:

- considering all alternatives to eviction (see section 3.1.4.3) and demonstrating the “unavoidable” character of the eviction
- conducting an eviction impact assessment
- respecting human rights and due process (including proper notifications, resort mechanism and availability of legal remedies)
- respecting the rights to information and meaningful consultation
- ensuring that the eviction does not result in homelessness
- taking specific safeguarding measures during and after the eviction, particularly with regard to the use of public force and presence of independent observers (see details in the United Nations Fact Sheet).¹⁴

3.1.4.5. EBRD client obligations in cases of unavoidable eviction

Where all avenues cited in section 3.1.4.3 have been exhausted and the client is considering an unavoidable eviction, they must undertake the following:

- Inform the EBRD ahead of any eviction action being taken, including providing the EBRD with:
 - a memo establishing the rationale for the unavoidable eviction, including a description of the origin of the issue, the rationale for the land being urgently needed, and the avoidance measures taken
 - a plan of action describing precisely how the unavoidable eviction will be conducted and which remedies will be in place (see indicative list in section 3.1.4.4), as well as the consultations undertaken with relevant stakeholders, including government, security forces, as warranted, and civil-society organisations.
- Document the implementation of the unavoidable eviction by appropriate means and provide associated documentation to the EBRD.

3.1.5. Negotiated settlements

Project developers are required to seek to acquire land through negotiated settlement, even if the project has the legal means of gaining access to the land without the consent of the seller (that is, through expropriation). In a PR5 context, negotiation entails the following:

- good faith (both parties genuinely seek to reach an agreement that they find acceptable)
- provision of sufficient time
- transparency and absence of favouritism
- balance (for example, situations in which an illiterate or vulnerable landowner “negotiates” with three highly skilled project lawyers are imbalanced), absence of coercion and threats
- comprehensiveness (for example, no negotiation on minor details if strategic decisions have been made unilaterally before)
- access to legal support and a fair grievance mechanism for project-affected people.

The EBRD expects any process aimed at reaching a negotiated settlement to be properly documented, so that it can be demonstrated that the criteria listed above have been met.

For large-scale resettlements, negotiation will often be most effective where it is organised on a collective level through representative organisations. Depending on the case in question, such organisations can be municipal councils, farmers and/or agricultural cooperatives, business unions, and/or specific committees representing affected persons. This is frequently the case in rural areas. Negotiation typically involves successive steps (methods and rules of negotiation should be agreed first with the affected community or their representatives, then principles of compensation, then rates, and so on). It is often a long process that needs to be accommodated accordingly in project schedules.

Once a collective agreement on compensation rates or amounts has been reached with the entire group of affected people, individual bargaining should be avoided, as it may fuel a perception that the process is not transparent or fair. Some level of individual fine-tuning may, however, be useful on top of collectively agreed compensation rates to take into account specific situations where there is clear justification (for example, to reflect levels of interior finish or the productivity of agricultural land).

14 Ibid.

It is good practice for the project to offer independent legal support to affected parties during the design and implementation of the resettlement process. Such support can be implemented by NGOs, such as those specialising in resettlement and human rights protection, or private lawyers.

Lastly, it is important to understand that “negotiated settlement” is not tantamount to “voluntary transaction” (or “willing buyer-willing seller”) as detailed in section 2.2.2. A negotiated settlement can take place within an expropriation process (which automatically triggers PR5).

3.2. Consideration of vulnerable groups

3.2.1. General

Vulnerable groups receive more attention in the 2019 version of PR5, as there is growing realisation that vulnerable groups may be affected significantly more than other people in the resettlement process. There is a higher risk that even in a process deemed successful for the majority, vulnerable groups or people will be left out, will not benefit while others do, or will be disproportionately affected.

3.2.2. Vulnerability criteria

Potential vulnerability factors can be context, group and/or household specific. There are plenty of examples:

- An ethnic minority may be vulnerable in a given area and not in another, depending on history, current political conditions and the local socio-economic context.
- An elderly person may or may not be vulnerable at a given time, depending on their health status, social integration and socio-economic circumstances.
- A female-headed household may or may not be vulnerable, depending on their socio-economic circumstances, level of education and social acceptance of such households locally.

In all these examples, people are potentially vulnerable in the context of physical or economic displacement and may or may not be actually vulnerable. It is, therefore, important to adapt the vulnerability assessment to local risks and specific household circumstances. It is also important to consider the fact that some people who may not be vulnerable in the pre-displacement situation can become vulnerable due to the physical or economic displacement, so are disproportionately affected. This would, for example, be the case for elderly people losing connection to their relatives and/or local solidarity networks because of physical resettlement.

Vulnerable people or people prone to becoming vulnerable because they are disproportionately affected *potentially* include, but are not limited to:

- female-headed households
- child-headed households
- mentally or physically disabled people
- people living with chronic diseases and/or those who are seriously ill
- indigenous groups per PR7¹⁵
- ethnic, cultural or religious minorities
- sexual and gender minorities
- people living in poverty, as defined by national statistics institutes or otherwise
- people holding no formalised or customary rights to the assets they use for residence or livelihood (informal users of land, slum dwellers)
- migrant workers
- nomadic and other mobile communities (for example, those engaged in seasonal transhumance, temporary migrants)
- refugees and IDPs
- elderly people.

Several economies in which the EBRD operates recognise some of these criteria (but usually not all) as triggering an official “vulnerable” classification (official terminology may vary) and associated benefits, such as pensions, some degree of tax exemption, free or discounted healthcare and free or discounted transport. While officially recognised criteria must be considered in the vulnerability analysis mandated by PR5 (and described in section 3.2.3), it is usually necessary to broaden the analysis to cover the additional criteria mentioned above, which local social welfare and other regulations do not necessarily take into account. It is also important to recognise that some criteria in the above list may be socially or politically contentious (for example, consideration of sexual and gender minorities, slum dwellers or undocumented migrants) and, in such situations, tactful consultation with both government and communities will be needed.

15 See EBRD (2019), p. 39.

3.2.3. Vulnerability analysis and pre-identification of potentially vulnerable people

The vulnerability analysis recognises the multi-dimensional character of vulnerability and can include the following steps:

- Identification of vulnerability criteria that are relevant in the context of the project. Select and refine, from the list of criteria in section 3.2.2, those that apply to project-affected communities. This should be done in the early stages (scoping) of resettlement planning and can be based on consultation with local community representatives, government institutions, particularly those in charge of social welfare activities, and NGOs.
- Based on selected criteria, the establishment of a vulnerability matrix to take into account the multi-dimensional nature of the vulnerability, which may include a preliminary vulnerability scoring system to enable the ranking of households by vulnerability score.
- Application of this matrix to household-level socio-economic data gathered in baseline surveys to generate a list of vulnerable people that may be potentially affected by the project. Where detailed socio-economic surveys of a sample of affected people (long linear projects, for example) are carried out, vulnerability information should still be gathered on all affected people. This can happen in a further data-collection stage, for instance, in the negotiation stage.

3.2.4. Identification of vulnerable people

Based on the list generated by the aforementioned vulnerability analysis, the project should interview all individuals identified as potentially vulnerable.¹⁶

Based on these interviews, final validation and identification should be done and documented. Where possible, external stakeholders should participate in and/or validate this final identification, including local government and its social welfare specialists, community representatives and NGOs.

3.2.5. Assistance for vulnerable people

Assistance for vulnerable people is meant to support them during and after the resettlement process to achieve the desired outcomes per the objectives of PR5. Such assistance should be devised so as to enhance the sustainability of housing conditions and livelihoods, rather than generate additional dependency. Depending on household circumstances and based on consultation with the affected households themselves, community representatives, government institutions and local NGOs,¹⁷ measures could include:

- food aid over a finite transition period
- assistance in securing alternative decent housing
- assistance in securing sustainable livelihoods (such as the provision of agricultural land, the provision of agricultural inputs and technical support, assistance in establishing small businesses, literacy and numeracy training, vocational training, linkages with direct or indirect project employment and procurement)
- temporary healthcare support
- provision of equipment to mitigate disabilities
- specific accessibility provisions on resettlement sites to facilitate access to elderly individuals and people with disabilities and special needs
- where affected people are physically displaced, specific assistance during and after the moving period
- specific (for example, more frequent or longer) livelihood and social monitoring in the post-displacement period.

3.2.6. Livelihood and standard-of-living restoration for vulnerable people

PR5, paragraph 4, requires clients to “improve, or as a minimum restore the livelihoods and standards of living of affected persons compared to pre-displacement levels”. This guidance note expands on the provisions in section 3.16. The general requirement is restoration “as a minimum”. However, where the livelihoods of people living in poverty are affected, EBRD projects should seek to bring about significant improvement in these livelihoods. Similarly, where standards of living are poor, the obligation is to improve conditions by providing adequate housing (see section 3.15.4), not to restore prior squalid conditions.

In addition, livelihood restoration planning must take account of vulnerability: proposed activities should match the abilities and capacities of all, including the vulnerable. In some cases, it may be possible to transfer the eligibility for livelihood restoration of elderly people, with their consent, to others in their household, particularly where activities are proposed that older people may not embrace easily (IT training or language training, for example).

3.3. Consideration of gender aspects

3.3.1. General

Land acquisition, displacement and resettlement may affect men and women differently. For example, in some jurisdictions only men’s ownership of real estate is recognised. In others, the joint property of married couples exists in law, but not in practice, particularly where land ownership and use are primarily governed by customs. The result is often that men

¹⁶ The interview should preferably be conducted in the householder’s home and with both spouses or partners present if they are a couple. It should also be based on a formalised interview guide or questionnaire devised by a qualified social specialist familiar with local conditions.

¹⁷ Such as women’s rights groups, NGOs advocating for the rights of people with disabilities or special needs, NGOs supporting refugees or IDPs, and lesbian, gay, bisexual and transgender (LGBT) organisations.

de jure or *de facto* own the land and other assets. As a result, women may be excluded from compensation, particularly where compensation is in cash, with sometimes drastic implications if the man decides to use compensation to satisfy his own aspirations exclusively. The contribution of women to household livelihoods is often non-monetary: for example, they may earn no direct cash income in situations where farming sales are managed exclusively by the male spouse, although women's labour may have been critical to generating this income. Similarly, it is often women who deal with general household chores, which are not monetised. As a result, women's contribution tends to be underestimated in devising livelihood restoration and improvement programmes. Understanding such gender-specific details will help to devise compensation and mitigation measures that benefit both women and men, are equally available to men and women and are adapted to their respective needs.

3.3.2. Gender aspects in socio-economic baseline surveys

The EBRD expects its clients to identify all types of gender impact a project might have, including gender-based violence and harassment (GBVH) risks, to both workforce and community.

Therefore, a broader gender impact assessment should be carried out as part of the ESIA process for high-risk projects and not be limited to affected landowners/users. For such projects, the conclusions of the gender assessment on land, income and resettlement-related issues must be considered in the design of the resettlement plan.

On projects where a standalone gender impact assessment is not required, these gender aspects must still be considered in the baseline surveys carried out for resettlement planning.

3.3.2.1. Incorporating gender aspects into household-level data collection and analysis

Socio-economic surveys for land acquisition and resettlement are typically carried out using the household as the investigation unit, because, in the vast majority of cases, the whole household is affected and subject to displacement. It is, therefore, logical to carry out the analysis and present the results at household level. When designing quantitative survey questionnaires, it is important to incorporate sufficient levels of demographic detail, which will subsequently allow for meaningful data analysis of the potential differences in resettlement impacts on men and women. Well-designed questionnaires will allow for additional household-level analysis by disaggregating data by the gender of the household head, thus providing insights into the potential differences between women- and men-led households. The analysis may also be carried out at an individual level, thus providing information on relevant differences between men and women.

This approach will help to identify and design more suitable

mitigation measures for individual or household needs. Important insights and socio-economic indicators, such as differences in income, key livelihood streams, land tenure arrangements, levels of education and skill, preferences for resettlement and livelihood options, can be derived from such quantitative data collection and analysis.

In administering the questionnaire, care should be taken that the female spouse is present. Enumerators must be trained accordingly, taking into account cultural sensitivities.

3.3.2.2. Further investigations

The knowledge gained from the quantitative survey can be supplemented with further investigations that help to better understand local gender and social dynamics and support the design of more effective resettlement mitigation measures. It is useful to look into the below aspects, potentially using qualitative research methods, such as interviews, key informant interviews and/or focus-group discussions. Focus-group discussions should be conducted separately for women and men:

- intra-household division of responsibilities and tasks (earning cash income, farming, dealing with animals, child education and care, elder care, domestic chores)
- differences in livelihood streams between males and females and differential impacts of land acquisition on each of these streams
- intra-household management of money:
 - who manages cash and/or bank accounts
 - where the male and female earn cash income independently of each other, how this is managed
 - who caters to the needs of children (school fees, clothes, health expenses)
 - how decisions are made about significant household expenses (such as fixing the house or purchasing a vehicle)
 - how women's aspirations are handled within the household
 - when times are tough, how money matters are handled within the household
- the potential for the project to exacerbate differences in income between men and women
- the potential for the project to exacerbate GBVH risks (see below)
- potential expectations and preferences for resettlement mitigation measures.

These investigations need tact, experience and discretion. Interaction with women and girls in focus group discussions is often (but not necessarily) best handled by female resettlement specialists.

The potential for GBVH in relation to the resettlement process should also be assessed. This is important, as the delivery of cash compensation within a land acquisition programme may result in increased risks of GBVH. It is also critical, where relevant, to assess and avoid GBVH risks related to the very process of investigation, as the disclosure by women of information to outsiders may also result in GBVH. A resettlement-related GBVH risk assessment must be conducted in line with the Guidance on Addressing Gender-Based Violence and Harassment issued by the EBRD, CDC and the International Finance Corporation (IFC).¹⁸

3.3.2.3. Investigation of gender aspects of tenure

Understanding land tenure arrangements is a key aspect of socio-economic baseline investigations undertaken in preparation of land acquisition and resettlement. Land tenure arrangements are often detrimental to women due to certain traditions, even where the law gives males and females equal rights. The following should be investigated from both a legal and a social perspective:

- legal aspects:
 - legal rights to land of men and women
 - whether the law allows for joint ownership of assets by both spouses
 - whether assets acquired by married couples are automatically registered in both names
 - legal provisions on separation, divorce and inheritance (who gets what in the event of divorce or succession)
 - how the above provisions apply, by law, to informally held assets (if they apply at all)
 - the rights of men and women to other household assets (buildings, livestock, agricultural equipment, furniture, household items)
- social aspects and customs:
 - how the law is applied in practice
 - whether custom has the force of law
 - what regimes of inheritance apply to informally held assets, particularly land and immovable property (check the respective rights of the deceased's spouse and children)
 - provisions applicable to divorce
 - status of polygamous households
 - customary dowry regimes, where applicable, and implications for ownership of land and other assets in the event of succession, divorce or *de facto* separation.

This type of information can be gathered using qualitative methods, such as focus-group discussions with separate groups of men and women and interviews with experts and community elders.

3.3.3. Gender aspects in consultation

By mixing women and men in the same consultation events, gender specificities may end up being overlooked, as men may be more vocal and suppress women's views. In specific cultural contexts, it is, therefore, important to arrange separate consultation opportunities with males and females, in addition to general meetings where both attend. Various methods can be used, from gender-specific community meetings to focus groups and individual interviews, as well as meetings with women's groups and associations. Proper consultation avenues should be used and the outcomes of these events should be adequately processed so that the potentially different views of both genders are genuinely reflected and taken into consideration (for example, when devising compensation and livelihood restoration entitlements). In addition, consultation times and arrangements should be conducive to women's presence and participation (for example, allowing children to be present or making sure that meeting times do not coincide with women's typical household chores).

3.3.4. Gender aspects in devising compensation entitlements

When compensation for land and other assets is required, it must take into account that men and women may have different preferences. For example, experience shows that men overwhelmingly prefer cash compensation. Women, in contrast tend to prioritise access to adequate housing, livelihood security and access to health and education services for their household members. It is, therefore, important that compensation entitlements be discussed with representatives of both genders and be based on a comprehensive gender analysis, as mentioned previously.

Titles to resettlement properties should be established in the name of both spouses, and cash compensation should be paid into joint accounts where this is legally and culturally possible. Where there are legal or cultural hurdles to achieving this, the project should adopt a best-effort approach, for example, by proposing on a systematic basis that titles be established in both names and seeking to convince all relevant parties that this is in the best interest of families in the long term.

The potential adverse effects on women of cash compensation should be mitigated by appropriate awareness and training activities, including access to financial training.

18 See EBRD, CDC and IFC (2020).

3.3.5. Gender aspects in livelihood restoration

As reflected in section 3.3.2 on baseline surveys, livelihood streams are often different for women and men. For example, males may take care of open-field agriculture while women may handle livestock and backyard gardening. Secondary or seasonal activities can also differ. In many areas, gathering (berries, mushrooms) is a female activity, while fishing or hunting is a male activity. Women and men also tend to engage in different small business activities. These gender-specific livelihood streams will be affected (or not) in different ways by land acquisition or restrictions on resource access.

It is critical to understand these different impacts, gender-specific constraints and gender responsibilities when devising livelihood restoration plans. While there may be common points, the livelihood restoration activities proposed to representatives of each gender may also be different, depending on the cultural, social and economic context, as well as on the abilities and wishes of each gender. It is, therefore, essential that separate consultation take place, as suggested in section 3.3.3.

3.4. Baseline surveys and cut-off date

See also sections 3.2 (vulnerability) and 3.3 (gender).

3.4.1. General

The key objectives of baseline surveys are as follows:

- **socio-economic surveys:** establish a social and economic profile of affected individuals, communities and groups that will be used, among other things, to:
 - devise livelihood restoration activities
 - provide the pre-impact baseline against which post-project livelihood restoration and standards of living will be assessed and monitored
 - provide the information for a gender analysis
- **census:** identify all affected people
- **inventory of affected assets:** provide the basis of compensation entitlements
- establish a **cut-off date** after which people moving into the area will not be eligible
- **vulnerability analysis** (see section 3.2): identify vulnerability factors and pre-identify vulnerable people.

Where socio-economic surveys have been conducted well before actual impacts, an update should be carried out after 2-3 years, sometimes sooner if significant macroeconomic changes have taken place.

3.4.2. Socio-economic surveys

Socio-economic surveys typically use a combination of quantitative social research methods (in the form of household interviews based on a questionnaire) and qualitative investigation.

3.4.2.1. Quantitative surveys

Quantitative surveys are typically administered at household level. The questionnaire should be simple, allow information to be coded, allow for stratified data analysis by relevant indicators, such as gender, and include indicators relevant to further livelihood monitoring, such as indirect income and expense and standard-of-living indicators (for example, possession of certain household items). To minimise the onus on affected people, the questionnaire should be administered in one hour or less wherever possible. Where the household involves a couple, the questionnaire should ideally be administered in the presence of both spouses. Tablet-based questionnaires are generally convenient and should be considered. Quality control, the training of enumerators and the supervision of teams by qualified social scientists are critical. These socio-economic questionnaires can also include a section on compensation preferences (for example, cash versus in-kind, resettlement location preferences). They should also include questions related to potential vulnerability criteria in order to identify vulnerable people within the project-affected community.

For long linear projects, such as highways or transmission lines, or projects in dense urban settings that can affect thousands of people in a relatively marginal way, it may be unreasonable to administer a detailed socio-economic survey to all, so a sample is acceptable. The size of the sample should be sufficiently representative and generate reasonable statistical confidence (typically 95 per cent confidence for a 5 per cent margin of error).¹⁹ The sample may need to be stratified to reflect geographic or other relevant differences, such as gender and ethnicity. The survey design and sampling method need to be established by a qualified social scientist or statistician. All physically displaced households should be included in the sample. Basic identification and vulnerability information is required for all affected people.

¹⁹ The EBRD *Resettlement Guidance and Good Practice* document includes specific guidance on sample size for socio-economic surveys. See EBRD (2017), page 33.

3.4.2.2. Qualitative surveys

While household surveys provide systematic baselines on all affected people, qualitative surveys will provide further information necessary to qualify and elaborate on the quantitative information and better understand specific issues, such as:

- land tenure, particularly where informal users are affected
- local governance and decision-making
- gender issues, such as those discussed in sections 3.3.2.2 and 3.3.2.3
- livelihood streams
- vulnerability factors (see also sections 3.2.2 and 3.2.3)
- use of communal natural resources and specific livelihood activities, such as fishing, hunting and gathering
- compensation preferences
- discussions with specific groups, such as community leaders, community elders, youth, women, the elderly and business communities.

Qualitative investigations must be conducted by experienced social scientists and be properly documented and processed.

3.4.2.3. Outcome of socio-economic surveys

The desired outcomes of socio-economic surveys are listed in PR5, paragraph 20, as follows:

- Establish a social and economic profile of the affected communities and people with disaggregation of data by sex and age.
- Establish village profiles, particularly for linear projects.
- Identify sources of livelihood that are affected and their significance to the overall livelihoods of affected people.
- Identify land-tenure regimes in the affected area.
- Identify any gender issues that may affect the land acquisition and resettlement process.
- Identify relevant factors of vulnerability and establish a list of vulnerable groups or persons.

3.4.3. Census and inventory of affected assets

Where data are available (which is the case in most economies where the EBRD operates), such investigations typically start with the review of any cadastral data obtained from the relevant authority. This will provide a list of land plots located within the project footprint or corridor, usually with some basic characteristics, possibly including a cadastral or fiscal value, as well as the identification of registered landowners. This is, however, not sufficient and must be complemented by field investigations to gather the following information with a view to valuation:

- confirmation of landowners (cadastral data may be obsolete, with recent transactions or successions not registered)
- identification of any land users, whether formal or informal, permanent or seasonal
- physical characteristics (slope, access, soil), actual land use (which may differ from information in the cadastral database), presence of specific developments (such as irrigation or drainage canals), presence of structures and nature/description of these structures
- identification and description of trees and crops
- measurements and detailed characterisation of land plots and structures.

The design of asset surveys must be consistent with any applicable national valuation requirements. It is usually best to allocate their implementation to licensed topographers and/or valuers that are familiar with both national standards and the concept of full replacement cost. Satellite imagery or drone flyovers can be very useful and cost effective, particularly if linked to a Geographic Information System (GIS) with cadastral information. These should always be considered for long linear projects.

3.4.4. Cut-off date

3.4.4.1. Objective

The cut-off date is meant to ensure a distinction between people owning, occupying or using the area prior to this date (and who will genuinely be affected by it) and those settling in the area for speculative reasons. It aims to protect the project from opportunistic claims for undue compensation. The cut-off date should be transparently established and disclosed.

3.4.4.2. Cut-off date established by law

Where the state is involved in project land acquisition, the cut-off date, as defined by PR5, is usually established by a legal act of government, such as a declaration of public interest (or, in some jurisdictions, by a specific decree or order taken in application of the declaration of public interest). Where this is the case, the project must coordinate its census and asset survey exercise (both in terms of method and schedule) with the statutory steps required by law. While not mandated by law, it is desirable in such cases that socio-economic surveys be concurrent with the census and asset surveys. Ensuring consistency between the requirements of PR5 and the mandatory steps prescribed by expropriation legislation is usually possible, but needs to be planned with care, before the declaration of public interest is taken, and preferably in discussion with the EBRD.

3.4.4.3. Project cut-off date

For private-sector projects, or where the cut-off date is not prescribed by a statutory process, the project will establish its own cut-off date. PR5 mandates that this cut-off date be at the end of the census/inventory process. It should preferably be backed by visual data produced through drone or satellite surveys, or photographs showing the site conditions. It is advisable that the project cut-off date be supported by a legal act taken by a local mayor, district head or regional governor.

3.4.4.4. Disclosure of cut-off date

PR5 has clear requirements as far as disclosing the cut-off date to the public and affected people is concerned. A cut-off date is valid only if it has been properly disclosed to the public (see PR5, paragraph 23). This is important where the project is faced with potential legacy issues, as a government agency may have cleared land in the past based on a cut-off date that was not meaningfully disclosed. Where the project resumes after a long period of time, people that have settled in the footprint will claim that they were not informed and, if the proper disclosure of the cut-off is not documented, a new survey, census and inventory and a new cut-off date may be necessary. To be meaningful, disclosure must take place locally, in local languages, and the process must ensure that all affected people have been informed in a timely manner.

3.4.4.5. Seasonal and other users

The cut-off date process and the need to implement a census or survey immediately thereafter may miss people that occupy the project area on a seasonal basis, such as herders, beekeepers, fishermen, waste pickers or sharecroppers. In undertaking socio-economic surveys and consultations with communities, the project must pay attention to the potential presence of such users in the project area. If they cannot be identified and surveyed at the same time, they will need to be surveyed later.

Similarly, the project must make sure that secondary users, such as people using mineral resources formally or informally, hunters and gatherers, are captured by census and socio-economic surveys.

3.4.4.6. Validity of cut-off date

Complex projects can often take longer than expected to materialise. There can sometimes be a long period between a declaration of public interest or similar act and the project actually starting. The government and project may then be tempted to consider any occupants who have settled in the area as illegal and seek to evict them without compensation. However, the requirements pertaining to cut-off date validity contained in PR5, paragraph 24, apply:

- where the cut-off date is established further to a national statutory process (see section 3.4.4.1)

- where the cut-off date is established by the project (see section 3.4.4.3), it is valid for a “reasonable period”.

In cases where a cut-off date was established several years (sometimes decades) ago and people are found to occupy these earmarked public areas, such a cut-off date would typically not qualify as clearly established and made public per the provisions of PR5, paragraph 23. A new census and inventory must be conducted and a new cut-off date must be set.

Such situations can occur in three cases:

- A cut-off date was declared and the area was cleared (sometimes with compensation), but people came back when they realised the project would not materialise soon, or settled because the area appeared free of occupation and they were not aware that a project had been suspended.
- A cut-off date was declared (a census may have taken place, sometimes even some compensation or assistance may have been delivered), but the area was never cleared of occupants.
- A cut-off date was declared, but the census dealt only with formal occupants (those with a title), neglecting informal users who were never informed.

In any of these cases, the strategy will depend on applicable legal requirements if the cut-off date was declared as part of a mandatory legal process²⁰ and on how much time has passed since the cut-off date was declared (assuming it was clearly established and made public per the provisions of PR5, paragraph 23):

- If people were compensated or assisted at the time of the initial cut-off date under conditions that meet the objectives of PR5 and subsequently moved back or did not move:
 - If the cut-off date is less than three years old and people received compensation and/or assistance under conditions in line with the objectives of PR5, this cut-off date can typically be deemed valid and the project can proceed with clearing the area, subject to a check that compensation rates paid at the time still meet full replacement cost, taking inflation into account.
 - If the cut-off date is three to five years old, then an updated survey and census should be conducted to assess the extent of changes and identify any additional eligible people (assuming a census was conducted concurrently with the cut-off). Compensation rates should also be updated.
 - If the cut-off date is more than five years old, it should be deemed invalid and the whole process of declaring a cut-off date and surveying the area should be redone. Those present at the time of the new cut-off date should then be compensated.

20 Most countries have clear requirements in this regard.

- If people were not compensated or assisted at the time of the initial cut-off and a census is available:
 - If the cut-off date is less than three years old, it can be deemed valid and the project can proceed with compensating and assisting affected people, subject to an update of compensation rates, but avoiding double payments.
 - If the cut-off date is three to five years old, then an updated survey should be conducted (similar to above) prior to establishing eligibility lists for compensation and assistance, along with an update of compensation rates.
 - If the cut-off date is older than five years, it should be deemed invalid and the whole process of declaring a cut-off and surveying to determine eligibility for compensation and assistance should be redone.

The above provisions may need to be adapted depending on the applicable national laws, but the general objectives that these provisions reflect should be safeguarded as much as possible.

3.4.5. Data management

Survey and other compensation- and resettlement-related data must be properly stored, as they will be used throughout the compensation implementation and monitoring phases. For projects with a high numbers of transactions, it is advisable to use professional tools and adequately qualified specialists to manage and store data. There are “off-the-shelf” software solutions available on the market, which still need to be tailored and usually require significant training effort. For large projects, a tailored tool using open-source development tools is often a good solution.

EBRD clients should check data privacy legislation in the economy where they operate, as this legislation may have implications for survey data gathering, processing and storage, as well as for consultation. It is often necessary to get project-affected people to sign a legal waiver at the time of survey, explicitly giving them permanent right of access and correction. In addition, some jurisdictions prohibit such data being stored or processed in a foreign country.

3.5. Valuation at full replacement cost

3.5.1. Definition

Full replacement cost valuation is a method of valuation that calculates compensation sufficient to replace assets and the requisite transaction costs associated with asset replacement. Where residential structures are concerned, the full replacement cost method must yield a value that is sufficient to purchase a residence that meets adequate housing criteria. This is important, as many poorer residents live in inadequate or small structures, the valuation of which would provide a sum insufficient to buy a house on the market.

3.5.2. Replacement cost in functional real-estate markets

Where real-estate markets are functional and reflect supply and demand, replacement cost is the market value established by independent and competent real-estate valuation plus transaction costs. Valuation in such cases is usually based on the comparative method, whereby the property being acquired (or its constitutive elements – land, buildings, trees, and so on) is valued by comparing it with similar transactions in equivalent areas. EBRD projects should be mindful of the following when using this method:

- The number of transactions should be sufficient to create a meaningful baseline.
- Asking prices and real transacted prices may be different, so using asking prices in the comparative method (such as those on real-estate websites) may yield biased results.
- Properties used as benchmarks should be comparable in all respects (location, economic potential, condition).
- Transactions should be recent and take into account macroeconomic changes in the recent past that may affect the price of real estate.
- In some jurisdictions, transactions may be under-declared to the tax authorities to minimise taxes due. Using the tax registry to create a baseline of comparable transactions may, therefore, be misleading. The comparison should seek to estimate the higher price actually paid rather than that declared.

Where land acquisition takes place within a state-led project, EBRD projects should make sure that valuation is undertaken by officially certified valuers using prescribed mandatory methods. Valuation standards established by the International Valuation Standards Council can also be considered.

Experience shows that in those economies where the EBRD operates, functional real-estate markets typically exist in larger cities, but not always in rural areas, where there are often too few transactions to generate reliable comparative data.

3.5.3. Replacement cost in formative or non-functional real-estate markets

Where real-estate markets are in their formative years or where they do not exist, using full replacement cost valuation is generally more complex, as the comparative method outlined above cannot be used. Full replacement cost can be determined by alternative means, such as one or more of the following:

- Land:
 - Dedicated surveys: Preferably use focus-group discussions and key informant interviews to query locals on typical prices (this often requires tact and a good understanding of local culture and values in relation to land and money).
 - Calculate the output value for land or productive assets (the “income” valuation method).
- Structures: A bill of quantities-based methodology can be used to calculate the undepreciated value (“as new”) of replacement materials and labour for the construction of structures or other fixed assets, with no deduction for depreciation or taxes and the like.
- Trees and crops:
 - Annual crops:²¹ The full replacement cost is the typical yield observed in the area multiplied by the average or median selling price (variations in time need to be considered). No deductions are made for expenses or other items.
 - Perennial crops: The full replacement cost is the sum of:
 - The loss of income during the whole period required to re-establish the affected perennial crop to its current level of production. This is usually calculated by integrating over a period of time the value of the lost harvests at the local selling price. This calculation usually requires gathering data from qualified agronomists and/or the affected farmers themselves.
 - The direct cost of inputs (labour, fertilisers, and so on) during that period.

Where affected people are allowed to salvage materials from their affected structures, no deductions to the full replacement cost are made.

3.5.4. Should future or current value be considered?

There are situations in which affected people claim that their properties should be valued taking into account the value increase brought about by the project itself or by a forthcoming change in land categorisation. For example, in one pipeline project affecting agricultural land in an area

close to a large city that was soon likely to be developed into suburbs, farmers claimed that their land should be valued as construction land rather than agricultural land, even though it had not been reclassified as such by the relevant authority. Similar claims can arise from the construction of infrastructure, such as roads, that might increase the value of adjacent land. Lastly, a project may cause a change in land cadastral classification (for example, from agricultural to construction or industrial land), which could, in turn, trigger a notable increase in land value.²²

According to legislation and/or practice in most countries, land should be valued at its current value, not taking into account potential opportunity losses. Where such issues arise, the EBRD recommends considering national benchmarks for similar situations, including the engagement of both government officials and valuers, checking how similar questions have been addressed in other projects and setting project policy accordingly. Whatever the avenue, the outcome should always meet the “full replacement cost” requirement.

3.5.5. Valuation of inadequate housing

In cases of physical displacement, the full replacement cost must at least be sufficient to enable the purchase or construction of housing that meets adequate housing criteria. This is particularly relevant to projects involving poorly built, inadequate residences, such as slums, but can also apply to projects in rural or urban areas that affect old, traditional houses that do not meet current building standards, such as those associated with energy efficiency or earthquake resilience (“non-compliant” housing).

The best way to approach this is usually to propose project-built resettlement houses that are designed to meet all applicable national standards.

However, where the compensation approach is based on cash for all or some of the physically displaced people, the amounts should be such that the minimum paid will always allow the purchase of adequate housing that meets local standards. The usual way to achieve this outcome is to provide a minimum amount per square metre, which has been calculated to align with adequate housing criteria, national building standards and the value of what is actually available on the market. People living in affected inadequate or non-compliant housing will receive this amount so that they can replace it with adequate and compliant housing. Note that for slum dwellers and informal users, the EBRD does not necessarily mandate that they be provided with alternative housing under a full ownership arrangement, as detailed in section 3.15.3.

Further detail on adequate housing is provided in section 3.15.4.

21 Note that entry to land should generally be planned in such a way that annual crops can be harvested ahead of taking ownership.

22 In several economies where the EBRD operates, mining or industrial projects are only permitted once a change in land classification has taken place. This typically requires an update of spatial plans. The land must then be classified as industrial before it can be acquired. In such cases, although the initial purpose and classification of the land are clearly agricultural, law and practice would certainly require compensation for the land to be classified as industrial.

3.5.6. Transaction costs

Transaction costs are all of the costs an affected owner incurs as a result of the involuntary transaction (whether negotiated or resulting from a compulsory process), which she or he would not have incurred if the project had not taken place. These can include:

- direct transaction costs, such as registration taxes, inheritance taxes, notary fees, cost of establishing power of attorney
- indirect transaction costs in reasonable lump-sum amounts, such as transport, telecommunications and value of time lost
- taxes that the affected landowner may incur on top of direct costs as a result of the transaction, including income taxes, for example
- the cost of processes an informal user may incur to register their rights to land.

In some economies where the EBRD operates, cadastral registries are not necessarily up to date, particularly in remote rural areas. When a project starts, it is important to check at the resettlement planning stage the status and currency of cadastral data. Where they appear to be outdated, the project should engage with the relevant authorities and consider supporting the update of the cadastre, including procuring licensed surveyors to undertake the fieldwork and paying registration fees. Experience shows that doing this proactively is well worth the time and money invested, as it saves considerable time down the line, removes a burden from the affected people and often supports the project's "social licence to operate".

3.5.7. Updating full replacement cost during the project cycle

For projects that involve multiple transactions over a period of more than one year, it is necessary to review compensation rates on a regular basis, typically once a year unless circumstances such as currency devaluation or high inflation demand otherwise.

The compensation rates should be updated by qualified valuers and involve a review of applicable rates against current market conditions particularly for crops and trees (as agricultural prices can be quite volatile) and for land and structures, where applicable (the cost of construction can also be quite volatile, as it is linked to cement and steel, which can see significant fluctuations).

Any updated rates should be publicly disclosed, with clear conditions of applicability (from what date, for which period of time). The initial resettlement plan does not necessarily need to be updated accordingly, but it is important that contingencies in the initial budget are sufficient to accommodate such updates and that the plan establishes the frequency of and arrangements for such updates.

For linear projects, consistency of rate calculation methodology over the length of the project is also important to avoid discrepancies between neighbouring administrative units.

3.6. Valuation of businesses

The valuation of an affected business can comprise up to four components:

- Any fixed asset (such as land or structures) owned by a business and affected by the project will be valued at full replacement cost under rules similar to those applying to any land or structures affected by the project.
- Professional equipment that cannot reasonably be moved should be valued at full replacement cost.
- Loss of income during the transition period should be offset by cash compensation if legally possible or other assistance, based on records and/or tax returns for formal businesses. For informal businesses, a fair assessment of earnings should be made together with the owner and/or operator and targeted assistance in cash or other forms should be made available.
- Employees should be given targeted assistance in respect of any work stoppage resulting from the impact on the enterprise, so that their livelihoods are maintained during that suspension of income. Alternatively, their termination or suspension of employment should be addressed in compliance with PR2.²³ Where there are no unemployment schemes that can handle such assistance, the project should find alternative mitigation measures. Employees of informal businesses, employees without a work contract and individual businesses that depend significantly on the activity of the affected business should be addressed as well via cash or non-cash assistance (that is, among other things, identified in the census and investigated in the socio-economic surveys), as their livelihoods will be affected too. Where the enterprise cannot be re-established for whatever reason, providing employees with six months of lost income is generally adequate. Assistance with re-employment, including training, can also be proposed.

Where a business is operated by a person who is not the owner, tripartite agreements (project, owner and operator) may be needed to share the compensation according to the respective losses of the different parties.

Where employees are to be given targeted assistance in respect of impacts on their employment, the EBRD recommends direct payment to the employee rather than indirect payment through the business owner, where this is legally possible.

23 See EBRD (2019), p. 16.

For large, formal businesses held by several shareholders, specific legal and financial advice may be needed to mitigate legal risks to the project associated with the payment of compensation.

For very small, informal businesses (such as a farmer using a roadside stall to sell fruit), the best solution is to facilitate their swift relocation to minimise the economic disruption.

Where activities are very specific (for example, wine making in designated areas or fishing), business valuers may need to be supported by experts in the field.

3.7. Other valuation issues

3.7.1. Loss in value of land not subject to project land acquisition

There are cases where people whose properties are not being acquired claim the project has caused a reduction in value (for example, due to landscape or environmental impacts, such as noise). This could be the case, for example, for projects with landscape impacts, such as overhead transmission lines, and is particularly relevant to areas with high tourism potential, where the value of a good view can be very high.

PR5 does not specifically address such issues. They can sometimes be considered as part of the impact assessment process, for example, through mitigation measures for noise, such as the double-glazing of windows in residential areas. They can also be considered on a case-by-case basis through the grievance management process, whereby the merit of the claim is assessed, taking local legislation, jurisprudence and practice into account. However, where such issues are identified and assessed as likely at project planning stage (for example, in tourism areas), the EBRD will require a methodological approach to be prepared and presented in the resettlement plan to ensure consistency and fairness of treatment, rather than an ad hoc process that could result in unfair mitigation measures or compensation only for more vocal or better-connected individuals.

3.7.2. Valuation of restrictions on land

Some projects base their land acquisition strategy on restrictions rather than outright purchase. This is the case with many pipelines and transmission lines. Lands above and around the pipeline or under the conductors will remain in original ownership, albeit with restrictions, such as a ban on erecting structures or planting high trees, with the owner then compensated for these restrictions. This can also be the case in “sanitary protection zones” established by the local regulator, for example, around potentially hazardous industrial sites, airports or intakes from ground or surface water, or similar safety or protection zones.

In most jurisdictions, there is typically no mandatory or even broadly accepted methodology for valuing such restrictions. The project must assess the actual impacts and devise a compensation strategy that addresses the full extent of the impacts and takes in account local precedents, if any. For example:

- If people living in an area designated as a sanitary protection zone on a formal or informal basis are required to move out as a result of a project, they should be offered a full resettlement package in line with PR5.
- Where land affected by a restriction is constructible²⁴ and the project-induced restriction will prohibit construction, affected people could be offered the difference in value between construction and agricultural land (both estimated at full replacement cost), even if they have no immediate project to build, for those patches of land that are actually potentially constructible.
- Where farmers are prohibited from growing trees under a transmission line in an area where trees are cultivated, they should be offered compensation for this restriction based, for example, on the net present value of the loss of income.

3.8. Compensation entitlements

3.8.1. Eligibility

In line with similar standards, EBRD PR5 identifies three categories of rights holder that are eligible for various types of compensation:

- persons who have formal legal rights to the land (including customary and traditional rights recognised under national laws) or assets
- 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 law
- persons who have no recognisable legal right or claim to the land or assets they occupy or use.

Note that the word “persons” covers both people and legal entities.

3.8.2. Overview of entitlements for the three categories of project-affected person

Table 2 provides a brief overview of potential compensation entitlements for all three categories of affected people, as defined in PR5, paragraph 26.

²⁴ “Constructible” in this instance should be understood as including both land that is officially categorised as construction land and land that actually bears constructions, even if it is not categorised officially as construction land.

Table 2: Overview of compensation entitlements for the three categories of affected person

	Impact	(i) Formal rights holders	(ii) Holders of recognisable rights	(ii) Informal users ²⁵
1	Physical displacement			
11	Land	Land-for-land compensation or compensation at full replacement cost	Provide support for the legal recognition of rights and, once rights are recognised, land-for-land compensation or compensation at full replacement cost	PR5 does not require compensation for land to informal users Replacement land can be offered as a livelihood restoration measure
12	Crops and trees	Replacement (where practical) or compensation at full replacement cost	Replacement (where practical) or compensation at full replacement cost	Replacement (where practical) or compensation at full replacement cost
13	Residential buildings	Cash compensation at full replacement cost, replacement and resettlement assistance	Provide support for the legal recognition of rights and, once rights are recognised, cash compensation at full replacement cost and replacement and resettlement assistance	Compensation at full replacement cost of structures and/or resettlement assistance to allow relocation to adequate housing (not necessarily in full ownership, but with some degree of security of tenure, for example, social housing with a long-term lease); this may apply to occupants and tenants, whether formal or informal Formal or informal tenants can also be addressed by a cash payment sufficient to allow them to pay the deposit required to secure a new rented dwelling (typically three to six months of rent), unless they are formal tenants already adequately addressed in legislation and tenancy agreements (for example, with an adequate notice period)
14	Non-residential buildings	Replacement or compensation at full replacement cost	Provide support for the legal recognition of rights and, once rights are recognised, replacement or compensation at full replacement cost	Replacement or compensation at full replacement cost for non-residential buildings
2	Economic displacement			
21	Land	Land-for-land compensation or compensation at full replacement cost and livelihood restoration assistance	Provide support for the legal recognition of rights and, once rights are recognised, land-for-land compensation or compensation at full replacement cost and livelihood restoration assistance	No compensation for land, however, replacement land could be offered as a livelihood restoration measure, as well as livelihood restoration assistance
22	Crops and trees	Replacement (if practical) or compensation at full replacement cost	Replacement (if practical) or compensation at full replacement cost	Replacement or compensation at full replacement cost (for trees in ownership of the informal user of land)
23	Structures	Replacement or compensation at full replacement cost	Provide support for the legal recognition of rights and, once rights are recognised, replacement or compensation at full replacement cost	Replacement or compensation at full replacement cost for those non-residential buildings that are in full ownership of informal users of land
24	Enterprises	Replacement or cash compensation of structures and business re-establishment assistance	Replacement or cash compensation of structures and business re-establishment assistance	Replacement or cash compensation of structures and business re-establishment assistance
25	Business employees	Compensation for termination or suspension of employment per PR2 or compensation for lost income during the period required to re-establish the business or/and livelihood restoration assistance if the business cannot be re-established	If viable, provide support for the legal recognition of rights and, once rights are recognised, compensation for lost income	Targeted assistance covering lost income during the period required to re-establish the business Livelihood restoration assistance if the business cannot be re-established

25 See details in section 3.8.3.

3.8.3. Project-affected persons in category (i)

Projects that affect persons of the second category per PR5, paragraph 26 (see section 3.8.1) must provide free legal support to project-affected persons to regularise their ownership rights, such that they can receive compensation per category (i) entitlements. This may entail:

- registering or re-registering ownership rights and issuing related title documentation
- regularising inheritance, marriages and divorces, transactions or servitudes
- regularising or updating building permits and any missing permits or certificates that local legislation may require.

Projects should make legal services (qualified lawyers or notaries and paralegals) available to project-affected persons to support them in preparing documents and applying to the relevant agencies, and monitor the process.

The payment of fees associated with legal support is a project obligation. However, the payment of tax arrears, levies, duty and stamp rights, and so on due by project-affected persons as a result of the regularisation process is not necessarily a project obligation (although it may be good practice in many cases and substantially expedite the process).

3.8.4. Informal users in category (iii)

3.8.4.1. Background

Many projects have to deal with informal settlers or land users occupying public land (and, more rarely, private land) on an informal basis. In the economies where the EBRD operates, people occupy public land designated for purposes other than construction for various reasons. For example, they settle in non-constructible areas for a lack of other solutions, they establish informal shops, kiosks or stalls along roads, or they build informal dwellings in areas meant for flood protection or as safety buffers around hazardous industrial facilities (and which are supposed to be empty of people).

Informal users have often occupied such areas for a long time. They are generally tolerated by local authorities in the name of social peace, but also because their presence and livelihood activities can be both a source of inputs for businesses or of income for local municipalities through market taxes or other levies. Sometimes, state utility companies provide power or water to these informal areas, thereby sanctioning the informal occupation.

Residents of slums or informal traders are sometimes undocumented migrants whose rights to legal due process are limited by regulations or by the fear of legal action, fines or deportation. They may go unnoticed or be tolerated until a government agency requires the land where they live or trade for public purposes. As a result, such people are particularly vulnerable to forced evictions and they will often be unwilling or unable to demand legal due process.

In dealing with informal settlers, clients should be mindful that the EBRD does not accept forced evictions, as detailed in section 3.1.4. Projects where a forced eviction is found to have taken place prior to the EBRD's involvement will typically not proceed.

3.8.4.2. Eligibility of and benefits for informal users per PR5

Informal users fall under category (iii) of PR5 paragraphs 26 and 28. The EBRD does not require the compensation of informal users of land that they do not own. However, the Bank mandates compensation for any assets held in ownership by informal users on the land they occupy, such as structures, be they residential or not, business equipment, irrigation or drainage structures, trees and crops. The EBRD also mandates resettlement assistance for all physically displaced groups, including informal users. Such assistance does not necessarily involve access to a replacement dwelling with full property ownership and could include facilitating access to one of the following options, for example:

- municipal or state social housing under an affordable rental arrangement, as long as the “adequate housing” criterion is met (see 3.15.4.) and there is reasonable security of tenure (that is, a lease over several years)
- privately held rental housing
- facilitated access to a plot of land with security of tenure, where physically displaced households can self-build a residential house with project assistance, including accessing affordable financing mechanisms.

A common situation in the economies where the EBRD operates is that of herders informally using state, municipal or community land to graze their animals. This is tolerated, but rarely formalised in a lease or similar legal agreement. In such cases, the project is expected to facilitate access by these herders to similar grazing land in a favourable location. Where possible, the formalisation of this occupation should also be facilitated to provide improved security of tenure.

In addition, the EBRD mandates livelihood restoration for economically displaced informal users based on principles similar to those that apply to registered owners. Livelihood restoration requirements also apply to informal users of natural resources, such as herders grazing animals on state-owned, municipal or community-held meadows, gatherers of berries, mushrooms, fuel wood in public forests, hunters, as well as fishermen using continental or maritime water bodies on an informal basis, as long as such fishing activities are not illegal (see 3.8.4.3) or environmentally harmful.

Clients are not required to compensate or assist opportunistic settlers who encroach on the project area after the cut-off date as long as this cut-off date meets the conditions of PR5, paragraph 23.

It is important to note that these requirements of PR5 are unchanged from previous versions of the Performance Requirements and in line with the policies of all major multilateral lenders.

3.8.4.3. Illegal activities

Projects may affect illegal activities, such as the growing of plants for the preparation of narcotics, or illegal fishing or hunting of prohibited species or in protected areas. Sometimes, such activities are somehow supported by national or international criminal organisations. The EBRD does not expect compensation for such activities. However, where the livelihoods of project-affected persons are based on illegal activities, the EBRD expects livelihood restoration activities to support conversion to legal alternatives, while recognising the difficulties inherent in such endeavours. Planning is delicate and may involve specialist assessments (potentially including a security assessment) and extensive interaction with government and/or non-government agencies handling such programmes.

3.8.5. Timing of payments

Compensation will be provided before displacement or the imposition of access restrictions on land or assets. This is a fundamental principle that is enshrined in the constitutions of many countries (“fair and prior compensation”). Resettlement plans must substantiate the mechanisms that are put in place to ensure this principle is respected, including in government-led land acquisition. Exceptions to this principle may be acceptable (subject to EBRD review and approval) in the following cases only, to be detailed in resettlement plans:

- where certain legal difficulties are experienced (absentee landowner, succession, ownership dispute before court), as long as due process has been followed under the control of a judge, notary or similar officer, and the compensation monies are deposited into a dedicated escrow account (such account preferably remaining under the control of an independent party such as a judge or notary), with a proven mechanism to effect payment immediately upon resolution of the legal problem
- where a payment in instalments can mitigate the risks of cash misuse and subject to such payment being explicitly consulted upon with the community and formally accepted by each recipient in a specific agreement that clearly indicates the timing and amounts of instalments.

“Prior to impact” means prior to the time that people are unable to access their land, be it because construction of the project has started or because land rights have been formally transferred. For agricultural land, it is always a good idea, where possible, to take into account agricultural cycles when planning land entry to minimise impacts on livelihoods (for example, allow farmers to harvest).

3.8.6. Cash versus in kind

Resettlement research has for many years documented multiple examples of cash compensation failing to achieve policy objectives due, among other things, to recipients being unprepared to receiving relatively large amounts of cash and resulting cash misuse, often to the detriment of women and children in the household. The EBRD supports in-kind compensation wherever possible, that is, resettlement through the provision of housing to physically displaced people and the replacement of productive assets, particularly agricultural land, for economically displaced people.

For physically displaced people, clients are expected to identify suitable and reasonably attractive²⁶ resettlement solutions (which could be the construction of new houses or the purchase of existing properties) and propose them as an alternative to cash compensation (see section 3.15.1).

There are certainly legal and practical obstacles that make land replacement more challenging than cash compensation and projects frequently claim that it is unfeasible or unacceptable to the people in question. The EBRD requires that any such claims be fully substantiated by signed consultation minutes, with adequate demonstration that women have been involved in discussions. It may also require a land availability study to be carried out by an independent party (as part of the resettlement plan) to assess whether replacement land is available.

In interpreting “land-based livelihoods”, it is important to recognise that in many of the economies in which the EBRD operates, so-called “backyard agriculture” and other forms of small-scale agriculture (including keeping some livestock) can be critical to the livelihoods of poor people, particularly elderly pensioners living on small pensions, sometimes even in suburban or urban areas. The livelihoods of poorer people are often multi-dimensional, so affecting just one income stream, as small as it appears, can jeopardise a households’ livelihood in a lasting way. People whose primary activity is not agriculture may still depend on land to such an extent that depriving them of this land could aggravate poverty.

Where land is owned by a group of co-owners (typically inheritors of the original owner), with one or more of the co-owners actually using the land, the flaw in cash compensation is that the actual user will only receive a small fraction of the compensation, resulting in them being unable to purchase alternative land and their livelihoods being jeopardised. As mentioned in PR5, paragraph 31, the EBRD requires land-for-land compensation in such cases. This may also apply to land owned by communities (for example, communal pastureland), for which in-kind compensation is preferable.

²⁶ In proper locations, built according to proper design and standards, meeting adequate housing criteria and meeting the expectations of affected people.

Cash and in-kind compensation are not mutually exclusive. Rather, combinations of the two often provide excellent solutions that meet both the need for a safety net (a house and/or agricultural land) and allow households to satisfy some basic needs or pay back old debts.

3.8.7. Entitlements in an expropriation process

Where landowners reject negotiated compensation offers and the project has to resort to expropriation, this typically raises a number of potential issues:

- The judicial process may be complex and lengthy, potentially resulting in the state seeking “urgent entry into land” as a first step in the expropriation process. In some jurisdictions, land can be entered into based on an “urgent entry” ruling by a judge, with payment delayed to a later stage. This can result, for example, in farmers being deprived of their livelihoods with no immediate compensation.
- The expropriation process could result in a lower indemnity to the affected landowner than what was initially proposed in the negotiated process.
- Expropriation may result in significant legal costs for the affected landowner.
- Expropriation may result in eviction where the landowner consistently refuses to leave, in which case the provisions of section 3.1.4 should apply.

The EBRD recognises that projects are not always in a position to exert leverage on the state agencies and judicial bodies that take over land acquisition processes when expropriation is triggered. This is the main reason why PR5 requires negotiated settlements, with expropriation only a last resort. Where expropriation is triggered, projects should take the following steps:

- Affected people should be properly informed of the implications of expropriation, including potential delays in receiving compensation, the risks of “urgent entry into land” or similar mechanisms, the potential for a lower indemnity, where applicable, and available recourse mechanisms.
- Affected people must be informed, with adequate notice, of the project’s intention to resort to expropriation and such notices must be documented, as they can be required by the EBRD for auditing purposes.
- Projects should continue to seek engagement with affected landowners throughout the expropriation process and affected persons should be able to access the project grievance mechanism.

- Wherever it is legally possible (and it is, indeed, possible in many jurisdictions), affected landowners should have the option to suspend the expropriation process at any point before the final ruling and seek an out-of-court negotiated settlement.
- Where an indemnity is eventually awarded that is lower than what was initially proposed, the project should consider “topping up” this indemnity to achieve full replacement cost and/or compensation rates negotiated for all landowners.
- Where possible, the cost of expropriation should be covered by projects where expropriation has to be triggered for technical reasons (for example, with absentee landowners that cannot be contacted).
- There must be no retaliation against people involved in expropriation processes. Specifically, their right to access livelihood restoration activities and other non-compensation-related project benefits must be safeguarded.
- EBRD requirements on the prohibition of forced evictions apply to people in an expropriation process.
- Resettlement plans should precisely describe expropriation processes and conditions that would trigger expropriation and address all points mentioned above.

3.8.8. Voluntary land donations

The acceptable way to acquire land is to compensate for it in kind or in cash per the requirements of PR5. Voluntary land donations are not a typical way of acquiring land in EBRD projects. Voluntary land donations are acceptable only as an exception, where all conditions mentioned in PR5, paragraph 35 are met:

- The potential donor or donors have been appropriately informed and consulted on the project and the choices available to them.
- The potential donor or donors have confirmed their willingness in writing.
- No coercion, intimidation or bribery has been used.
- The amount of land being donated will not reduce the donor’s current livelihood levels and the land donation entails no residual livelihood impact.
- No household relocation is involved.
- The donors are expected to benefit directly from the project.
- For community or collective land, donation can only occur with the consent of individuals using or occupying the land.
- Clients will maintain a transparent record of all consultations and agreements reached.

Any prospective land donation in an EBRD project must be submitted to the Bank for prior review and written approval. Donations sought by contractors or sub-contractors are covered by PR5 and the conditions above apply.

Unsanctioned or undocumented land donations will be deemed tantamount to forced eviction.

3.8.9. Compensation for community-held resources

There are multiple examples in the economies where the EBRD operates of natural resources being held in collective ownership (formal or informal) by communities (like high-mountain pastureland in the Caucasus or “collective land” in Morocco). The land may be formally titled to the state or a municipal entity, but communities hold a well-recognised (often customary) usage right and sometimes formal ownership rights. In such case, the following steps should be taken:

- understanding legal requirements (in some countries, there is a prescribed process for acquisition and compensation of such land)
- valuing the loss (sometimes difficult when there are no transactions on similar land)
- consulting the community on their compensation and livelihood restoration preferences,²⁷ prioritising, wherever possible, modes of compensation that will offset impacts on livelihoods and strengthen community governance,²⁸ rather than simply sharing cash between residents
- consulting direct users (who may be different to the customary owners, for example, nomadic or transhumant herders using community land in a certain area), particularly in view of access to alternative resources and livelihood restoration if there is a substantiated impact on their livelihoods
- reaching a negotiated settlement in the sense of section 3.1.5, including the associated formalisation and documentation requirements.

3.8.10. Community facilities, utilities and public amenities

A project taking land may affect schools, health centres, markets, administrative buildings and associated services, water or power supplies, sanitation facilities, community centres, and central heating facilities and networks, among other things.

The EBRD requires the replacement of such equipment and/or associated services to a similar or better level. This does not necessarily mean that a new facility has to be built, but the replacement of the service could be through the enhancement of existing equipment (for example, adding classrooms to an existing school or expanding an existing water or heating network). This requires engagement with the relevant agency or community, such that service

reinstatement principles and designs are agreed and staff are appointed or reappointed in time. Where a new system has to be built, care should be taken that this new equipment meets applicable standards and can be permitted (for example, drinking-water quality, energy efficiency, and so on). The cost of the service should also be assessed, as new affordability issues may arise, so that the new facilities are affordable and sustainable. Where necessary, specific provisions for the vulnerable will need to be devised, so that they can access the service.

3.9. Stakeholder engagement and grievance management

3.9.1. Stakeholder engagement

Stakeholder engagement is central to land acquisition and resettlement scoping, planning and implementation. PR10 principles apply to engagement undertaken for land acquisition and resettlement.²⁹ Any resettlement plan submitted to the EBRD must include:

- a clear and detailed account of consultation methods, events and outcomes, as well as relevant documentation, such as signed minutes of meetings, which must be kept for potential auditing
- a plan for further consultation in the resettlement implementation period (alternatively, this can be presented in the stakeholder engagement plan for the project).

For sensitive resettlement activities, particularly where significant physical displacement is envisaged or where indigenous groups or vulnerable parties are affected, the EBRD may require a specific stakeholder engagement plan for the resettlement process. This may be similar in structure to the project stakeholder engagement plan, but with a specific focus on consultation, negotiation processes and information disclosure specifically related to resettlement, as experience shows that formalising engagement planning into a document is generally useful to the project itself.

3.9.2. Safety of stakeholder engagement and remote engagement

From a Covid-19 pandemic perspective, clients should scrutinise potential stakeholder engagement activities in light of (1) measures prescribed or recommended by national authorities and (2) EBRD guidance on the topic, including the Covid-19 stakeholder engagement guidance note,³⁰ which lists a number of alternative methods for safe, remote stakeholder engagement involving no physical meetings. The use of online tools should ensure personal data security and respect of privacy.

²⁷ If there are impacts on livelihoods.

²⁸ Examples include community projects, such as repairing a school or water system, livelihood projects, such as providing access to veterinary services (or artificial insemination services) to affected communities, improving the quality of other available pasturelands and supporting rational management of pasture land to avoid over-grazing.

²⁹ See EBRD (2019), p. 47.

³⁰ See EBRD (2020).

Where meetings are deemed necessary for meaningful engagement and are permissible, precautionary measures must be taken. This includes complying with all national requirements and guidelines, ensuring that the venue is accessible, applying social distancing and ensuring the availability of handwashing and disinfectant facilities, masks, and so on.

3.9.3. Information disclosure

Requirements pertaining to the disclosure of resettlement plans are detailed in section 3.10.6. However, resettlement plans are often complex and bulky documents. They include multiple details that may be of limited interest to project-affected persons. This is why the EBRD requires (“simple, practical, accurate and culturally appropriate documentation meant for broad dissemination to affected persons”),³¹ such as a guide to land acquisition and compensation (GLAC). A GLAC is not meant as a substitute for a resettlement plan, the full disclosure of which remains necessary in line with section 3.10.6. Rather, it should include practical, short and user-friendly information that project-affected people can use as a guide throughout the land acquisition, compensation and (if applicable) relocation process, such as:

- key project and sponsor information, including relevant addresses and contact details
- a summary description of project land and displacement impacts (physical, economical) with relevant numbers and clear maps
- eligibility rules
- compensation principles and processes
- legalisation processes and associated project support, where applicable
- compensation rates for the various types of affected asset
- survey process and cut-off date
- description of resettlement sites, where applicable
- resettlement assistance measures
- livelihood restoration measures
- documents that project-affected persons should prepare (such as identity documents, land titles, building permits, passports and so on)
- contact information for community representatives and/or local authorities involved in the land acquisition and resettlement process
- grievance management, relevant avenues and contact information.

31 PR5, paragraph 39.

32 See EBRD (2019), p. 47.

33 See EBRD (2023).

34 See EBRD (2019), p. 47.

35 Ibid.

The GLAC should be disseminated to all affected people and made broadly available in administrative offices (districts, municipalities), public libraries, on the project website and social networks. In multilingual countries, it should be prepared in languages accessible to those who are affected, which may include official and unofficial languages.

3.9.4. Grievance mechanism

3.9.4.1. Overview

The grievance mechanism can be part of the system established for the project as a whole per PR10,³² or separate. The accompanying guidance note on PR10 provides detailed advice on establishing a grievance mechanism.³³ For projects with significant displacement impacts, or where land acquisition is managed separately from other impacts (for example, by a government agency), there are often benefits to having a separate grievance mechanism for land acquisition and resettlement, also because land acquisition may start earlier than other project processes. Another reason for keeping the two separate is the fact that the general grievance mechanism described in PR10, paragraph 29 does not necessarily include a recourse mechanism (although this is recommended),³⁴ and the land acquisition and resettlement grievance mechanism must have one. All key principles that apply to the grievance mechanism also apply to the resettlement grievance mechanism.³⁵ The anonymous processing of grievances and compliance with national data privacy requirements is also necessary.

The grievance mechanism has to be in place from the inception of the land acquisition and resettlement planning process (usually well before the resettlement plan is submitted) and, specifically, prior to the declaration of cut-off and asset surveys, which typically generate a significant number of grievances.

3.9.4.2. Recourse mechanism

PR5 requires a recourse mechanism designed to resolve disputes in an impartial manner to be included in the project grievance management system. This recourse mechanism should be distinct from the judicial system; aggrieved persons can resort to the justice system at any step in the grievance process, but they should also be given an opportunity to appeal the project's initial decision without resorting to the courts. The arrangements are context specific and could include the following:

- forming a local grievance committee, which could include local authorities, municipal counsellors, representatives of project-affected persons (both male and female) and civil society (such as NGO representatives or religious leaders); such committees can be established for each sizable affected community or be project-wide, depending on the size of the project-affected area and taking into account cultural and socio-political sensitivities
- using local representatives of national ombudsman services where these are available at a reasonable distance from the project site.

3.9.4.3. Mediation services

For projects with significant displacement impacts, it may be expedient to arrange for mediation services be provided to aggrieved persons by an independent party, which could be a local lawyer with such experience or an NGO. The mediation can be triggered through the recourse mechanism described in the previous section.

3.10. Resettlement planning documentation

3.10.1. Applicability of the requirement for a resettlement plan

Where PR5 is applicable (see sections 2.1 and 2.3), the EBRD requires a resettlement plan. No project that triggers PR5 is exempt from the requirement to prepare a resettlement plan and submit it to the EBRD. This requirement applies regardless of the magnitude of displacement (that is, it starts from one land plot and one household).

However, as detailed in other sections of this note, the scope, contents and preparation arrangements of the resettlement plan must be proportionate to the magnitude of impact.

3.10.2. Title of resettlement plan

Resettlement plans are named as such, per PR5, for the sake of clarity and simplicity. This is the recommended title. However, the name of the document can be changed if it is deemed more conducive to engagement with stakeholders, particularly to avoid confusion or concern in projects with no physical displacement or where translation of the word “resettlement” may cause confusion in national and local languages. For example, “land acquisition and compensation plan”, “land acquisition and livelihood restoration plan” and multiple variations on these terms are all acceptable, as long as they adequately reflect the substance of the plan.

3.10.3. Contents of the resettlement plan

3.10.3.1. Projects with minor land acquisition impacts

The resettlement plan can be brief and should present the following (see also Appendix 4):

- the extent of impacts (number of affected land plots, affected households, affected individuals), key characteristics of affected land and other assets (structures, crops, trees, natural resources), location on map(s)
- eligibility criteria, cut-off date, results of asset surveys and socio-economic surveys
- entitlements (valuation methodology, compensation rates, payment procedures)
- consultations carried out to date and key outcomes, plan for further consultations, grievance management system

- livelihood impacts and livelihood restoration and improvement measures
- monitoring (inputs, outputs, livelihoods)
- resources for implementation, roles and responsibilities, budget and implementation schedule
- annexes – lists of affected plots, lists of affected households and their characteristics, relevant maps and photographs, minutes of relevant meetings.

3.10.3.2. Projects with physical displacement or significant economic displacement

The template structure of a resettlement plan (including situations that entail physical displacement) is presented in Appendix 3.

3.10.4. Resettlement framework

The EBRD normally requires a resettlement plan, including a detailed impact assessment based on the results of detailed asset and socio-economic surveys in the final project footprint, prior to the project’s consideration by the EBRD Board of Directors. In exceptional cases, where, for compelling reasons, the project design is not finalised at the time of submission to the EBRD Board, it may be acceptable, subject to the approval of the Bank during due diligence, to postpone the preparation of a full resettlement plan, as long as a resettlement framework is submitted as a first step. Similarly, a resettlement framework may be acceptable for certain linear projects or projects with several sub-components.

Where the project footprint can be partially identified at the time of project submission for the consideration of the EBRD Board of Directors, the EBRD may require a resettlement framework that covers all impacts, while a full resettlement plan will cover that part of the footprint already fully identified. One or several resettlement plans will be submitted and disclosed (per the rules in section 3.10.6) over the course of the loan disbursement to cover the rest of the project footprint at mutually agreeable milestones.

Where a resettlement framework has been submitted earlier, further resettlement plan(s) can be simplified and do not necessarily need to repeat materials already presented in the resettlement framework, such as the legal review, for example. However, materials and data related to the particular impacts covered by the plan must be presented in full (including, for example, the results of surveys and any entitlements that are specific to the area being considered).

Public disclosure rules applicable to resettlement frameworks are the same as those for resettlement plans (see section 3.10.6).

The template structure of a resettlement framework is presented in Appendix 5.

3.10.5. Independent preparation of resettlement plans (or frameworks)

For any project outside of the scope of PR5 paragraph 41 (i) (projects with minor land acquisition impacts – see also section 3.10.3.1), the EBRD requires that the resettlement plan be prepared by an independent party. This is the case for any project involving physical displacement or significant impacts on livelihoods. For projects within the scope of PR5 paragraph 41 (i), a brief resettlement plan can be prepared and submitted by project personnel themselves.

The EBRD will advise projects in the early stages of due diligence whether they trigger PR5 and are deemed to fall under PR5 paragraph 41 (i).

3.10.6. Changes to resettlement plans

An update or addendum to the resettlement plan can be required if there is a significant change in the socio-economic context of the affected communities and if there are material design changes that entail significant changes to the footprint and/or number of affected people since approval of the initial resettlement plan. This should be discussed and agreed with the Bank on a case-by-case basis.

3.10.7. Formal endorsement of resettlement plans

The project sponsor must demonstrate commitment to the resettlement plan, including its budget and implementation arrangements. The forms this commitment can take will be discussed with the EBRD at the time of project review and due diligence. For public institutions, it could take the form of a decree or order by the relevant head of agency. For private companies, it could be by way of a letter confirming full endorsement of the document.

3.10.8. EBRD disclosure of resettlement planning documents

3.10.8.1. Category A projects

For category A projects, the EBRD requires public disclosure of the resettlement plan as part of, and concurrently with, the ESIA (typically, the resettlement plan is one volume of the ESIA), as foreseen in PR10 and the EBRD's 2019 Access to Information Policy. This applies to all category A projects, including those falling under PR5, paragraph 41 (i), for which the resettlement plan should meet the requirements presented in section 3.10.3.1, and those falling under PR5 paragraph 41 (ii) and (iii), for which the resettlement plan should meet the requirements presented in section 3.10.3.2.

Any confidential personal information contained in resettlement plans or frameworks will be removed from the versions meant for public disclosure. This may include lists of project-affected persons, certain photographs and information on income, among other things.

3.10.8.2. Category B projects

For category B projects falling under categories (ii) and (iii) of PR5, paragraph 41, the Bank may also require the public disclosure of resettlement plans where the magnitude of displacement impacts is significant.

3.11. Organisational capacity and commitment

Land acquisition and resettlement are resource-demanding activities, in terms of staff, logistics and budget. As part of its review of resettlement plans, the EBRD will closely scrutinise the implementation of organisational arrangements, including roles and responsibilities, particularly where external parties are involved in the implementation, budget, implementation schedule, capabilities of proposed staff members, reporting channels, monitoring and documentation resources, training and capacity-building arrangements. The land acquisition and resettlement schedule must be presented in the resettlement plan in a manner that allows checks on its consistency with the overall project development schedule.

The resettlement plan is a project commitment. The project's environmental and social action plan (ESAP) will refer to it as one of the management plans against which the EBRD will assess project performance as part of its project monitoring activities.

3.12. Government-managed land acquisition and resettlement

3.12.1. Background

Any project financed by the EBRD is required to comply with PR5, regardless of the organisational and financial arrangements pertaining to land acquisition and resettlement. In many jurisdictions, land acquisition for public purpose projects is a responsibility of the state, even where the project is implemented and financed by a private investor. This is often the case for public-private partnership (PPP) projects. In such situations, the government will implement land acquisition according to applicable legislation. However, there may be gaps between local legislation and this PR, including one or several of the following:

- Acquisition of land by the state usually involves limited consultation – there will generally be prior disclosure of the state's plans in various forms, but no consultation on entitlements and other aspects as required by international standards.
- Public interest and expropriation may be triggered without prior attempts to reach negotiated settlement.
- With a few exceptions, compensation for structures is at market or depreciated value rather than full replacement cost.

- Compensation for land may be at cadastral value (or similar mandatory requirements), which is generally lower than the market or full replacement cost.
- Provisions for compensation of businesses may fall short of international requirements.
- People cannot choose between several compensation options—compensation is typically in cash only, although some jurisdictions have provisions for resettlement, replacement properties or property exchange.
- Informal users are typically excluded from compensation.
- Evictions may have taken place with limited safeguards or due process.
- Livelihood restoration is usually not required, and livelihood or other socio-economic baseline information is not gathered as a result.
- There may be no specific provisions for vulnerable people in land-acquisition legislation, although there may be other legislative acts protecting vulnerable people.
- Gender-related risks are rarely considered.
- Planning documents (resettlement plan or framework) are generally not required.
- Monitoring and evaluation are not required.
- Government agencies may be reluctant to provide better treatment to people affected by a specific project and could invoke a “precedent effect” that they believe will make further land acquisition under usual government conditions difficult or impossible.
- in-kind compensation (resettlement, land-for-land) and legal avenues to deliver such types of compensation
- consultation and negotiation prior to expropriation procedures
- rights of informal users
- risk of forced evictions
- baseline studies
- livelihood restoration programmes.
- Benchmark other projects benefitting from the support of international financial institutions (IFIs) in the country, as it is likely that other IFI-backed projects have faced similar issues in aligning government practice with their standards, and use lessons learned from their experience.
- Engage government on the benefits of PR5 and provide capacity building if required.
- Engage the government on a “top-up” approach, whereby government takes care of compensation in line with national legislation, while project-specific top-up measures are developed and paid for separately by the project developer. Where cash top-ups are not acceptable to government, look at the possibility of implementing in-kind top-ups.
- Look into cost-sharing arrangements, whereby the government provides the funds for compensation in accordance with national legislation, while the private project developer finances supplemental costs arising from the application of EBRD PRs (i.e. additional compensation contributions, livelihood restoration and compensation for informal users who are not eligible for compensation in line with the national law).
- Look into the rules governing the channelling of funds and disbursement of government funds and check whether funds can be made available before land is required (compensation to be delivered prior to land entry).
- Seek formal agreement from government on key areas where regulation is not aligned with PR5.
- Formalise government commitments in an agreed supplemental resettlement plan.
- Check at what level of government the supplemental resettlement plan needs to be approved.

Where local law or project-specific legal arrangements require the government to lead land acquisition, these gaps may be difficult to overcome unless addressed specifically by the project proponent early in the development process, and provided in project agreements or other legal documentation.

3.12.2. EBRD client obligations in government-managed land acquisition

3.12.2.1. Gap analysis and government engagement

Scoping issues that might arise as a result of a government leading land acquisition should be flagged as early as possible, so that mitigation actions can be developed and legally formalised. This requires engagement with the relevant government agency, as mandated in PR5, paragraph 46 (i), and should be factored into the project schedule. Cases where such engagement is not successful must be reported early to the EBRD. The gap analysis process should:

- Review national legislation against PR 5 requirements and identify gaps (if any), with focus on the following:
 - compensation at full replacement cost and related valuation methodologies (detailed analysis of gaps in government valuation methods against full replacement cost methodology as detailed in this guidance note)

3.12.2.2. Avenues for meeting gaps in government practice

This is one of the most difficult issues in government-managed land acquisition. For example, government officials are generally reluctant to accept higher compensation rates, as they allege this would create a “precedent” effect or might expose them to allegations of misuse of public money. In PPP projects, or other projects involving a private partner, the private partner is usually able to bridge gaps and fund these measures, for example using a resettlement action plan fund (for compensation beyond

national legal requirements) to disburse compensation to ineligible project-affected people, which can be co-managed with the responsible government agency. In fully public projects, other avenues will have to be found. When compensation cannot be increased to meet replacement costs or broadened to cover ineligible categories, it is often advisable to seek to offset insufficient compensation by paying allowances or livelihood restoration benefits that will not be presented as part of compensation. In such cases, terminology may become important from a government perception perspective.

3.12.2.3. Supplemental resettlement plan

The supplemental resettlement plan must meet the requirements of PR5, paragraph 48. It should include:

- a description of the entitlements of displaced persons provided under applicable laws and regulations
- the measures proposed to bridge any gaps between such entitlements and the requirements of PR5
- the financial and implementation responsibilities of the government agency and/or the client in the execution of this plan.

In cases where land acquisition and resettlement have been undertaken by a government agency prior to the EBRD's involvement (as detailed in section 3.13), the supplemental resettlement plan and the corrective action plan described in this guidance note (section 3.13.2) will be the same document.

3.12.2.4. Responsibilities

Clients are responsible for meeting the objectives of the EBRD PRs. This holds for compliance with PR5 in the case of government-managed land acquisition. Here, clients are expected to deploy a best-endeavour approach and report any issues to the EBRD. Where possible (for example, on certain PPP projects), the EBRD should seek to formalise government commitments with regard to the Performance Requirements in a tri-partite agreement.

3.13. Land acquisition and resettlement undertaken prior to the EBRD's involvement

3.13.1. Principles

Any land acquisition carried out as part of an EBRD project prior to the Bank's involvement has to conform to the objectives and principles of PR5. This also applies to situations in which such land acquisitions were undertaken by another entity (for example, in a PPP project, where land acquisition was undertaken by the state or where the project operator changed between the time of the land acquisition and when the project was proposed to the EBRD).

In such situations, the EBRD will review previous activities and check compliance with PR5 provisions or deviations from them. Where necessary (see section 3.13.2), an audit may need to be commissioned and any deviations will need to be addressed to the satisfaction of the Bank.

3.13.2. Audit and corrective action plan

Where the EBRD's interaction with a client, other relevant parties and available documentation does not provide a clear picture of how past land acquisition was implemented or of the strategy going forward, or where significant gaps to PR5 provisions are presumed, an audit of past land acquisition will be carried out at the project sponsor's expense to establish the following:

- cut-off date, census, past implementation of eligibility criteria and consultation on these aspects
- compensation packages and an assessment of compensation rates paid against the replacement cost requirement
- livelihood restoration, including any facilitation to relocate to alternative settings
- clearance of the project area and conditions surrounding its implementation (notifications, due process, grievance management, use of public force, any violence reported)
- grievance redress (accessibility, transparency, fairness, effectiveness).

Comparing aerial photographs in time sequence can be very helpful to detect any significant changes in occupation. In urban areas, the resolution of publicly available satellite imagery and the time sequences available are generally sufficient to achieve this.

For projects with significant impact, the audit will be undertaken by an independent party acceptable to the EBRD. The project will be expected to provide all relevant information in a transparent and straightforward manner. For projects with lesser impacts, an internally established history and documentation of processes may be acceptable but, generally, the involvement of an experienced resettlement specialist with experience in PR5 application is advisable.

Where gaps are observed, the audit will result in a corrective action plan to address any PR5-related shortfalls. The project sponsor will be responsible for implementing this corrective action plan, which will entail the same commitment as a resettlement plan (it will be referred to in the project ESAP). The corrective action plan should include:

- a description of all activities needed to achieve compliance with PR5
- a time-bound action plan with clear milestones and deadlines
- a description of implementation arrangements, including a budget, an implementation schedule and a clear allocation of roles and responsibilities.

3.14. Monitoring and evaluation

3.14.1. Overview

Monitoring and evaluation (M&E) is a key component of the resettlement and livelihood restoration process and is, therefore, a requirement of PR5. The M&E process examines what works and what does not, why it works or why it does not, and what needs to change. It is meant to track progress and to report, but also – and more importantly – to guide action, particularly where correction is needed.

Monitoring is a recurring task that starts from the resettlement planning stage and involves the measurement through time of information for three purposes:

- to identify deviations from objectives and commitments so that corrections can be made where needed
- to learn from experience to improve future practice
- to strengthen accountability and transparency on progress and issues encountered.

Evaluation assesses the performance of a completed project against initial objectives, as well as its compliance with policies, standards and the initial resettlement plan. Improvements and corrective actions are recommended, and learning occurs through evaluation. It is typically based on data gathered during the monitoring exercise.

Regardless of the magnitude of impacts, all projects that trigger PR5 are expected to undertake internal monitoring per the provisions in section 3.14.2 and to submit a land acquisition and resettlement execution report (see section 3.14.3). Projects with more significant impacts are also expected to have independent external monitoring (either compliance reviews or a completion audit, or both) in accordance with the provisions of sections 3.14.4 and 3.14.5.

3.14.2. Internal monitoring and reporting to the EBRD

As part of regular project monitoring obligations arising from PR1 (paragraph 32), clients submit environmental and social monitoring reports to the EBRD. Where PR5 is triggered, these reports must include a chapter on land acquisition and resettlement. The frequency of submission is normally annual, but for projects with significant displacement impacts, the EBRD may require more frequent reporting (to be specified in the ESAP and/or loan agreements). The chapter of the environmental and social monitoring report dedicated to land acquisition and resettlement (or the standalone internal land acquisition and resettlement monitoring report, as the case may be) should be structured as follows:

- progress of land acquisition and resettlement activities during the monitoring period, with relevant numerical indicators, such as number of households moved or compensated, compensation paid into escrow accounts, progress on implementation of livelihood restoration activities, and so on

- a description of efforts to avoid and minimise displacement that may have taken place during the monitoring period
- a summary of consultation events and outcomes
- a description of any issues encountered and how they were resolved
- a summary of grievances received and how they were resolved, including how commitments related to grievance processing (particularly average and median time to resolve a grievance) were met
- livelihood restoration activities during the monitoring period
- activities meant to support vulnerable people
- a gender sensitivity review of activities implemented during the monitoring period
- a description of resources mobilised to implement land acquisition, resettlement and livelihood restoration activities
- key results of internal monitoring (and external, if applicable), including how findings of external compliance reviews (if relevant) were followed up.

3.14.3. Land acquisition and resettlement execution report

Clients submit a land acquisition and resettlement execution report to the EBRD upon completion of land acquisition and resettlement activities (that is, completion of compensation delivery and processing of grievances, not necessarily including all ongoing livelihood restoration activities, which may span a number of years after all compensation has been delivered).

The report should be structured as follows:

- a summary of final project impacts (both physical and economic displacement)
- a summary of key principles, including cut-off and entitlements, guiding the resettlement plan
- a description of efforts to avoid and minimise displacement
- a summary of consultation events and outcomes, including how they influenced entitlements and other features of the land acquisition, resettlement and livelihood restoration process, and any provisions made to ensure inclusion of women and vulnerable persons in engagement activities
- a description of the compensation delivery process, including cash and in-kind compensation, as applicable
- livelihood restoration activities and their interim results
- activities meant to support vulnerable people
- a gender sensitivity review of activities
- a description of any issues encountered and how they were resolved

- a summary of grievances received and how they were resolved, including the list of any grievances and court cases pending at the date of submission of the report
- a description of resources mobilised to plan and implement land acquisition, resettlement and livelihood restoration activities
- key results of internal monitoring (and external if applicable), outstanding issues and lessons learned.

3.14.4. External compliance reviews

Compliance reviews are meant to check whether the implementation of land acquisition and resettlement complies with the PR5, the resettlement plan and local legislation. Such reviews can be integrated into a broader independent monitoring scope that covers compliance with all PRs by an independent environmental and social consultant or similar) as mandated under PR1, paragraph 35. Compliance reviews are mandated for higher-risk projects (with significant displacement impacts).

The reviews are an ongoing exercise that covers planning and implementation until the completion audit, or until the compliance reviewers declare that resettlement and compensation are complete if no completion audit is expected. Compliance reviews typically take place from once every year to once every quarter for the most sensitive projects. Where compliance reviews are expected, clients are expected to recruit an independent reviewer acceptable to the EBRD based on a scope of work to be submitted for the Bank's approval. Compliance reviewers should have unlimited and independent access to affected persons for interviews and consultation, as well as to other stakeholders, and be able to carry out their investigations without interference from the project.

The need for compliance reviews is assessed by the EBRD during due diligence and will be sanctioned in the ESAP.

Compliance review reports are submitted to the EBRD and may be publicly disclosed. EBRD staff may join compliance reviews as part of the Bank's own monitoring activities.

3.14.5. External completion audit

The completion audit is mandated for higher-risk projects (with significant displacement impacts). It aims to verify that PR5 has been met and that the livelihoods of affected people have been improved or at least restored. It can take place only after the Bank has approved the land acquisition and resettlement execution report. Key objectives of the completion audit are to:

- verify that all entitlements and commitments described in the resettlement plan and committed upon therein have been delivered
- determine whether measures have been effective in restoring or enhancing affected persons' living standards and livelihoods, including men and women, as well as vulnerable people
- check on any grievances that may have been left outstanding
- check that any physically displaced people are living in adequate housing with security of tenure
- identify any corrective actions necessary to achieve the completion of resettlement plan commitments, particularly additional livelihood restoration, should livelihoods of certain groups be demonstrated not to have been restored.

The completion audit should be conducted by an independent expert, in coordination with project teams. It is expected to focus on livelihood restoration and should build on previous internal and external monitoring and the land acquisition and resettlement execution report. It will generally include a comparison of the post-resettlement economic situation of affected households with the baseline data. Where a large number of households have been affected, a representative sample can be used. This comparison usually requires a certain period of time to have elapsed since the disbursement of compensation for livelihood measures to have been effective. As a result, completion audits are typically undertaken a few years after compensation has been disbursed and resettlement assistance and livelihood restoration activities have been completed, within the validity period of the loan agreement.

The completion audit report should present conclusions on livelihood improvement or restoration and identify any corrective measures necessary to achieve livelihood restoration (at a minimum) of displaced households. The scope, timing and implementation arrangements for the completion audit should be presented in the resettlement plan, along with clear completion criteria that the project will be expected to meet.

The need for a completion audit is assessed by the EBRD during due diligence and will be sanctioned in the ESAP. The completion audit report is submitted to the EBRD and may be publicly disclosed.

3.15. Physical displacement and resettlement assistance

3.15.1. Physical displacement also entails economic displacement

In most cases, physical displacement also entails economic displacement. The livelihoods of displaced people are obviously impacted, usually because they lose productive assets, such as agricultural land or businesses, or simply because of the disruption caused by the move. Economic displacement is addressed separately for the sake of clarity, but people who are physically displaced will also require livelihood restoration measures per PR5, paragraphs 61 to 63.

3.15.2. Physical resettlement strategies

The EBRD recommends that physical resettlement strategies be based on the provision of adequate replacement properties rather than cash compensation. Where a client is proposing cash compensation to address physical displacement, the EBRD will require it to demonstrate that project-affected persons, including both genders and potentially vulnerable groups, have been meaningfully consulted and have overwhelmingly stated their preference for cash compensation (see section 3.8.6). Physical resettlement may involve one or a combination of the following strategies:

- development by the project of a resettlement site and the reconstruction of dwellings
- purchase of existing properties and allocation to physically displaced households
- construction by the project of new dwellings within the fabric of an existing community rather than at a dedicated resettlement site (“in-fill” resettlement)
- facilitated self-build of dwellings either in a dedicated resettlement site or in “in-fill” land plots.

All options have their pros and cons, which are context specific. The selection of one or more options should involve thorough consultation with all strata of the affected communities. For projects that physically displace significant numbers of people, it is good practice to offer several options and/or resettlement sites.

All PRs apply to the development of resettlement sites as part of the project. Specifically:

- an ESIA may be required under PR1³⁶
- PR2 applies to workers employed to develop the resettlement site and build resettlement housing³⁷
- any secondary displacement at the resettlement site itself must be managed according to PR5 and the main project resettlement plan
- consultation with host communities must take place in line with the principles of PR10³⁸
- care must be taken to deal with any biodiversity and cultural heritage issues at resettlement sites in accordance with PR6 and PR8, respectively.³⁹

³⁶ See EBRD (2019), p. 13.

³⁷ See EBRD (2019), p. 16.

³⁸ See EBRD (2019), p. 47.

³⁹ See EBRD (2019), p. 35 and 42.

3.15.3. Security of tenure

The EBRD requires that physically displaced people be offered a replacement property with security of tenure. For people that previously owned a property in full (be it formalised or not), this means that any replacement property should also be owned in full, with documented ownership rights (that is, a perpetual title). For informal users or tenants that had no property rights prior to the project, while it is good practice to offer ownership rights if possible, long-term leases in social housing, for example, could also be acceptable. For tenants, a cash payment to allow them to pay a deposit to secure a new dwelling is also adequate. It is typically three to six months of rent.

3.15.4. Adequate housing

Adequate housing should meet the following criteria:

- adequate privacy
- adequate space
- physical accessibility
- adequate security
- security of tenure
- structural stability and durability
- adequate lighting, heating and ventilation
- adequate basic infrastructure, such as water-supply, sanitation and waste-management facilities
- suitable environmental quality and health-related factors
- adequate and accessible location with regard to work and basic facilities
- affordability.

Most of these criteria are context specific. Many of the economies in which the EBRD operates have stringent building and housing standards, and most criteria for adequate housing are supposed to be achieved by applying these standards. However, there may be certain gaps in the standards or in their actual implementation by architects and contractors (for example, accessibility), and standards typically do not cover all aspects of adequate housing (for example, location or security). Consultation with affected groups and other stakeholders, such as national housing regulators and architects, is paramount in arriving at suitable, adequate housing criteria in the context of the project area. In addition, resettlement is not conducive to experimentation and only proven technologies and materials must be used.

3.15.5. Resettlement assistance

Resettlement assistance is required where people are physically displaced by a project and is meant to minimise the disruption caused by a move. Resettlement assistance will vary according to the type of entitlement (provision of a replacement house or cash compensation) and category of those affected (owners versus tenants, residents versus non-residents).

Resettlement assistance must be discussed with affected persons, including women, and should include:

- for residents, whether owners or tenants:
 - support in moving belongings, either in kind (provision of moving services) or in cash (moving allowance covering the cost of a self-move)
 - support with administrative formalities, such as registration at the new address and updating identity documents
 - support in re-establishing utilities at the new location
 - support in establishing resident committees, management arrangements and cost recovery mechanisms where there are common facilities that require collective management (such as lifts, gardens or playgrounds)
- for resident tenants:
 - support in identifying a replacement dwelling
- for non-residents:
 - no specific assistance.

3.15.6. Impacts of physical resettlement on host communities

Any secondary impacts of an influx of resettlers into an existing community must be assessed and managed in close consultation with all relevant stakeholders in that community. Typical examples of impacts on host communities include:

- land take for resettlement sites and associated livelihood impacts
- additional load on utilities (water, power, sanitation), as well as educational and health facilities
- conflict over the use of natural resources, such as grazing land or fishing grounds, among other things
- potential conflict and jealousy between “haves” (the resettlers) and “have-nots” (the hosts)
- cultural differences between communities.

Any land acquisition, physical or economic displacement affecting a host community must be managed in accordance with PR5, that is, seeking avoidance and minimisation, then compensating for any residual impact according to the same principles that apply to affected people. In addition, indirect impacts on utilities and community facilities in host communities should be mitigated through the expansion of capacity (including both facilities and staff, as applicable). Indirect impacts on communal natural resources, such as increased pressure on grazing land or water bodies, must also be addressed, for example, through support for better management. Lastly, it is good practice to offset impacts on host communities by including them in livelihood improvement activities designed for directly affected persons.

3.15.7. Contents of the resettlement plan in case of physical displacement

The template structure of a resettlement plan (including situations that entail physical displacement) is presented in Appendix 3.

3.16. Economic displacement and livelihood improvement or restoration

3.16.1. Overview

In the spirit of PR5 and other similar standards, compensation addresses affected assets such as land, structures or trees, while livelihood improvement or restoration aims to address impacts on livelihoods resulting from the impacts on those assets. Livelihood restoration is neither part of compensation nor a “nice to have”; it is a project obligation wherever livelihoods are affected, on top of compensation. As a result, livelihood restoration should be separate from both compensation and community development and other “corporate social responsibility” activities, which are not usually project obligations arising from the need to mitigate impacts. It should be separately funded and monitored.

As mentioned in section 3.15.1, physically displaced people are also economically displaced in the vast majority of cases. The requirements of PR5, paragraphs 61 to 63 and the following sections, therefore, also apply to physically displaced people.

The EBRD, like similar institutions, requires that impacts on livelihoods be assessed as part of resettlement plans (through socio-economic surveys), be mitigated through specific activities and that the improvement or restoration be monitored until the completion audit shows that objectives have been met.

PR5, paragraph 63 provides guidance on the types of activity suited to various impacts. Livelihood restoration should be adequately funded and implemented by competent personnel with the right experience. There is no room for experiments where livelihoods have been affected; only proven techniques and implementation partners should be used. Linkages are often key (with state-funded economic development programmes, agricultural development agencies and, possibly, existing cooperatives, training institutes, business promotion agencies and NGOs). The involvement of government agencies is often paramount in sustaining support and long-term monitoring.

3.16.2. Examples of livelihood restoration activities in typical situations

Table 3: Examples of livelihood restoration activities in typical situations

Situation	Indicative livelihood restoration activities
Linear project with marginal impacts on a large number of agricultural land plots	Support for the intensification of agricultural activities (improvement of soil preparation techniques, use of improved varieties, fertilisation); support for better marketing of agricultural production; linkage of affected farmers with existing agricultural development initiatives
Large footprint affecting whole agricultural plots	Support for access to replacement agricultural land; support for the intensification of agricultural techniques; pension schemes for older farmers; training for younger farmers and consideration of the development of alternative activities; facilitation of access to credit
Physical displacement of a rural community	In addition to the above, look at re-establishing backyard gardening, which may provide an important source of livelihood to the most vulnerable part of the population (particularly the elderly); replace houses with gardens with houses with gardens rather than apartments; re-establish breeding of small animals (poultry) and support improved techniques (health, feed)
Large footprint affecting pasture land	Support for access to alternative grazing areas; support for improvement in animal husbandry techniques (for example, improvement of animal feed, forage crops, animal health, artificial insemination); facilitate access to financing; improve marketing, including storage and/or processing of milk
Urban project with impacts on existing businesses	Support for the re-establishment of businesses in other locations (identification of sites and facilitation of access by businesspersons to these sites); support for improved business management; support for the formalisation of informal businesses; linkage with existing business support programmes; linkage with micro-finance institutions or commercial banks to improve access to financing
Road widening affecting roadside businesses, such as small cafés and restaurants or fruit sellers	Establishment of parking areas where roadside businesses can be relocated; support for management and formalisation; linkage with existing business support programmes; linkage with micro-finance institutions or commercial banks to improve access to financing
Ship terminal or port and associated manoeuvring areas affecting fishing-vessel movement and fishing grounds	Support for improved fishing techniques; provision of improved equipment; certification of produce where possible (eco-friendly fishing or similar); support for improved marketing (including cold-chain and transport); establishment of cooperatives or similar groupings; improved management of fishing enterprises; access to credit

The examples in Table 3 are provided for general guidance only. Each situation is specific, and livelihood restoration planning should rely heavily on consultation with affected people, including women and vulnerable persons, government agencies specialising in the delivery of economic development programmes and local experts with relevant experience (agronomists, biologists, veterinarians, business development and training specialists, and so on).

3.16.3. Specifics in the case of informal users

Livelihood restoration is a PR5 obligation for all economically displaced persons, including informal users that may not be eligible for compensation for land.

Farmers or herders informally using affected public land, as well as sharecroppers or renters on affected public or private land, must be included in agricultural livelihood restoration meant for affected farmers in general, notwithstanding their informal status. This may involve access to replacement land and/or other initiatives to enhance agricultural productivity.

Similarly, livelihood restoration activities must be devised for small businesses informally occupying public space, on top of the compensation described in PR5, paragraph 53, first bullet point. The best approach is usually to facilitate access to an alternative location:

- In rural areas, there are multiple examples in Central Asia and the Caucasus where the reconstruction of an intercity highway provided an opportunity to build regularly spaced parking areas, where farmers selling food or farm produce can establish a stall or kiosk in safer conditions. This can allow public authorities to collect a modest levy on such sales, an obvious win-win outcome.
- In urban areas, the access of small businesses to formal markets should be facilitated; interaction with municipal authorities is needed to identify alternative locations where small businesses can be re-established.

3.17. Impacts on indigenous groups

Where a project affects indigenous groups (as defined in PR7),⁴⁰ impacts on customary lands and resources and physical displacement are two of the three circumstances that trigger free, prior and informed consent (FPIC).

The “collective attachment” of indigenous peoples to their lands and resources quite often constitutes a unique way of viewing life itself. Retaining the integrity of their habitat and avoiding impacts is, therefore, of central concern in any project that affects indigenous groups. In such circumstances, it is critical that the environmental and social assessment capture the details of land use and the land tenure system, ensuring that communally held lands under use are included in the assessment of project impacts and risks and that maximal efforts are made to avoid or minimise lands used by the project. If impacts on customary lands and resources are unavoidable, clients must obtain the FPIC of the affected indigenous people. In addition, any impacts on lands and resources resulting in physical or economic displacement must be managed in accordance with the requirements of PR5. It is also advisable that clients secure the services of qualified specialists to conduct studies of land use and land-tenure systems.

PR7 emphasises that avoiding relocation is the top priority for project planning (paragraph 18), a principle that is also fundamental to PR5. As with loss of lands and resources, the issue of relocation is fraught with danger as, regardless of the goodwill and compensation involved, resettlement almost unavoidably results in negative social, economic and cultural impacts on indigenous peoples. For many indigenous peoples, “collective attachment” is real. When physical displacement is unavoidable, clients need to obtain the FPIC of affected indigenous people and work collaboratively with them to plan resettlement according to their needs and wishes and consistent with the requirements of PR5.

40 See EBRD (2019), p. 39.

Appendix 1. Glossary

Term	Definition
Adequate housing	Adequate housing comprises adequate privacy, space, physical accessibility, security, security of tenure, structural stability and durability, lighting, heating and ventilation, basic infrastructure, such as water supply, sanitation and waste-management facilities, suitable environmental quality and health-related factors, an adequate and accessible location with regard to work and basic facilities, and affordability.
Affected community	A community affected by the project as defined by PR1 and whose members are experiencing physical or economic displacement. Affected communities include host communities.
Affected person	A natural person or legal entity experiencing either physical or economic displacement as a result of project-related land acquisition or restrictions on land use, other assets or natural resources.
Business	Businesses are defined as shops, restaurants, services, manufacturing facilities and other enterprises, regardless of size and whether licensed or unlicensed.
Compensation	Payment in cash or in kind for loss of land, other assets or natural resources, and access thereto, that are acquired or affected by the project. It encompasses all forms of compensation, both in kind and in cash, including the provision of a dwelling (apartment or house and land) to replace the affected one.
Completion audit	External audit of land acquisition and resettlement activities undertaken after the activities set out in the resettlement plan have been completed, to determine whether the requirements of PR5 and provisions of the resettlement plan have been met, particularly those pertaining to livelihood improvement or restoration.
Displacement (economic)	Loss of assets, including land, or of access to assets that leads to loss of income sources or means of livelihood as a result of project-related land acquisition, temporary occupation or restriction of access to natural resources. People or enterprises may be economically displaced with or without experiencing physical displacement.
Displacement (physical)	Loss of dwelling or shelter as a result of project-related land access, which requires the affected person(s) to move to another location.
External compliance review	Periodic external reviews of land acquisition and resettlement activities undertaken during planning and implementation of these activities to determine whether the requirements of PR5 and provisions of the resettlement plan are being met. It must include recommendations to correct any observed gap.
Forced eviction	Forced eviction refers to acts and/or omissions involving the coerced, permanent or temporary involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that they occupy or depend on, thus eliminating or limiting their ability to reside or work in a particular dwelling, residence or location, without the provision of and access to appropriate forms of legal or other protections provided for under PR5.
Full replacement cost	Full replacement cost valuation is a method of valuation that calculates compensation sufficient to replace assets plus the requisite transaction costs associated with asset replacement. Where functioning markets exist, replacement cost is the market value established by independent and competent real-estate valuation, plus transaction costs. Where functioning markets do not exist, replacement cost may be determined by alternative means, such as calculating the output value for land or productive assets or the undepreciated value of replacement material and labour for the construction of structures or other fixed assets, plus transaction costs. In all instances, where physical displacement results in loss of shelter, the replacement cost must at least be sufficient to enable the purchase or construction of housing that meets acceptable minimum community standards of quality and safety.
Gender	The socially constructed roles, attributes, opportunities and relationships that a given society considers appropriate for men and women. These expectations differ from society to society and change over time. In some societies, it has been recognised that there are more than two genders. However, “men/boys” and “women/girls” are the most commonly recognised genders and are, therefore, used throughout this guidance note.
Inventory	Inventory should include a detailed account, prepared 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, and rights held in common.

Term	Definition
Host community	Any community receiving resettled persons.
Involuntary resettlement	<p>In the context of PR5, resettlement refers to two distinct but related processes:</p> <ul style="list-style-type: none"> displacement, whereby a project causes affected persons to lose land, dwellings or other assets, or access to these assets or natural resources resettlement, whereby affected persons are assisted in relocating to new dwellings and in improving, or at least in restoring, their livelihoods, including incomes and living standards. <p>Resettlement is considered involuntary (thereby making PR5 applicable) when affected persons do not have the right to refuse land acquisition that results in displacement. This occurs in cases of:</p> <ul style="list-style-type: none"> expropriation using the “eminent domain” powers of the state negotiated settlements in which the buyer can use expropriation, even if as a last resort, where negotiations with the seller fail.
Land acquisition	Land acquisition refers to all methods of obtaining land for project purposes, which may include outright purchase, the expropriation of land and assets and the acquisition of temporary or permanent access rights, such as easements, rights of way and the establishment of restrictions of access to protected and other areas. Land acquisition may also include: (a) the acquisition of unoccupied or unutilised land whether or not the landholder relies upon such land for income or livelihood purposes; (b) the repossession of public land that is used or occupied by individuals or households; and (c) project impacts that result in land being submerged or otherwise rendered unusable or inaccessible. “Land” includes anything growing on or permanently affixed to land, such as crops, buildings and other improvements, as well as water bodies contained therein.
Land acquisition and resettlement execution report	A report finalised on completion of land acquisition, resettlement and livelihood restoration activities, which includes: a summary of project impacts (both physical and economic displacement) and principles guiding the resettlement plan; a description of efforts to avoid and minimise displacement; a summary of consultation events and outcomes, including how they influenced entitlements and other features of the land acquisition, resettlement and livelihood restoration activities; a description of the compensation delivery process; a description of any issues encountered and how they were resolved; a summary of grievances received and how they were resolved, including the list of any grievances and court cases pending at the date of submission of the report; a description of resources mobilised to plan and implement land acquisition, resettlement and livelihood restoration activities.
Land rights	Land rights include full and permanent ownership rights recognised by the law of the country, whether registered or customary; permanent or temporary usage rights derived from a formal or informal agreement or from custom, including long- or short-term leases, tenancy and sharecropping, as well as formal or informal use of communally held natural resources, such as forest, pasture, and water bodies; rights of way established by law or custom; and restrictions of use or access established by law or custom.
Livelihood	<p>Livelihood refers to the full range of means that individuals, families and communities use to make a living, such as wages from employment; cash income earned through an enterprise or through the sale of produce, goods, handicrafts or services; rental income from land or premises; income from a harvest or animal husbandry, share of a harvest (such as various sharecropping arrangements) or livestock production; self-produced goods or produce used for exchange or barter; self-consumed goods or produce; food, materials, fuel and goods for personal or household use or trade derived from natural or common resources; pensions and various types of government allowance.</p> <p>Livelihoods are often split into three categories:</p> <ul style="list-style-type: none"> land-based livelihoods (activities such as cropping and the grazing of livestock, as well as the harvesting of natural resources) wage-based livelihoods enterprise-based livelihoods. <p>Livelihoods in developing, emerging and transition economies, however, are often based on complex combinations of activities at household level.</p>
Livelihood improvement or restoration	Specific allowances or activities meant to support affected persons in improving or, at a minimum, restoring their livelihoods compared with pre-displacement levels.

Term	Definition
Property	Buildings, land or both together, including all fixed assets attached to the land, such as trees and ancillary structures.
Resettlement assistance	Technical and financial assistance provided to displaced people in addition to compensation to support their efforts in relocating to a new home and restoring their livelihoods.
Restrictions on land use	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 project. These may include restrictions on access to legally designated parks and protected areas, restrictions on access to other common property resources, and restrictions on land use within utility easements or safety zones.
Security of tenure	Security of tenure refers to resettled individuals or communities resettled to a site 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.
Transition period	Period between the occurrence of the displacement and the time when affected livelihoods are restored.
Vulnerable groups (or people)	Vulnerable groups refers to people who, by virtue of gender identity, ethnicity, age, disability, economic disadvantage or social status, may be more adversely affected by project impacts than others and who may be limited in their ability to claim or take advantage of project benefits. Vulnerable individuals and/or groups may also include people living below the poverty line, the landless, the elderly, women- and children-headed households, refugees, internally displaced people, ethnic minorities, natural resource-dependent communities or other displaced persons who may not be protected by national and/or international law.
Willing buyer-willing seller transactions	Negotiated market transactions in which the seller is not obliged, coerced, intimidated or bribed to sell and the buyer cannot resort to expropriation or other compulsory processes if negotiations fail.

Appendix 2. Frequently asked questions

Applicability of PR5

1. Question: In our renewable energy project, we have to acquire 10 land parcels from local farmers. There is no physical displacement; land is used only for agricultural purposes. We are making every effort to acquire these parcels in “willing buyer-willing seller” transactions and are engaging each landowner in negotiations. However, we want to be sure that the project can proceed in the unlikely event that one or two landowners are unwilling to sell their land. We have therefore approached the government about potentially triggering compulsory acquisition per the country’s expropriation law if this is the case. Does PR5 apply to our project?

Answer: Yes, PR5 applies to your project as long as compulsory acquisition is triggered, even as a last resort and even if this is unlikely. All requirements apply. Specifically, you will have to provide the EBRD with a brief resettlement plan setting out your negotiation process.

2. Question: In our transmission line project, we have no permanent land acquisition, only temporary land occupation during the construction period. The land is then handed back to landowners with some very limited restrictions (such as no building or planting of high trees). We have routed the line to avoid all houses. Does PR5 apply?

Answer: Yes, PR5 applies to your project. First, even if it is very limited, you will need to undertake some permanent land acquisition for the towers. You cannot erect the towers on somebody else’s land, so you will have to acquire the base of the towers. You may have to permanently acquire some access roads for maintenance purposes. Lastly, you will impose a restriction on land use under the line and this, of itself, triggers PR5. The only situation in which PR5 would not apply is if you were implementing all these land transactions in fully “willing buyer-willing seller” mode, but this is unlikely. In addition, as this is a public purpose project, the expropriation legislation of your country will apply. All PR5 requirements should apply. You will also have to provide the EBRD with a brief resettlement plan.

3. Question: As a government agency, we are widening an intercity highway from three to four lanes. Land has already been acquired in the past for the four-lane corridor, so we have no land still to acquire. However, the project will affect some informal kiosks and stalls established by farmers selling fruit and vegetables on the roadside and we will have to remove them. As these kiosks are established on government land, we believe that PR5 is not applicable and that we have no obligation to them. Is this correct?

Answer: No, PR5 applies and you will have to mitigate this impact. The project will affect the livelihoods of these farmers, as they may lose the opportunity to sell their products if this impact is not addressed. Furthermore, their presence has been tolerated by the authorities and local municipalities are collecting market taxes from them. They are informal, but not illegal. Where affected people have established immovable structures, you will have to pay compensation. You will also have to provide livelihood restoration measures, for example, by establishing alternative locations for the sale of farm produce. This will have to be presented to the EBRD in a brief resettlement plan.

Compensation payments

4. Question: In our project, some project-affected persons would be better off if they did not receive all of their compensation at once, as they are not used to handling large amounts of cash. Is it acceptable to pay land, structure and crop compensation in several instalments over a period of, say, two years?

Answer: PR5 mandates that compensation must be paid prior to impact (PR5, paragraph 30). The first thing you must consider, before envisioning paying cash in instalments, is delivering compensation in kind rather than in cash (see PR5, paragraphs 31 and 32), for example, replacing affected agricultural land with similar land or providing houses to replace affected dwellings. This will mitigate the risks of cash payment, which are, indeed, high in some communities. A payment in instalments, some of which are paid after the impact, could potentially be considered where all of the following criteria are met:

- there is a demonstrated social risk attached to a one-off payment
- no livelihoods are affected as a result of the payment in instalments
- affected people confirm that they want a payment in instalments and this is sanctioned both in public consultation and individually in writing (addendum to compensation agreement or similar)
- the timeframe remains reasonable (maximum two years)
- people can opt out at any given time and receive the remainder of their compensation immediately if so they wish.

5. Question: Our project affects 200 agricultural plots. Some of these plots are owned by large groups of people (the many successors to the original owner) – up to 200 in a few cases. Sometimes, some of these inheritors live abroad. Do we have to compensate each one of them before we start construction on these land parcels?

Answer: Compensation has to be paid before entry into land and you must make every effort to achieve this very fundamental requirement. Unjustified deviations from this principle are serious non-compliance and may result in default. However, the EBRD recognises that there are situations in which it may be impossible to meet this requirement and PR5 addresses such situations in paragraph 30. Such situations must remain the exception, not the rule. The same can apply where ownership is disputed. In such cases, you must follow local legislation and, at a minimum, put the following in place, with support from experienced local lawyers:

- You must demonstrate that you have sought repeatedly to contact all co-owners using all reasonable avenues. You must also be able to provide associated documentary evidence to the EBRD.
- In many jurisdictions, it is acceptable for the absent co-owner to provide power of attorney to a trusted individual, who may then be able to sign agreements and even receive compensation on their behalf. Sometimes, if the person giving power of attorney lives abroad, specific procedures apply (such as notarisations or apostils) that you will have to follow per the guidance of local lawyers. In other jurisdictions, a telephone conversation in the presence of a public notary is deemed sufficient evidence of agreement.
- If such efforts prove unsuccessful, the associated compensation amount will have to be paid into an escrow account under the control of local judges or notaries. It will be kept in this account until the recipient has been able to receive them. The EBRD may require documentary evidence that compensation funds have been transferred into said escrow account prior to entry into land.
- The project must make sure that no livelihoods are affected as a result of delayed payment, which is why payment of any compensation due to actual land users (such as compensation for crops, developments on land) and livelihood restoration packages should be delivered ahead of the impact, even if some shareholders are not paid due to legal technicalities.
- Where such issues (including, but not limited to multiple co-ownership and various land ownership disputes, such as problematic succession issues) are identified in the project preparation phase, the resettlement plan must address such cases and provide solutions, so that the project is not taken by surprise when they actually arise.

6. Question: We have to acquire a building and demolish it to build a shopping mall. There are tenants in the building whose leases will end before demolition takes place. Does PR5 mandate anything specific in terms of compensation to tenants or their livelihood restoration?

Answer: As leases come to an end before the acquisition, the project has no obligation arising from PR5 to these tenants. If businesses are affected, livelihood restoration activities may be considered.

Expropriation

7. Question: We have to undertake expropriation in a few cases where acquisition was not possible for legal technical reasons. Do we have to pay the legal fees of those affected?

Answer: Yes.

8. Question: We have to undertake expropriation in a few cases where landowners are unwilling to sell their land despite our best efforts. Do we have to pay the legal fees of those affected?

Answer: No. However (see answer to next question), you may offer to reimburse legal fees if some of these reluctant landowners come back to the negotiating table during the course of the expropriation process.

9. Question: We are a private project and have offered relatively generous compensation to affected landowners, more than what government expropriation processes would typically involve in similar cases. The vast majority of those affected have accepted the offer and we have been able to acquire 95 per cent of the land we need in negotiated transactions. However, despite repeated attempts, we have been unable to engage one landowner in reasonable discussions and he has let it be known that he will never sell his land to us. We have to embark on expropriation (local legislation gives us this possibility). What should we do if the indemnity this person obtains through the expropriation process is lower than what we initially offered?

Answer: First of all, you should try to outline the risks of expropriation to the affected person, possibly using indirect engagement (neighbours, the local mayor, for instance), his lawyer, and/or an independent mediator acceptable to the affected person. Then, you should look closely at the legislation in question and check whether the person can “exit” the process when it transpires that the compensation may be lower than what you offered and come back to the negotiation table. If the person exits the process, you should pay him what you initially offered. In addition, you could consider paying his legal fees.

Resettlement plan – applicability, preparation and disclosure

10. Question: We affect six agricultural land plots. There is no physical displacement and all landowners are amenable to land acquisition. Do we have to prepare a resettlement plan and submit it to public consultation?

Answer: If land has already been acquired in willing seller-willing buyer transactions and there are no land users (informal users) whose livelihoods may be affected, PR5 does not apply and there is no need to provide a resettlement plan. The EBRD will, however, require a short land acquisition and resettlement execution report (see PR5, paragraph 52). If land has not already been acquired, but you have reasonable evidence (such as option sale-purchase agreements) that it will be acquired in willing seller-willing buyer transactions and there are no affected land users other than the owner whose livelihoods may be affected, there is no need to provide a resettlement plan. The EBRD will require you to provide documentary evidence of such conditions and, later, to provide a short land acquisition and resettlement execution report (see PR5, paragraph 52). In all other cases and despite the small number of affected land plots, you will have to provide a resettlement plan. Note that the plan is expected to be commensurate with the magnitude of impacts, so for six affected land plots, it could be a document of a few pages in line with PR5, paragraph 41 (i).⁴¹

11. Question: Must the resettlement plan be prepared by an independent party?

Answer: For any project outside of the scope of PR5 paragraph 41 (i), the EBRD requires that the resettlement plan be prepared by an independent party. This is the case for any project involving physical displacement or projects where the impacts on livelihoods are significant.

12. Question: Do we have to disclose the resettlement plan to affected people? We believe it contains confidential information and we are therefore unwilling to disclose it.

Answer: Yes, the resettlement plan has to be publicly disclosed. The modalities of this can be discussed with the EBRD. To avoid disclosing what might be deemed confidential information, you should remove all personal data (including names, addresses, photographs of specific features or people, and so on) and any information that could easily be related to identifiable individuals or groups. In addition, you have to provide transparent information to support meaningful consultation with affected people. Because the resettlement plan is not necessarily a user-friendly document for affected people, a simplified GLAC will be useful in the spirit of PR5, paragraph 39.

Valuation

13. Question: Among the people our project is affecting is a group of slum dwellers that live in poorly constructed structures with no running water, illegal power supply and limited sanitation. Although they live illegally on the land, we are thinking of compensating them to avoid an eviction that might have undesirable social and political implications. Our valuers assessed the full replacement cost of these structures by calculating the value “as new” of constitutive materials. However, when we look at the outcome we realise that the values arrived at would certainly not allow these slum dwellers to acquire normal housing.

Answer: This can be approached in several ways, but certainly not through inadequate cash compensation that would only allow them to acquire an inadequate and informal dwelling. In such situations, the EBRD requires the relocation of informal dwellers to adequate housing with reasonable security of tenure. The EBRD does not necessarily require the relocation of informal slum dwellers to housing that they would own in full. You could consider relocating them to adequate social housing where they would pay rent.

14. Question: Our country is on an EU accession track. The government has already introduced some EU requirements into the building code, for example, energy efficiency norms. Our project affects traditional houses that are far from being energy efficient. Should we take newly introduced energy efficiency and other currently applicable requirements into account when calculating full replacement cost?

Answer: Yes, if these requirements are already applicable. The full replacement cost should be sufficient to allow the affected owner build or acquire a dwelling that fully meets applicable national standards.

15. Question: Our country has stringent space per person requirements in the housing code.⁴² These standards are not met in affected housing: more people typically live in affected dwellings than permissible under the housing code. Should we apply these requirements in calculating full replacement cost?

Answer: Yes. You should apply the full replacement cost to the surface area that the true household composition requires. For example, if there are six people living in 72 m² while the housing code requires a minimum space per person of 14 m² (that is 84 m² for this particular household) and the full replacement cost of that dwelling is €69,000, the compensation this household should receive is: €69,000 / (72 / 84) = €80,510.

⁴¹ Projects falling within the scope of PR5, paragraph 41 (i) are “projects with minor land acquisition or restrictions on land use”, for which a simplified resettlement plan is provided.

⁴² This is actually the case in several former Soviet countries.

Appendix 3. Resettlement plan – template outline

Note 1: This is presented as general guidance and should be adapted to the specificities of the project in question. It applies to projects in categories (ii) and (iii) of PR5, paragraph 41.

Note 2: The EBRD appreciates conciseness. The expected size of a resettlement plan for a project with significant impacts is in the range of 50-100 A4 pages, appendices not included. Bulky and disorderly documents will not be reviewed and not be accepted. The executive summary should provide an adequate overview in approximately 5-12 pages.

Note 3: As an action plan referred to in the ESAP, the resettlement plan is a project commitment. A resettlement plan is not a study that makes “recommendations”. If an action is included in the resettlement plan, it becomes a firm commitment that must be implemented and against which the project will be monitored by the EBRD.

Note 4: Projects with limited impacts are addressed in Appendix 4.

Executive summary

1. Scope of the resettlement plan: Introduction

- 1.1 Scope and contents of this report
- 1.2 Key definitions

2. Project description and potential impact

- 2.1 Project objectives, location, rationale and benefits
- 2.2 Key project components (should be brief and can refer to the ESIA for further details)
- 2.3 The project footprint and its associated land impacts (with maps, description and photographs as relevant)
- 2.4 Avoidance and minimisation of project displacement impacts (should explain the iterative process of changing and adapting the design to avoid and minimise displacement impacts, and the outcomes of such process, with tabular and cartographic illustration as relevant)

3. Legal framework (to be adapted to the context in the jurisdiction)

- 3.1 The constitution (or any other fundamental law, typically establishing high-level principles related to the public interest and expropriation versus protection of the right to private property)
- 3.2 The expropriation law (review of principles and processes)
- 3.3 Land tenure regime (including customary and informal regimes as relevant)

- 3.4 Legislative processes (if relevant)
- 3.5 EBRD policy on involuntary resettlement (brief summary of PR5 and this guidance note)
- 3.6 Gap review (comparison of local legislation with EBRD policies and the identification of potential gaps, if any, with the proposed way forward to meet PR5)

4. Principles, objectives and processes

- 4.1 Key principles and objectives (should spell out in a formal manner and at high level, without details, the key commitments the project is making as regards compliance with PR5)
 - 4.1.1 Avoidance of forced evictions
 - 4.1.2 Cut-off date and eligibility
 - 4.1.3 Compensation at replacement value, in-kind compensation wherever possible
 - 4.1.4 Livelihood restoration wherever livelihoods are affected
 - 4.1.5 Consideration of vulnerable people
 - 4.1.6 Consultation-grievance mechanisms
 - 4.1.7 Monitoring and external reviews
 - 4.1.8 Key principles for implementation arising from agreements with government or law, particularly where government is playing a mandatory role in implementation

4.2 Process overview

- 4.2.1 Negotiated settlements (the process for arriving at a negotiated agreement, collective then individual negotiations, offers, refusals, acceptance, formalisation of agreement)
- 4.2.2 Process in case no agreement is reached
 - with expropriation (formalised ownership)
 - without expropriation (informal occupation)

5. Baseline of affected assets and affected persons

- 5.1 Census of affected assets and affected households
 - 5.1.1 Methodology
 - 5.1.2 Implementation
 - 5.1.3 Results
- 5.2 Socio-economic baseline surveys
 - 5.2.1 Methodology
 - 5.2.2 Implementation
 - 5.2.3 Results (including livelihoods, social fabric, culture, relevant sociopolitical aspects)

- 5.3 Affected land
 - 5.3.1 Estimates of surfaces potentially required
 - 5.3.2 Categorisation of land needs (permanent, temporary)
 - 5.3.3 Land tenure regimes
- 5.4 Affected structures
 - 5.4.1 Estimates of numbers of affected structures
 - 5.4.2 Categorisation of structures
 - 5.4.3 Structure ownership regime
- 5.5 Affected businesses
 - 5.5.1 Estimates of numbers of affected businesses
 - 5.5.2 Categorisation of businesses
 - 5.5.3 Business ownership regime
- 5.6 Affected people
 - 5.6.1 Estimated number of affected households and persons
 - 5.6.2 Economic and physical displacement
 - 5.6.3 Summary socio-economic description and categorisation of affected persons
 - 5.6.4 Compensation preferences
- 6. Resettlement and compensation strategy**
 - 6.1 Entitlements
 - 6.1.1 Eligibility for compensation
 - 6.1.2 Entitlement matrix
 - 6.2 Valuation of affected assets
 - 6.2.1 Land
 - 6.2.2 Structures
 - 6.2.3 Crops and trees
 - 6.2.4 Businesses
 - 6.3 Resettlement packages (for projects with physical displacement – category (ii) of PR5, paragraph 41)
 - 6.3.1 Reconstruction (project or self, arrangements for reconstruction)
 - 6.3.2 Resettlement site (or sites as applicable) selection (comparison of options, consultation around site identification and selection)
 - 6.3.3 Resettlement site development (planning standards, site planning (with relevant drawings), community facilities, utilities, plot allocation within the site)
 - 6.3.4 Housing design (consultation around housing design, principles, selected construction materials, selected designs, with relevant drawings)
- 6.4 Cash compensation
 - 6.4.1 Rates for all different types of asset
 - 6.4.2 Payment process
 - 6.4.3 Cash risk mitigation (including financial training, payment in instalments or any other relevant mitigation)
- 6.5 Incremental land acquisition (ongoing acquisition of small pieces of land during project construction and operation, beyond the scope of this resettlement plan)
 - 6.5.1 Scope
 - 6.5.2 Processes (including consultation)
- 6.6 Gender sensitivity assessment on proposed compensation entitlements (gender analysis and mitigation of any identified gender risks)
- 7. Livelihood restoration and improvement**
 - 7.1 Principles (eligibility, key aspects of livelihood restoration and improvement entitlements)
 - 7.2 Restoration and improvement of land-based livelihoods (replacement land and agricultural improvement packages)
 - 7.3 Restoration and improvement of non-land-based livelihoods (employability enhancement, project procurement and employment, support for SME creation and development, and so on)
 - 7.4 Training
 - 7.5 Specific aspects related to gender
 - 7.6 Specific aspects related to vulnerability
 - 7.7 Partnerships and linkages for the planning and implementation of livelihood restoration and improvement
- 8. Consultation and disclosure**
 - 8.1 Main results of consultation carried out in preparation for the resettlement plan
 - 8.2 Engagement plan for further stages
 - 8.3 Disclosure

9. Grievance management and redress system

- 9.1 Key principles
- 9.2 Registration of grievances
- 9.3 First tier of amicable settlement
- 9.4 Resort mechanism and mediation
- 9.5 Appeal to court

Appendix A. Detailed results of the census and socio-economic survey

Appendix B. Census dossier and methodology

Appendix C. Template of a claim registration and follow-up form

Plus any other relevant appendices (photographs, maps, drawings, and so on)

10. Vulnerable people

- 10.1 Vulnerability analysis
 - 10.1.1 Vulnerability definition and criteria in the context of the project
 - 10.1.2 Vulnerability matrix (with scoring of criteria)
 - 10.1.3 Consultation around vulnerability criteria
- 10.2 Pre-identification of vulnerable people
- 10.3 Potential activities to assist vulnerable people
- 10.4 Arrangements for the implementation and budgeting of assistance to vulnerable people

11. Monitoring and evaluation

- 11.1 General objectives of monitoring and evaluation
- 11.2 Auditing and monitoring during implementation
 - 11.2.1 Scope and content – internal activities
 - 11.2.2 Scope and content – external reviews
 - 11.2.3 Indicators, including key performance indicators
 - 11.2.4 Reporting
- 11.3 Completion audit
 - 11.3.1 Objectives and scope
 - 11.3.2 Success/completion criteria
 - 11.3.3 Timing and implementation arrangements for completion audit

12. Implementation responsibilities and funding

- 12.1 Implementation responsibilities
- 12.2 Budget and arrangements for funding
- 12.3 Time schedule (including review of compatibility of resettlement schedule with overall project construction and development schedule)
- 12.4 Change management

Appendix 4. Resettlement plan for projects with limited impact – template outline

Note 1: This is presented as general guidance and should be adapted to the specificities of the project context. It applies to projects with limited physical or economic displacement impacts.

Executive summary

1. Scope of the resettlement plan: Introduction

2. Project description and potential impacts

- 2.1 Project objectives, location, rationale, benefits and key components
- 2.2 Project footprint and associated land impacts – avoidance and minimisation

3. Legal framework (to be adapted to the context in the jurisdiction)

Brief description of legal processes to be followed for land acquisition in the project and brief review of potential problematic gaps with EBRD's standards, if any.

4. Principles, objectives and processes

- 4.1 Key principles and objectives (should spell out in a formal manner and at high level, without details, the key commitments the project is making as regards compliance with PR5)
 - 4.1.1 Avoidance of forced evictions
 - 4.1.2 Cut-off date and eligibility
 - 4.1.3 Compensation at replacement value, in-kind compensation wherever possible
 - 4.1.4 Livelihood restoration wherever livelihoods are affected
 - 4.1.5 Consideration of vulnerable people
 - 4.1.6 Consultation-grievance mechanisms
 - 4.1.7 Monitoring and external reviews
 - 4.1.8 Key principles for implementation arising from agreements with government or law, particularly where government is playing a mandatory role in implementation
- 4.2 Process overview
 - 4.2.1 Negotiated settlements (the process for arriving at a negotiated agreement, collective then individual negotiations, offers, refusals, acceptance, formalisation of agreement)
 - 4.2.2 Process in case no agreement is reached

5. Baseline of affected assets and affected persons

Should be proportionate to the magnitude of the impacts.

- 5.1 Description of affected assets
- 5.2 Affected businesses
- 5.3 Affected people (numbers, nature of displacement, permanent or temporary displacement, restrictions)

6. Entitlements

- 6.1 Valuation principles
- 6.2 Entitlement matrix
- 6.3 Gender sensitivity assessment as relevant

7. Livelihood restoration

- 7.1 Principles (eligibility, key aspects of livelihood restoration and improvement entitlements)
- 7.2 Activities
- 7.3 Partnerships for livelihood restoration activities

8. Consultation and disclosure

- 8.1 Main results of consultation carried out in preparation for the resettlement plan
- 8.2 Engagement plan for further stages
- 8.3 Disclosure

9. Grievance management and redress system

- 9.1 Description of grievance management system
- 9.2 Resort mechanism and mediation

10. Vulnerable people

- 10.1 Identified vulnerable groups or people
- 10.2 Assistance for vulnerable people

11. Monitoring and evaluation

- 11.1 Internal monitoring scope
- 11.2 Indicators
- 11.3 Reporting frequencies

12. Implementation responsibilities and funding

- 12.1 Implementation responsibilities
- 12.2 Budget and arrangements for funding
- 12.3 Time schedule

Any relevant appendices (photographs, maps, drawings, sample questionnaires, and so on)

Appendix 5. Resettlement framework

– sample outline

EXECUTIVE SUMMARY

1. Scope of the resettlement framework: Introduction

- 1.1 Scope and contents of this framework
- 1.2 Key definitions

2. Project description and potential impacts

- 2.1 Project objectives, location, rationale and benefits
- 2.2 Key project components (should be brief and can refer to the ESIA for further details)
- 2.3 The potential project footprint and its associated land impacts (with maps, description and photographs as relevant) – this is tentative, as the design of the project will typically not have been finalised at the time of framework submission, but a first estimate should be presented based on a worst-case impact scenario, with possible different options, if applicable
- 2.4 Commitment to the avoidance and minimisation of displacement in further project development

3. Legal framework (to be adapted to the context in the jurisdiction)

- 3.1 The constitution (or any other fundamental law, typically establishing high-level principles related to the public interest and expropriation versus the protection of the right to private property)
- 3.2 The expropriation law (review of principles and processes)
- 3.3 Land tenure regime (including customary and informal regimes as relevant)
- 3.4 Legislative processes (if relevant)
- 3.5 EBRD policy on involuntary resettlement (brief summary of PR5 and this guidance note)
- 3.6 Gap review (comparison of local legislation with EBRD policies and identification of potential gaps, if any, with the proposed way forward to meet PR5)

4. Principles, objectives and processes

- 4.1 Key principles and objectives (should spell out in a formal manner and at high level, without details, the key commitments the project is making as regards compliance with PR5)
 - 4.1.1 Avoidance of forced evictions
 - 4.1.2 Cut-off date and eligibility
 - 4.1.3 Compensation at replacement value, in-kind compensation wherever possible

- 4.1.4 Livelihood restoration wherever livelihoods are affected

- 4.1.5 Consideration of vulnerable people

- 4.1.6 Consultation-grievance mechanisms

- 4.1.7 Monitoring and external reviews

- 4.1.8 Key principles for implementation arising from agreements with government or law, particularly where government is playing a mandatory role in implementation

4.2 Process overview

- 4.2.1 Negotiated settlements (what is the process to arrive at a negotiated agreement, collective then individual negotiations, offers, refusals, acceptance, formalisation of agreement)

- 4.2.2 Process in case no agreement is reached:

- with expropriation (formalised ownership)
- without expropriation (informal occupation)

5. Tentative resettlement and compensation strategy

5.1 First approach to entitlements

- 5.1.1 Eligibility for compensation

- 5.1.2 Entitlement matrix

5.2 Valuation of affected assets (principles, methodology, arrangements for valuation implementation)

- 5.2.1 Land

- 5.2.2 Structures

- 5.2.3 Crops and trees

- 5.2.4 Businesses

5.3 Cash compensation

- 5.3.1 Rates for all different types of asset

- 5.3.2 Payment process

- 5.3.3 Cash risk mitigation (including financial training, payment in instalments or any other relevant mitigations)

5.4 Gender sensitivity assessment on proposed compensation entitlements (gender analysis and mitigation of any gender risks)

6. Livelihood restoration and improvement

- 6.1 Principles (eligibility, key aspects of livelihood restoration and improvement entitlements)
- 6.2 Restoration and improvement of land-based livelihoods (replacement land and agricultural improvement packages) – tentative identification of potential activities
- 6.3 Restoration and improvement of non-land based livelihoods (employability enhancement, project procurement and employment, support for SME creation and development, and so on) – tentative identification of potential activities
- 6.4 Training
- 6.5 Specific aspects related to gender
- 6.6 Specific aspects related to vulnerability
- 6.7 Partnerships and linkages for planning and implementation of livelihood restoration and improvement

7. Consultation and disclosure

- 7.1 Main results of consultation carried out in preparation for the resettlement framework
- 7.2 Engagement plan for further stages
- 7.3 Disclosure

8. Grievance management and redress system

- 8.1 Key principles
- 8.2 Registration of grievances
- 8.3 First tier of amicable settlement
- 8.4 Resort mechanism and mediation
- 8.5 Appeal to court

9. Vulnerable people

- 9.1 Vulnerability analysis
 - 9.1.1 Vulnerability definition and criteria in the context of the project
 - 9.1.2 Vulnerability matrix (with scoring of criteria)
- 9.2 Potential activities to assist vulnerable people
- 9.3 Arrangements for implementing and budgeting for assistance to vulnerable people

10. Monitoring and evaluation

- 10.1 General objectives of monitoring and evaluation
- 10.2 Auditing and monitoring during implementation
 - 10.2.1 Scope and content – internal activities
 - 10.2.2 Scope and content – external reviews
 - 10.2.3 Indicators, including key performance indicators
 - 10.2.4 Reporting
- 10.3 Completion audit
 - 10.3.1 Objectives and scope
 - 10.3.2 Success/completion criteria
 - 10.3.3 Timing and implementation arrangements for completion audit

11. Implementation responsibilities and funding

- 11.1 Implementation responsibilities
- 11.2 Budget and arrangements for funding
- 11.3 Time schedule (including review of compatibility of resettlement schedule with overall project construction and development schedule)
- 11.4 Change management

Appendix A. Census dossier and methodology

Appendix B. Template of a claim registration and follow-up form

Plus any other relevant appendices (photographs, maps, drawings, and so on).

Appendix 6. Acronyms

EBRD	European Bank for Reconstruction and Development
EIA	Environmental impact assessment
ESAP	Environmental and social action plan
ESIA	Environmental and social impact assessment
ESP	Environmental and Social Policy
FPIC	Free, prior, informed consent
GBVH	Gender-based violence and harassment
GLAC	Guide to land acquisition and compensation
IDP	Internally displaced person
IFC	International Finance Corporation
LGBT	Lesbian, gay, bisexual, transsexual
M&E	Monitoring and evaluation
NGO	Non-governmental organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
PR	Performance Requirement
UN	United Nations
UN OCHA	United Nations Office for the Coordination of Humanitarian Affairs

Appendix 7. Additional resources

A.7.1. MDB resettlement policies

African Development Bank (2013) *African Development Bank Group's Integrated Safeguards System: Policy statement and operational safeguards*, Tunis. Available at: https://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/December_2013_-_AfDB'S_Integrated_Safeguards_System_-_Policy_Statement_and_Operational_Safeguards.pdf.

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Asian Infrastructure Investment Bank (2016) *Environmental and Social Framework*, Beijing. Available at: https://www.aiib.org/en/policies-strategies/_download/environment-framework/20160226043633542.pdf.

European Investment Bank (2018) *Environmental and Social Standards*, Luxembourg. Available at: https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf.

International Finance Corporation (2012) *Performance Standard 5: Land Acquisition and Involuntary Resettlement*, Washington, DC. Available at: https://www.ifc.org/wps/wcm/connect/75de96d4-ed36-4bdb-8050-400be02bf2d9/PS5_English_2012.pdf?MOD=AJPERES&CVID=jqex59b.

International Finance Corporation (2012) *International Finance Corporation's Guidance Notes: Performance Standards on Environmental and Social Sustainability*, Washington, DC. Available at: https://www.ifc.org/wps/wcm/connect/9fc3aaef-14c3-4489-acf1-a1c43d7f86ec/GN_English_2012_Full-Documents_updated_June-27-2019.pdf?MOD=AJPERES&CVID=mRQmrEJ.

World Bank (2017) *Environmental and Social Standard 5: Land Acquisition, Restrictions on Land Use and Involuntary Resettlement*, Washington, DC. Available at: <http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf#page=67&zoom=80>.

World Bank guidance notes, good practice notes and other resources on the Bank's Environmental and Social Framework. Available at: <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework>.

A.7.2. Private industry resettlement guidelines

International Council on Mining and Metals (2015) *Land acquisition and resettlement: lessons learned*, London. Available at: <https://www.icmm.com/en-gb/guidance/social-performance/2015/land-acquisition-and-resettlement>.

G. Reddy, E. Smyth and M. Steyn (2015) *Land access and resettlement, a guide to best practice*, Greenleaf Publishing.

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EBRD (2023) *EBRD Performance Requirement 10: Information disclosure and stakeholder engagement – guidance note*, London.

EBRD, CDC and IFC (2020) *Addressing Gender-Based Violence and Harassment: Emerging Good Practice for the Private Sector*, London and Washington, DC. Available at: <http://www.ebrd.com/gbv-good-practice.pdf>.

OHCHR (1948) *Universal Declaration of Human Rights*, New York. Available at: <https://www.ohchr.org/en/universal-declaration-of-human-rights>.

OHCHR (2007) *Basic principles and guidelines on development-based evictions and displacement*, New York. Available at: <https://www.ohchr.org/en/documents/thematic-reports/basic-principles-and-guidelines-development-based-evictions-and>.

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1552 Performance Requirement 5: Land acquisition, restrictions on land use and involuntary resettlement – Guidance note

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